



**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
HONOLULU, HAWAII
SPECIAL PROVISIONS
PROPOSAL
CONTRACT AND BOND**

FOR

GUARDRAIL REPAIRS AT VARIOUS LOCATIONS

PROJECT NO. HWY-KM-2024-01K

ISLAND OF KAUAI

FY 2024

NOTICE TO BIDDERS
(Chapter 103D, HRS)

SEALED BIDS for GUARDRAIL REPAIRS AT VARIOUS LOCATIONS, PROJECT NO. HWY-KM-2024-01K, ISLAND OF KAUAI, will begin as advertised in HiePRO. Bidders shall register and submit complete bids through HiePRO only. Refer to the following HiePRO link for important information on registering: <https://hiepro.ehawaii.gov/welcome.html>.

Plans, specifications, proposal, and other documents designated or incorporated by reference shall be available in HiePRO.

DEADLINE TO SUBMIT BIDS is October 6, 2023, at 2:00 p.m., Hawaii Standard Time (HST). **Bidders shall submit and upload the complete proposal to HiePRO prior to the bid opening date and time. Proposals received after said due date and time shall not be considered. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HiePRO. Do not include confidential and/or proprietary documents with the proposal. The record of each bidder and respective bid shall be open to public inspection. FAILURE TO UPLOAD THE PROPOSAL TO HiePRO SHALL BE GROUNDS FOR REJECTION OF THE BID.**

The scope of work consists of guardrail and terminal section repairs on the island of Kauai on an “as needed” basis.

To be eligible for award, bidders must possess a valid State of Hawaii General Engineering "A" license or Specialty Contractors "C-32" license **at the time of bidding**.

A pre-bid conference is scheduled for **September 14, 2023 at 10:00 A.M. HST on Microsoft Teams**. Due to the impacts of COVID-19, attendees shall dial the number listed below to participate by teleconference.

Dial in number: (808) 829-4853

Phone Conference ID: 357 273 519#

All prospective bidders and/or their respective representatives are encouraged to attend, however, attendance is not mandatory. All information presented at the pre-bid conference is provided for clarification and information only. Any amendments to the bid documents shall be made by formal addendum and posted in HiePRO.

All Request for Information (RFI) questions and substitution requests shall be submitted via HiePRO **no later than fourteen (14) calendar days** before bid opening. RFI questions received after the stated deadline will not be addressed. Verbal RFIs will not receive a response. All responses to RFI questions shall be issued by formal addendum and posted in HiePRO.

Apprenticeship Preference. A 5% bid adjustment for bidders that are party to apprenticeship agreements pursuant to §103-55.6, Hawaii Revised Statutes (HRS), is applicable to this project.

Employment of State Residents on Construction Procurement Contracts. Compliance with §103B-3, HRS, is a requirement for this project whereby a minimum of 80% of the bidder's work force on this project shall consist of Hawaii residents.

Campaign contributions by State and County Contractors. Contractors are hereby notified of the applicability of §11-355, HRS, which states that campaign contributions are prohibited from specified State or county government contractors during the term of the contract if the contractors are paid with funds appropriated by a legislative body. For more information, contact the Campaign Spending Commission at (808) 586-0285.

Protests. Any protest of this solicitation shall be submitted in writing to the Director of Transportation, in accordance with §103D-701, HRS, and §3-126, Hawaii Administrative Rules.

The Equal Employment Opportunity Regulations of the Secretary of Labor implementing Executive Order 11246, as amended, shall be complied with on this project.

Driving While Impaired (DWI) Education. HDOT encourages all organizations contracted with the DOT to have an employee education program preventing DWI. DWI is defined as operating a motor vehicle while impaired by alcohol or other legal or illegal substances. HDOT promotes this type of program to accomplish our mission to provide a safe environment for motorists, bicyclists and pedestrians utilizing our State highways, and expects its contractors to do so as well.

The U.S. Department of Transportation Regulation entitled “Nondiscrimination in Federally-Assisted Programs of the U.S. Department of Transportation,” Title 49, Code of Federal Regulations (CFR), Part 21 is applicable to this project. Bidders are hereby notified that the Department of Transportation will affirmatively ensure that the contract entered into pursuant to this advertisement will be awarded to the lowest responsible bidder without discrimination on the grounds of race, color, national origin or sex (as directed by 23 CFR Part 200).

For additional information, contact Eric Fujikawa, Project Manager, by phone at (808) 241-3015, by fax at (808) 241-3011 or email at eric.i.fujikawa@hawaii.gov.

The State reserves the right to reject any or all proposals and to waive any defects in said proposals in the best interest of the public.



ROBIN K. SHISHIDO
Deputy Director of Transportation for Highways

Posted on HiePRO: September 6, 2023

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INSTRUCTIONS FOR CONTRACTOR'S LICENSING

"A" general engineering contractors and "B" general building contractors are reminded that due to the Hawaii Supreme Court's January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the general contractor to act as a specialty contractor in any area where the general contractor has no license. Although the "A" and "B" contractor may still bid on and act as the "prime" contractor on an "A" or "B" project (*See, HRS § 444-7 for the definitions of an "A" and "B" project.*), respectively, the "A" and "B" contractor may only perform work in the areas in which they have the appropriate contractor's license (*An "A" or "B" contractor obtains "C" specialty contractor's licenses either on its own, or automatically under HAR § 16-77-32.*). The remaining work must be performed by appropriately licensed entities. It is the sole responsibility of the contractor to review the requirements of this project and determine the appropriate licenses that are required to complete the project.

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
HONOLULU, HAWAII

SPECIAL PROVISIONS

These Special Provisions shall supplement and/or amend the applicable provisions of the Hawaii Standard Specifications for Road and Bridge Construction, 2005, hereinafter referred to as the "Standard Specifications".

1 Amend **Section 101 - TERMS, ABBREVIATIONS, AND DEFINITIONS** to read as
 2 follows:

3
 4 **“DIVISION 100 - GENERAL PROVISIONS**

5
 6
 7 **SECTION 101 - TERMS, ABBREVIATIONS, AND DEFINITIONS**

8
 9 **101.01 Meaning of Terms.** The specifications are generally written in the
 10 imperative mood. In sentences using the imperative mood, the subject, “the
 11 Contractor shall”, is implied. In the material specifications, the subject may also
 12 be the supplier, fabricator, or manufacturer supplying material, products, or
 13 equipment for use on the project. The word “will” generally pertains to decisions
 14 or actions of the State.

15
 16 When a publication is specified, it refers to the most recent date of issue,
 17 including interim publications, before the bid opening date for the project, unless a
 18 specific date or year of issue is provided.

19
 20 **101.02 Abbreviations.** Meanings of abbreviations used in the specifications,
 21 on the plans, or in other contract documents are as follows:

22

23	AAN	American Association of Nurserymen
24		
25	AASHTO	American Association of State Highway and Transportation Officials
26		
27		
28	ACI	American Concrete Institute
29		
30	ADA	Americans with Disabilities Act
31		
32	ADAAG	Americans with Disabilities Act Accessibility Guidelines
33		
34	AGC	Associated General Contractors of America
35		
36	AIA	American Institute of Architects
37		
38	AISC	American Institute of Steel Construction
39		
40	AISI	American Iron and Steel Institute
41		
42	ANSI	American National Standards Institute
43		
44	APA	American Plywood Association
45		

46	ARA	American Railway Association
47		
48	AREA	American Railway Engineering Association
49		
50	ASA	American Standards Association
51		
52	ASCE	American Society of Civil Engineers
53		
54	ASLA	American Society of Landscape Architects
55		
56	ASTM	American Society for Testing and Materials
57		
58	AWG	American Wire Gauge
59		
60	AWPA	American Wood Preserver's Association
61		
62	AWS	American Welding Society
63		
64	AWWA	American Water Works Association
65		
66	BMP	Best Management Practice
67		
68	CCO	Contract Change Order
69		
70	CFR	Code of Federal Regulations
71		
72	CRSI	Concrete Reinforcing Steel Institute
73		
74	DCAB	Disability and Communication Access Board, Department of Health, State of Hawaii
75		
76		
77	DOTAX	Department of Taxation, State of Hawaii
78		
79	EPA	U.S. Environmental Protection Agency
80		
81	FHWA	Federal Highway Administration, U.S. Department of Transportation
82		
83		
84	FSS	Federal Specifications and Standards, General Services Administration, U.S. Department of Defense
85		
86		
87	HAR	Hawaii Administrative Rules
88		
89	HDOT	Department of Transportation, State of Hawaii
90		

91	HIOSH	Occupational Safety and Health, Department of Labor and Industrial Relations, State of Hawaii
92		
93		
94	HMA	Hot Mix Asphalt
95		
96	HRS	Hawaii Revised Statutes
97		
98	ICEA	Insulated Cable Engineers Association (formerly IPCEA)
99		
100	IMSA	International Municipal Signal Association
101		
102	IRS	Internal Revenue Service
103		
104	ITE	Institute of Transportation Engineers
105		
106	MUTCD	Manual on Uniform Traffic Control Devices for Streets and Highways, FHWA, U.S. Department of Transportation
107		
108		
109	NCHRP	National Cooperative Highway Research Program
110		
111	NEC	National Electric Code
112		
113	NEMA	National Electrical Manufacturers Association
114		
115	NFPA	National Forest Products Association
116		
117	NPDES	National Pollutant Discharge Elimination System
118		
119	OSHA	Occupational Safety and Health Administration/Act, U.S. Department of Labor
120		
121		
122	SAE	Society of Automotive Engineers
123		
124	SI	International Systems of Units
125		
126	UFAS	Uniform Federal Accessibility Standards
127		
128	UL	Underwriter's Laboratory
129		
130	USGS	U.S. Geological Survey
131		
132	VECP	Value Engineering Cost Proposal
133		
134		

135 **101.03 Definitions.** Whenever the following words, terms, or pronouns are
136 used in the contract documents, unless otherwise prescribed therein and without
137 regards to the use or omission of uppercase letters, the intent and meaning shall
138 be interpreted as follows:

139
140 **Addendum (plural - Addenda)** - A written or graphic document, including
141 drawings and specifications, issued by the Director during the bidding period. This
142 document modifies or interprets the bidding documents by additions, deletions,
143 clarifications or corrections.

144
145 **Addition** (to the contract sum) - Amount added to the contract sum by change
146 order.

147
148 **Advertisement** - A public announcement inviting bids for work to be performed or
149 materials to be furnished.

150
151 **Amendment** - A written document issued to amend the existing contract between
152 the State and Contractor and properly executed by the Contractor and Director.

153
154 **Award** - Written notification to the bidder that the bidder has been awarded a
155 contract.

156
157 **Bad Weather Day (or Unworkable Day)** - A day when weather or other conditions
158 prevent a minimum of four (4) hours of work with the Contractor's normal work
159 force on critical path activities at the site.

160
161 **Bag** - 94 pounds of cement.

162
163 **Barrel** - 376 pounds of cement.

164
165 **Base Course** - The layer or layers of specified material or selected material of a
166 designed thickness placed on a subbase or subgrade to support a surface course.

167
168 **Basement Material** - The material in excavation or embankments underlying the
169 lowest layer of subbase, base, pavement, surfacing or other specified layer.

170
171 **Bid** - See Proposal.

172
173 **Bidder** - An individual, partnership, corporation, joint venture or other legal entity
174 submitting, directly or through a duly authorized representative or agent, a
175 proposal for the work or construction contemplated.

176
177 **Bidding Documents (or Solicitation Documents)** - The published solicitation
178 notice, bid requirements, bid forms and the proposed contract documents including
179 all addenda and clarifications issued prior to receipt of the bid.

180

181 **Bid Security** - The security furnished by the bidder from which the State may
182 recover its damages in the event the bidder breaches its promise to enter into a
183 contract with the State, or fails to execute the required bonds covering the work
184 contemplated, if its proposal is accepted.

185
186 **Blue Book** - EquipmentWatch Cost Recovery (formerly known as
187 EquipmentWatch Rental Rate Blue Book), available from EquipmentWatch, a
188 division of Penton, Inc.

189
190 **Calendar Day** - See Day.

191
192 **Change Order (or Contract Change Order)** - A written order signed by the
193 Engineer issued with or without the consent of the Contractor directing changes in
194 the work, contract time or contract price. The purposes of a change order include,
195 but are not limited to (1) establishing a price or time adjustment for changes in the
196 work; (2) establishing full payment for direct, indirect, and consequential costs,
197 including costs of delay; (3) establishing price adjustment or time adjustment for
198 work covered and affected by one or more field orders; or (4) settling Contractor's
199 claims for direct, indirect, and consequential costs, or for additional contract time,
200 in whole or in part.

201
202 **Completion** - See Substantial Completion and Final Completion.

203
204 **Completion Date** - The date specified by the contract for the completion of all
205 work on the project or of a designated portion of the project.

206
207 **Comptroller** - the Comptroller of the State of Hawaii, Department of Accounting
208 and General Services.

209
210 **Contract** - The written agreement between the Contractor and the State, by which
211 the Contractor shall provide all labor, equipment, and materials and perform the
212 specified work within the contract time stipulated, and by which the State of Hawaii
213 is obligated to compensate the Contractor at the prices set forth in the contract
214 documents.

215
216 **Contract Certification Date** - The Date on which the Deputy Comptroller for the
217 State of Hawaii (or authorized representative) signs the Contract Certification.

218
219 **Contract Completion Date** - The calendar day on which all work on the project,
220 required by the contract, must be completed. See CONTRACT TIME.

221

222 **Contract Documents** - The contract, solicitation, addenda, notice to bidders,
223 Contractor's bid proposal (including wage schedule, list of subcontractors and
224 other documentations accompanying the bid), notice to proceed, bonds, general
225 provisions, special provisions, specifications, drawings, all modifications, all written
226 amendments, change orders, field orders, orders for minor changes in the work,
227 the Engineer's written interpretations and clarifications issued on or after the
228 effective date of the contract.

229
230 **Contract Item (Pay Item)** - A specific unit of work for which there is a price in the
231 contract.

232
233 **Contract Modification (Modification)** - A change order that is mutually agreed to
234 and signed by the parties to the contract.

235
236 **Contract Price** - The amount designated on the face of the contract for the
237 performance of work.

238
239 **Contract Time (or Contract Duration)** - The number of calendar or working days
240 provided for completion of the contract, inclusive of authorized time extensions.
241 Contract time shall commence on the Start Work Date and end on the Substantial
242 Completion Date. If in lieu of providing a number of calendar or working days, the
243 contract requires completion by a certain date, the work shall be completed by that
244 date.

245
246 **Contracting Officer** - See Engineer.

247
248 **Contractor** - Any individual, partnership, firm, corporation, joint venture, or other
249 legal entity undertaking the execution of the work under the terms of the contract
250 with the State.

251
252 **Critical Path** - Longest logical sequence of activities that must be completed on
253 schedule for the entire project to be completed on schedule.

254
255 **Day** - Any day shown on the calendar, beginning at midnight and proceeding up
256 to, but not including, midnight the following day. If no designation of calendar or
257 working day is made, "day" shall mean calendar day.

258
259 **Department** - The Department of Transportation of the State of Hawaii
260 (abbreviated HDOT).

261
262 **Director** - The Director of the HDOT acting directly or through duly authorized
263 representatives.

264
265 **Plans (or Drawings)** - The contract drawings in graphic or pictorial form including
266 the notes, tables and other notations thereon indicating the design, location,
267 character, dimensions, and details of the work.

268

269 **Engineer** - The Highway Administrator, Highways Division, HDOT, or the
270 authorized person delegated to act on the Administrator's behalf.

271

272 **Equipment** - All machinery, tools, and apparatus needed to complete the contract.

273

274 **Field Order** - A written order issued by the Engineer or the Engineer's authorized
275 representative to the Contractor requiring a change or changes to the contract
276 work. A field order may (1) establish a price adjustment or time adjustment; or (2)
277 may declare that no adjustment will be made to contract price or contract time; or
278 (3) may request the Contractor to submit a proposal for an adjustment to the
279 contract price or contract time.

280

281 **Final Acceptance** - The Status of the project when the Engineer finds that the
282 Contractor has satisfactorily completed all contract work in compliance with the
283 contract including all plant establishment requirements, and all the materials have
284 been accepted by the State.

285

286 **Final Completion** - The date set by the Director that all work required by the
287 contract has been completed in full compliance with the contract documents.

288

289 **Final Inspection** - Inspection where all contract items (with the exception of
290 Planting Period and Plant Establishment Period) are accepted by the Engineer.
291 Substantial Completion will be issued by the Engineer based on the satisfactory
292 results of the Final Inspection.

293

294 **Float** - The amount of time between when an activity can start and when an activity
295 must start, i.e., the time available to complete non-critical activities required for the
296 performance of the work without affecting the critical path.

297

298 **Guarantee** - Legally enforceable assurance of the duration of satisfactory
299 performance of quality of a product or work.

300

301 **Hawaii Administrative Rules** - Rules adopted by the State in accordance with
302 Chapter 91 of the Hawaii Revised Statutes, as amended.

303

304 **Highway (Street, Road, or Roadway)** - A public way within a right-of-way
305 designed, intended, and set aside for use by vehicles, bicyclists, or pedestrians.

306

307 **HAWAII ePROCUREMENT SYSTEM (HiEPRO)** - The State of Hawaii
308 eProcurement System for issuing solicitations, receiving proposals and responses,
309 and issuing notices of award.

310

311 **Highways Division** - The Highways Division of the Hawaii Department of
312 Transportation constituted under the laws of Hawaii for the administration of
313 highway work.

314

315 **Holidays** - The days of each year which are set apart and established as State
316 holidays pursuant to Chapter 8 of the Hawaii Revised Statutes, as amended.

317
318 **Inspector** - The Engineer's authorized representative assigned to make detailed
319 inspections of contract performance, prescribed work, and materials supplied.

320
321 **Laboratory** - The testing laboratory of the Highways Division or other testing
322 laboratories that may be designated by the Engineer.

323
324 **Laws** - All Federal, State, and local laws, executive orders and regulations having
325 the force of law.

326
327 **Leveling Course** - An aggregate mixture course of variable thickness used to
328 restore horizontal and vertical uniformity to existing pavements or shoulders.

329
330 **Liquidated Damages** - The amount prescribed in Subsection 108.08 - Liquidated
331 Damages for Failure to Complete the Work or Portions of the Work on Time, to be
332 paid to the State or to be deducted from any payments payable to or, which may
333 become payable to the Contractor.

334
335 **Lump Sum (LS)** - When used as a payment method means complete payment
336 for the item of work described in the contract documents.

337
338 **Material** - Any natural or manmade substance or item specified in the contract to
339 be incorporated in the work.

340
341 **Notice to Bidders** - The advertisement for proposals for all work or materials on
342 which bids are required. Such advertisement will indicate the location of the work
343 to be done or the character of the material to be furnished and the time and place
344 for the opening of proposals.

345
346 **Notice to Proceed** - Written notice from the Engineer to the Contractor identifying
347 the date on which the Contractor is to begin procuring materials and required
348 permits and adjusting work forces, equipment, schedules, etc. prior to beginning
349 physical work.

350
351 **Pavement** - The uppermost layer of material placed on the traveled way or
352 shoulders or both. Pavement and surfacing may be interchangeable.

353
354 **Pavement Structure** - The combination of subbase, base, pavement, surfacing or
355 other specified layer of a roadway constructed on a subgrade to support the traffic
356 load.

357
358 **Payment Bond** - The security executed by the Contractor and surety or sureties
359 furnished to the Department to guarantee payment by the Contractor to laborers,
360 material suppliers and subcontractors in accordance with the terms of the contract.

361

362 **Physical Work** - Physical construction activities on the project site or at
363 appurtenant facilities including staging areas. It includes; (i) building or installing
364 any structures or facilities including, but not limited to sign erection; BMP
365 installation; field office site grading and building; (ii) removal, adjustment, or
366 demolition of physical obstructions on site; (iii) any ground breaking activities; and
367 (iv) any utility work. It does not include pre-construction environmental testing
368 (such as water quality baseline measurements) that may be required as part of
369 contract.

370

371 **Pre-Final Inspection** - Inspection scheduled when Contractor notifies Engineer
372 that all physical work on the project, with the exception of planting period and plant
373 establishment period, has been completed. Notice from Contractor of substantial
374 completion will suspend contract time until Contractor receives punchlist from
375 Engineer.

376

377 **Profile Grade** - The elevation or gradient of a vertical plane intersecting the top
378 surface of the proposed pavement.

379

380 **Project Acceptance Date** - The calendar day on which the Engineer accepts the
381 project as completed. See Final Completion.

382

383 **Proposal (Bid)** - The offer of a Bidder, on the prescribed HDOT form, to perform
384 the work and to furnish the labor and materials at the prices quoted.

385

386 **Public Traffic** - Vehicular or pedestrian movement on a public way.

387

388 **Punchlist** - A list compiled by the Engineer specifying work yet to be completed or
389 corrected by the Contractor in order to substantially complete the contract.

390

391 **Questionnaire** - The specified forms on which the bidder shall furnish required
392 information as to its ability to perform and finance the work.

393

394 **Request for Change Proposal** - A written notice from the Engineer to the
395 Contractor requesting that the Contractor provide a price and/or time proposal for
396 contemplated changes preparatory to the issuance of a field order or change order.

397

398 **Right-of-Way** - Land, property, or property interests acquired by a government
399 agency for, or devoted to transportation purposes.

400

401 **Roadbed** - The graded portion of a highway within top and side slopes, prepared
402 as a foundation for the pavement structure and shoulders.

403

404 **Roadside** - The area between the outside edges of the shoulders and the right-of-
405 way boundaries. Unpaved median areas between inside shoulders of divided
406 highways and infield areas of interchanges are included.

407 **Section and Subsection** - Section or subsection shall be understood to refer to
408 these specifications unless otherwise specified.

409

410 **Shop Drawings** - All drawings, diagrams, illustrations, schedules and other data
411 or information which are specifically prepared or assembled by or for the
412 Contractor and submitted by the Contractor to illustrate some portion of the work.

413

414 **Shoulder** - The portion of the roadway next to the traveled way for:
415 accommodation of stopped vehicles, placement of underground facilities,
416 emergency use, and lateral support of base and surface courses.

417

418 **Sidewalk** - That portion of the roadway primarily constructed for use by
419 pedestrians.

420

421 **Solicitation** - An invitation to bid or request for proposals or any other document
422 issued by the Department to solicit bids or offers to perform a contract. The
423 solicitation may indicate the time and place to receive the bids or offers and the
424 location, nature and character of the work, construction or materials to be provided.

425

426 **Specifications** - Compilation of provisions and requirements to perform
427 prescribed work.

428

429 (A) **Standard Specifications.** Specifications by the State intended for
430 general application and repetitive use.

431

432 (B) **Special Provisions.** Revisions and additions to the standard
433 specifications applicable to an individual project.

434

435 **Standard Plans** - Drawings provided by the State for specific items of work
436 approved for repetitive use.

437

438 **State** - The State of Hawaii, its Departments and agencies, acting through its
439 authorized representative(s).

440

441 **State Waters** – All waters, fresh, brackish, or salt, around and within the State,
442 including, but not limited to, coastal waters, streams, rivers, drainage ditches,
443 ponds, reservoirs, canals, ground waters, and lakes; provided that drainage
444 ditches, ponds, and reservoirs required as a part of a water pollution control system
445 are excluded.

446

447 **Start Work Date** - Date on which Contractor begins physical work on the contract
448 or work order. This date shall also be the beginning of Contract Time.

449

450 **Structures** - Bridges, culverts, catch basins, drop inlets, retaining walls, cribbing,
451 manholes, endwalls, buildings, sewers, service pipes, underdrains, foundation
452 drains, and other such features that may be encountered in the work.

453

454 **Subbase** - A layer of specified material of specified thickness between the
455 subgrade and a base.

456

457 **Subcontract** - Any written agreement between the Contractor and its
458 subcontractors which contains the conditions under which the subcontractor is to
459 perform a portion of the work for the Contractor.

460

461 **Subcontractor** - An individual, partnership, firm, corporation, joint venture or other
462 legal entity, as licensed or required to be licensed under Chapter 444, Hawaii
463 Revised Statutes, as amended, which enters into an agreement with the
464 Contractor to perform a portion of the work.

465

466 **Subgrade** - The top surface of completed earthwork on which subbase, base,
467 surfacing, pavement, or a course of other material is to be placed.

468

469 **Substantial Completion** - The Status of the project when the Contractor has
470 completed the work, except for the planting period and plant establishment period,
471 and each of the following requirements are met:

472

473 (1) All traffic lanes (including shoulders, ramps, sidewalks and bike
474 paths) are in their final configuration as designed and the final
475 wearing surface has been installed;

476

477 (2) All operational and safety devices have been installed in accordance
478 with the contract documents including guardrails, end treatments,
479 traffic barriers, required signs and pavement markings, drainage,
480 parapet, and bridge and pavement structures;

481

482 (3) All required illumination and lighting for normal and safe use and
483 operation is installed and functional in accordance with the contract
484 documents;

485

486 (4) All utilities and services are connected and working;

487

488 (5) The need for temporary traffic controls or lane closures at any time
489 has ceased, except for lane closures required for routine
490 maintenance;

491

492 (6) The building, structure, improvement or facility can be used for its
493 intended purpose.

494

495 **Substantial Completion Date** - The date the Substantial Completion is granted
496 by the Engineer in Writing and Contract Time stops.

497

498 **Superintendent** - The employee of the Contractor who is responsible for all the
499 work and is a Contractor's agent for communications to and from the State.

500

501 **Surety** - The qualified individual, firm or corporation other than the Contractor,
502 which executes a bond with and for the Contractor to insure its acceptable
503 performance of the contract.

504
505 **Surfacing** - The uppermost layer of material placed on the traveled way or
506 shoulders. This term is used interchangeably with pavement.

507
508 **Traveled Way** - The portion of the roadway for the movement of vehicles,
509 exclusive of shoulders.

510
511 **Unsuitable Material** - Materials that contain organic matter, muck, humus, peat,
512 sticks, debris, chemicals, toxic matter, or other deleterious materials not suitable
513 for use in earthwork.

514
515 **Utility** - A line, facility, or system for producing, transmitting, or distributing
516 communications, power, electricity, heat, gas, oil, water, steam, waste, or storm
517 water.

518
519 **Utility Owner** - The entity, whether private or owned by a State, Federal, or County
520 governmental body, that has the power and responsibility to grant approval for, or
521 undertake construction work involving a particular utility.

522
523 **Water Pollutant** - Dredged spoil, solid refuse, incinerator residue, sewage,
524 garbage, sewage sludge, munitions, chemical waste, biological materials,
525 radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil,
526 sediment, cellar dirt and industrial, municipal, and agricultural waste.

527
528 **Water Pollution** - (1) Such contamination or other alteration of the physical,
529 chemical, or biological properties of any state waters, including change in
530 temperature, taste, color, turbidity, or odor of the waters, or (2) Such discharge of
531 any liquid, gaseous, solid, radioactive, or other substances into any state waters,
532 as will or is likely to create a nuisance or render such waters unreasonably harmful,
533 detrimental, or injurious to public health, safety, or welfare, including harm,
534 detriment, or injury to public water supplies, fish and aquatic life and wildlife,
535 recreational purposes and agricultural and industrial research and scientific uses
536 of such waters or as will or is likely to violate any water quality standards, effluent
537 standards, treatment and pretreatment standards, or standards of performance for
538 new sources adopted by the Department of Health.

539
540 **Work** - The furnishing of all labor, material, equipment, and other incidentals
541 necessary or convenient for the successful execution of all the duties and
542 obligations imposed by the contract.

543
544 **Working Day** - A calendar day in which a Contractor is capable of working four (4)
545 or more hours with its normal work force, exclusive of:

546

547 (1) Saturdays, Sundays, and recognized legal State holidays and such
548 other days specified by the contract documents as non-working days,
549

550 (2) Day in which the Engineer suspends work for four (4) or more hours
551 through no fault of the Contractor.”
552

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556

END OF SECTION 101

1 Make this section a part of the Standard Specifications:
2

3 **“SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**
4

5
6 **102.01 Prequalification of Bidders.** Prospective bidders shall be capable of
7 performing the work for which they are bidding.
8

9 In accordance with HRS Chapter 103D-310, the Department may require
10 any prospective bidder to submit answers to questions contained in the 'Standard
11 Qualification Questionnaire For Prospective Bidders On Public Works Contracts'
12 furnished by the Department, properly executed and notarized, setting forth a
13 complete statement of the experience of such prospective bidder and its
14 organization in performing similar work and a statement of the equipment
15 proposed to be used, together with adequate proof of the availability of such
16 equipment. Whenever it appears to the Department, from answers to the
17 questionnaire or otherwise, that the prospective bidder is not fully qualified and
18 able to perform the intended work, the Department will, after affording the
19 prospective bidder an opportunity to be heard and if still of the opinion that the
20 bidder is not fully qualified to perform the work, refuse to receive or consider any
21 bid offered by the prospective bidder. All information contained in the answers to
22 the questionnaire shall be kept confidential. Questionnaire so submitted shall be
23 returned to the bidders after serving their purpose.
24

25 No person, firm or corporation may bid where (1) the person, firm, or
26 corporation, or (2) a corporation owned substantially by the person, firm, or
27 corporation, or (3) a substantial stockholder or an officer of the corporation, or (4)
28 a partner or substantial investor in the firm is in arrears in payments owed to the
29 State or its political subdivisions or is in default as a surety or failure to do
30 faithfully and diligently previous contracts with the State.
31

32 Prospective bidders shall have performed similar work for at least two (2)
33 years prior to the bid date. Failure to meet this requirement shall be cause for
34 disqualification. Experience to be submitted to Project Manager within seven (7)
35 calendar days upon request from State.
36

37 **102.02 Contents of Proposal Forms.** The Department will furnish
38 prospective bidders with proposal forms posted in HlePRO stating:
39

- 40 (1) The location,
- 41
- 42 (2) Description of the proposed work,
- 43
- 44 (3) The approximate quantities,
- 45
- 46 (4) Items of work to be done or materials to be furnished,

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(5) A schedule of items, and

(6) The time in which the work shall be completed.

Papers bound with or attached to the proposal form are part of the proposal. The bidder shall not detach or alter the papers bound with or attached to the proposal when the bidder submits its proposal through HlePRO.

Also, the bidder shall consider other documents including the plans and specifications a part of the proposal form whether attached or not.

102.03 (Unassigned)

102.04 Estimated Quantities. The quantities shown in the contract are approximate and are for the comparison of bids only. The actual quantity of work may not correspond with the quantities shown in the contract. The Department will make payment to the Contractor for unit price items in accordance with the contract for only the following:

(1) Actual quantities of work done and accepted, not the estimated quantities; or

(2) Actual quantities of materials furnished, not the estimated quantities.

The Department may increase, decrease, or omit each scheduled quantities of work to be done and materials to be furnished. When the Department increases or decreases the estimated quantity of a contract item by more than 15% the Department will make payment for such items in accordance with Subsection 104.06 - Methods of Price Adjustment.

102.05 Examination of Contract and Site of Work. The bidder shall examine carefully the site of the proposed work and contract before submitting a proposal.

By the act of submitting a bid for the proposed contract, the bidder warrants that:

(1) The bidder and its Subcontractors have reviewed the contract documents and found them free from ambiguities and sufficient for the purpose intended;

(2) The bidder and its workers, employees and subcontractors have the skills and experience in the type of work required by the contract documents bid upon;

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- (3) Neither the bidder nor its employees, agents, suppliers or subcontractors have relied upon verbal representations from the Department, its employees or agents, including architects, engineers or consultants, in assembling the bid figure; and
- (4) The basis for the bid figure is solely on the construction contract documents.

Also, the bidder warrants that the bidder has examined the site of the work. From its investigations, the bidder acknowledges satisfaction on:

- (1) The nature and location of the work;
- (2) The character, quality, and quantity of materials;
- (3) The difficulties to be encountered; and
- (4) The kind and amount of equipment and other facilities needed.

Subsurface information or hydrographic survey data furnished are for the bidders' convenience only. The data and information furnished are the product of the Department's interpretation gathered in investigations made at the specific locations. These conditions may not be typical of conditions at other locations within the project area or that such conditions remain unchanged. Also, conditions found at the time of the subsurface explorations may not be the same conditions when work starts. The bidder shall be solely responsible for assumptions, deductions, or conclusions the bidder may derive from the subsurface information or data furnished.

If the Engineer determines that the natural conditions differ from that originally anticipated or contemplated by the Contractor in the items of excavation, the State may treat the difference in natural conditions, as falling within the meaning of Subsection 104.02 – Changes.

102.06 Preparation of Proposal. The submittal of its proposal shall be on forms furnished by the Department. The bidder shall specify in words or figures:

- (1) A unit price for each pay item with a quantity given;
- (2) The products of the respective unit prices and quantities;
- (3) The lump sum amount; and
- (4) The total amount of the proposal obtained by adding the amounts of the several items.

139 The words and figures shall be in ink or typed. If a discrepancy occurs
140 between the prices written in words and those written in figures, the prices written
141 in words shall govern.

142
143 When an item in the proposal contains an option to be made, the bidder
144 shall choose in accordance with the contract for that particular item.
145 Determination of an option will not permit the Contractor to choose again.

146
147 The bidder shall sign the proposal properly in ink. A duly authorized
148 representatives of the bidder or by an agent of the bidder legally qualified and
149 acceptable to the Department shall sign, including one or more partners of the
150 bidder and one or more representatives of each entity comprising a joint venture.

151
152 When an agent, other than the officer(s) of a corporation authorized to
153 sign contracts for the corporation or a partner of a partnership, signs the
154 proposals, a 'Power of Attorney' shall be on file with the Department or submitted
155 with the proposal. Otherwise, the Department will reject the proposal as irregular
156 and unauthorized.

157
158 The bidder shall submit acceptable evidence of the authority of the
159 partner, member(s) or officer(s) to sign for the partnership, joint venture, or
160 corporation respectively with the proposal. Otherwise, the Department will reject
161 the proposal as irregular and unauthorized.

162
163 **102.07 Irregular Proposals.** The Department may consider proposals
164 irregular and may reject the proposals for the following reasons:

- 165
166 (1) The proposal is a form not furnished by the Department, altered,
167 or detached;
168
169 (2) The proposal contains unauthorized additions, conditions, or
170 alternates. Also, the proposal contains irregularities that may tend to
171 make the proposal incomplete, indefinite, or ambiguous to its meaning;
172
173 (3) The bidder adds provisions reserving the right to accept or reject an
174 award. Also, the bidder adds provisions into a contract before an award;
175
176 (4) The proposal does not contain a unit price for each pay item listed
177 except authorized optional pay items; and
178
179 (5) Prices for some items are out of proportion to the prices for other
180 items.
181
182 (6) If in the opinion of the Director, the bidder and its listed
183 subcontractors do not have the Contactor's licenses or combination of
184 Contractor's licenses necessary to complete the work.
185

186 Where the prospective bidder is bidding on multiple projects
187 simultaneously and the proposal limits the maximum gross amount of awards
188 that the bidder can accept at one bid letting, the proposal is not irregular if the
189 limit on the gross amount of awards is clear, and the Department selects the
190 awards that can be given.

191
192 **102.08 Proposal Guaranty.** In as much as the contract to be executed is a
193 price-term, open end, or requirements contract under which the contract price, or
194 total amount to be paid the Contractor cannot be determined at the time the
195 contract is executed, the proposal guaranty required shall be in the amount of
196 \$25,000.00

197
198 The Department will not consider a proposal of \$25,000 or more unless
199 accompanied by:

200
201 (1) A deposit of legal tender; or

202
203 (2) A valid surety bid bond, underwritten by a company licensed to
204 issue bonds in the State of Hawaii, in the form and composed,
205 substantially, with the same language as provided herewith and signed by
206 both parties; or

207
208 (3) A certificate of deposit, share certificate, cashier's check,
209 treasurer's check, teller's check, or official check drawn by, or a certified
210 check accepted by and payable on demand to the State by a bank,
211 savings institution, or credit union insured by the Federal Deposit
212 Insurance Corporation (FDIC) or the National Credit Union Administration
213 (NCUA).

214
215 (a) The bidder may use these instruments only to a maximum of
216 \$100,000.

217
218 (b) If the required security or bond amount totals over \$100,000
219 more than one instrument not exceeding \$100,000 each and issued
220 by different financial institutions shall be acceptable.

221
222 (c) The instrument shall be made payable at sight to the
223 Department.

224
225 (d) **If bidder elects options (1) or (3) above for its bid security, said**
226 **bid security shall be in its original form and shall be submitted before**
227 **the bid deadline to the Contract Office, Department of**
228 **Transportation, Aliiaimoku Hale, 869 Punchbowl Street, Room 105,**
229 **Honolulu, Hawaii 96813. Original surety bid bonds do not need to be**
230 **submitted to the Contracts Office. Bidders are reminded that a copy**

231 of its surety bid bond shall be included with its bid submitted and
232 uploaded to HlePRO.
233

234 In accordance with HRS Chapter 103D-323, the above shall be in a sum
235 not less than 5% of the amount bid.
236

237 **102.09 Delivery of Proposal.** Bidders shall submit and upload the
238 complete proposal to HlePRO prior to the bid opening date and time.
239 **Proposals received after said due date and time shall not be considered.**
240 Original (wet ink, hard copy) proposal documents are not required to be
241 submitted. Contract award shall be based on evaluation of proposals submitted
242 and uploaded to HlePRO. **Any additional support documents explicitly**
243 **designated as confidential and/or proprietary shall be uploaded as a**
244 **separate file to HlePRO. Do not include confidential and/or proprietary**
245 **documents with the proposal.** The record of each bidder and respective bid
246 shall be open to public inspection.
247

248 **FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HlePRO SHALL BE**
249 **GROUND FOR REJECTION OF THE BID.**
250

251 If there is a conflict between the specification document and the HlePRO solicitation, the
252 specifications shall govern and control, unless otherwise specified.
253

254 **102.10 Withdrawal or Revision of Proposals.** A bidder may withdraw or
255 revise a proposal after the bidder submits the proposal in HlePRO. Withdrawal
256 or revision of proposal must be completed before the time set for the receiving of
257 bids.
258

259 **102.11 Public Opening of Proposals.** Not applicable.
260

261 **102.12 Disqualification of Bidders.** The Department may disqualify a bidder
262 and reject its proposal for the following reasons:
263

- 264 (1) Submittal of more than one proposal whether under the same or
265 different name.
266
- 267 (2) Evidence of collusion among bidders. The Department will not
268 recognize participants in collusion as bidders for any future work of the
269 Department until such participants are reinstated as qualified bidders.
270
- 271 (3) Lack of proposal guaranty.
272
- 273 (4) Submittal of an unsigned or improperly signed proposal.
274
- 275 (5) Submittal of a proposal without a listing of subcontractors or
276 containing only a partial or incomplete listing of subcontractors.

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(6) Submittal of an irregular proposal in accordance with Subsection 102.07 - Irregular Proposals.

(7) Evidence of assistance from a person who has been an employee of the agency within the preceding two (2) years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to HRS Chapter 84-15.

(8) Suspended or debarred in accordance with HRS Chapter 104-25.

(9) Failure to complete the prequalification questionnaire, if applicable.

(10) Failure to attend the mandatory pre-bid meeting, if applicable.

102.13 Material Guaranty. The successful bidder may be required to furnish a statement of the composition, origin, manufacture of materials, and samples.

102.14 Substitution of Materials and Equipment Before Bid Opening. See Subsection 106.13 for Substitution Of Materials and Equipment After Bid Opening.

(A) General. When brand names of materials or equipment are specified in the contract documents, they are to indicate a quality, style, appearance, or performance and not to limit competition. The bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualification of such proposed alternate brands shall be submitted via email to the Contact person listed in HlePRO for the solicitation and also post a question in HlePRO under the question/answer tab referencing the email with the request. The request must be posted in HlePRO no later than fourteen (14) calendar days before the bid opening date, not including the bid opening date

An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.17 – Addenda .

(B) Statement of Variances. The statement of variances must list all features of the proposed substitution that differ from the contract documents and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, and any other features requested by the Engineer and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, the Contractor shall

322 immediately replace the product with a specified product at no increase in
323 contract price and contract time.

324
325 **(C) Substitution Denial.** Any substitution request not complying with
326 the above requirements will be denied.

327
328 **102.15 Preferences.**

329
330 **(A) Preference for Hawaii Products.** In accordance with ACT 174,
331 SLH 2022, effective June 27, 2022, Hawaii Products Preference shall not
332 apply to solicitations for public works construction. Therefore, the Hawaii
333 Products Preference shall not apply to this project.

334
335 **(B) Preferences for Apprenticeship Programs.** In accordance with
336 ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for
337 bidders that are parties to apprenticeship agreements pursuant to Hawaii
338 Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's
339 price for evaluation purposes. These procedures apply to public works
340 projects with estimated cost of \$250,000 or more and entered into under
341 the provisions of HRS Chapter 103.

342
343 The following provisions apply to this Apprenticeship Program.

344
345 **(1) Definitions**

346
347 **(a)** “Apprenticeable trade”, HRS Section 103-55.6 (c),
348 shall have the same meaning as ‘apprenticeable occupation’
349 pursuant to Hawaii Administrative Rules (HAR) Section 30-
350 1-5.

351
352 **(b)** “Department” means the department of labor and
353 industrial relations.

354
355 **(c)** “Director” means the director of labor and industrial
356 relations.

357
358 **(d)** “Employ” means the employment of a person in an
359 employer-employee relations.

360
361 **(e)** “Governmental body” means as defined in HRS
362 Section 103D-104.

363
364 **(f)** “Party to an apprenticeship agreement” means party
365 to a registered apprenticeship program with the department
366 of labor and industrial relations.

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(g) “Preference” means the 5% by which the qualified bidder's offer amount would be decreased for evaluation purposes.

(h) “Public work” shall be as defined in HRS Section 104-2 and HAR Section 12-22-1.

(i) “Registered apprenticeship program” means a construction trade program approved by the department pursuant to HAR Section 12-30-1 and Section 12-30-4.

(j) “Sponsor” means an operator of an apprenticeship program and in whose name the program is approved and registered with the department of labor and industrial relations pursuant to HAR Section 12-30-1.

(k) Offeror – Entity/bidder submitting a proposal to undertake a project.

(l) Procurement Officer – Director of Transportation or his authorized representative.

(2) Qualification Procedures

(a) Any bidder seeking the preference must be a party to an apprenticeship agreement registered with the department at the time the offer is made for each apprenticeable trade the bidder will employ to construct the public works projects for which the offer is being made.

1. The apprenticeship agreement shall be registered and conform to the requirements of HRS Chapter 372.

2. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.

3. The bidder is not required to have apprentices in its employ at the time of submittal of an offer to qualify for the preference.

(b) The department shall:

1. Develop and maintain a list of construction trades in registered apprenticeship programs which conform to HRS Chapter 372; and

2. Electronically post the list, including any

414 amendments, on the department website
415 (<http://labor.hawaii.gov>).

416
417 (c) Bidder is responsible to comply with all submission
418 requirements for registration of its apprenticeship program
419 before requesting a preference.

420
421 (d) Bidder shall provide a certification by the sponsor of
422 the respective registered apprenticeship programs covering
423 the relevant trade(s) for the public works project.

424
425 (e) *Certification Form 1* issued by the department shall
426 include:

- 427
- 428 1. Contractor information;
 - 429 2. Solicitation reference;
 - 430 3. Trade(s);
 - 431 4. Date and name of apprenticeship program;
 - 432 5. Signature of authorized training coordinator or
433 training trust fund administrator certifying that the
434 contractor is a participant in the program, and that the
435 program is registered with the department;
 - 436 6. Contract information for sponsor's authorized
437 representative signing the form;
 - 438 7. Number of apprentices enrolled in the program,
439 number who successfully completed the
440 apprenticeship program in the past twelve (12)
441 months, including whether the contractor is signatory
442 to a collective bargaining agreement for that trade, or
443 if not, provide for attachment of a copy of the
444 agreement between the contractor and the program.

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450
451 (3) Solicitation Procedures.

452
453 (a) If the NTB indicates that this project is covered by this
454 preference, and the offer is less than \$250,000 this
455 preference will still be applicable in determining the lowest
456 bidder.

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458 (b) A claim for this preference must include the following:
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1. Allow bidder seeking to claim the preference to state the trades the bidder will employ to perform the work;

2. For each trade to be employed to perform the work, the bidder shall submit a completed signed original *Certification Form 1* verifying participation in an apprenticeship program registered with the department;

3. The *Certification Form 1* shall be authorized by an apprenticeship sponsor of the department's list of registered apprenticeship programs. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor; and

4. The completed *Certification Form 1* for each trade must be submitted by the bidder with the offer. Previous certifications shall not apply unless allowed by the solicitation.

(c) Upon receiving *Certification Form 1*, the procurement officer will verify with the department that the apprenticeship program is on the list of apprenticeship programs registered with the department. If the programs are not confirmed by the department, the bidder will not qualify for the preference.

(4) Evaluation and Contract Award

(a) If the bidder certifies participation in an apprenticeship program for each trade which will be employed by the bidder for the project, the procurement officer shall apply the preference and decrease the bidder's total bid amount by five per cent (5%) for evaluation purposes.

(b) Should the bidder qualify for other statutory preferences (for example, Hawaii products), all applicable preferences shall be applied to the bidder's price.

(c) The contract amount shall be the original offer amount, exclusive of any preference; the preference is only for evaluation purposes.

(d) Any claims challenging a bidder's representation that the bidder is a participant in an apprenticeship program(s) as

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claimed, shall be submitted to the procurement officer. The procurement officer will refer the challenge to the department of labor and industrial relations who shall investigate any such claims and shall make a determination.

(5) Contract Administration

(a) For the duration of a contract awarded utilizing the apprenticeship preference, the contractor shall certify each month that work is being conducted on the project, that it continues to be a participant in the relevant apprenticeship program for each trade it employs.

(b) Monthly certification shall be made on *Monthly Certification Form 2* prepared and made available by the department, be a signed original by the respective apprenticeship program sponsors authorized official, and submitted by the contractor with its monthly payment requests.

(c) Should the contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a part to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

1. Withholding of the requested payment until the required form(s) are submitted;
2. Temporary or permanent cessation of work on the project , without recourse to breach of contract claims by the contractor; provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or
3. Proceed to debar or suspend pursuant to HRS Section 103D-702.

(d) If events such as “acts of God,” acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and

552 expeditiously complies with the certification process when
553 the event is over.

554
555 This subsection shall not apply when its application will disqualify
556 the State from receiving federal funds or aid.

557
558 **(C) Preference for Recycled Products.** Recycled Products shall not
559 apply to this project.

560
561 **(D) Evaluation Procedures and Contract Award.** For bid evaluation,
562 the Engineer will evaluate the bids by applying the applicable preferences
563 selected by the bidders according to the contract. The Engineer will base
564 the calculations for adjustments upon the original bid prices offered. If
565 more than one preference applies, the evaluated bid price shall be the
566 sum of the original bid price plus applicable preference adjustments.

567
568 If a bidder has designated use of a Hawaii Product and fails to
569 provide the product, the contract will become void, and no payments will
570 be made.

571
572 The Engineer will award the contract to the responsible bidder
573 submitting the responsive bid with the lowest evaluated bid price. The
574 contract amount of the contract awarded shall be the original bid price
575 offered exclusive of any preference.

576
577 **102.16 Certification for Safety and Health Program for Bids in excess of**
578 **\$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by
579 signing and submitting this proposal, certifies that a written safety and health plan
580 for this project will be available and implemented by the notice to proceed date
581 for this project. Details of the requirements of this plan may be obtained from the
582 State Department of Labor and Industrial Relations, Occupational Safety and
583 Health Division (HIOSH).

584
585 **102.17 Addenda.** Addenda issued shall become part of the contract
586 documents. Addenda to the bid documents will be provided to all prospective
587 bidders via HlePRO. Each addendum shall be an addition to the contract
588 documents. The terms and requirements of the bid documents (i.e., drawings,
589 specifications and other bid and contract documents) cannot be changed prior to
590 the bid opening except by a duly issued addendum.”

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END OF SECTION 102

1 Make this section a part of the Standard Specifications:
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3 **“SECTION 103 - AWARD AND EXECUTION OF CONTRACT**
4

5
6 **103.01 Consideration of Proposals.** The Department will compare the
7 proposals in terms of the summation of the products of the approximate quantities
8 and the unit bid prices after the submittal date and time established in HlePRO. If
9 a discrepancy occurs between the unit bid price and the bid price, the unit bid price
10 shall govern.
11

12 The Department reserves the right to reject proposals, waive technicalities
13 or advertise for new proposals, if the rejection, waiver, or new advertisement favors
14 the Department.
15

16 **103.02 Award of Contract.** The award of contract, if it be awarded, will be
17 made within sixty (60) calendar days after the opening of bids, to the lowest
18 responsible and responsive bidder whose bid meets all the requirements and
19 criteria set forth in the invitation for bids. (Through HlePRO). The successful
20 bidder will be notified by letter mailed to the address shown in its proposal, that
21 its proposal has been accepted, and that it has been awarded the contract.
22

23
24 **(1) Requirement for Award.** To be eligible for award, the
25 apparent low bidder will be contacted to submit copies of the
26 documents listed below to demonstrate compliance with HRS
27 Section 103D-310(c). The documents shall be submitted to the
28 Department within fourteen (14) days after bid opening unless
29 otherwise specified in the invitation for bids or an extension is
30 granted in writing by the Department. If a valid certificate/clearance
31 is not submitted on a timely basis for award of a contract, a bidder
32 otherwise responsive and responsible may not receive the award.
33 See also Subsection 108.03 – Preconstruction Data Submittal.
34

35 The Department may request the bidders to allow the Department
36 to consider the bids for the issuance of an award beyond the sixty (60)
37 calendar day period. Agreement to such an extension must be made by
38 a bidder in writing. Only bidders who have agreed to such an extension
39 will be eligible for the award.
40

41 **(A) Tax Clearance.** Pursuant to HRS Sections 103D-310(c), 103-53
42 and 103D-328, the successful bidder shall be required to submit a certified
43 copy of its tax clearance issued by the Hawaii State Department of Taxation
44 (DOTAX) and the Internal Revenue Service (IRS) to demonstrate its
45 compliance with HRS Chapter 237. A tax clearance is valid for six (6)
46 months from the most recent approval stamp date on the tax clearance and
47 must be valid on the bid's first legal advertisement date or any date
48 thereafter up to the bid opening date.

49
50 FORM A6, TAX CLEARANCE CERTIFICATE, is available at
51 the following website:

52
53 <https://tax.hawaii.gov/>

54
55 To receive DOTAX Forms by fax or mail, phone
56 (808) 587-7572 or 1-800-222-7572.

57
58 The application for the Tax Clearance Certificate is the responsibility
59 of the bidder and must be submitted directly to the DOTAX or IRS. The
60 approved certificate may then be submitted to the Department.

61
62 **(B) DLIR Certificate of Compliance.** Pursuant to HRS Section 103D-
63 310(c), the successful bidder shall be required to submit a copy (faxed
64 copies are acceptable) of its approved certificate of compliance issued by
65 the Hawaii State Department of Labor and Industrial Relations (DLIR) to
66 demonstrate its compliance with unemployment insurance (HRS Chapter
67 383), workers' compensation (HRS Chapter 386), temporary disability
68 insurance (HRS Chapter 392), and prepaid health care (HRS Chapter 393).
69 The certificate is valid for six (6) months from the most recent approval
70 stamp date on the certificate and must be valid on the bid's first legal
71 advertisement date or any date thereafter up to the bid opening date. For
72 certificates which receive a "pending" approval stamp, a DLIR approval
73 stamp is required prior to the issuance of the Notice to Proceed.

74
75 FORM LIR#27, APPLICATION FOR CERTIFICATE OF
76 COMPLIANCE WITH SECTION 3-122-112, HAR, is available at the
77 following website:

78
79 <http://labor.hawaii.gov/>

80
81 More information is available by calling the DLIR Unemployment Insurance
82 Division at (808) 586-8926.

83
84 Inquiries regarding the status of a LIR#27 Form may be made by
85 calling the DLIR Disability Compensation Division at (808) 586-9200.

87 The application for the Certificate of Compliance is the responsibility
88 of the bidder and must be submitted directly to the DLIR. The approved
89 certificate may then be submitted to the Department.
90

91 **(C) DCCA Certificate of Good Standing.** Pursuant to HRS Section
92 103D-310(c), the successful bidder shall be required to submit a copy
93 (faxed copies are acceptable) of its approved Certificate of Good Standing
94 issued by the Hawaii State Department of Commerce and Consumer Affairs
95 (DCCA), Business Registration Division (BREG) to demonstrate that it is
96 either:

97
98 (1) Incorporated or organized under the laws of the State; or
99

100 (2) Registered to do business in the State as a separate branch
101 or division that is capable of fully performing under the contract.
102

103 The Certificate of Good Standing is valid for six (6) months from the
104 approval date on the certificate and must be valid on the bid's first legal
105 advertisement date or any date thereafter up to the bid opening date. A
106 Hawaii business that is a sole proprietorship, however, is not required to
107 register with the BREG, and therefore not required to submit a Certificate of
108 Good Standing. Bidders are advised that there are costs associated with
109 registering and obtaining a Certificate of Good Standing from the DCCA.
110

111 To purchase a CERTIFICATE OF GOOD STANDING, go to On-Line
112 Services at the following website:

113
114 <http://cca.hawaii.gov/>
115

116 The application for the Certificate of Good Standing is the
117 responsibility of the bidder and must be submitted directly to the DCCA.
118 The approved certificate may then be submitted to the Department.
119

120 **(D) Hawaii Compliance Express (HCE).** In lieu of the certificates
121 referenced above, the bidder may make available proof of compliance
122 through the Hawaii Compliance Express or any other designated
123 certification process. Bidders may apply and register at the "Hawaii
124 Compliance Express" website:

125
126 <https://vendors.ehawaii.gov/hce/>
127

128 **103.03 Cancellation of Award.** The Department reserves the right to cancel
129 the award of contracts before the execution of said contract by the parties. There
130 will be no liability to the awardee and to other bidders.
131

132 **103.04 Return of Proposal Guaranty.** The Department will return the proposal
133 guaranties, except those of the three lowest bidders, after the Department checks
134 the proposals. The Department will return the proposal guaranties of the remaining
135 two lowest bidders, not awarded the contract, within five (5) working days following
136 the execution of the contract. The Department will return the successful bidder's
137 proposal guaranty after the successful bidder furnishes a bond and executes the
138 contract.

139
140 **103.05 Requirement of Contract Bond.** At the time of execution of the
141 contract, the successful bidder shall file a good and sufficient performance bond
142 and a payment bond on the forms furnished by the Department conditioned for
143 the full and faithful performance of the contract in accordance with the terms and
144 intent thereof and for the prompt payment to all others for all labor and material
145 furnished by them to the bidder and used in the prosecution of the work provided
146 for in the contract. The bonds shall be of an amount equal to 100 percent of the
147 amount of the contract price and include 5 percent of the contract amount
148 estimated to be required for extra work. The bidder shall limit the acceptable
149 performance and payment bonds to the following:

150
151 (a) Legal tender;

152
153 (b) Surety bond underwritten by a company licensed to issue bonds in
154 the State of Hawaii; or

155
156 (c) A certificate of deposit; share certificate; cashier's check; treasurer's
157 check, teller's check drawn by or a certified check accepted by and payable
158 on demand to the State by a bank savings institution or credit union insured
159 by the Federal Deposit Insurance Corporation (FDIC) or the National Credit
160 Union Administration (NCUA).

161
162 1. The bidder may use these instruments only to a maximum of
163 \$100,000.

164
165 2. If the required security or bond amount totals over \$100,000
166 more than one instrument not exceeding \$100,000 each and issued
167 by different financial institutions shall be acceptable.

168
169 Such bonds shall also by the terms inure to the benefit of any and all
170 persons entitled to file claims for labor done or material furnished in the work so as
171 to give them a right of action as contemplated by HRS Section 103D-324.

172
173 The contract bond required shall be furnished by the Contractor for the term
174 of the contract (12 months). The bond of the contract shall be submitted to the
175 State, or such additional time as may be granted by the State. Such bond for each
176 extended year may be extensions of the original bond by endorsements thereto.

177

178 In as much as the contract to be executed is a price-term, open end, or
179 requirements contract under which the contract price, or total amount to be paid
180 the Contractor cannot be determined at the time the contract is executed, the
181 performance and payment bond amounts required for the work shall be
182 \$525,000.00.

183
184 The State and the Contractor may mutually agree to an adjustment of the
185 bond amount as the scope of work is completed or as negotiated in each work
186 order under the performance of this contract. If the work order amount exceeds
187 the amount, the State may require additional bonds per work order.

188
189 **103.06 Execution of the Contract.** The contract bond and HRS Chapter 104
190 - Compliance Certificate, similar to a copy of the same annexed hereto, shall be
191 executed by the successful bidder and returned within ten (10) days after the
192 award of the contract or within such further time as the Director may allow after the
193 bidder has received the contract for execution.

194 The contract shall not bind the Department unless said parties execute the
195 contract and the Director of Finance endorses the bidder's certificate in
196 accordance with HRS Section 103-39.

197
198 **103.07 Failure to Execute Contract.** Failure to execute the contract and file
199 acceptable bonds shall be cause for the cancellation of the award in accordance
200 with Subsection 103.06 - Execution of the Contract. Also, the Contractor forfeits
201 the proposal guaranty which becomes the property of the Department. This is not
202 a penalty, but liquidated damages sustained by the State. The Department may
203 then make award to the next lowest responsible and responsive bidder or the
204 Department may readvertise and construct the work under contract.”

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END OF SECTION 103

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(5) At the sole option of the Engineer, work may be paid for on a force account basis in accordance with Subsection 109.06 - Force Account Provisions and Compensation.

(6) By the cost variations attributable to the events or situations with adjustment of profit and fee, all as specified in the contract or subsequently agreed upon before commencement of the pertinent performance.

(7) In the absence of agreement by the parties:

(A) For change orders with value not exceeding \$50,000 by documented actual costs of the work, allowing for overhead and profit as set forth in Section 109.05 - Allowances for Overhead and Profit. A change order shall be issued within fifteen (15) days of submission by the contractor of proper documentation of completed force account work, whether periodic (conforming to the applicable billing cycle) or final. The Engineer shall return any documentation that is defective, to the contractor within fifteen (15) days after receipt, with a statement identifying the defect; or

(B) For change orders with value exceeding \$50,000 by a unilateral determination by the Engineer of the costs attributable to the events or situations with adjustment of profit and fee, all as computed by the Engineer in accordance with applicable sections of HAR Chapters 3-123 and 3-126, and Section 109.05 - Allowances for Overhead and Profit. When a unilateral determination has been made, a unilateral change order shall be issued within ten (10) days. Upon receipt of the unilateral change order, if the contractor does not agree with any of the terms or conditions, or the adjustment or nonadjustment of the contract time or contract price, the contractor shall file a notice of intent to claim within thirty (30) days after the receipt of the written unilateral change order. Failure to file a protest within the time specified shall constitute agreement on the part of the contractor with the terms, conditions, amounts, and adjustment or nonadjustment of the contract time or the contract price set forth in the unilateral change order.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of HAR Chapter 3-122, Subchapter 15. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subsections 104.06(1) through 104.06(7) shall be issued within ten (10) days after agreement on the method of adjustment."

95 **(III) Amend Section 104.11(B) Contractor’s Duty to Locate and Protect**
96 **Utility** by adding the following after line 291:

97
98 “(4) The Contractor shall contact the Hawaii One Call Center at 811 prior
99 to any execution in a public right of way or on private property.”

100
101 **(IV) Amend Subsection 104 – Scope of Work** by adding the following after
102 line 318:

103
104 **“104.13 Performance of Work.** The Contractor shall perform work satisfactorily
105 in the judgement of the Engineer during the contract period. If it appears at any
106 time that the work contracted to be performed is not satisfactory, the Engineer
107 may require the Contractor to furnish and place in operation such additional force
108 and equipment as the Engineer shall deem necessary to bring the work up to
109 satisfactory status. In case the Contractor fails to comply after five (5) working
110 days from the date of receipt of such a written order from the Engineer, the
111 Engineer may employ a working force and equipment and charge the Contractor
112 for the reasonable cost thereof including depreciation for equipment or he may
113 terminate the contract.

114
115 **104.14 Contract to be Open-Ended.** The requirement for service to be
116 furnished by the Contractor will be on an “as-needed” basis as called for in these
117 specifications at the applicable unit price bid during the term of this contract and
118 in such numbers as may be required by the State. The unit price bid indicated by
119 the Contractor shall be applicable and binding under the terms of his contract.

120
121 Payment for services will be made by purchase order.”

122
123
124
125 **END OF SECTION 104**

47 **(C) Authority of the Consultant and Construction Management.**
48 The State may engage consultants and construction managements to
49 perform duties in connection with the work. Unless otherwise specified in
50 writing to the Contractor, such retained consultants and construction
51 managements shall have no greater authority than an Inspector.”
52
53

54 **(II) Amend Subsection 105.02 - Submittals** by revising the first paragraph
55 from lines 52 to 61 to read as follows:
56

57 **“105.02 Submittals.** The contract contains the description of various items
58 that the Contractor must submit to the Engineer for review and acceptance. The
59 Contractor shall review all submittals for correctness, conformance with the
60 requirements of the contract documents and completeness before submitting
61 them to the Engineer. The submittal shall indicate the contract items and
62 specifications subsections for which the submittal is provided. The submittal
63 shall be legible and clearly indicate what portion of the submittal is being
64 submitted for review. The Contractor shall provide six copies of the required
65 submissions at the earliest possible date.”
66
67

68 **(III) Amend Subsection 105.08 (A) - Furnishing Drawings and Special**
69 **Provisions** to read as follows:
70

71 **“(A) Furnishing Drawings and Special Provisions.** The State will
72 furnish the Contractor an electronic set of the special provisions and
73 plans.” The Contractor shall have and maintain at least one set of plans
74 and specifications on the work site, at all times.
75
76

77 **(IV) Amend Subsection 105.14(D) – No Designated Storage Area** from lines
78 421 to 432 to read as follows:
79

80 **“(D) No Designated Storage Area.** If no storage area is designated
81 within the contract documents, materials and equipment may be stored
82 anywhere within the State highway right-of-way, provided such storage
83 and access to and from such site, within the sole discretion of the
84 Engineer, does not create a public or traffic hazard or an impediment to
85 the movement of traffic.”
86
87

88 **(V) Amend Subsection 105.16(B) – Substituting Subcontractors** from line
89 487 to line 494 to read:
90

91 **(B) Substituting Subcontractors.** Under HRS Chapter 103D-302, the
92 Contractor is required to list the names of persons or firms to be engaged

93 by the Contractor as a subcontractor or joint contractor in the performance
94 of the contract. No subcontractor may be added or deleted, unless
95 authorized by the Engineer. Substitutions will be allowed only if the
96 subcontractor:

97
98
99

END OF SECTION 105

1 **SECTION 106 – MATERIAL RESTRICTIONS AND REQUIREMENTS**

2

3 Make the following amendment to said Section:

4

5 **(I)** Amend **106.05(B) – Deviation** by revising the third sentence from line 106
6 to 108 to read as follows:

7

8 “Any deviations will be subject to Subsection 102.14 – Substitution of Materials
9 and Equipment Before Bid Opening.

10

11 **(II)** Amend **106.11 Steel and Iron Construction Material** from line 238
12 to line 277 to read as follows

13

14 **“106.11 Steel and Iron Construction Material. (Not Applicable)”**

15

16

17

18

19

20

END OF SECTION 106

1 **SECTION 107 - LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

2
3 Make the following amendments to said Section:

4
5
6 **(I)** Amend **Section 107.01 Insurance Requirements** from lines to 81 to
7 read as follows:

8
9 **“(A) Obligation of Contractor.** Contractor shall not commence any
10 work until it obtains, at its own expense, all required insurance described
11 herein. Such insurance shall be provided by an insurance company
12 authorized by the laws of the State to issue such insurance in the State of
13 Hawaii. Coverage by a “Non-Admitted” carrier is permissible provided the
14 carrier has a Best’s Rating of “A-VII” or better. The Contractor shall
15 maintain and ensure all insurance policies are current for the full period of
16 the contract until final acceptance of the work by the State.

17
18 The Certificate of Insurance shall contain: a clause that it is agreed
19 that any insurance maintained by the State of Hawaii will apply in excess
20 of, and not contribute with, insurance provided by this policy; and shall be
21 accompanied by endorsement form CG2010 or equivalent naming the
22 State as an additional insured to the policy which status shall be
23 maintained for the full period of the contract until final acceptance of the
24 work by State.

25
26 The Contractor shall obtain all required insurance as part of the
27 contract price. Where there is a requirement for the State of Hawaii and
28 its officers and employees to be named as additional insureds under any
29 Contractor’s insurance policy, before the State of Hawaii issues the Notice
30 to Proceed, the Contractor shall obtain and submit to the Engineer a
31 Certificate of Insurance and a written policy endorsement that confirms the
32 State of Hawaii and its officers and employees are additional insureds for
33 the specific State project number and project title under such insurance
34 policies. The written policy endorsement must be issued by the insurance
35 company insuring the Contractor for the specified policy type or by an
36 agent of such insurance company who is vested with the authority to issue
37 a written policy endorsement. The insurer’s agent shall also submit
38 written confirmation of such authority to bind the insurer. Any delays in
39 the issuance of the Notice to Proceed attributed to the failure to obtain the
40 proof of the State of Hawaii and its officers and employees’ additional
41 insured status shall be charged to the Contractor.
42

43 A mere Certificate of Insurance issued by a broker who represents
44 the Contractor (but not the Contractor's insurer), or by any other party who
45 is not authorized to contractually name the State as an additional insured
46 under the Contractor's insurance policy, is not sufficient to meet the
47 Contractor's insurance obligations.
48

49 Certificates shall contain a provision that coverages being certified
50 will not be cancelled or materially changed without giving the Engineer at
51 least thirty (30) days prior written notice. Contractor will immediately
52 provide written notice to the Director should any of the insurance policies
53 evidenced on its Certificate of Insurance form be cancelled, reduced in
54 scope or coverage, or not renewed upon expiration. Should any policy be
55 canceled before final acceptance of the work by the State, and the
56 Contractor fails to immediately procure replacement insurance as
57 specified, the State, in addition to all other remedies it may have for such
58 breach, reserves the right to procure such insurance and deduct the cost
59 thereof from any money due or to become due to the Contractor.
60

61 Nothing contained in these insurance requirements is to be
62 construed as limiting the extent of Contractor's responsibility for payment
63 of damages resulting from its operations under this contract, including the
64 Contractor's obligation to pay liquidated damages, nor shall it affect the
65 Contractor's separate and independent duty to defend, indemnify and hold
66 the State harmless pursuant to other provisions of this contract. In no
67 instance will the State's exercise of an option to occupy and use
68 completed portions of the work relieve the Contractor of its obligation to
69 maintain the required insurance until the date of final acceptance of the
70 work.
71

72 All insurance described herein shall be primary and cover the
73 insured for all work to be performed under the contract, all work performed
74 incidental thereto or directly or indirectly connected therewith, including
75 but not limited to traffic detour work, barricades, warnings, diversions, lane
76 closures, and other work performed outside the work area and all change
77 order work.
78

79 The Contractor shall, from time to time, furnish the Engineer, when
80 requested, satisfactory proof of coverage of each type of insurance
81 required covering the work. Failure to comply with the Engineer's request
82 may result in suspension of the work, and shall be sufficient grounds to
83 withhold future payments due the Contractor and to terminate the contract
84 for Contractor's default.
85

86 **(B) Types of Insurance.** Contractor shall purchase and
87 maintain insurance described below which shall provide coverage
88 against claims arising out of the Contractor's operations under the

89 contract, whether such operations be by the Contractor itself or by any
90 subcontractor or by anyone directly or indirectly employed by any of
91 them or by anyone for whose acts any of them may be liable.
92

93 **(1) Workers' Compensation.** The Contractor shall obtain
94 worker's compensation insurance for all persons whom they
95 employ in carrying out the work under this contract. This insurance
96 shall be in strict conformity with the requirements of the most
97 current and applicable State of Hawaii Worker's Compensation
98 Insurance laws in effect on the date of the execution of this contract
99 and as modified during the duration of the contract.
100

101 **(2) Auto Liability.** The Contractor shall obtain Auto Liability
102 Insurance covering all owned, non-owned and hired autos with a
103 Combined single Limit of not less than \$1,000,000 per occurrence
104 for bodily injury and property damage with the State of Hawaii
105 named as additional insured. Refer to SPECIAL CONDITIONS for
106 any additional requirements.
107

108 **(3) General Liability.** The Contractor shall obtain General
109 Liability insurance with a limit of not less than \$2,000,000 per
110 occurrence and in the Aggregates for each of the following:
111

- 112 (a) Products - Completed/Operations Aggregate,
- 113
- 114 (b) Personal & Advertising Injury, and
- 115
- 116 (c) Bodily Injury & Property Damage
117

118 The General Liability insurance shall include the State as an
119 Additional Insured. The required limit of insurance may be provided
120 by a single policy or with a combination of primary and excess
121 policies. Refer to SPECIAL CONDITIONS for any additional
122 requirements.
123

124 **(4) Builders Risk For All Work.** The Contractor shall take out
125 a policy of builder's risk insurance for the full replacement value of
126 the project work; from a company licensed or otherwise authorized
127 to do business in the State of Hawaii; naming the State as an
128 additional insured under each policy; and covering all work, labor,
129 and materials furnished by such Contractor and all its
130 subcontractors against loss by fire, windstorm, tsunamis,
131 earthquakes, lightning, explosion, other perils covered by the
132 standard Extended Coverage Endorsement, vandalism, and
133 malicious mischief. Refer to SPECIAL CONDITIONS for any
134 additional requirements."

135 (II) Add **Section 107.18 Citizen and Residential Labor Force** after line 745
136 to read as follows:

137

138 **“107.18 Citizen and Residential Labor Force.**

139

140 (A) **Citizen Labor.** No person shall be employed as a laborer or
141 mechanic unless such person is a citizen of the United States or eligible to
142 become one; provided that persons without such qualifications may be
143 employed with the approval of the Governor until persons who are citizens
144 and are competent for such services are available for hire.

145

146 (B) **Residential Labor Force.** In accordance with Act 192; SLH 2011,
147 no less than eighty (80) percent of the bidder's labor force working on the
148 contract shall be provided by Hawaii residents. This act applies to all
149 construction procurements under HRS Chapter 103D; however this act
150 does not apply to procurements for professional services under Section
151 103D-304 and small purchases under Section 103D-305. This act is also
152 applicable to any subcontract of \$50,000.00 or more in connection with
153 this contract.

154

155 Resident means a person who is physically present in the State of
156 Hawaii at the time the person claims to have established the person's
157 domicile in the State of Hawaii and shows the person's intent is to make
158 Hawaii the person's primary residence.

159

160 (C) Percentage of workforce shall be determined by dividing the labor
161 hours (including subcontractors) provided by residents working on the
162 project divided by the total number of hours worked by all employees of
163 the contractor in the performance of the contract. Hours worked by
164 employees within shortage trades as determined by the Department of
165 Labor and Industrial Relations shall not be included in the calculation of
166 this percentage.

167

168 (D) Certification of compliance with the forgoing provisions shall be
169 made by the contractor in the form of a written oath submitted to the
170 Procurement Officer on a monthly basis for the duration of the contract.

171

172 (E) Sanctions for non compliance with these provisions are as follows:

173

174 (1) With respect to the General Contractor, withholding of
175 payment on the contract until the Contractor or its Subcontractor
176 complies with HRS Chapter 103B as amended by Act 192, SLH
177 2011.

178

179 **(2)** Proceedings for debarment or suspension of the Contractor
180 or Subcontractor under Hawaii Revised Statutes § 103D-702.

181
182 This Section shall not apply when its application will disqualify the State
183 from receiving federal funds or aid.”

184
185
186
187
188

END OF SECTION 107

1 Amend **Section 108 – PROSECUTION AND PROGRESS** to read as follows:
2

3 **“SECTION 108 – PROSECUTION AND PROGRESS**
4

5
6 **108.01 Notice to Proceed (NTP).** A Notice To Proceed will be issued to the
7 Contractor for the Contract.
8

9 Separate Start Work Dates will be issued to the Contractor for each
10 work order created. The Start Work Date issued for the work order will begin
11 charging of time specified to complete the work order. Time specified to complete
12 the work order will be followed in accordance with Subsection 108.05 – Contract
13 Time. Liquidated damages for each work order will be enforced in accordance with
14 Subsection 108.08 – Liquidated Damages for Failure to Complete the Work or
15 Portions of the Work on Time.
16

17 In the event that the Contractor fails to start physical work within the time
18 specified, the Engineer may terminate the contract in accordance with Subsection
19 108.11 – Termination of Contract for Cause.
20

21 During the period between the issuance of a work order and the Start Work
22 Date the Contractor should adjust work forces, equipment, schedules, and procure
23 materials and required permits, prior to beginning physical work.
24

25 Any physical work done prior to the Start Work Date will be considered
26 unauthorized work. If the Engineer does not direct that the unauthorized work be
27 removed, it shall be paid for after the Start Work Date and only if it is acceptable.
28

29 The Contractor shall notify the Engineer at least twenty four (24) hours
30 before restarting physical work after a suspension of work pursuant to Subsection
31 108.10 – Suspension of Work.
32

33 Once physical work has begun, the Contractor shall work expeditiously and
34 pursue the work diligently to completion with the contract time. If a portion of the
35 work is to be done in stages, the Contractor shall leave the area safe and usable
36 for the user agency and the public at the end of each stage.
37

38 **108.02 Prosecution of Work.** Unless otherwise permitted by the Engineer, in
39 writing, the Contractor shall not commence with physical construction unless
40 sufficient materials and equipment are available for either continuous construction
41 or completion of a specified portion of the work.
42

43 **108.03 Preconstruction Submittals.** The awardee shall submit to the
44 Engineer for information and review the pre-construction submittals within twenty
45 one (21) calendar days from award. Until the items listed below are received and
46 found acceptable by the Engineer, the Contractor shall not start physical work
47 unless otherwise authorized to do so in writing and subject to such conditions set
48 by the Engineer. Charging of Contract Time will not be delayed, and additional
49 contract time will not be granted due to Contractor delay in submitting acceptable
50 preconstruction submittals. No progress payment will be made to the Contractor
51 until the Engineer acknowledges, in writing, receipt of the following
52 preconstruction submittals acceptable to the Engineer:
53

- 54 (1) List of the Superintendent and other Supervisory Personnel, and
55 their contact information.
56
- 57 (2) Name of person(s) authorized to sign for the Contractor.
58
- 59 (3) Work Schedule including hours of operation.
60
- 61 (4) Initial Progress Schedule (See Subsection 108.06 – Progress
62 Schedule).
63
- 64 (5) Water Pollution and Siltation Control Submittals, including Site-
65 Specific Best Management Practice Plan.
66
- 67 (6) Solid Waste Disposal form.
68
- 69 (7) Tax Rates.
70
- 71 (8) Insurance Rates.
72
- 73 (9) Certificate of Insurance, satisfactory to the Engineer, indicating that
74 the Contractor has in place all insurance coverage required by the contract
75 documents.
76
- 77 (10) Schedule of agreed prices.
78
- 79 (11) List of suppliers.
80
- 81 (12) Traffic Control Plan, if applicable.

82 **108.04 Character and Proficiency of Workers.** The Contractor shall at all
83 times provide adequate supervision and sufficient labor and equipment for
84 prosecuting the work to full completion in the manner and within the time required
85 by the contract. The superintendent and all other representatives of the
86 Contractor shall act in a civil and honest manner in all dealings with the Engineer,
87 all other State officials and representatives, and the public, in connection with the
88 work.

89
90 All workers shall possess the proper license, certification, job classification,
91 skill, training, and experience necessary to properly perform the work assigned to
92 them.

93
94 The Engineer may direct the removal of any worker(s) who does not carry
95 out the assigned work in a proper and skillful manner or who is disrespectful,
96 intemperate, violent, or disorderly. The worker shall be removed forthwith by the
97 Contractor and will not work again without the written permission of the Engineer.

98
99 **108.05 Contract Time.**

100
101 **(A) Calculation of Contract Time.** When the contract time is on a
102 working day basis, the total contract time allowed for the performance of
103 the work will be the number of working days shown in the contract plus any
104 additional working days authorized in writing as provided hereinafter. The
105 count of elapsed working days to be charged against contract time, will
106 begin from the Start Work Date and will continue consecutively to the date
107 of Substantial Completion. When multiple shifts are used to perform the
108 work, the State will not consider the hours worked over the normal eight (8)
109 working hours per day or night as an additional working day.

110
111 When the contract is on a calendar day basis, the total contract time
112 allowed for the performance of the work will be the number of days shown
113 in the contract plus any additional days authorized in writing as provided
114 hereinafter. The count of elapsed days to be charged against contract time
115 will begin from the Start Work Date and will continue consecutively to the
116 date of Substantial Completion. The Engineer will exclude days elapsing
117 between the orders of the Engineer to suspend work and resume work for
118 suspensions not the fault of the Contractor.

119
120 **(B) Modifications of Contract Time.** Whenever the Contractor
121 believes that an extension of contract time is justified, the Contractor shall
122 serve written notice on the Engineer not more than five working days after
123 the occurrence of the event that causes a delay or justifies a contract time
124 extension. Contract time may be adjusted for the following reasons or
125 events, but only if and to the extent the critical path has been affected:
126

127 **(1) Changes in the Work, Additional Work, and Delays**
128 **Caused by the State.** If the Contractor believes that an extension of
129 time is justified on account of any act or omission by the State, and is
130 not adequately provided for in a field order or change order, it must
131 request the additional time as provided above. At the request of the
132 Engineer, the Contractor must show how the critical path will be
133 affected and must also support the time extension request with
134 schedules, as well as statements from its subcontractors, suppliers,
135 or manufacturers, as necessary. Claims for compensation for any
136 altered or additional work will be determined pursuant to Subsection
137 104.02 – Changes.

138
139 Additional time to perform the extra work will be added to the
140 time allowed in the contract without regard to the date the change
141 directive was issued, even if the contract completion date has
142 passed. A change requiring time issued after contract time has
143 expired will not constitute an excusal or waiver of pre-existing
144 Contractor delay.

145
146 **(2) Delay for Permits.** For delays in the routine application and
147 processing time required to obtain necessary permits, including
148 permits to be obtained from State agencies, the Engineer may grant
149 an extension provided that the permit takes longer than thirty (30)
150 days to acquire and the delay is not caused by the Contractor, and
151 provided that as soon as the delay occurs, the Contractor notifies the
152 Engineer in writing that the permits are not available. Permits
153 required by the contract that take less than thirty (30) days to acquire
154 from the time which the appropriate documents are granted shall be
155 acquired between Notice to Proceed and Start Work Date or
156 accounted for in the contractor's progress schedule. Time
157 extensions will be the exclusive relief granted on account of such
158 delays.

159
160 **(3) Delays Beyond Contractor's Control.** For delays caused by
161 acts of God, a public enemy, fire, inclement weather days or
162 adverse conditions resulting therefrom, earthquakes, floods,
163 epidemics, quarantine restrictions, labor disputes impacting the
164 Contractor or the State, freight embargoes and other reasons
165 beyond the Contractor's control, the Contractor may be granted an
166 extension of time provided that:

167
168 **(a)** In the written notice of delay to the Engineer, the
169 Contractor describes possible effects on the completion date
170 of the contract. The description of delays shall:
171

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1. State specifically the reason or reasons for the delay and fully explain in a detailed chronology how the delay affects the critical path.

2. Include copies of pertinent documentation to support the time extension request.

3. Cite the anticipated period of delay and the time extension requested.

4. State either that the above circumstances have been cleared and normal working conditions restored as of a certain day or that the above circumstances will continue to prevent completion of the project.

(b) The Contractor shall notify the Engineer in writing when the delay ends. Time extensions will be the exclusive relief granted and no additional compensation will be paid the Contractor for such delays.

(4) Delays in Delivery of Materials or Equipment. For delays in delivery of materials or equipment, which occur as a result of unforeseeable causes beyond the control and without fault of the Contractor, its subcontractor(s) or supplier(s), time extensions shall be the exclusive relief granted and no additional compensation will be paid the Contractor on account of such delay. The delay shall not exceed the difference between the originally scheduled delivery date and the actual delivery date. The Contractor may be granted an extension of time provided that it complies with the following procedures:

(a) The Contractor's written notice to the Engineer must describe the delays and state the effect such delays may have on the critical path.

(b) The Contractor, if requested, must submit to the Engineer within five days after a firm delivery date for the material and equipment is established, a written statement regarding the delay. The Contractor must justify the delay as follows:

1. State specifically all reasons for the delay. Explain in a detailed chronology the effect of the delay on the critical path.

217 2. Submit copies of purchase order(s), factory
218 invoice(s), bill(s) of lading, shipping manifest(s),
219 delivery tag(s), and any other documents to support the
220 time extension request.

221
222 3. Cite the start and end date of the delay and the
223 time extension requested.

224
225 **(5) Delays for Suspension of Work.** When the performance of
226 the work is totally suspended for one or more days (calendar or
227 working days, as appropriate) by order of the Engineer in
228 accordance with Subsections 108.10(A)(1), 108.10(A)(2), or
229 108.10(A)(5) the number of days from the effective date of the
230 Engineer's order to suspend operations to the effective date of the
231 Engineer's order to resume operations shall not be counted as
232 contract time and the contract completion date will be adjusted.
233 During periods of partial suspensions of the work, the Contractor will
234 be granted a time extension only if the partial suspension affects the
235 critical path. If the Contractor believes that an extension of time is
236 justified for a partial suspension of work, it must request the
237 extension in writing at least five working days before the partial
238 suspension will affect the critical operation(s) in progress. The
239 Contractor must show how the critical path was increased based on
240 the status of the work and must also support its claim if requested,
241 with statements from its subcontractors. A suspension of work will
242 not constitute a waiver of pre-existing Contractor delay.

243
244 **(6) Contractor Caused Delays.** No time extension will be
245 granted under the following circumstances:

246
247 **(a)** Delays within the Contractor's control in performing the
248 work caused by the Contractor, subcontractor, supplier, or any
249 combination thereof.

250
251 **(b)** Delays within the Contractor's control in arrival of
252 materials and equipment caused by the Contractor,
253 subcontractor, supplier, or any combination thereof, in
254 ordering, fabricating, and delivery.

255
256 **(c)** Delays requested for changes which do not affect the
257 critical path.

258 (d) Delays caused by the failure of the Contractor to make
259 submittals in a timely manner for review and acceptance by
260 the Engineer, such as but not limited to shop drawings,
261 descriptive sheets, material samples, and color samples
262 except as covered in Subsection 108.05(B)(3) – Delays
263 Beyond Contractor’s Control and 108.05(B)(4) – Delays in
264 Delivery of Materials or Equipment.

265
266 (e) Delays caused by the failure to submit sufficient
267 information and data in a timely manner in the proper form in
268 order to obtain necessary permits related to the work.

269
270 (f) Failure to follow the procedure within the time allowed
271 by contract to request a time extension.

272
273 (g) Failure of the Contractor to provide evidence sufficient
274 to support the time extension request.

275
276 (7) **Reduction in Time.** If the State deletes or modifies any
277 portion of the work, an appropriate reduction of contract time may be
278 made in accordance with Subsection 104.02 - Changes.

279
280 **108.06 Progress Schedules.**

281
282 (A) **Forms of Schedule.** All schedules shall be submitted using the
283 specific computer program designated in the bid documents. If no such
284 scheduling software program is designated, then all schedules shall be
285 submitted using the latest version of Microsoft Project by Microsoft or
286 approved equivalent software program.

287
288 Schedule submittals shall be as follows:

289
290 (1) **For Contracts \$2,000,000 or less or For Contract Time 100**
291 **Working Days or 140 Calendar Days or Less.** For contracts of
292 \$2,000,000 or less or for contract time of 100 working days or 140
293 calendar days or less, the progress schedule will be a Time Scaled
294 Logic Diagram (TSLD). The Contractor shall submit a TSLD
295 submittal package meeting the following requirements and having
296 these essential and distinctive elements:

297
298 (a) The major features of work, such as but not limited to
299 BMP installation, grubbing, roadway excavation, structure
300 excavation, structure construction, shown in the chronological
301 order in which the Contractor proposes to work that feature or
302 work and its location on the project. The schedule shall
303 account for normal inclement weather, unusual soil or other

- 304 conditions that may influence the progress of the work,
305 schedules, and coordination required by any utility, off or on
306 site fabrications, and other pertinent factors that relate to
307 progress;
- 308
- 309 **(b)** All features listed or not listed in the contract
310 documents that the Contractor considers a controlling factor
311 for the timely completion of the contract work.
- 312
- 313 **(c)** The time span and sequence of the activities or events
314 for each feature, and its interrelationship and
315 interdependencies in time and logic to other features in order
316 to complete the project.
- 317
- 318 **(d)** The total anticipated time necessary to complete work
319 required by the contract.
- 320
- 321 **(e)** A chronological listing of critical intermediate dates or
322 time periods for features or milestones or phases that can
323 affect timely completion of the project.
- 324
- 325 **(f)** Major activities related to the location on the project.
- 326
- 327 **(g)** Non-construction activities, such as submittal and
328 acceptance periods for shop drawings and material,
329 procurement, testing, fabrication, mobilization, and
330 demobilization or order dates of long lead material.
- 331
- 332 **(h)** Set schedule logic for out of sequence activities to
333 retain logic. In addition, open ends shall be non-critical.
- 334
- 335 **(i)** Show target bars for all activities.
- 336
- 337 **(j)** Vertical and horizontal sight lines both major and minor
338 shall be used as well as a separator line between groups.
339 The Engineer will determine frequency and style.
- 340
- 341 **(k)** The file name, print date, revision number, data and
342 project title and number shall be included in the title block.
- 343
- 344 **(l)** Have columns with the appropriate data in them for
345 activity ID, description, original duration, remaining duration,
346 early start, early finish, total float, percent complete,
347 resources. The resource column shall list who is responsible
348 for the work to be done in the activity. These columns shall
349 be to the left of the bar chart.
- 350

351 **(2) For Contracts Which Have A Contract Amount More Than**
352 **\$2,000,000 Or Having A Contract Time Of More Than 100**
353 **Working Days Or 140 Calendar Days.** For contracts which have a
354 contract amount more than \$2,000,000 or contract time of more than
355 100 working days or 140 calendar days, the Contractor shall submit
356 a Timed-Scaled Logic Diagram (TSLD) meeting the following
357 requirements and having these essential and distinctive elements:
358

359 **(a)** The information and requirements listed in Subsection
360 108.06(A)(1) – For Contracts \$2,000,000 or Less or For
361 Contract Time 100 Working Days or 140 Calendar Days or
362 Less.

363
364 **(b)** Additional reports and graphics available from the
365 software as requested by the Engineer.
366

367 **(c)** Sufficient detail to allow at least weekly monitoring of
368 the Contractor and subcontractor's operations.
369

370 **(d)** The time scaled schematic shall be on a calendar or
371 working days basis. What will be used shall be determined by
372 how the contract keeps track of time. It will be the same. Plot
373 the critical calendar dates anticipated.
374

375 **(e)** Breakdown of activity, such as forming, placing
376 reinforcing steel, concrete pouring and curing, and stripping
377 in concrete construction. Indicate location of work to be done
378 in such detail that it would be easily determined where work
379 would be occurring within approximately 200 feet.
380

381 **(f)** Latest start and finish dates for critical path activities.
382

383 **(g)** Identify responsible subcontractor, supplier, and others
384 for their respective activity.
385

386 **(h)** No individual activity shall have duration of more than
387 20 calendar days unless requested and approved by the
388 Engineer.
389

390 **(i)** All activities shall have work breakdown structure
391 codes and activity codes. The activity codes shall have
392 coding that incorporates information for phase, location, who
393 is responsible for doing work and type of operation and
394 activity description.
395

396 (j) Incorporate all physical access and availability
397 restraints.

398
399 **(B) Inspection and Testing.** All schedules shall provide reasonable
400 time and opportunity for the Engineer to inspect and test each work activity.

401
402 **(C) Engineer's Acceptance of Progress Schedule.** The submittal of,
403 and the Engineer's receipt of any progress schedule, shall not be deemed
404 an agreement to modify any terms or conditions of the contract. Any
405 modifications to the contract terms and conditions that appear in or may be
406 inferred from an acceptable schedule will not be valid or enforceable unless
407 and until the Engineer exercises discretion to issue an appropriate change
408 order. Nor shall any submittal or receipt imply the Engineer's approval of
409 the schedule's breakdown, its individual elements, any critical path that may
410 be shown, nor shall it obligate the State to make its personnel available
411 outside normal working hours or the working hours established by the
412 Contract in order to accommodate such schedule. The Contractor has the
413 risk of all elements (whether or not shown) of the schedule and its
414 execution. No claim for additional compensation, time, or both, shall be
415 made by the Contractor or recognized by the Engineer for delays during
416 any period for which an acceptable progress schedule or an updated
417 progress schedule as required by Subsection 108.06(E) – Contractor's
418 Continuing Schedule Submittal Requirements had not been submitted. Any
419 acceptance or approval of the schedule shall be for general format only and
420 shall not be deemed an agreement by the State that the construction
421 means, methods, and resources shown on the schedule will result in work
422 that conforms to the contract requirements or that the sequences or
423 durations indicated are feasible.

424
425 **(D) Initial Progress Schedule.** The Contractor shall submit an initial
426 progress schedule. The initial progress schedule shall consist of the
427 following:

- 428
429 (1) Four sets of the TSLD schedule.
430
431 (2) All the software files and data to re-create the TSLD in a
432 computerized software format as specified by the Engineer.
433
434 (3) A listing of equipment that is anticipated to be used on the
435 project. Including the type, size, make, year of manufacture, and all
436 information necessary to identify the equipment in the Rental Rate
437 Blue Book for Construction Equipment.
438
439 (4) An anticipated manpower requirement graph plotting contract
440 time and total manpower requirement. This may be superimposed
441 over the payment graph.
442

443 (5) A Method Statement that is a detailed narrative describing the
 444 work to be done and the method by which the work shall be
 445 accomplished for each major activity. A major activity is an activity
 446 that:

- 447
- 448 (a) Has a duration longer than five days.
 - 449
 - 450 (b) Is a milestone activity.
 - 451
 - 452 (c) Is a contract item that exceeds \$10,000 on the contract
 453 cost proposal.
 - 454
 - 455 (d) Is a critical path activity.
 - 456
 - 457 (e) Is an activity designated as such by the Engineer.
 - 458

459 Each Method Statement shall include the following items
 460 needed to fulfill the schedule:

- 461
- 462 (a) Quantity, type, make, and model of equipment.
 - 463
 - 464 (b) The manpower to do the work, specifying worker
 465 classification.
 - 466
 - 467 (c) The production rate per eight (8) hour day, or the
 468 working hours established by the contract documents needed
 469 to meet the time indicated on the schedule. If the production
 470 rate is not for eight (8) hours, the number of working hours
 471 shall be indicated.
 - 472
 - 473 (6) Two sets of color time-scaled project evaluation and review
 474 technique charts ("PERT") using the activity box template of Logic –
 475 Early Start or such other template designated by the Engineer.
 - 476

477 If the contract documents establish a sequence or order for the work,
 478 the initial progress schedule shall conform to such sequence or order.

479

480 **(E) Contractor's Continuing Schedule Submittal Requirements.**
 481 After the acceptance of the initial TSLD and when construction starts, the
 482 Contractor shall submit four plotted progress schedules, two PERT charts,
 483 and reports on all construction activities every two (2) weeks (bi-weekly).
 484 This scheduled bi-weekly submittal shall also include an updated version of
 485 the project schedule in a computerized software format as specified by the
 486 Engineer. The submittal shall have all the information needed to re-create
 487 that time period's TSLD plot and reports. The bi-weekly submittal shall
 488 include, but not limited to, an update of activities based on actual durations,

489 all new activities and any changes in duration or start or finish dates of any
490 activity.

491
492 The Contractor shall submit with every update, in report form
493 acceptable to the Engineer, a list of changes to the progress schedule since
494 the previous schedule submittal. The Engineer may change the frequency
495 of the submittal requirements but may not require a submittal of the
496 schedule to be more than once a week. The Engineer may decrease the
497 frequency of the submittal of the bi-weekly schedule.

498
499 The Contractor shall submit updates of the anticipated work
500 completion graph, equipment listing, manpower requirement graph or
501 method statement when requested by the Engineer. The Contractor shall
502 submit such updates within four (4) calendar days from the date of the
503 request by the Engineer.

504
505 The Engineer may withhold progress payment until the Contractor is
506 in compliance with all schedule update requirements

507
508 **(F) Float.** All float appearing on a schedule is a shared commodity.
509 Float does not belong to or exist for the exclusive use or benefit of either
510 the State or the Contractor. The State or the Contractor has the opportunity
511 to use available float until it is depleted. Float has no monetary value.

512
513 **(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly
514 basis with the Engineer to review the progress schedule. The Contractor
515 shall have someone attending the meeting that can answer all questions on
516 the TSLD and other schedule related submittals.

517
518 **(H) Accelerated Schedule; Early Completion.** If the Contractor
519 submits an accelerated schedule (shorter than the contract time), the
520 Engineer's review and acceptance of an accelerated schedule does not
521 constitute an agreement or obligation by the State to modify the contract
522 time or completion date. The Contractor is solely responsible for and shall
523 accept all risks and any delays, other than those that can be directly and
524 solely attributable to the State, that may occur during the work, until the
525 contract completion date. The contract time or completion date is
526 established for the benefit of the State and cannot be changed without an
527 appropriate change order or Substantial Completion granted by the State.
528 The State may accept the work before the completion date is established,
529 but is not obligated to do so.

530 If the TSLD indicates an early completion of the project, the
531 Contractor shall, upon submittal of the schedule, cooperate with the
532 Engineer in explaining how it will be achieved. In addition, the Contractor
533 shall submit the above explanation in writing which shall include the State's
534 part, if any, in achieving the early completion date. Early completion of the
535 project shall not rely on changes to the Contract Documents unless
536 approved by the Engineer.

537
538 **(I) Contractor Responsibilities.** The Contractor shall promptly
539 respond to any inquiries from the Engineer regarding any schedule
540 submission. The Contractor shall adjust the schedule to address directives
541 from the Engineer and shall resubmit the TSLD package to the Engineer
542 until the Engineer finds it acceptable.

543
544 The Contractor shall perform the work in accordance with the
545 submitted TSLD. The Engineer may require the Contractor to provide
546 additional work forces and equipment to bring the progress of the work into
547 conformance with the TSLD at no increase in contract price or contract time
548 whenever the Engineer determines that the progress of the work does not
549 insure completion within the specified contract time.

550
551 **108.07 Weekly Meeting.** In addition to the bi-weekly schedule meetings, the
552 Contractor shall be available to meet once a week with the Engineer at the time
553 and place as determined by the Engineer to discuss the work and its progress
554 including but not limited to, the progress of the project, potential problems,
555 coordination of work, submittals, erosion control reports, etc. The Contractor's
556 personnel attending shall have the authority to make decisions and answer
557 questions.

558
559 The Contractor shall bring to weekly meetings a detailed work schedule
560 showing the next three (3) weeks' work. Number of copies of the detailed work
561 schedule to be submitted will be determined by the Engineer. The three (3) week
562 schedule is in addition to the TSLD and shall in no way be considered as a
563 substitute for the TSLD or vice versa. The three (3) week schedule shall show:

564
565 **(a)** All construction events, traffic control and BMP related activities in
566 such detail that the Engineer will be able to determine at what location and
567 type of work will be done for any day for the next three (3) weeks. This is
568 for the State to use to plan its manpower requirements for that time period.

569
570 **(b)** The duration of all events and delays.

571
572 **(c)** The critical path clearly marked in red or marked in a manner that
573 makes it clearly distinguishable from other paths and is acceptable to the
574 Engineer.

575

576 (d) Critical submittals and requests for information (RFI's).

577

578 (e) The project title, project number, date created, period the schedule
579 covers, Contractor's name and creator of the schedule on each page.

580

581 Two (2) days prior to each weekly meeting, the Contractor shall
582 submit a list of outstanding submittals, RFIs and issues that require
583 discussion.

584

585 **108.08 Liquidated Damages for Failure to Complete the Work or Portions**
586 **of the Work on Time.** The actual amount of damages resulting from the
587 Contractor's failure to complete the contract in a timely manner is difficult to
588 accurately determine. Therefore, the amount of such damages shall be liquidated
589 damages as set forth herein and in the special provisions. The State may, at its
590 discretion, deduct the amount from monies due or that may become due under the
591 contract.

592

593 When the Contractor fails to install the inertial barrier system in accordance
594 with Section 694 – Inertial Barrier System, within the time specified in Section 694
595 – Inertial Barrier System, in addition to all other remedies for breach that may be
596 available to the State, the Contractor shall pay liquidated damages to the State, in
597 the amount of \$1,000.00 per calendar day.

598

599 When the Contractor fails to reach substantial completion of the work for
600 which liquidated damages are specified, within the time or times fixed in the
601 contract or any extension thereof, in addition to all other remedies for breach that
602 may be available to the State, the Contractor shall pay liquidated damages to the
603 State, in the amount of \$5,000.00 per working day.

604

605 (A) **Liquidated Damages Upon Termination.** If the State terminates
606 on account of Contractor's default, liquidated damages may be charged
607 against the defaulting Contractor and its surety until final completion of
608 work.

609

610 (B) **Liquidated Damages for Failure to Complete the Punchlist.** The
611 Contractor shall complete the work on any punchlist created after the pre-
612 final inspection, within the contract time or any extension thereof.

613

614 When the Contractor fails to complete the work on such punchlist
615 within the contract time or any extension thereof, the Contractor shall pay
616 liquidated damages to the State of 20 percent of the amount of liquidated
617 damages established for failure to substantially complete the work within
618 contract time. Liquidated damages shall not be assessed for the period
619 between:

620

621 (1) Notice from the Contractor that the project is substantially
622 complete and the time the punchlist is delivered to the Contractor.

623
624 (2) The date of the completion of punchlist as determined by the
625 Engineer and the date of the successful final inspection, and
626

627 (3) The date of the Final Inspection that results in Substantial
628 Completion and the receipt by the Contractor of the written notice of
629 Substantial Completion.
630

631 (C) **Actual Damages Recoverable If Liquidated Damages Deemed**
632 **Unenforceable.** In the event a court of competent jurisdiction holds that
633 any liquidated damages assessed pursuant to this contract are
634 unenforceable, the State will be entitled to recover its actual damages for
635 Contractor's failure to complete the work, or any designated portion of the
636 work within the time set by the contract.
637

638 **108.09 Rental Fees for Unauthorized Lane Closure or Occupancy.** In
639 addition to all other remedies available to the State for Contractor's breach of the
640 terms of the contract, the Engineer will assess the rental fees in the amount of
641 \$2,500.00 for every one-to fifteen-minute increment for each roadway lane closed
642 to public use or occupied beyond the time periods authorized in the contract or by
643 the Engineer. The State may, at its discretion, deduct the amount from monies
644 due or that may become due under the contract. The rental fee may be waived in
645 whole or part if the Engineer determines that the unauthorized period of lane
646 closure or occupancy was due to factors beyond the control of the Contractor.
647 Equipment breakdown is not a cause to waive liquidated damages.
648

649 **108.10 Suspension of Work.**
650

651 (A) **Suspension of Work.** The Engineer may, by written order, suspend
652 the performance of the work, either in whole or in part, for such periods as
653 the Engineer may deem necessary, for any cause, including but not limited
654 to:
655

656 (1) Weather or soil conditions considered unsuitable for
657 prosecution of the work.
658

659 (2) Whenever a redesign that may affect the work is deemed
660 necessary by the Engineer.
661

662 (3) Unacceptable noise or dust arising from the construction even
663 if it does not violate any law or regulation.
664

665 (4) Failure on the part of the Contractor to:
666

- 667 (a) Correct conditions unsafe for the general public or for
 668 the workers.
 669
 670 (b) Carry out orders given by the Engineer.
 671
 672 (c) Perform the work in strict compliance with the
 673 provisions of the contract.
 674
 675 (d) Provide adequate supervision on the jobsite.
 676 (5) The convenience of the State.
 677

678 **(B) Partial and Total Suspension.** Suspension of work on some but
 679 not all items of work shall be considered a “partial suspension”.
 680 Suspension of work on all items shall be considered “total suspension”.
 681 The period of suspension shall be computed from the date set out in the
 682 written order for work to cease until the date of the order for work to
 683 resume.
 684

685 **(C) Reimbursement to Contractor.** In the event that the Contractor is
 686 ordered by the Engineer in writing as provided herein to suspend all work
 687 under the contract for the reasons specified in Subsections 108.10(A)(2),
 688 108.10(A)(3), or 108.10(A)(5) of the “Suspension of Work” paragraph, the
 689 Contractor may be reimbursed for actual direct costs incurred on work at
 690 the jobsite, as authorized in writing by the Engineer, including costs
 691 expended for the protection of the work. An allowance of 5 percent for
 692 indirect categories of delay costs will be paid on any reimbursed direct
 693 costs, including extended branch and home-office overhead and delay
 694 impact costs. No allowance will be made for anticipated profits. Payment
 695 for equipment which is ordered to standby during such suspension of work
 696 shall be made as described in Subsection 109.06(H) - Idle and Standby
 697 Equipment.
 698

699 **(D) Cost Adjustment.** If the performance of all or part of the work is
 700 suspended for reasons beyond the control of the Contractor except an
 701 adjustment shall be made for any increase in cost of performance of this
 702 contract (excluding profit) necessarily caused by such suspension, and the
 703 contract modified in writing accordingly.
 704

705 However, no adjustment to the contract price shall be made for any
 706 suspension, delay, or interruption:
 707

- 708 (1) For weather related conditions.
 709
 710 (2) To the extent that performance would have been so
 711 suspended, delayed, or interrupted by any other cause, including the
 712 fault or negligence of the Contractor.

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(3) Or, for which an adjustment is provided for or excluded under any other provision of this Contract.

(E) Claims for Adjustment. Any adjustment in contract price made shall be determined in accordance with Subsections 104.02 – Changes and 104.06 – Methods of Price Adjustment.

Any claims for such compensation shall be filed in writing with the Engineer within thirty (30) days after the date of the order to resume work or the claim will not be considered. The claim shall conform to the requirements of Subsection 107.15(D) – Making of a Claim. The Engineer will take the claim under consideration, may make such investigations as are deemed necessary and will be the sole judge as to the equitability of the claim. The Engineer’s decision will be final.

(F) No Adjustment. No provision of this clause shall entitle the Contractor to any adjustments for delays due to failure of its surety, the cancellation or expiration of any insurance coverage required by the contract documents, for suspensions made at the request of the Contractor, for any delay required under the contract, for suspensions, either partial or whole, made by the Engineer under Subsection 108.10(A)(4) of the “Suspension of work” paragraph.

108.11 Termination of Contract for Cause.

(A) Default. If the Contractor refuses or fails to perform the work, or any separable part thereof, with such diligence as will assure its completion within the time specified in this contract, or any extension thereof, or commits any other material breach of this contract, and further fails within seven (7) days after receipt of written notice from the Engineer to commence and continue correction of the refusal or failure with diligence and promptness, the Engineer may, by written notice to the Contractor, declare the Contractor in breach and terminate the Contractor’s right to proceed with the work or the part of the work as to which there has been delay or other breach of contract. In such event, the State may take over the work, perform the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the work, the materials, appliances, and plants as may be on the site of the work and necessary therefore. Whether or not the Contractor’s right to proceed with the work is terminated, the Contractor and the Contractor’s sureties shall be liable for any damage to the State resulting from the Contractor’s refusal or failure to complete the work within the specified time.

757 **(B) Additional Rights and Remedies.** The rights and remedies of the
758 State provided in this contract are in addition to any other rights and
759 remedies provided by law.

760
761 **(C) Costs and Charges.** All costs and charges incurred by the State,
762 together with the cost of completing the work under contract, will be
763 deducted from any monies due or which would or might have become due
764 to the Contractor had it been allowed to complete the work under the
765 contract. If such expense exceeds the sum which would have been
766 payable under the contract, then the Contractor and the surety shall be
767 liable and shall pay the State the amount of the excess.

768
769 In case of termination, the Engineer will limit any payment to the
770 Contractor to the part of the contract satisfactorily completed at the time of
771 termination. Payment will not be made until the work has satisfactorily been
772 completed and all required documents, including the tax clearance required
773 by Subsection 109.11 – Final Payment are submitted by the Contractor.
774 Termination shall not relieve the Contractor or Surety from liability for
775 liquidated damages.

776
777 **(D) Erroneous Termination for Cause.** If, after notice of termination of
778 the Contractor's right to proceed under this section, it is determined for any
779 reason that good cause did not exist to allow the State to terminate as
780 provided herein, the rights and obligations of the parties shall be the same
781 as, and the relief afforded the Contractor shall be limited to, the provisions
782 contained in Subsection 108.12 – Termination for Convenience.

783
784 **108.12 Termination For Convenience.**

785
786 **(A) Terminations.** The Director may, when the interests of the State so
787 require, terminate this contract in whole or in part, for the convenience of
788 the State. The Director will give written notice of the termination to the
789 Contractor specifying the part of the contract terminated and when
790 termination becomes effective.

791
792 **(B) Contractor's Obligations.** The Contractor shall incur no further
793 obligations in connection with the terminated work and on the date set in
794 the notice of termination the Contractor shall stop work to the extent
795 specified. The Contractor shall also terminate outstanding orders and
796 subcontracts as they relate to the terminated work. The Contractor shall
797 settle the liabilities and claims arising out of the termination of subcontracts
798 and orders connected with the terminated work subject to the State's
799 approval. The Engineer may direct the Contractor to assign the
800 Contractor's right, title, and interest under terminated orders or subcontracts
801 to the State. The Contractor must still complete the work not terminated by
802 the notice of termination and may incur obligations as necessary to do so.

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(C) Right to Construction and Goods. The Engineer may require the Contractor to transfer title and to deliver to the State in the manner and to the extent directed by the Engineer, the following:

- (1)** Any completed work.
- (2)** Any partially completed construction, goods, materials, parts, tools, dies, jigs, fixtures, drawings, information, and contract rights (hereinafter called "construction material") that the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.
- (3)** The Contractor shall protect and preserve all property in the possession of the Contractor in which the State has an interest. If the Engineer does not elect to retain any such property, the Contractor shall use its best efforts to sell such property and construction materials for the State's account in accordance with the standards of HRS Chapter 490:2-706.

(D) Compensation.

- (1)** The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by HAR Subchapter 15, Chapter 3-122. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, the Engineer may pay the Contractor, if at all, an amount set in accordance with Subsection 108.12(D)(3).
- (2)** The Engineer and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under Subsection 108.12(C)(3), and the proportionate contract price of the work not terminated.
- (3)** Absent complete agreement, the Engineer will pay the Contractor the following amounts less any payments previously made under the contract:
 - (a)** The cost of all contract work performed prior to the effective date of the notice of termination work plus a 5 percent markup on the actual direct costs, including amounts

849 paid to subcontractor, less amounts paid or to be paid for
 850 completed portions of such work; provided, however, that if it
 851 appears that the Contractor would have sustained a loss if the
 852 entire contract would have been completed, no markup shall
 853 be allowed or included and the amount of compensation shall
 854 be reduced to reflect the anticipated rate of loss. No
 855 anticipated profit or consequential damage will be due or paid.
 856

857 **(b)** Subcontractors shall be paid a markup of 10 percent on
 858 their direct job costs incurred to the date of termination. No
 859 anticipated profit or consequential damage will be due or paid
 860 to any subcontractor. These costs must not include payments
 861 made to the Contractor for subcontract work during the
 862 contract period.
 863

864 **(c)** The total sum to be paid the Contractor shall not
 865 exceed the total contract price reduced by the amount of any
 866 sales of construction supplies, and construction materials.
 867

868 **(4)** Cost claimed, agreed to, or established by the State shall be
 869 in accordance with HAR Chapter 3-123.
 870

871 **108.13 Pre-Final and Final Inspections.**

872
 873 **(A) Inspection Requirements.** Before the Engineer undertakes a final
 874 inspection of any work, a pre-final inspection must first be conducted. The
 875 Contractor shall notify the Engineer that the work has reached substantial
 876 completion and is ready for pre-final inspection.
 877

878 **(B) Pre-Final Inspection.** Before notifying the Engineer that the work
 879 has reached substantial completion, the Contractor shall inspect the project
 880 and test all installed items with all of its subcontractors as appropriate. The
 881 Contractor shall also submit the following documents as applicable to the
 882 work:
 883

884 **(1)** All written guarantees required by the contract.
 885

886 **(2)** Two accepted final field-posted drawings as specified in
 887 Section 648 – Field-Posted Drawings;
 888

889 **(3)** Complete weekly certified payroll records for the Contractor
 890 and Subcontractors.
 891

892 **(4)** Certificate of Plumbing and Electrical Inspection.
 893

894 **(5)** Certificate of building occupancy as required.

- 895
896 **(6)** Certificate of Soil and Wood Treatments.
897
898 **(7)** Certificate of Water System Chlorination.
899
900 **(8)** Certificate of Elevator Inspection, Boiler and Pressure Pipe
901 Inspection.
902
903 **(9)** Maintenance Service Contract and two copies of a list of all
904 equipment installed.
905
906 **(10)** Current Tax clearance. The contractor will be required to
907 submit an additional tax clearance certificate when the final payment
908 is made.
909
910 **(11)** And any other final items and submittals required by the
911 contract documents.

912
913 **(C) Procedure.** When in compliance with the above requirements, the
914 Contractor shall notify the Engineer in writing that the project has reached
915 substantial completion and is ready for pre-final inspection.
916

917 The Engineer will then make a preliminary determination as to
918 whether or not the project is substantially complete and ready for pre-final
919 inspection. The Engineer may, in writing, postpone until after the pre-final
920 inspection the Contractor's submittal of any of the items listed in Subsection
921 108.13(B) – Pre-Final Inspection, herein, if in the Engineer's discretion it is
922 in the interest of the State to do so.
923

924 If, in the opinion of the Engineer, the project is not substantially
925 complete, the Engineer will provide the Contractor a punchlist of specific
926 deficiencies in writing which must be corrected or finished before the work
927 will be ready for a pre-final inspection. The Engineer may add to or
928 otherwise modify this punchlist from time to time. The Contractor shall take
929 immediate action to correct the deficiencies and must repeat all steps
930 described above including written notification that the work is ready for pre-
931 final inspection.
932

933 After the Engineer is satisfied that the project appears substantially
934 complete a final inspection shall be scheduled within ten (10) working days
935 after receipt of the Contractor's latest letter of notification that the project is
936 ready for final inspection.
937

938 If, as a result of the pre-final inspection, the Engineer determines the
939 work is not substantially complete, the Engineer will inform the Contractor in
940 writing as to specific deficiencies which must be corrected before the work

941 will be ready for another pre-final inspection. If the Engineer finds the work
942 is substantially complete but finds deficiencies that must be corrected
943 before the work is ready for final inspection, the Engineer will prepare in
944 writing and deliver to the Contractor a punchlist describing such
945 deficiencies.

946
947 At any time before final acceptance, the Engineer may revoke the
948 determination of substantial completion if the Engineer finds that it was not
949 warranted and will notify the Contractor in writing the reasons therefore
950 together with a description of the deficiencies negating the declaration.

951
952 When the date of substantial completion has been determined by the
953 State, liquidated damages for the failure to complete the punchlist, if due to
954 the State will be assessed in pursuant to Subsection 108.08(B) - Liquidated
955 Damages for Failure to Complete the Punchlist.

956
957 **(D) Punchlist; Clean Up and Final Inspection.** Upon receiving a
958 punchlist after pre-final inspection, the Contractor shall promptly devote all
959 required time, labor, equipment, materials and incidentals to correct and
960 remedy all punchlist deficiencies. The Engineer may add to or otherwise
961 modify this punchlist until substantial completion of the project.

962
963 Before final inspection of the work, the Contractor shall clean all
964 ground occupied by the Contractor in connection with the work of all
965 rubbish, excess materials temporary structures and equipment, shall
966 remove all graffiti and defacement of the work and all parts of the work and
967 the worksite must be left in a neat and presentable condition to the
968 satisfaction of the Engineer.

969
970 Final inspection will occur within ten (10) working days after the
971 Contractor notifies the Engineer in writing that all punchlist deficiencies
972 remaining after the pre-final inspection have been completed and the
973 Engineer concurs. If the Engineer determines that deficiencies still remain
974 at the final inspection, the work will not be accepted and the Engineer will
975 notify the Contractor, in writing, of the deficiencies which shall be corrected
976 and the steps above repeated.

977
978 If the Contractor fails to correct the deficiencies and complete the
979 work by the established or agreed date, the State may correct the
980 deficiencies by whatever method it deems appropriate and deduct the cost
981 from any payments due the Contractor.

982
983 **108.14 Substantial Completion and Final Acceptance.**

984
985 **(A) Substantial Completion.** When the Engineer finds that the
986 Contractor has satisfactorily completed all work for the project in

987 compliance with the contract, with the exception of the planting period and
988 the plant establishment period, the Engineer will notify the Contractor, in
989 writing, of the project's substantial completion, effective as of the date of the
990 final inspection. The substantial completion date shall determine end of
991 contract time and relieve contractor of any additional accumulation of
992 liquidated damages for failure to complete the punchlist.

993
994 **(B) Final Acceptance.** When the Engineer finds that the Contractor has
995 satisfactorily completed all contract work in compliance with the contract
996 including all plant establishment requirements, and all the materials have
997 been accepted by the State, the Engineer will issue a Final Acceptance
998 Letter. The Final Acceptance date shall determine the commencement of
999 all guaranty periods subject to Subsection 108.16 – Contractor's
1000 Responsibility for Work; Risk of Loss or Damage.

1001
1002 **108.15 Use of Structure or Improvement.** The State has the right to use the
1003 structure, equipment, improvement, or any part thereof, at any time after it is
1004 considered by the Engineer as available. In the event that the structure,
1005 equipment or any part thereof is used by the State before final acceptance, the
1006 Contractor is not relieved of its responsibility to protect and preserve all the work
1007 until final acceptance.

1008
1009 **108.16 Contractor's Responsibility for Work; Risk of Loss or Damage.**
1010 Until the written notice of final acceptance has been received, the Contractor shall
1011 take every precaution against loss or damage to any part of the work by the action
1012 of the elements or from any other cause whatsoever, whether arising from the
1013 performance or from the non-performance of the work. The Contractor shall
1014 rebuild, repair, restore and make good all loss or damage to any portion of the
1015 work resulting from any cause before its receipt of the written notice of final
1016 acceptance and shall bear the risk and expense thereof.

1017
1018 The risk of loss or damage to the work from any hazard or occurrence that
1019 may or may not be covered by a builder's risk policy is that of the Contractor and
1020 Surety, unless such risk of loss is placed elsewhere by express language in the
1021 contract documents.

1022
1023 **108.17 Guarantee of Work.**

1024
1025 **(1)** Regardless of, and in addition to, any manufacturers' warranties, all
1026 work and equipment shall be guaranteed by the Contractor against defects
1027 in materials, equipment or workmanship for one (1) year from the date of
1028 final acceptance or as otherwise specified in the contract documents.

1029
1030 **(2)** When the Engineer determines that repairs or replacements of any
1031 guaranteed work and equipment is necessary due to materials, equipment,
1032 or workmanship which are inferior, defective, or not in accordance with the

1033 terms of the contract, the Contractor shall, at no increase in contract price
 1034 or contract time, and within five (5) working days of receipt of written notice
 1035 from the State, commence to all of the following:

1036
 1037 (a) Correct all noted defects and make replacements, as directed
 1038 by the Engineer, in the equipment and work.

1039
 1040 (b) Repair or replace to new or pre-existing condition any
 1041 damages resulting from such defective materials, equipment or
 1042 installation thereof.

1043
 1044 (3) The State will be entitled to the benefit of all manufacturers and
 1045 installers warranties that extend beyond the terms of the Contractor's
 1046 guaranty regardless of whether or not such extended warranty is required
 1047 by the contract documents. The Contractor shall prepare and submit all
 1048 documents required by the providers of such warranties to make them
 1049 effective, and submit copies of such documents to the Engineer. If an
 1050 available extended warranty cannot be transferred or assigned to the State
 1051 as the ultimate user, the Contractor shall notify the Engineer who may direct
 1052 that the warranted items be acquired in the name of the State as purchaser.

1053
 1054 (4) If a defect is discovered during a guarantee period, all repairs and
 1055 corrections to the defective items when corrected shall be guaranteed for a
 1056 new duration equal to the original full guarantee period. The running of the
 1057 guarantee period shall be suspended for all other work affected by any
 1058 defect. The guarantee period for all other work affected by any such defect
 1059 shall restart for its remaining duration upon confirmation by the Engineer
 1060 that the deficiencies have been repaired or remedied.

1061
 1062 (5) Nothing in this section is intended to limit or affect the State's rights
 1063 and remedies arising from the discovery of latent defects in the work after
 1064 the expiration of any guarantee period.

1065
 1066 **108.18 No Waiver of Legal Rights.** The following will not operate or be
 1067 considered as a waiver of any portion of the contract, or any power herein
 1068 reserved, or any right to damages provided herein or by law:

1069
 1070 (1) Any payment for, or acceptance of, the whole or any part of the work.

1071
 1072 (2) Any extension of time.

1073
 1074 (3) Any possession taken by the Engineer.

1075
 1076 A waiver of any notice requirement or of any noncompliance with the
 1077 contract will not be held to be a waiver of any other notice requirement or any
 1078 other noncompliance with the contract.

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108.19 Final Settlement of Contract.

(A) Closing Requirements. The contract will be considered settled after the project acceptance date and when the following items have been satisfactorily submitted, where applicable:

- (1) All written guarantees required by the contract.
- (2) Complete and certified weekly payrolls for the Contractor and its subcontractor's.
- (3) Certificate of plumbing and electrical inspection.
- (4) Certificate of building occupancy.
- (5) Certificate for soil treatment and wood treatment.
- (6) Certificate of water system chlorination.
- (7) Certificate of elevator inspection, boiler and pressure pipe installation.
- (8) Tax clearance.
- (9) All other documents required by the Contract or by law.

(B) Failure to Meet Closing Requirements. The Contractor shall meet the applicable closing requirements within sixty (60) days from the date of Project Acceptance or the agreed to Punchlist complete date. Should the Contractor fail to comply with these requirements, the Engineer may terminate the contract for cause.”

END OF SECTION 108

47 **(IV)** Amend **Subsection 109.11 Final Payment** by revising lines 568 to 576
48 to read as follows:

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(3) A current “Certificate of Vendor Compliance” issued by the Hawaii Compliance Express (HCE). The Certificate of Vendor Compliance is used to certify the Contractor’s compliance with

(a) Section 103D-328, HRS (for all contracts \$25,000 or more) which requires a current tax clearance certificate issued by the Hawaii State Department of Taxation and the Internal Revenue Service;

(b) Chapters 383, 386, 392, and 393, HRS; and

(c) Subsection 103D-310(c), HRS. The State reserves the right to verify that compliance is current prior to the issuance of final payment. Contractors are advised that non-compliance status will result in final payment being withheld until compliance is attained.

Sums necessary to meet the claims of any governmental agencies may be withheld from the sums due the Contractor until said claims have been fully and completely discharged or otherwise satisfied.”

END OF SECTION 109

1 Make the following section a part of the Standard Specifications:
2

3 **SECTION 110 – GUARDRAIL REPAIRS**
4

5 **110.01 Scope of Work.** The work shall consist of furnishing all labor,
6 necessary equipment, materials and traffic control, to repair guardrail on the
7 Island of Kauai as requested. The guardrail repair involves repairing the rails,
8 posts, spacer blocks, terminal sections (gating and non-gating systems), and
9 impact attenuator systems. All work shall be performed in a professional manner
10 in accordance with current practices and this document. All guardrail parts and
11 debris shall be removed daily at all locations. See Section 110.03 – Area of
12 Coverage.
13

14 The Contractor shall work as directed by the Highways Division’s Kauai
15 District Maintenance Engineer. The Contractor, as per Section 110.04 Safety
16 and Convenience, shall provide traffic control and its cost shall be inclusive of
17 guardrail work cost.
18

19 **110.02 Contract Period and Option to Extend.** The period of the contract
20 shall be for twelve (12) months commencing from the date indicated in the
21 “Notice to Proceed” from the Department. There is an option to extend for four
22 (4) additional twelve (12) month periods, without re-bidding, upon mutual
23 agreement in writing prior to the contract expiration date, provided the initial bid
24 price remains the same. The maximum contract period is sixty (60) months.
25

26 Failure by the Contractor to execute the amendment to extend the
27 contract within the number of days specified under Section 103.07 – Failure to
28 Execute Contract may be cause for cancellation of the written agreement to
29 extend the contract and may be subject to disqualification from bidding future
30 projects for a two (2) year period in accordance with Section 102.12 –
31 Disqualification of Bidders.
32

33 **110.03 Area of Coverage.** The project requires the Contractor to repair
34 guardrail on the Island of Kauai. Work shall be grouped into one area along with
35 the corresponding routes as shown on the attached map of the island of Kauai
36 (Figure 1). Note: There are numerous side streets with or without route numbers
37 along State highways where State jurisdiction extends various distances into side
38 streets. :
39

40 **(A) Area:**

41	Route 50,	Kaumualii Hwy.
42	Route 51,	Waapa Rd., Rice St., Kauai Veterans Memorial Hwy.,
43	Kapule Hwy.	
44	Route 56,	Kuhio Hwy.
45	Route 58,	Nawiliwili Rd.
46	Route 540,	Halewili Rd.
47	Route 550,	Waimea Canyon Dr., Kokee Rd.

48 Route 560, Kuhio Hwy.
49 Route 570, Ahukini Rd.
50 Route 580, Kuamoo Rd.
51 Route 583, Maalo Rd.
52 Route 5600, Temporary Kapaa By-Pass Rd.
53

54 **110.04 Safety and Convenience.** The Contractor shall at all times conduct
55 his work to assure the least possible obstruction to public traffic. The safety and
56 convenience of the general public and the protection of persons and property is
57 of utmost importance, and the Contractor shall provide appropriate traffic control
58 and safety measures. The Contractor and his employees shall treat members of
59 the public in a fair and polite manner. Workers shall present a professional
60 appearance and conduct themselves in a professional manner at all times.
61

62 All traffic control and safety measures shall be done in conformance with
63 the "Administrative Rules of Hawaii Governing the Use of Traffic Control Devices
64 at Work Sites on or Adjacent to Public Streets and Highways" adopted by the
65 Director of Transportation, and the current U.S. Federal Highway Administration
66 "Manual on Uniform Traffic Control Devices (MUTCD), 2003 Edition, including
67 Revision 1 dated August 31, 2004. Costs for traffic control shall include set-up
68 and removal of all signs, cones, delineators, barricades, flag persons, police
69 officers, arrow boards, etc., and shall be included in the guardrail proposal price.
70 See Section 645 – Work Zone Traffic Control.
71

72 Do not close traffic lanes or slow down traffic during the following peak
73 hours:
74

75 Morning Peak Hours	6:00 A.M. to 8:30 A.M
76 Afternoon Peak Hours	3:00 P.M. to 6:00 P.M.

77
78 Above peak hours are daily except Saturdays, Sundays, and holidays.
79

80 The Contractor must notify all private property owners in the vicinity where
81 guardrail repair is performed in the event that the work may hinder access to their
82 property. The Contractor must also secure permission prior to entering private
83 property to do guardrail work, if any.
84

85 The Contractor shall remove debris daily and shall leave the work site in a
86 condition equal to or cleaner than prior to commencing work. The Contractor
87 shall be responsible for all hauling and lawful disposal of debris. Any
88 unauthorized or illegal disposal is grounds for termination of the contract.
89

90 No section of incomplete guardrail shall be left unshielded at the end of
91 each work day.
92

93 **110.05 Hours of Operation.** The Contractor shall be available to provide the
94 specified services during normal working hours and complete the services within

95 the period specified in the work order. Normal working days and hours for the
96 project are defined as Monday through Friday, 8:30 A.M. to 3:00 P.M., except for
97 State holidays. Night work may be required as directed by the Engineer. Refer
98 to Section 645 – Work Zone Traffic Control. Authorized Highways personnel will
99 contact the Contractor to schedule work, as needed. All services requested after
100 normal work hours may be charged in accordance with Subsection 107.04 –
101 Overtime and Night Work.

102

103 **110.06 Disposal of Debris.** The Contractor shall be responsible for all
104 hauling and dump fees and shall include the cost of these items in his bid. Any
105 unauthorized or illegal disposal is grounds for termination of the contract.

106

107 **110.07 Work Orders.** Prepare a work order (Figure 2) for each guardrail
108 repair or group of guardrail repairs in the same location. The work order shall
109 also include the construction time schedule. At certain work sites, erosion control
110 plans or BMP plans will be requested by the Engineer. Submit the work order for
111 approval to the Highways Division Maintenance Engineer, Kauai District Office,
112 1720 Haleukana Street, Lihue, Hawaii 96766, or email Work Order to
113 willy.s.ortal@hawaii.gov. Work shall not be performed unless the Contractor
114 receives an approved work order. The Engineer or his representative shall
115 authorize any increases in total price.

116

117 **110.08 Basis of Payment.** Payment shall be made by purchase order. The
118 Contractor shall submit monthly progress payments to the Kauai District Office,
119 1720 Haleukana Street, Lihue, Hawaii 96766, if services are rendered. (See
120 Subsection 109.08 – Progress Payments).”

121

122

123

END OF SECTION 110

1 Amend **Section 209 - TEMPORARY WATER POLLUTION, DUST, AND EROSION**
2 **CONTROL** to read as follows:

3
4
5 **“SECTION 209 - TEMPORARY WATER POLLUTION, DUST, AND EROSION**
6 **CONTROL**

7
8
9 **209.01 Description.** This section describes the following:

10
11 **(A)** Including detailed plans, diagrams, and written Site-Specific Best
12 Management Practices (BMP); constructing, maintaining, and repairing
13 temporary water pollution, dust, and erosion control measures at the project
14 site, including local material sources, work areas and haul roads; removing
15 and disposing hazardous wastes; control of fugitive dust (defined as
16 uncontrolled emission of solid airborne particulate matter from any source
17 other than combustion); and complying with applicable State and Federal
18 permit conditions.

19
20 **(B)** Work associated with construction stormwater, dewatering, and
21 hydrotesting activities and complying with conditions of the National Pollutant
22 Discharge Elimination System (NPDES) permit(s) authorizing discharges
23 associated with construction stormwater, dewatering, and hydrotesting
24 activities.

25
26 **(C)** Potential pollutant identification and mitigation measures are listed in
27 Appendix A for use in the development of the Contractor’s Site-Specific BMP.

28
29 Requirements of this section also apply to construction support
30 activities including concrete or asphalt batch plants, rock crushing plants,
31 equipment staging yards/areas, material storage areas, excavated material
32 disposal areas, and borrow areas located outside the State Right-of-Way.
33 For areas serving multiple construction projects, or operating beyond the
34 completion of the construction project in which it supports, the Contractor
35 shall be responsible for securing the necessary permits, clearances, and
36 documents, and following the conditions of the permits and clearances, at no
37 cost to the State.

38
39 **209.02 Materials.** Comply with applicable materials described in Chapters 2 and
40 3 of the current HDOT “Construction Best Management Practices Field Manual”. In
41 addition, the materials shall comply with the following:

42
43 **(A) Grass.** Grass shall be a quick growing species such as rye grass,
44 Italian rye grass, or cereal grasses. Grass shall be suitable to the area and
45 provide a temporary cover that will not compete later with permanent cover.
46 Alternative grasses are allowable if acceptable to the Engineer.

47 **(B) Fertilizer and Soil Conditioners.** Fertilizer and soil conditioners shall
48 be a standard commercial grade acceptable to the Engineer. Fertilizer shall
49 conform to Subsection 619.02(H)(1) - Commercial Fertilizer.

50
51 **(C) Hydro-mulching.** Hydro-mulching used as a temporary vegetative
52 stabilization measure shall consist of materials in Subsections 209.02(A) -
53 Grass, and 209.02(B) – Fertilizer and Soil Conditioners. Mulches shall be
54 recycled materials including bagasse, hay, straw, wood cellulose bark, wood
55 chips, or other material acceptable to the Engineer. Mulches shall be clean
56 and free of noxious weeds and deleterious materials. Potable water shall
57 meet the requirements of Subsection 712.01 - Water. Submit alternate
58 sources of irrigation water for the Engineer’s acceptance if deviating from
59 712.01 - Water. Installation and other requirements shall be in accordance
60 with portions of Section 641- Hydro-Mulch Seeding including 641.02(D) - Soil
61 and Mulch Tackifier, 641.03(A) – Seeding, and 641.03(B) - Planting Period.
62 Install non-vegetative controls including mulch or rolled erosion control
63 products while the vegetation is being established. Water and fertilize grass.
64 Apply fertilizer as recommended by the manufacturer. Replace grass the
65 Engineer considers unsuitable or sick. Remove and dispose of trash and
66 debris. Remove invasive species. Mow as needed to prevent site or signage
67 obstructions, fire hazard, or nuisance to the public. Do not remove down
68 stream sediment control measures until the vegetation is uniformly
69 established, including no large bare areas, and provides 70 percent of the
70 density of pre-disturbance vegetation. Temporary vegetative stabilization
71 shall not be used longer than one (1) year.

72
73 **(D) Silt Fences.** Comply with ASTM D6462, Standard Practice for Silt
74 Fence Installation.

75
76 Alternative materials or methods to control, prevent, remove and dispose
77 pollution are allowable if acceptable to the Engineer.

78
79 **209.03 Construction.**

80
81 **(A) Preconstruction Requirements.**

82
83 **(1) Water Pollution, Dust, and Erosion Control Meeting.**
84 Schedule a water pollution, dust, and erosion control meeting with the
85 Engineer after Site-Specific BMP is accepted in writing by the
86 Engineer. Meeting shall be scheduled a minimum of seven (7)
87 calendar days prior to the Start Work Date. Discuss sequence of work,
88 plans and proposals for water pollution, dust, and erosion control.
89

90 **(2) Water Pollution, Dust, and Erosion Control Submittals.**

91 Submit a Site-Specific BMP Plan within twenty one (21) calendar days
92 of date of award. Submission of complete and acceptable Site-
93 Specific BMP Plan is the sole responsibility of the Contractor and
94 additional contract time will not be issued for delays due to
95 incompleteness. Include the following:

96
97 **(a)** Written description of activities to minimize water
98 pollution and soil erosion into State waters, drainage or sewer
99 systems. BMP shall include the following:

- 100
101 1. An identification of potential pollutants and their
102 sources.
- 103
104 2. A list of all materials and heavy equipment to be
105 used during construction.
- 106
107 3. Descriptions of the methods and devices used to
108 minimize the discharge of pollutants into State waters,
109 drainage or sewer systems.
- 110
111 4. Details of the procedures used for the
112 maintenance and subsequent removal of any erosion or
113 siltation control devices.
- 114
115 5. Methods of removing and disposing hazardous
116 wastes encountered or generated during construction.
- 117
118 6. Methods of removing and disposing concrete and
119 asphalt pavement cutting slurry, concrete curing water,
120 and hydrodemolition water.
- 121
122 7. Spill Control and Prevention and Emergency Spill
123 Response Plan.
- 124
125 8. Fugitive dust control, including dust from grinding,
126 sweeping, or brooming off operations or combination
127 thereof.
- 128
129 9. Methods of storing and handling of oils, paints
130 and other products used for the project.
- 131
132 10. Material storage and handling areas, and other
133 staging areas.
- 134
135 11. Concrete truck washouts.

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- 12.** Concrete waste control.
- 13.** Fueling and maintenance of vehicles and other equipment.
- 14.** Tracking of sediment offsite from project entries and exits.
- 15.** Litter management.
- 16.** Toilet facilities.
- 17.** Other factors that may cause water pollution, dust and erosion control.

(b) Provide plans indicating location of water pollution, dust and erosion control devices; provide plans and details of BMPs to be installed or utilized; show areas of soil disturbance in cut and fill, indicate areas used for construction staging and storage including items (1) through (17) above, storage of aggregate (indicate type of aggregate), asphalt cold mix, soil or solid waste, equipment and vehicle parking, and show areas where vegetative practices are to be implemented. Indicate intended drainage pattern on plans. Include flow arrows. Include separate drawing for each phase of construction that alters drainage patterns. Indicate approximate date when device will be installed and removed.

(c) Construction schedule.

(d) Name(s) of specific individual(s) designated responsible for water pollution, dust, and erosion controls on the project site. Include home, cellular, and business telephone numbers, fax numbers, and e-mail addresses.

(e) Description of fill material to be used.

(f) For projects with an NPDES Permit for Construction Activities, submit information to address all sections in the Storm Water Pollution Prevention Plan (SWPPP).

(g) For projects with an NPDES Permit, information required for compliance with the conditions of the Notice of General Permit Coverage (NGPC)/NPDES Permit.

181 (h) Site-Specific BMP Review Checklist. The checklist may
182 be downloaded from HDOT’s Stormwater Management
183 website at <http://stormwaterhawaii.com>.
184

185 Date and sign Site-Specific BMP Plan. Keep accepted
186 copy on site or at an accessible location so that it can be made
187 available at the time of an on-site inspection or upon request by
188 the Engineer, HDOT Third-Party Inspector, and/or DOH/EPA
189 Representative. Amendments to the Site-Specific BMP Plan
190 shall be included with original Site-Specific BMP Plan. Modify
191 SWPPP if necessary to conform to revisions. Include date of
192 installation and removal of Site-Specific BMP measures.
193 Obtain written acceptance by the Engineer before
194 implementing revised Site-Specific BMPs in the field.
195

196 Follow the guidelines in the current HDOT “Construction
197 Best Management Practices Field Manual”, in developing,
198 installing, and maintaining Site-Specific BMPs for all projects.
199 For any conflicting requirements between the Manual and
200 applicable bid documents, the applicable bid documents will
201 govern. Should a requirement not be clearly described within
202 the applicable bid documents, notify the Engineer immediately
203 for interpretation. For the purposes of clarification “applicable
204 bid documents” include the construction plans, standard
205 specifications, special provisions, Permits, and the SWPPP
206 when applicable.
207

208 Follow Honolulu’s City and County “Rules for Soil
209 Erosion Standards and Guidelines” for all projects on Oahu.
210 Use respective Soil Erosion Guidelines for Maui, Kauai and
211 Hawaii projects.
212

213 **(B) Construction Requirements.** Do not begin work until submittals
214 detailed in Subsection 209.03(A)(2) - Water Pollution, Dust, and Erosion
215 Control Submittals are completed and accepted in writing by the Engineer.
216

217 Install, maintain, monitor, repair and replace site-specific BMP
218 measures, such as for water pollution, dust and erosion control; installation,
219 monitoring, and operation of hydrotesting activities; removal and disposal of
220 hazardous waste indicated on plans, concrete cutting slurry, concrete curing
221 water; or hydrodemolition water. Site-Specific BMP measures shall be in
222 place, functional and accepted by HDOT personnel prior to initiating any
223 ground disturbing activities.
224

225 If necessary, furnish and install rain gage in a secure location prior to
226 field work including installation of site-specific BMP. Provide rain gage with
227 a tolerance of at least 0.05 inches of rainfall. Install rain gage on project site
228 in an area that will not deter rainfall from entering the gate opening. Do not
229 install in a location where rain water may splash into rain gage. The rain
230 gage installation shall be stable and plumbed. Maintain rain gage and
231 replace rain gage that is stolen, does not function properly or accurately, is
232 worn out, or needs to be relocated. Do not begin field work until rain gage is
233 installed and Site-Specific BMPs are in place. Rain gage data logs shall be
234 readily available. Submit rain gage data logs weekly to the Engineer.

235
236 Address all comments received from the Engineer.

237
238 Modify and resubmit plans and construction schedules to correct
239 conditions that develop during construction which were unforeseen during
240 the design and pre-construction stages.

241
242 Coordinate temporary control provisions with permanent control
243 features throughout the construction and post-construction period.

244
245 Limit maximum surface area of earth material exposed at any time to
246 300,000 square feet. Do not expose or disturb surface area of earth material
247 (including clearing and grubbing) until BMP measures are installed and
248 accepted in writing by the Engineer. Protect temporarily or permanently
249 disturbed soil surface from rainfall impact, runoff and wind before end of the
250 work day.

251
252 Immediately initiate stabilizing exposed soil areas upon completion of
253 earth disturbing activities for areas permanently or temporarily ceased on any
254 portion of the site. Earth-disturbing activities have permanently ceased when
255 clearing and excavation within any area of the construction site that will not
256 include permanent structures has been completed. Earth-disturbing
257 activities have temporarily ceased when clearing, grading, and excavation
258 within any area of the site that will not include permanent structures will not
259 resume for a period of fourteen (14) or more calendar days, but such activities
260 will resume in the future. The term "immediately" is used in this section to
261 define the deadline for initiating stabilization measures. "Immediately" means
262 as soon as practicable, but no later than the end of the next work day,
263 following the day when the earth-disturbing activities have temporarily or
264 permanently ceased.

265
266 For projects with an NPDES Permit for Construction activities:
267

268 (1) For construction areas discharging into waters not impaired for
269 nutrients or sediments, complete initial stabilization within fourteen
270 (14) calendar days after the temporary or permanent cessation of
271 earth-disturbing activities.

272
273 (2) For construction areas discharging into nutrient or sediment
274 impaired waters, complete initial stabilization within seven (7) calendar
275 days after the temporary or permanent cessation of earth-disturbing
276 activities.

277
278 For projects without an NPDES Permit for Construction activities,
279 complete initial stabilization within fourteen (14) calendar days after the
280 temporary or permanent cessation of earth-disturbing activities.

281
282 Any of the following types of activities constitutes initiation of
283 stabilization:

- 284
285 (1) Prepping the soil for vegetative or non-vegetative stabilization;
286
287 (2) Applying mulch or other non-vegetative product to the exposed
288 area;
289
290 (3) Seeding or planting the exposed area;
291
292 (4) Starting any of the activities in items (1) – (3) above on a portion
293 of the area to be stabilized, but not on the entire area; and
294
295 (5) Finalizing arrangements to have stabilization product fully
296 installed in compliance with the deadline for completing initial
297 stabilization activities.

298
299 Any of the following types of activities constitutes completion of initial
300 stabilization activities:

- 301
302 (1) For vegetative stabilization, all activities necessary to initially
303 seed or plant the area to be stabilized; and/or
304
305 (2) For non-vegetative stabilization, the installation or application
306 of all such non-vegetative measures.

307
308 If the Contractor is unable to meet the deadlines above due to
309 circumstances beyond the Contractor's control, and the Contractor is using
310 vegetative cover for temporary or permanent stabilization, the Contractor
311 may comply with the following stabilization deadlines instead as agreed to by
312 the Engineer:

313

314 (1) Immediately initiate, and complete within the timeframe shown
315 above, the installation of temporary non-vegetative stabilization
316 measures to prevent erosion;

317
318 (2) Complete all soil conditioning, seeding, watering or irrigation
319 installation, mulching, and other required activities related to the
320 planting and initial establishment of vegetation as soon as conditions
321 or circumstances allow it on the site; and

322
323 (3) Notify and provide documentation to the Engineer the
324 circumstances that prevent the Contractor from meeting the deadlines
325 above for stabilization and the schedule the Contractor will follow for
326 initiating and completing initial stabilization and as agreed to by the
327 Engineer.

328
329 Follow the applicable requirements of the specifications and special
330 provisions including Section 619 Planting and Section 641 Hydro-Mulch
331 Seeding.

332
333 Immediately after seeding or planting the area to be vegetatively
334 stabilized, to the extent necessary to prevent erosion on the seeded or
335 planted area, select, design, and install non-vegetative erosion controls that
336 provide cover (e.g., mulch, rolled erosion control products) to the area while
337 vegetation is becoming established.

338
339 Protect exposed or disturbed surface area with mulches, grass seeds
340 or hydromulch. Spray mulches at a rate of 2,000 pounds per acre. Add
341 tackifier to mix at a rate of 85 pounds per acre. Apply grass seeds at a rate
342 of 125 pounds per acre. For hydromulch, use the ingredients and rates
343 required for mulches and grass seeds. Submit recommendations from a
344 licensed Landscape Architect when deviating from the application rates
345 above.

346
347 Apply fertilizer to mulches, grass seed or hydromulch per
348 manufacturer's recommendations. Submit recommendations from a licensed
349 Landscape Architect when deviating from the manufacturer's
350 recommendations.

351
352 Install velocity dissipation measures when exposing erodible surfaces
353 greater than 15 feet in height.

354
355 BMP measures shall be in place and operational at the end of work
356 day or as required by Section 209.03(B) Construction Requirements.

357

358 Install and maintain either or both stabilized construction entrances
359 and wheel washes to minimize tracking of dirt and mud onto roadways.
360 Restrict traffic to stabilized construction areas only. Clean dirt, mud, or other
361 material tracked onto the road, sidewalk, or other paved area by the end of
362 the same day in which the track-out occurs. Modify stabilized construction
363 entrances to prevent mud from being tracked onto road. Stabilize entire
364 access roads if necessary.

365
366 Chemicals may be used as soil stabilizers for either or both erosion
367 and dust control if acceptable to the Engineer.

368
369 Provide temporary slope drains of rigid or flexible conduits to carry
370 runoff from cuts and embankments. Provide portable flume at the entrance.
371 Shorten or extend temporary slope drains to ensure proper function.

372
373 Protect ditches, channels, and other drainageways leading away from
374 cuts and fills at all times by either:

- 375
376 (1) Hydro-mulching the lower region of embankments in the
377 immediate area.
378
379 (2) Installing check dams and siltation control devices.
380
381 (3) Other methods acceptable to the Engineer.

382
383 Provide for controlled discharge of waters impounded, directed, or
384 controlled by project activities or erosion control measures.

385
386 Cover exposed surface of materials completely with tarpaulin or
387 similar device when transporting aggregate, soil, excavated material or
388 material that may be source of fugitive dust.

389
390 Cleanup and remove any pollutant that can be attributed to the
391 Contractor.

392
393 Install or modify Site-Specific BMP measures due to change in the
394 Contractor's means and methods, or for omitted condition that should have
395 been allowed for in the accepted Site-Specific BMP or a Site-Specific BMP
396 that replaces an accepted Site-Specific BMP that is not satisfactorily
397 performing. Modifications to Site-Specific BMP measures shall be accepted
398 in writing by the Engineer prior to implementation.

399
400 Properly maintain all Site-Specific BMP measures.

401
402 For projects with an NPDES Permit for Construction Activities:

403

404 (1) For construction areas discharging into nutrient or sediment
405 impaired waters, inspect, prepare a written report, and make repairs
406 to BMP measures at the following intervals:

- 407
- 408 (a) Weekly.
- 409
- 410 (b) Within twenty four (24) hours of any rainfall of 0.25 inch
411 or greater which occurs in a twenty four (24) hour period.
- 412
- 413 (c) When existing erosion control measures are damaged
414 or not operating properly as required by Site-Specific BMP.
- 415

416 (2) For construction areas discharging to waters not impaired for
417 nutrients or sediments, inspect, prepare a written report, and make
418 repairs to BMP measures at the following intervals:

- 419
- 420 (a) Weekly.
- 421
- 422 (b) When existing erosion control measures are damaged
423 or not operating properly as required by Site-Specific BMP.
- 424

425 For projects without an NPDES Permit for Construction activities,
426 inspect, prepare a written report, and make repairs to BMP measures at the
427 following intervals:

- 428
- 429 (a) Weekly.
- 430
- 431 (b) When existing erosion control measures are damaged
432 or not operating properly as required by Site-Specific BMP.
- 433

434 Temporarily remove, replace or relocate any Site-Specific BMP that
435 must be removed, replaced or relocated due to potential or actual flooding,
436 or potential danger or damage to project or public.

437

438 Maintain records of inspections of Site-Specific BMP work. Keep
439 continuous records for duration of the project. Submit copy of Inspection
440 Report to the Engineer within twenty four (24) hours after each inspection.

441

442 The Contractor's designated representative specified in Subsection
443 209.03(A)(2)(d) shall address any Site-Specific BMP deficiencies brought up
444 by the Engineer immediately, including weekends and holidays, and
445 complete work to fix the deficiencies by the close of the next work day if the
446 problem does not require significant repair or replacement, or if the problem
447 can be corrected through routine maintenance. Address any Site-Specific
448 BMP deficiencies brought up by the State's Third-Party Inspector in the
449 timeframe above or as specified in the Consent Decree or MS4 NPDES

450 Permit, whichever is more stringent. The Consent Decree timeframe
451 requirement applies statewide. The MS4 NPDES Permit only applies to
452 Oahu. In this section, “immediately” means the Contractor shall take all
453 reasonable measures to minimize or prevent discharge of pollutants until a
454 permanent solution is installed and made operational. If a problem is
455 identified at a time in the day in which it is too late to initiate repair, initiation
456 of repair shall begin on the following work day. When installation of a new
457 pollution prevention control or a significant repair is needed, complete
458 installation or repair no later than seven (7) calendar days from the time of
459 notification/Contractor discovery. Notify the Engineer and document why it
460 is infeasible to complete the installation or repair within seven (7) calendar
461 days and complete the work as soon as practicable and as agreed to by the
462 Engineer. Address Site-Specific BMP deficiencies discovered by the
463 Contractor within the timeframe above. The Contractor’s failure to
464 satisfactorily address these Site-Specific BMP deficiencies, the Engineer
465 reserves the right to employ outside assistance or use the Engineer’s own
466 labor forces to provide necessary corrective measures. The Engineer will
467 charge the Contractor such incurred costs plus any associated project
468 engineering costs. The Engineer will make appropriate deductions from the
469 Contractor’s monthly progress estimate. Failure to apply Site-Specific BMP
470 measures may result in one or more of the following: assessment of
471 liquidated damages, suspension, or cancellation of Contract with the
472 Contractor being fully responsible for all additional costs incurred by the
473 State.

474
475 **(C) Discharges of Storm Water Associated with Construction**
476 **Activities.** If work includes disturbance of one acre or more, an NPDES
477 Permit authorizing Discharges of Storm Water Associated with Construction
478 Activity (CWB-NOI Form C) or Individual Permit authorizing storm water
479 discharges associated with construction activity is required from the
480 Department of Health Clean Water Branch (DOH-CWB).

481
482 Do not begin construction activities until all required conditions of the
483 permit are met and submittals detailed in Subsection 209.03(A)(2) – Water
484 Pollution, Dust, and Erosion Control Submittals are completed and accepted
485 in writing by the Engineer.

486
487 **(D) Discharges Associated with Hydrotesting Activities.** If
488 hydrotesting activities require effluent discharge into State waters or drainage
489 systems, an NPDES Hydrotesting Waters Permit (CWB-NOI Form F) or
490 Individual Permit authorizing discharges associated with hydrotesting from
491 DOH-CWB is required from the DOH-CWB.

492
493 Do not begin hydrotesting activities until the DOH-CWB has issued an
494 Individual NPDES Permit or Notice of General Permit Coverage (NGPC).
495 Conduct Hydrotesting operations in accordance with the conditions of the

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permit or NGPC.

(E) Discharges Associated with Dewatering Activities. If dewatering activities require effluent discharge into State waters or drainage systems, an NPDES Dewatering Permit (CWB-NOI Form G) or Individual Permit authorizing discharges associated with dewatering from DOH-CWB is required from the DOH-CWB.

Do not begin dewatering activities until the DOH-CWB has issued an Individual NPDES Permit or Notice of General Permit Coverage (NGPC). Conduct dewatering operations in accordance with the conditions of the permit or NGPC.

(F) Solid Waste. Submit the Solid Waste Disclosure Form for Construction Sites to the Engineer within twenty one (21) calendar days of date of award. Provide a copy of all the disposal receipts from the facility permitted by the Department of Health to receive solid waste to the Engineer monthly. This should also include documentation from any intermediary facility where solid waste is handled or processed, or as directed by the Engineer.

(G) Construction BMP Training. The Contractor’s representative responsible for development of the Site-Specific BMP Plan and implementation of Site-Specific BMPs in the field shall attend the State’s Construction Best Management Practices Training. The Contractor shall keep training logs updated and readily available.

209.04 Measurement. The Engineer will measure Installation, maintenance, monitoring, and removal of BMP as ordered by the Engineer on a force account basis in accordance with the contract documents.

209.05 Payment. The Engineer will pay for accepted pay items listed below on a force account basis in accordance with the contract documents. Payment will be full compensation for work prescribed in this section and contract documents.

The Engineer will compute the actual amount paid to the Contractor for force account work according to Subsection 109.06 – Force Account Provisions and Compensation.

The Engineer will pay for each of the following pay items when included in proposal schedule:

Pay Item	Pay Unit
Installation, Maintenance, Monitoring, and Removal of BMP	Force Account

541 An estimated amount for force account is allocated in proposal schedule
542 under 'Installation, Maintenance, Monitoring, and Removal of BMP', but actual
543 amount to be paid will be the sum shown on accepted force account records,
544 whether this sum be more or less than estimated amount allocated in proposal
545 schedule. The Engineer will pay for BMP measures requested by the Engineer on
546 a force account basis.

547
548 No progress payment will be authorized until the Engineer accepts in writing
549 Site-Specific BMP or when the Contractor fails to maintain project site in accordance
550 with accepted BMP.

551
552 For all citations or fines received by the Department for non-compliance,
553 including compliance with NPDES Permit conditions, the Contractor shall reimburse
554 State within thirty (30) calendar days for full amount of outstanding cost State has
555 incurred, or the Engineer will deduct cost from progress payment.

556
557 The Engineer will assess liquidated damages up to \$27,500 per day for non-
558 compliance of each BMP requirement and all other requirements in this section.
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Appendix A

The following list identifies potential pollutant sources and corresponding BMPs used to mitigate the pollutants. Each BMP is referenced to the corresponding section of the current HDOT Construction Best Management Practices Field Manual or appropriate Supplemental Sheets. The Manual may be obtained from the HDOT Statewide Stormwater Management Program Website at <http://www.stormwaterhawaii.com/resources/contractors-and-consultants/> under Construction Best Management Practices Field Manual. Supplemental BMP sheets are located at <http://www.stormwaterhawaii.com/resources/contractors-and-consultants/storm-water-pollution-prevention-plan-swppp/> under Concrete Curing and Irrigation Water.

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<p><i>Construction debris, green waste, general litter</i></p>	<ul style="list-style-type: none"> • <i>Separate contaminated clean up materials from construction and demolition (C&D) wastes.</i> • <i>Provide waste containers (e.g., dumpster or trash receptacle) of sufficient size and number to contain construction and domestic wastes.</i> • <i>Inspect construction waste and recycling areas regularly.</i> • <i>Schedule solid waste collection regularly.</i> • <i>Schedule recycling activities based on construction/demolition phases.</i> • <i>Empty waste containers weekly or when they are two-thirds full, whichever is sooner.</i> • <i>Do not allow containers to overflow. Clean up immediately if they do.</i> • <i>On work days, clean up and dispose of waste in designated waste containers.</i> • <i>See Solid Waste Management Section SM-6 for additional requirements.</i> • <i>Provide Storm Drain Inlet Protection and/or Perimeter Sediment Controls as applicable.</i> • <i>Collect and dispose of all waste materials in trash dumpsters. Place dumpsters, with secure watertight lids, away from storm water conveyances and drains, in a covered materials storage area.</i> • <i>Dispose of construction and non- construction solid waste in accordance with State DOH regs.</i> • <i>Load removed non- recyclable vegetation directly onto trucks; cover and transport to a licensed facility</i> 	<p><i>See Solid Waste Management Section SM-6. Storm Drain Inlet Protection SC-1, and Perimeter Sediment Controls where applicable.</i></p>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<p>Materials associated with the operation and maintenance of equipment, such as oil, fuel, and hydraulic fluid leakage</p>	<ul style="list-style-type: none"> • Use off-site wash racks, repair and maintenance facilities, and fueling sites when practical. • Designate bermed wash area if cleaning on site is necessary. • Place drip pans or drop cloths under vehicles and equipment to absorb spills or leaks. • Provide an ample supply of readily available spill cleanup materials. • Clean up spills immediately, using dry cleanup methods where possible, and dispose of used materials properly. • Do not clean surfaces or spills by hosing the area down. • Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge. • Inspect on-site vehicles and equipment regularly and immediately repair leaks. • Regularly inspect fueling areas and storage tanks. • Train employees on proper maintenance and spill practices and procedures and fueling and cleanup procedures. • Store diesel fuel, oil, hydraulic fluid, or other petroleum products or other chemicals in water-tight containers and provide cover or secondary containment. • Do not remove original product labels and comply with manufacturer's labels for proper disposal. • Dispose of containers only after all the product has been used. • Dispose of or recycle oil or oily wastes according to Federal, State, and Local requirements. • Store soaps, detergents, or solvents under cover or other means to prevent contact with rainwater. • See Vehicle and Equipment Cleaning, Maintenance, and Refueling, Sections SM-11, SM-12, and SM-13 and Material Storage and Handling Section SM-2 for additional requirements. 	<p>See Vehicle and Equipment Cleaning, Maintenance, and Refueling, Sections SM-11, SM-12, and SM-13, and Material Storage and Handling, Section SM-2, and Spill Prevention and Control SM-10.</p>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
Soil erosion from the disturbed areas	<ul style="list-style-type: none"> • Provide Soil Stabilization, Slope Protection, Storm Drain Inlet Protection SC-1, Perimeter Controls and Sediment Barriers, Sediment Basins and Detention Ponds, Check Dams SC-3 ,Level Spreader EC-6, Paving Operations SM-20, Construction Roads and Parking Area Stabilization SC-10, Controlling Storm Water Flowing Onto and Through the Project, Post-Construction BMPs, and Non-Structural BMPs (Construction BMP Training SM-1, Scheduling SM-14, Location of Potential Sources of Sediment SM-15, Preservation of Existing Vegetation SM-17). • Delineate, and clearly mark off, with flags, tape, or other similar marking device all natural buffer areas defined in the SWPPP. • Preserve native topsoil where practicable. • In areas where vegetative stabilization will occur, restrict vehicle/equipment use in areas to avoid soil compaction or condition soil to promote vegetative growth. • For Storm Drain Inlet Protection, clean, or remove and replace, the protection measures as sediment accumulates, the filter becomes clogged, and/or performance is compromised. • Where there is evidence of sediment accumulation adjacent to the inlet protection measure, remove the deposited sediment by the end of the same day in which it is found or by the end of the following work day if removal by the same day is not feasible. • Sediment basins shall be designed and maintained in accordance with HAR Chapter 11-55. • Minimize disturbance on steep slopes (Greater than 15% in grade). • If disturbance of steep slopes are unavoidable, phase disturbances and use stabilization techniques designed for steep grades. • For temporary drains and swales use velocity dissipation devices within and at the outlet to minimize erosive flow velocities. 	<p>Soil Stabilization</p> <ol style="list-style-type: none"> 1. SM-22 Topsoil Management 2. EC-12 Seeding and Planting 3. EC-14 Mulching 4. EC-11 Geotextiles and Mats <p>Slope Protection</p> <ol style="list-style-type: none"> 1. EC-12 Seeding and Planting 2. EC-14 Mulching 3. EC-11 Geotextiles and Mats 4. EC-4 Slope Roughening, Terracing, and Rounding 5. EC-7 Slope Drains and Subsurface Drains 6. EC-9 Slope Interceptor or Diversion Ditches/Berms <p>SC-1 Storm Drain Inlet Protection</p>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
		<p><i>Perimeter Controls and Sediment Barriers</i></p> <ol style="list-style-type: none"> 1. <i>SC-7 Silt Fence or Filter Fabric Fence</i> 2. <i>SC-2 Vegetated Filter Strips and Buffers</i> 3. <i>SC-6 Compost Filter Berm/Sock</i> 4. <i>SC-8 Sandbag Barrier</i> 5. <i>SC-9 Brush or Rock Filter</i> <p><i>Sediment Basins and Detention Ponds</i></p> <ol style="list-style-type: none"> 1. <i>SC-4 Sediment Trap</i> 2. <i>SC-5 Sediment Basin</i> <p><i>SC-3 Check Dams</i></p> <p><i>EC-6 Level Spreader</i> <i>SM-20 Paving Operations</i> <i>SC-10 Construction Roads and Parking Area Stabilization</i></p>

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Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
		<p><i>Controlling Storm Water Flowing onto and Through the Project</i></p> <ol style="list-style-type: none"> 1. <i>EC-3 Run-On Diversion</i> 2. <i>EC-5 Earth Dike, Swales and Ditches</i> <p><i>Post Construction BMPs</i></p> <ol style="list-style-type: none"> 1. <i>EC-2 Flared Culvert End Sections</i> 2. <i>EC-10 Rip-Rap and Gabion Inflow Protection</i> 3. <i>EC-8 Outlet Protection and Velocity Dissipation Devices</i> 4. <i>SM-22 Topsoil Management</i> <p><i>Non-Structural BMPs</i></p> <ol style="list-style-type: none"> 1. <i>SM-1 Construction BMP Training</i> 2. <i>SM-14 Scheduling</i> 3. <i>SM-15 Location of Potential Sources of Sediment</i> 4. <i>SM-17 Preservation of Existing Vegetation</i>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<i>Sediment from soil stockpiles</i>	<ul style="list-style-type: none"> • <i>Locate stockpiles a minimum of 50 feet or as far as practicable from concentrated runoff or outside of any natural buffers identified on the SWPPP.</i> • <i>Place bagged materials on pallets and under cover.</i> • <i>Provide physical diversion to protect stockpiles from concentrated runoff.</i> • <i>Cover stockpiles with plastic or comparable material when practicable.</i> • <i>Place silt fence, fiber filtration tubes, or straw wattles around stockpiles.</i> • <i>Do not hose down or sweep soil or sediment accumulated on pavement or other impervious surfaces into any storm water conveyance (unless connected to a sediment basin, sediment trap, or similarly effective control), storm drain inlet, or state water.</i> • <i>Unless infeasible, contain and securely protect stockpiles from the wind.</i> • <i>Provide Storm Drain Inlet Protection and/or Perimeter Sediment Controls as applicable. See Stockpile Management Section SM-3 for additional requirements.</i> 	<p><i>See Stockpile Management Section SM-3. Storm Drain Inlet Protection SC-1, and Perimeter Sediment Controls where applicable.</i></p>
<i>Emulsified asphalt or prime/tack coat</i>	<ul style="list-style-type: none"> • <i>Provide training for employees and contractors on proper material delivery and storage practices and procedures.</i> • <i>Restrict paving operations during wet weather to prevent paving materials from being discharged.</i> • <i>Use asphalt emulsions such as prime coat when possible.</i> • <i>Protect drain inlet structures and manholes during application of tack coat, seal coat, slurry seal, and fog seal.</i> • <i>Keep ample supplies of drip pans and absorbent materials on site.</i> • <i>Inspect inlet protection devices.</i> • <i>See Material Storage and Handling Section SM-2 and Paving Operations Section SM-20 for additional requirements.</i> • <i>Provide Storm Drain Inlet Protection and/or Perimeter Sediment Controls as applicable.</i> 	<p><i>See Material Storage and Handling Section SM-2, and Stockpile Management Section SM-3, Paving Operations Section SM-20, Storm Drain Inlet Protection SC-1, and Perimeter Sediment Controls where applicable.</i></p>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<p><i>Materials associated with painting, such as paint and paint wash solvent</i></p>	<ul style="list-style-type: none"> • <i>Hazardous chemicals shall be well-labeled and stored in original containers.</i> • <i>Keep ample supply of cleanup materials on site.</i> • <i>Dispose container only after all of the product has been used.</i> • <i>Remove as much paint from brushes on painted surface.</i> • <i>Rinse from water-based paints shall be discharged into the sanitary sewer system where possible. If not, direct all washwater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation.</i> • <i>Locate on-site wash area a minimum of 50 feet away or as far as practicable from storm drain inlets, open drainage facilities, or water bodies.</i> • <i>Do not dump liquid wastes into the storm drainage system.</i> • <i>Filter and re-use solvents and thinners.</i> • <i>Dispose of oil-based paints and residue as a hazardous waste.</i> • <i>Ensure collection, removal, and disposal of hazardous waste complies with regulations.</i> • <i>Immediately clean up spills and leaks.</i> • <i>Properly store paints, solvents, and epoxy compounds.</i> • <i>Properly store and dispose waste materials generated from painting and structure repair and construction activities.</i> • <i>Mix paints in a covered and contained area, when possible, to minimize adverse impacts from spills.</i> • <i>Do not apply traffic paint or thermoplastic if rain is forecasted.</i> • <i>See Material Storage and Handling Use SM-2, Hazardous Materials and Waste Management Section SM-9, Spill Prevention and Control Section SM-10, and Structure Construction and Painting Section SM-21 for additional requirements.</i> <p><i>Provide Storm Drain Inlet Protection and/or Perimeter Sediment Controls as applicable.</i></p>	<p><i>See Material Storage and Handling Use Section SM-2, Stockpile Management Section SM-3, Hazardous Materials and Waste Management Section SM-9, Waste Management, Spill Prevention and Control Section SM-10, and Structure Construction and Painting Section SM-21, Storm Drain Inlet Protection SC-1, and Perimeter Sediment Controls where applicable.</i></p>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<p><i>Industrial chemicals, fertilizers, and/or pesticides</i></p>	<ul style="list-style-type: none"> • <i>Hazardous chemicals shall be well-labeled and stored in original containers.</i> • <i>Keep ample supply of cleanup materials on site.</i> • <i>Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly.</i> • <i>Do not clean surfaces or spills by hosing the area down.</i> • <i>Eliminate the source of the spill to prevent a discharge or a furtherance of an ongoing discharge.</i> • <i>Dispose container only after all of the product has been used.</i> • <i>Retain a complete set of safety data sheets (formerly MSDS) on site.</i> • <i>Store industrial chemicals in water-tight containers and provide either cover or secondary containment.</i> • <i>Provide cover when storing fertilizers or pesticides to prevent these chemicals from coming into contact with rainwater.</i> • <i>Restrict amount of pesticide prepared to quantity necessary for the current application.</i> • <i>Do not apply fertilizers or pesticides during or just before a rain event.</i> • <i>Do not apply to stormwater conveyance channels with flowing water.</i> • <i>Comply with fertilizer and pesticide manufacturer's recommended usage and disposal instructions. Document departures from manufacturer's specifications in Attachment J.</i> • <i>Apply fertilizers at the appropriate time of year for the location, and preferably timed to coincide as closely as possible to the period of maximum vegetation uptake and growth.</i> • <i>Follow federal, state, and local laws regarding fertilizer application.</i> • <i>Do not dispose of toxic liquid wastes (solvents, used oils, and paints) or chemicals (additives, acids, and curing compounds) in dumpsters allocated for construction debris.</i> 	<p><i>See Material Storage and Handling Use Section SM-2, Stockpile Management Section SM-3, and Hazardous Materials and Waste Management Section SM-9, and Spill Prevention and Control SM-10</i></p>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
	<ul style="list-style-type: none"> • <i>Ensure collection, removal, and disposal of hazardous waste complies with regulations. Hazardous waste that cannot be reused or recycled shall be disposed of by a licensed hazardous waste hauler.</i> • <i>See Material Storage and Handling Use SM-2, and Hazardous Materials and Waste Management Section SM-9 for additional requirements.</i> 	
<p><i>Hazardous waste (Batteries, Solvents, Treated Lumber, etc.)</i></p>	<ul style="list-style-type: none"> • <i>Do not dispose of toxic materials in dumpsters allocated for construction debris.</i> • <i>Ensure collection, removal, and disposal of hazardous waste complies with regulations.</i> • <i>Hazardous waste that cannot be reused or recycled shall be disposed of by a licensed hazardous waste hauler.</i> • <i>Segregate and recycle wastes from vehicle/equipment maintenance activities such as used oil or oil filters, greases, cleaning solutions, antifreeze, automotive batteries, and hydraulic and transmission fluids.</i> • <i>Store waste in sealed containers, which are constructed of suitable materials to prevent leakage and corrosion, and which are labeled in accordance with applicable Resource Conservation and Recovery Act (RCRA) requirements and all other applicable federal, state, and local requirements.</i> • <i>All containers stored outside shall be kept away from surface waters and within appropriately sized secondary containment (e.g., spill berms, decks, spill containment pallets). Provide cover if possible.</i> • <i>Clean up spills immediately, using dry clean-up methods where possible, and dispose of used materials properly.</i> • <i>Do not clean surfaces or spills by hosing the area down.</i> • <i>Eliminate the source of the spill to prevent a discharge or a continuation of an ongoing discharge.</i> 	<p><i>See Hazardous Materials and Waste Management Section SM-9 and Vehicle and Equipment Maintenance SM-12</i></p>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
	<ul style="list-style-type: none"> • Ensure collection, removal, and disposal of hazardous waste complies with manufacturer's recommendations and is in compliance with federal, state, and local requirements. • See Hazardous Materials and Waste Management Section SM-9 and Vehicle and Equipment Management, Vehicle and Equipment Maintenance SM-12 for additional requirements. 	
<i>Metals and Building Materials</i>	<ul style="list-style-type: none"> • Inspect construction waste and recycling areas regularly. • Schedule solid waste collection regularly. • If building materials or metals are stored on site (such as rebar or galvanized poles) store under cover under tarps or in containers. • Minimize the amount of material stored on site. • Do not stockpile uncovered metals or other building materials in close proximity to discharge points. • See Solid Waste Management Section SM-6 for additional requirements. 	See Solid Waste Management Section SM-6
<i>Contaminated Soil</i>	<ul style="list-style-type: none"> • See Waste Management, Contaminated Soil Management Section SM-8 and/or Hazardous Materials and Waste Management Section SM-9 for additional requirements. • At minimum contain contaminated material soil by surrounding with impermeable lined berms or cover exposed contaminated material with plastic sheets. 	See Waste Management, Contaminated Soil Management Section SM-8 and/or Hazardous Materials and Waste Management Section SM-9

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<i>Fugitive Dust Control and Dust Control Water</i>	<ul style="list-style-type: none"> • <i>Do not over spray water for dust control purposes which will result in runoff from the area.</i> • <i>Apply water as conditions require.</i> • <i>Washing down of debris or dirt into drainage, sewage systems, or State waters is not allowed.</i> • <i>Minimize exposed areas through the schedule of construction activities.</i> • <i>Utilize vegetation, mulching, sprinkling, and stone/gravel layering to quickly stabilize exposed soil.</i> • <i>Direct construction vehicle traffic to stabilized roadways.</i> • <i>Cover dump trucks hauling material from the site with a tarpaulin.</i> <p><i>See Dust Control Section SM-19 for additional requirements.</i></p>	<i>See Dust Control Section SM-19</i>
<i>Concrete Truck Wash Water</i>	<ul style="list-style-type: none"> • <i>Disposal of concrete truck wash water via percolation is prohibited.</i> • <i>Wash concrete-coated vehicles or equipment off-site or in the designated wash area.</i> • <i>Locate on-site wash area a minimum of 50 feet away or as far as practicable from storm drain inlets, open drainage facilities, or water bodies.</i> • <i>Runoff from the on-site concrete wash area shall be contained in a temporary pit or level bermed area where the concrete can set.</i> • <i>Design the area so that no overflow can occur due to inadequate wash area sizing or precipitation.</i> • <i>The temporary pit shall be lined with plastic to prevent seepage of wash water into the ground.</i> • <i>Allow wash water to evaporate or collect wash water and all concrete debris in a concrete washout system bin.</i> • <i>Do not dump liquid wastes into storm drainage system.</i> • <i>Dispose of liquid and solid concrete wastes in compliance with federal, state, and local standards.</i> • <i>See Waste Management, Concrete Wash and Waste Management Section SM-4 for additional requirements.</i> 	<i>See Waste Management, Concrete Wash and Waste Management Section SM-4</i>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
Sediment Track-Out	<ul style="list-style-type: none"> • <i>Include Stabilized Construction Entrance at all points that exit onto paved roads.</i> • <i>A sediment trapping device is required if a wash rack is used in conjunction with the stabilized construction entrance/exit.</i> • <i>The pavement shall not be cleaned by washing down the street.</i> • <i>If sweeping is ineffective or it is necessary to wash the streets, wash water must be contained either by construction of a sump, diverting the water to an acceptable disposal area, or vacuuming the wash water.</i> • <i>Use BMPs for adjacent drainage structures.</i> • <i>Remove sediment tracked onto the street by the end of the day in which the track-out occurs.</i> • <i>Restrict vehicle use to properly designated exit points.</i> • <i>Include additional BMPs that remove sediment prior to exit when minimum dimensions cannot be met.</i> <p><i>See Stabilized Construction Entrance/Exit Section SC-11 for additional requirements.</i></p>	See Stabilized Construction Entrance/Exit Section SC-11
Irrigation Water	<ul style="list-style-type: none"> • <i>Consider irrigation requirements.</i> • <i>Where possible, avoid species which require irrigation.</i> • <i>Design, timing and application methods of irrigation water to eliminate the runoff of excess irrigation water into the storm water drainage system.</i> <p><i>See Seeding and Planting Section EC-12 and California Stormwater BMP Handbook SD-12 Efficient Irrigation included in SWPPP Attachment A for additional requirements.</i></p>	See Seeding and Planting Section EC-12 and California Stormwater BMP Handbook SD-12 Efficient Irrigation
Hydrotesting Effluent	<ul style="list-style-type: none"> • <i>If work includes removing, relocation or installing waterlines, and Contractor elects to flush waterline or discharge hydrotesting effluent into State waters or drainage systems, the Contractor shall prepare and obtain HDOT acceptance of a NOI/NPDES Permit Form F application for HDOT submittal to DOH CWB at least thirty (30) calendar days prior to the start of Hydrotesting Activities if necessary. Site specific BMPs will be included in the NOI/NPDES Permit Form F submittal.</i> 	Site specific BMPs will be included in the NOI/NPDES Permit Form F submittal.

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<i>Dewatering Effluent</i>	<i>If excavation or backfilling operations require dewatering, and Contractor elects to discharge dewatering effluent into State waters or existing drainage systems, Contractor shall prepare and obtain HDOT acceptance of a NOI/NPDES Permit Form G application for HDOT submittal to DOH CWB at least thirty (30) calendar days prior to the start of Dewatering Activities if necessary. See Site Planning and General Practices, Dewatering Operations Section SM-18 for additional requirements.</i>	<i>See Dewatering Operations SM-18. Site specific BMPs will be included in the NOI/NPDES Permit Form G submittal.</i>
<i>Saw-cutting Slurry</i>	<ul style="list-style-type: none"> • <i>Saw cut slurry shall be removed from the site by vacuuming.</i> • <i>Provide storm drain protection during saw cutting. See Paving Operations Section SM-20 for additional requirements.</i> <i>Provide Storm Drain Inlet Protection and/or Perimeter Sediment Controls as applicable.</i>	<i>See Paving Operations Section SM-20, Storm Drain Inlet Protection SC-1, Perimeter sediment controls where applicable</i>
<i>Concrete Curing Water</i>	<ul style="list-style-type: none"> • <i>Avoid overspraying of curing compounds.</i> • <i>Apply an amount of compound that covers the surface, but does not allow any runoff of the compound.</i> <i>See California Stormwater BMP Handbook NS-12 Concrete Curing included in SWPPP Attachment A for additional requirements.</i>	<i>See California Stormwater BMP Handbook NS-12 Concrete Curing</i>

Pollutant Source	Appropriate Site-Specific BMP to be Implemented	BMP Requirements
<i>Plaster Waste Water</i>	<ul style="list-style-type: none"> • <i>Direct all wastewater into a leak-proof container or leak-proof pit. The container or pit must be designed so that no overflows can occur due to inadequate sizing or precipitation.</i> • <i>Locate on-site wash area a minimum of 50 feet away or as far as practicable from storm drain inlets, open drainage facilities, or water bodies.</i> • <i>Any significant residual materials remaining on the ground after the completion of construction shall be removed and properly disposed. If the residual materials contaminate the soil, then the contaminated soil shall also be removed and properly disposed of.</i> • <i>Plaster waste water shall not be allowed to flow into drainage structures or State waters. See Material, Storage and Handling Use SM-2, Stockpile Management Use Section SM-3, and Hazardous Materials and Waste Management Section SM-9 for additional requirements.</i> 	<i>See Material, Storage and Handling Use Section SM-2, Stockpile Management Use Section SM-3, and Hazardous Materials and Waste Management Section SM-9</i>
<i>Water-Jet Wash Water</i>	<ul style="list-style-type: none"> • <i>For Water-Jet Wash Water used to clean vehicles, use off site wash racks or commercial washing facilities when practical.</i> • <i>See Vehicle and Equipment Cleaning Section SM-11 for additional information.</i> • <i>For Water-Jet Wash Water used to clean impervious surfaces, the runoff shall not be allowed to flow into drainage structures or State Waters.</i> 	<i>See Vehicle and Equipment Cleaning Section SM-11</i>
<i>Sanitary/Septic Waste</i>	<ul style="list-style-type: none"> • <i>Locate Sanitary facilities in a convenient place away from drainage facilities.</i> • <i>Position sanitary facilities so they are secure and will not be tipped over or knocked down.</i> • <i>Wastewater shall not be discharged to the ground or buried.</i> • <i>A licensed service provider shall maintain sanitary/septic facilities in good working order.</i> • <i>Schedule regular waste collection by a licensed transporter.</i> • <i>See Sanitary Waste Section SM-7 for additional requirements.</i> 	<i>See Sanitary Waste Section SM-7.</i>

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END OF SECTION 209

**HWY-KM-2024-01K
209-28a**

1-14-22

48 Top Coat: Valspar VyGuard V41 Series, DFT 4 mil
49 (minimum), WFT 7 mil (minimum)
50
51 Option 3:
52
53 Preparation: Solvent Clean per SSPC-SP1, and as
54 recommended by the manufacturer.
55
56 1st Coat: Sherwin Williams, Tile Clad High Solids B62
57 Series, DFT 4 mil (minimum), WFT 7 mil
58 (minimum)
59
60 Recoating Time: Eight (8) Hours (minimum)
61 Ten (10) Days (maximum)
62
63 Top Coat: Sherwin Williams, Cororthone II B65 W200
64 Series/B60V2, DFT 4 mil (minimum), WFT 7
65 mil (minimum)
66
67 Option 4:
68
69 Preparation: Solvent Clean per SSPC-SP1. Apply
70 Galvaprep Zinc Treatment.
71
72 1st Coat: Ameron Amercoat 384 epoxy, DFT 5 mil
73 (minimum), WFT 8 mil (minimum)
74
75 Recoating Time: Eight (8) Hours (minimum)
76 Two (2) Days (maximum)
77
78 Top Coat: Ameron Amercoat 450 SA Polyurethane, DFT 4 mil
79 (minimum), WFT 7 mil (minimum)
80

81 (II) Amend **606.04 - Measurement** by replacing lines 116 to 118 to read:

82
83 **“606.04 Measurement.** The Engineer will measure guardrail per linear foot
84 in accordance with the contract documents.
85

86 The Engineer will measure from center to center of end posts. If the
87 Contractor makes end connections to masonry or steel structures, the Engineer
88 will measure to the face of such structures.
89

90 The Engineer will measure rigid barrier type guardrail per linear foot from
91 end to end of the type specified.
92

93 The Engineer may measure post, spacer block, end anchorage, terminal
94 section and transition section as units of each kind.”

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(III) Amend **606.05 – Payment** by revising lines 120 to 138 to read as follows:

606.05 Payment. The Engineer will pay for the accepted guardrail, post, and spacer block at the contract price per pay unit, as shown in the proposal schedule. The price includes full compensation for removing existing guardrails and posts; filling post holes; grading and compacting the shoulder area; installing physical barrier; furnishing and installing the guardrails; and furnishing labor, materials, tools, equipment, and incidentals necessary to complete the work.

The Engineer will pay for the accepted end anchorage, terminal section and transition section at the contract price per pay unit complete in place. The price includes full compensation for removing existing guardrails and posts; filling post holes; grading and compacting the shoulder area; installing physical barrier; furnishing and installing the end anchorage; terminal section and transition section; and furnishing labor, materials, tools, equipment, and incidentals necessary to complete the work. All ancillary hardware necessary for a complete installation are to be included with the unit price.

The Engineer will pay for the following pay items when included in the proposal schedule:

Pay Item	Pay Unit
_____ Guardrail _____	Linear Foot
Spacer Block for _____	Each
_____ Post for Guardrail _____	Each
Deck Mounted Bridge Post _____	Each
Trailing End-Anchorage System _____	Each
Terminal Section – Type _____	Each
_____ Transition _____	Each
End Section – _____	Each”

END OF SECTION 606

1 Make the following Section a part of the Standard Specifications:
2

3 **SECTION 636 – E-CONSTRUCTION**
4

5
6 **636.01 Description.** This section specifies requirements for performing the Project in
7 a “paperless” manner, using electronic tools for all submittals, communications, quantity
8 tracking, testing, and sampling, scheduling, quality control, and performance monitoring.
9

10 **636.02 General Requirements.** The Contractor shall implement the use of the E-
11 Construction platform, as provided by the HDOT and directed by the Engineer, for use
12 throughout the project. Paper-based or hard copy submittals will not be accepted.
13

14 This Special Provision shall take precedence over all other Specification sections
15 with respect to providing and receiving paper copy communications, submittals, and any
16 project records. Where conflicts exist, and a decision between a hard-copy item and a
17 corresponding electronic version is needed, the electronic version shall be selected,
18 unless otherwise directed by the Engineer.
19

20 **636.03 Construction**
21

22 **(A) Plans and Specifications.** Project drawings will not be provided to the
23 Contractor in hard copy format. An electronic version will be provided in the E-
24 Construction platform for use during the project.
25

26 The Contractor shall note all changes to the work, including all
27 subcontractor’s work, in electronic format using the E-Construction platform Red
28 annotations shall be used to note changes. Blue annotations shall be used for any
29 additional notes that will be helpful for the State in interpreting the field posted
30 drawings. Other drafting standards may be implemented by the Engineer and shall
31 be adhered to by the Contractor. Changes shall be input by the Contractor and
32 reviewed by the Engineer monthly. The Contractor shall make any changes that
33 the Engineer requires.
34

35 **(B) Submittals.** The Contractor shall provide all required submittals, as listed
36 within the contract documents, via the E-Construction platform.—All review,
37 approval, and resubmittal regarding submittals shall also be documented within
38 the E-Construction platform
39

40 **(C) Correspondence.** Electronic mail (email) shall be the preferred method of
41 electronic communication. All communications that affect project scope, schedule,
42 cost, or quality, including changes and requests for information, shall be submitted
43 as directed by the Engineer.
44

45 **(D) Prosecution and Progress.** The Contractor shall provide all
46 administrative, management, and project support documents required by various
47 specification sections, using the E-Construction platform. These elements include,
48 but are not limited to:

- 49 (1) Preconstruction Submittals (Section 108.03)
- 50 (2) Correspondence regarding Contract Time and Delays (Section
51 108.05)
- 52 (3) Progress Schedules (Section 108.06)
- 53 (4) Weekly Meeting preparatory materials (Section 108.07)
- 54 (5) Samples, certifications, material data, installation instructions, and
55 shop drawings (Sections 105 and 106)
- 56 (6) Field-posted Drawings (Section 648)
- 57 (7) Pre-Final Inspection submittals (Section 108.13)
- 58 (8) Warranty documentation (Section 108.17)
- 59 (9) Project Closing Documents (Section 108.19)
- 60
- 61

62 In addition to the foregoing, the Contractor shall provide any other
63 materials, correspondence, and submittals using the E-Construction
64 platform as directed by the Engineer.
65

66 **(E) Resources.** The Contractor shall provide a comprehensive list of
67 Contractor labor and equipment, including all subcontractor labor and equipment,
68 that will be deployed on the project, using spreadsheet-based templates provided
69 in the E-Construction platform. All template fields shall be completed. The
70 submitted information shall comply with the requirements of Specification Section
71 108 – Prosecution and Progress (identification of labor and equipment resources)
72 and Specification Section 109 - Measurement and Payment (cost data) and
73 represent all individual personnel with labor categories and rates, and all
74 equipment owned or rented, with associated rates, on this project. Updates for
75 additional personnel or equipment shall be accomplished by the Contractor at will
76 and shall be completed when directed by the Engineer.
77

78 **636.04 Measurement.** The Engineer will measure additional E-Construction
79 programs, additional licenses, or additional equipment, if ordered by the Engineer, on a
80 force account basis in accordance with Subsection 109.06 – Force Account Provisions
81 and Compensation.

82
83 **636.05 Payment.** The Engineer will pay for the additional E-Construction programs,
84 additional licenses, or additional equipment, on a force account basis in accordance with
85 Subsection 109.06 – Force Account Provisions and Compensation.

86
87 The Engineer may withhold progress payment until the Contractor is in compliance
88 with all E-Construction requirements.

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90

Pay Item	Pay Unit
Additional E-Construction Programs, additional licenses or additional equipment	Force Account

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96 An estimated amount for force account may be allocated in the proposal schedule
97 under “Additional E-Construction Programs, additional licenses or additional equipment.”
98 The actual amount to be paid will be the sum shown on accepted force account records.

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END SECTION 636

1 **SECTION 645 - WORK ZONE TRAFFIC CONTROL**

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3 Make the following amendments to said Section:

4
5 **(I)** Amend **645.03 Construction** from line 64 to 66 to read as follows:

6
7 “Furnish two flaggers or police officers for each location that requires work
8 zone traffic control. If TCP is included in the contract documents, furnish
9 number of flaggers or police officers indicated in TCP.”

10
11 **(II)** Amend **645.03 (B) Construction Signs** from line 162 to 169 by changing all
12 references to “Construction Signs” to read “**Work Zone Signs**”.

13
14 **(III)** Amend **Subsection 645.03 Construction** by adding this paragraph after line
15 170 to read as follows:

16
17 **“(1) Covers.** Use sign covers when existing signs confuse the public or
18 are in conflict with TCP signs installed. Sign covers shall be commercially
19 manufactured and accepted by the Engineer before use. Sign covers shall at
20 all times and under all conditions not allow any portion of the sign being
21 covered to be visible. If more than one side of the sign has words or symbols
22 cover all sides of the sign until needed. “Homemade” or “field made” covers
23 shall not be used. Covering of sign identification markings are not required if
24 that is the only markings on that side of the sign. Sign covers shall be
25 maintained.

26
27 Removal of the existing sign in lieu of the use of sign covers may be
28 acceptable to the Engineer provided the previously removed existing sign is
29 immediately reinstalled when directed. Removal of existing post(s) and
30 mounting hardware is required if not used to mount the new TCP sign. New
31 mounting hardware shall be used to mount the TCP signs if the existing
32 hardware is in an unacceptable condition in the opinion of the Engineer. In
33 addition, should the sign or post during storage, in the opinion of the
34 Engineer, become unacceptable or lost or stolen the Contractor shall replace
35 the sign or post with a new sign or post. Use new hardware to reinstall the
36 sign regardless whether it is an existing sign or new.”

37
38 **(IV)** Amend **Subsection 645.03 (F) Lane Closures** Line 253 by changing "Oahu"
39 to “Kauai”.

40
41 **(VI)** Amend **Subsection 645.03 (G) Advisory Signs** from Line 314 to Line 324 to
42 read as follows:

43
44 **“(G) Advisory Signs.** Advisory signs are not required for this project.”

48 (VI) Amend **Subsection 645.03 (H) Advertisement** from Line 391 to Line 392 to
49 read as follows:

50
51 "Place advertisement for three (3) consecutive days and within one (1) week
52 before traffic pattern changes, in publication as ordered by the Engineer. In lieu of
53 the advertisement(s), the Engineer may substitute the use of two portable
54 changeable message boards and accessories at no additional cost for three (3)
55 days for each required advertisement."

56
57 (VII) Amend **Subsection 645.04 - Measurement** from line 394 to line 403 to read
58 as follows:

59
60 "**645.04 Measurement.** The Engineer will measure Traffic Control as ordered
61 by the Engineer on a force account basis in accordance with the contract
62 documents."

63
64 (IV) Amend **Subsection 645.05 – Payment** from lines 405 to 424 to read:

65
66 "**645.05 Payment.** The Engineer will pay for the accepted Traffic Control at
67 the contract price on a force account basis in accordance with the contract
68 documents. Payment will be full compensation for the work prescribed in this
69 section and the contract documents.

70
71 The Engineer will compute the actual amount paid to the Contractor for force
72 account work according to Subsection 109.06 – Force Account Provisions and
73 Compensation.

74
75 The Engineer will pay for the following pay items when included in the
76 proposal schedule:

77

Pay Item	Pay Unit
Traffic Control	Force Account

81
82 An estimated amount for force account is allocated in the proposal schedule under
83 'Traffic Control', but actual amount to be paid will be the sum shown on accepted
84 force account records, whether this sum be more or less than the estimated amount
85 allocated in the proposal schedule. The Engineer will pay for traffic control
86 measures requested by the Engineer on a force account basis."
87

88
89
90 **END OF SECTION 645**

1 Make the following Section a part of the Standard Specifications:
2

3 **“SECTION 671 – PROTECTION OF THREATENED AND ENDANGERED**
4 **SPECIES**
5

6 **671.01 Description.** The endangered Hawaiian hoary bat or ‘ōpe‘ape‘a
7 (*Lasiurus cinereus semotus*) may roost, forage, and rear young in the general
8 vicinity of the proposed project. The project site is located in a known flight corridor
9 for the endangered Hawaiian petrel or ‘ua‘u (*Pterodroma sandwichensis*), the
10 endangered Hawai‘i distinct population segment (DPS) of the band-rumped storm-
11 petrel or ‘ake‘ake (*Oceanodroma castro*), and the threatened Newell’s shearwater
12 or ‘a‘o (*Puffinus auricularis newelli*), hereinafter referred to as Hawaiian seabirds.
13 Endangered Hawaiian waterbirds, including the Hawaiian stilt or ae‘o (*Himantopus*
14 *mexicanus knudseni*), the Hawaiian coot or ‘alae ke‘oke‘o (*Fulica americana alai*),
15 the Hawaiian gallinule or ‘alae ‘ula (*Gallinula galeata sandvicensis*), and the
16 Hawaiian duck or koloa (*Anas wyvilliana*) are known to be in the general vicinity of
17 the project and may be attracted to the project staging areas even in sub-optimal
18 locations if water is present. Also, to be considered is the threatened Hawaiian
19 goose or nēnē (*Branta sandvicensis*) which may use the construction staging
20 areas or areas adjacent to the roadway.
21

22 The Contractor shall protect these threatened and endangered species
23 throughout the construction duration.
24

25 **671.02 Materials.** None
26

27 **671.03 Construction.**
28

29 **(A) Pre-Construction and Construction Requirements.** The
30 Contractor shall comply with the following conditions and notes in the
31 Contract Plans:
32

33 **(1) Hawaiian Hoary Bat.** Hawaiian hoary bats nest in both
34 native and non-native woody vegetation. Incorporate these
35 measures to avoid and minimize project-related adverse effects to
36 the Hawaiian hoary bat.
37

38 **(a)** There shall be no disturbance, removal, or trimming of
39 woody plants greater than 15 feet (4.6 meters) tall during the
40 bat birthing and pup rearing season (June 1 through
41 September 15).
42

43 **(b)** Barbed wire shall not be used for fencing.
44

45 **(2) Hawaiian Seabirds.** Hawaiian seabirds may traverse the
46 project area at night during breeding, nesting and fledgling season,
47 which extends from March 1 through December 15. Permanent
48 lighting poses a very high risk of seabird attraction so new highway
49 lighting should not be installed to protect seabird flyways and
50 preserve the night sky. Additional or increased lighting exacerbates
51 the problem of Newell’s shearwater fallout.

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(a) Fallout shall be defined as the occurrence of seabirds being harmed, injured or killed and falling to the ground due to: 1) collision with structures such as wires, poles, or other objects; 2) light attraction and the resulting collision with structure associated with or near the light sources; or, 3) the exhaustion from circling the light source.

(b) If nighttime work will be required in conjunction with the development of the project, incorporate these measures to avoid and minimize project-related adverse effects to Hawaiian seabirds:

(c) Before beginning any work at the project site, the Contractor shall:

1. Collect information regarding the protection of seabirds and seabird fallout.

2. Submit to the Engineer for acceptance a protection of seabirds training plan including a detailed description of information and materials the Contractor intends to use in the training classes. The training plan shall be submitted to the Engineer for acceptance at least fifteen (15) days in advance of the class. If the Engineer rejects the training plan, the Contractor shall revise and promptly propose another training plan.

3. Disseminate information regarding the protection of seabirds and seabird fallout by conducting training classes for all employees, subcontractors, suppliers and other personnel working on the project, including HDOT personnel, on such topics as the Save Our Shearwater (SOS) program, proper use of temporary lighting, procedures to store and report downed seabirds, and the consequences of non-compliance with the laws regarding threatened and endangered seabirds. The Engineer may request for additional topics related to seabirds to be included in the training classes.

Training classes shall be taught by authorized representatives of the U.S. Fish and Wildlife Service (USFWS), the Department of Land and Natural Resources, the SOS program or other qualified personnel accepted by the Engineer.

4. Furnish the Engineer with evidence that the Contractor has held training classes, including the

101 dates of the classes, identify who conducted the
102 training, and the content and nature of the training.

103
104 **(d)** The Contractor shall comply to the following
105 construction requirements:

106
107 1. As directed by the Engineer, the Contractor shall
108 conduct additional training classes during the project to
109 update all employees, subcontractors, suppliers, HDOT
110 personnel and other personnel on new and/or updated
111 information regarding the protection of seabirds and
112 seabird fallout.

113
114 2. No permanent streetlights shall be installed as part
115 of the project.

116
117 3. All temporary lights used for night work (between
118 sunset and sunrise) shall contain less than 2%
119 wavelengths less than 550 nm, and shall be downward-
120 facing and shielded so the bulb can only be seen from
121 below. Temporary lights shall include but are not limited
122 to flood lights, light towers, lights for construction
123 equipment and other lights as determined by the
124 Engineer. All traffic control devices, including warning
125 lights, arrow boards, portable changeable message
126 signs and other lighting device as determined by the
127 Engineer shall be shielded.

128
129 4. Lights shall be turned off when human activity is not
130 occurring in the lighted area, or install automatic motion
131 sensor switches and timer controls on all outdoor lights.

132
133 5. Nighttime construction and the use of all temporary
134 lights shall cease during the peak seabird fledgling
135 period (September 15 through December 15).

136
137 6. Where fences extend above vegetation, durable
138 scare tape or bird deterrent shall be integrated into the
139 fence to increase visibility and minimize fence strikes.

140
141 7. For powerlines and other cables, exposure above
142 vegetation height and vertical profile shall be
143 minimized.

144
145 8. The Contractor shall furnish and maintain a small
146 (approximately 10" x 12" x 19"), portable cat kennel on
147 site to temporarily hold a downed seabird. The

148 Contractor shall obtain acceptance of the cat kennel
149 from the Engineer prior to use.

150
151 9. If a downed dead seabird is found, the Contractor
152 shall contact the USFWS (Ms. Megan Laut at 808-792-
153 9400), the Kauai Branch Division of Forestry and
154 Wildlife (DOFAW) Office at (808) 274-3433 or SOS at
155 (808) 635-5117 within twenty four (24) hours.

156
157 10. If the downed seabird is alive, the Contractor shall:

158
159 a. Pick up the seabird from behind as soon
160 as possible using a clean towel, t-shirt or cloth by
161 gently wrapping it around its back and wings.

162
163 b. Place the seabird in the cat kennel and
164 immediately contact the SOS Program
165 Coordinator at 808-635-5117 for further
166 instructions on where to deliver the seabird.

167
168 c. Deliver the seabird to the location
169 determined by the coordinator of the SOS
170 program and as directed by the Engineer.

171
172 d. Keep the seabird in a cool, quiet location
173 and out of direct sunlight with adequate
174 ventilation.

175
176 e. The Contractor and any personnel on-
177 site shall not feed, provide water, handle or
178 release the seabird.

179
180 **(e)** The Contractor shall maintain records of all downed
181 seabirds for the duration of the project. The records shall
182 include the date, time, location and condition (dead or alive)
183 the seabird was found and delivered. Submit a copy of the
184 records to the Engineer after finding each and every downed
185 seabird.

186
187 **(3) Hawaiian Waterbirds.** Hawaiian waterbirds occupy fresh
188 and brackish water marshes, coastal estuaries and natural or
189 manmade ponds. Hawaiian stilts also occupy areas with ephemeral
190 or persistent standing water, conditions of which can be found in
191 culverts and drainage structures. Threats to these species from this
192 project may include predation, reduced reproductive success,
193 disturbance from human activity and injury or mortality from vehicle
194 strikes.

195
196 The Contractor shall incorporate these measures to avoid and
197 minimize project-related adverse effects to Hawaiian waterbirds:
198

199 (a) In areas where known presence of Hawaiian
200 waterbirds occurs, post, implement and enforce reduced
201 speed limits, and inform project personnel and Contractors of
202 the presence of these endangered species on-site.
203

204 (b) If water resources are located within or adjacent to the
205 project site, employ applicable best management practices
206 (BMPs) regarding work in aquatic environments.
207

208 (c) Where appropriate habitat occurs within the vicinity of
209 the project area, survey for Hawaiian waterbirds and nests
210 prior to initiation of project work using survey biologists familiar
211 with the species' biology. Survey biologists should be trained
212 and capable of identifying adults and juveniles of each species,
213 nesting behaviors, and nests. Repeat surveys again within
214 three (3) days of project initiation and after any subsequent
215 delay of work of three (3) or more days (during which the birds
216 may attempt to nest).
217

218 (d) If a nest of active brood is found, the Contractor shall:
219

220 1. Contact the USFWS (Ms. Megan Laut at 808-792-
221 9400) or the Kauai Branch DOFAW Office at (808) 274-
222 3433 within twenty four (24) hours for further guidance.
223

224 2. Establish and maintain a 100-ft buffer around all
225 active nests and/or broods until the chicks/ducklings
226 have fledged. Do not conduct potentially disruptive
227 activities or habitat alteration within this buffer.
228

229 3. A biological monitor that is familiar with the species'
230 biology shall be present on the project site during all
231 construction or earth moving activities until the
232 chicks/ducklings fledge to ensure that Hawaiian
233 waterbirds and nests are not adversely affected.
234

235 (4) **Hawaiian Goose.** Hawaiian goose or nēnē uses various
236 habitat types. Threats to the species from this project include
237 disturbance from human presence, and injury and mortality from
238 vehicle strikes. An increased human presence at the project site
239 could disturb nēnē nesting, foraging, or loafing in the area.
240

241 The Contractor shall incorporate these measures to avoid and
242 minimize project-related adverse effects to the nēnē:

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(a) Nēnē in or near the project area shall not be approached, fed, or disturbed in any way.

(b) All food and or beverage waste shall be disposed of in appropriate, covered trash receptacles.

(c) If nēnē are observed loafing, foraging, or otherwise present within the project area during the breeding season (September 1 through April 30), a trained biologist familiar with nēnē nesting behavior shall survey for nests in and around the project area prior to resumption of any work. Surveys shall be repeated after any subsequent delay of work of three (3) or more days (during which the birds may attempt to nest).

(d) If a nest is identified within a radius of 150 feet of the project area, or a previously undiscovered nest is found within the 150-foot radius after work begins, all work shall cease immediately, and the Contractor shall contact the USFWS (Ms. Megan Laut at 808-792-9400) or the Kauai Branch DOFAW Office at (808) 274-3433 for further guidance.

(e) Reduced speed limits shall be posted and implemented in areas where nēnē are known to be present, and project personnel and Contractors will be informed of the presence of endangered species on-site.

(f) There shall be no feeding of birds or dogs on the project site.

(5) Best Management Practices (BMPs) Regarding Work in Aquatic Environments. Where work may affect aquatic environments, the Contractor shall incorporate these measures to avoid or minimize impacts to fish and wildlife:

(a) Authorized dredging or filling-related activities that may result in the temporary or permanent loss of aquatic habitats will be designed to avoid direct, negative impacts to aquatic habitats beyond the planned project area.

(b) Dredging or filling in the marine environment should be scheduled to avoid coral spawning and recruitment periods, and sea turtle nesting and hatching periods. Because these periods are variable throughout the Pacific Islands, the relevant local, state, or federal fish and wildlife resource agency will be contacted for site specific guidance.

(c) Turbidity and siltation from project-related work will be minimized and contained within the project area by silt containment devices and curtailing work during flooding or

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adverse tidal and weather conditions. BMPs will be maintained for the life of the construction period until turbidity and siltation within the project area is stabilized. All project construction-related debris and sediment containment devices will be removed and disposed of at an approved site.

(d) All project construction-related materials and equipment (dredges, vessels, backhoes, silt curtains, etc.) to be placed in an aquatic environment will be inspected for pollutants including, but not limited to; marine fouling organisms, grease, oil, etc., and cleaned to remove pollutants prior to use. Project related activities should not result in any debris disposal, non-native species introductions, or attraction of non-native pests to the affected or adjacent aquatic or terrestrial habitats. Implementing both a litter-control plan and a Hazard Analysis and Critical Control Point plan (HACCP – see <https://www.fws.gov/policy/A1750fw1.html>) can help to prevent attraction and introduction of non-native species.

(e) Project construction-related materials (fill, revetment rock, pipe, etc.) should not be stockpiled in, or in close proximity to aquatic habitats and should be protected from erosion (e.g., with filter fabric, etc.), to prevent materials from being carried into waters by wind, rain, or high surf.

(f) Fueling of project-related vehicles and equipment will take place away from the aquatic environment and a contingency plan to control petroleum products accidentally spilled during the project will be developed. The plan will be retained on site with the person responsible for compliance with the plan. Absorbent pads and containment booms will be stored on-site to facilitate the clean-up of accidental petroleum releases.

(g) All deliberately exposed soil or under-layer materials used in the project near water will be protected from erosion and stabilized as soon as possible with geotextile, filter fabric or native or non-invasive vegetation matting, hydro-seeding, etc.

(B) Compliance Requirements. The Contractor shall protect all species noted above for the duration of construction. Failure to comply with the construction requirements, harm or a taking of an individual during the construction duration shall be enforceable by the USFWS as set forth by the Endangered Species Act and the DOFAW as set forth under the provisions of the Hawaii Revised Statutes, Chapter 195D, Conservation of Aquatic Life, Wildlife, and Land Plants. Resultant penalties and/or fines shall be at the Contractor's expense without cost or liability to the State.

671.03 Measurement. The Engineer will measure the work required for the protection of threatened and endangered species on a force account basis in

345 accordance with Subsection 109.06 – Force Account Provisions and
346 Compensation and as ordered by the Engineer.

347

348 **671.04 Payment.** The Engineer will pay for the accepted protection of
349 threatened and endangered species on a force account basis in accordance with
350 Subsection 109.06 – Force Account Provisions and Compensation. Payment will
351 be full compensation for the work prescribed in this section, by the Engineer, and
352 in the contract documents.

353

354 The Engineer will pay for the following pay item when included in the
355 proposal schedule:

356

Pay Item	Pay Unit
Protection of Threatened and Endangered Species	Force Account

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An estimated amount may be allocated in the proposal schedule under
“Protection of Threatened and Endangered Species”, but the actual amount to be
paid will be the sum shown on the accepted force account records, whether this
sum be more or less than the estimated amount allocated in the proposal
schedule.”

END OF SECTION 671

1 Make the following section a part of the Standard Specifications:
2

3 **SECTION 694 – INERTIAL BARRIER SYSTEM**
4
5

6 **694.01 Description.** This work includes furnishing and installing Inertial
7 Barrier System at the prepared site shown in the plans according to the
8 requirements of the contract or as ordered by the Engineer.
9

10 **694.02 Materials.** The Inertial Barrier System shall consist of the
11 following:
12

13 **(A) Container.** The inertial Barrier shall consist of modules in 200,
14 400, 700, 1400, and 2100 lbs. sizes. 200, 400, 700, and 1400 lbs.
15 modules shall consist of a container molded in one piece with a
16 minimum capacity of 21 cubic feet. The material shall be durable,
17 weather proof, and shall be formulated to resist deterioration from
18 ultraviolet rays. The color shall be yellow. This model must be of
19 continuous molded construction and be nestable. The modules shall
20 be designed and manufactured from a frangible polyethylene material,
21 which shall shatter upon impact to permit dispersion of the sand mass
22 container within.
23

24 **(B) Lid.** Each module shall have a black lid, which locks securely over
25 the top lip of the outer container. Material shall be durable,
26 weatherproof, and shall be formulated to resist deterioration from
27 ultraviolet rays.
28

29 **(C) Insert.** All 200, 400, and 700 lbs. modules will require a cone-
30 shaped supporting insert used to support various sand masses. Cone
31 inserts shall be of one-piece molded construction and be nestable.
32

33 **(D) Sand.** Sand placed into these modules should be washed concrete
34 sand conforming to ASTM-C-33 or equal and as specified by the
35 Manufacturer's requirements.
36

37 Each Inertial Barrier System array shall be configured to provide a
38 satisfactory average rate of deceleration (8 g's maximum preferred for
39 each row) for errant vehicles in the weight ranges of 1810 to 4410 lbs.
40 The inertial barrier system shall meet the requirements of MASH for the
41 appropriate Test Level (TL-2 for Low Speed Design Roadways and TL-3
42 for High Speed Design Roadways) and for nondirective gating crash
43 cushions. For impact vehicles weighing between 1810 and 4410 lbs. and
44 traveling at speeds of up to 62 mph for TL-3 (44 mph for TL-2), the
45 maximum 24-inch occupant fail space velocity shall be less than 39 ft/sec
46 and the vehicles' highest 10 millisecond occupants' ride-down acceleration
47 shall be less than 20 g's.

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The center of gravity of each properly-filled module shall be at a height which will aid in controlling the pitch of standard passenger vehicles.

The components of the modules shall interface to prevent leakage of sand contained therein. The interface shall, however, permit drainage of excess water contained within the sand mass.

694.03 Construction Requirements. The Contractor shall submit seven (7) days following the Award of Contract, a written certification to the Engineer stating that the crash cushion to be furnished satisfies the requirements of MASH with the appropriate Test Level (TL-2 for Low Speed Design Roadways and TL-3 for High Speed Design Roadways). The Contractor shall also provide a copy of the FHWA approval letter stating that the system satisfies the requirements of MASH for the appropriate Test Level.

The inertial barrier system is required for immediate temporary protection. The contractor shall install the inertial barrier system within forty eight (48) hours after notification for repairs. Failure to install inertial barrier system within forty eight (48) hours after notification for repairs will result in liquidated damages in accordance with Subsection 108.08 – Liquidated Damages for Failure to Complete the Work or Portions of the Work on Time.

Placement of the modules within an array and the geometric design of the array shall be as shown on as-built plans for the appropriate locations, as indicated by the manufacturer’s specifications or as ordered by the Engineer based on the design speed of the roadway. In locations where the barrier system separates two roadways, the barrier array and geometric design shall be based on the higher design speed of the two roadways.

After the completion of the repair, the sand will be removed and disposed from each module and each empty module shall be hauled as directed by the Engineer. Prior to hauling, each module shall be cleaned and nested together for transport.

694.04 Method of Measurement. The Engineer will measure the Inertial Barrier System per each.

694.05 Basis of Payment. The Engineer will pay for the accepted quantities of Inertial Barrier System, of the types specified in the proposal schedule, per each. The price includes full compensation for submitting a list of materials and equipment to be incorporated in the work; written certifications and approval letters; grading; furnishing, installing, and

95 compacting aggregate subbase; furnishing, assembling, and installing an
96 Inertial Barrier module with sand; removal & disposal of sand, cleaning
97 and hauling the empty modules as specified in the proposal after
98 completion of the repair; and furnishing labor, materials, tools, equipment,
99 and incidentals necessary to complete the work.

100

101

102

103 The Engineer will make payment under:

104

105

Pay Item

Pay Unit

106

107 Inertial Barrier System _____

Each”

108

109

110

END OF SECTION 694

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION

Work Order Form
COMPLAINT/REQUEST

Tracking Number:

Time:

Date:

Name:

Company Name:

Address:

City:

Phone

Home:

Business:

Zip Code:

Complaints:

Area:

Route:

Location:

Remarks:

Route Name:

Call Received By:

Referred to:

Action taken:

Completion date:

Sign:

Reference Work Order:

Tort:

Requirements of Chapter 104, HRS Wages and Hours of Employees on Public Works Law

Chapter 104, HRS, applies to every public works construction project over \$2,000, regardless of the method of procurement or financing (purchase order, voucher, bid, contract, lease arrangement, warranty, SPRB).

Rate of Wages for Laborers and Mechanics

- Minimum prevailing wages (basic hourly rate plus fringe benefits), as determined by the Director of Labor and Industrial Relations and published in wage rate schedules, shall be paid to the various classes of laborers and mechanics working on the job site. [§104-2(a), (b), Hawaii Revised Statutes (HRS)]
- If the Director of Labor determines that prevailing wages have increased during the performance of a public works contract, the rate of pay of laborers and mechanics shall be raised accordingly. [§104-2(a) and (b), HRS; §12-22-3(d) Hawaii Administrative Rules (HAR)]

Overtime

- Laborers and mechanics working on a Saturday, Sunday, or a legal holiday of the State or more than eight hours a day on any other day shall be paid overtime compensation at not less than one and one-half times the basic hourly rate plus the cost of fringe benefits for all hours worked. If the Director of Labor determines that a prevailing wage is defined by a collective bargaining agreement, the overtime compensation shall be at the rates set by the applicable collective bargaining agreement [§§104-1, 104-2(c), HRS; §12-22-4.1, HAR]

Weekly Pay

- Laborers and mechanics employed on the job site shall be paid their full wages at least once a week, without deduction or rebate, except for legal deductions, within five working days after the cutoff date. [§104-2(d), HRS]

Posting of Wage Rate Schedules

- Wage rate schedules with the notes for prevailing wages and special overtime rates, shall be posted by the contractor in a prominent and easily accessible place at the job site. A copy of the entire wage rate schedule shall be given to each laborer and mechanic employed under the contract, except when the employee is covered by a collective bargaining agreement. [§104-2(d), HRS]

Withholding of Accrued Payments

- If necessary, the contracting agency may withhold accrued payments to the contractor to pay to laborers and mechanics employed by the contractor or subcontractor on the job site any difference between the wages required by the public works contract or specifications and the wages received. [§104-2(e), HRS]

Certified Weekly Payrolls and Payroll Records

- A certified copy of all payrolls shall be submitted weekly to the contracting agency. [§104-3(a), HRS; §12-22-10, HAR]
- The contractor is responsible for the submission of certified copies of the payrolls of all subcontractors. The certification shall affirm that the payrolls are correct and complete, that the wage rates listed are not less than the applicable rates contained in the applicable wage rate schedule, and that the classifications for each laborer or mechanic conform with the work the laborer or mechanic performed. [§104-3(a), HRS; §12-22-10, HAR]
- Payroll records shall be maintained by the contractor and subcontractors for three years after completion of construction. The records shall contain: [§104-3(b), HRS; §12-22-10, HAR]
 - the name and home address of each employee
 - the last four digits of social security number
 - a copy of the apprentice's registration with DLIR
 - the employee's correct classification
 - rate of pay (basic hourly rate + fringe benefits)
 - itemized list of fringe benefits paid
 - daily and weekly hours worked
 - weekly straight time and overtime earnings
 - amount and type of deductions
 - total net wages paid
 - date of payment
- Records shall be made available for examination by the contracting agency, the Department of Labor and Industrial Relations (DLIR), or any of its authorized representatives, who may also interview employees during working hours on the job. [§§104-3(c), 104-22(a), HRS; §12-22-10, HAR]

Termination of Work on Failure to Pay Wages

- If the contracting agency finds that any laborer or mechanic employed on the job site by the contractor or any subcontractor has not been paid prevailing wages or overtime, the contracting agency may, by written notice to the contractor, terminate the contractor's or subcontractor's right to proceed with the work or with the part of the work in which the required wages or overtime compensation have not been paid. The contracting agency may complete this work by contract or otherwise, and the contractor or contractor's sureties shall be liable to the contracting agency for any excess costs incurred. [§104-4, HRS]

Apprentices

- Apprentice wage rates apply to contractors who are a party to a bona fide apprenticeship program which has been registered with the DLIR. In order to be paid apprentice rates, apprentices must be parties to an agreement either registered with or recognized as a USDOL nationally approved apprenticeship program by the DLIR, Workforce Development Division, (808) 586-8877, and the apprentice must be individually registered by name with the DLIR. [§12-22-6(1) and (2), HAR]
- The number of apprentices on any public work in relation to the number of journeyworkers in the same craft classification as the apprentices employed by the same employer on the same public work may not exceed the ratio allowed under the apprenticeship standards registered with or recognized by the DLIR. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [§12-22-6(3), HAR]

Enforcement

- To ensure compliance with the law, DLIR and the contracting agency will conduct investigations of contractors and subcontractors. If a contractor or subcontractor violates the law, the penalties are: [§104-24, HRS]
 - First Violation Equal to 25% of back wages found due or \$250 per offense up to \$2,500, whichever is greater.
 - Second Violation Equal to amount of back wages found due or \$500 for each offense up to \$5,000, whichever is greater.
 - Third Violation Equal to two times the amount of back wages found due or \$1,000 for each offense up to \$10,000, whichever is greater; and
Suspension from doing any new work on any public work of a governmental contracting agency for three years.
- A violation would be deemed a second violation if it occurs within two years of the **first notification of violation**, and a third violation if it occurs within three years of **the second notification of violation**. [§104-24, HRS; §12-22-25(b), HAR]
- **Suspension:** For a first or second violation, the department shall immediately suspend a contractor who fails to pay wages or penalties until all wages and penalties are paid in full. For a third violation, the department shall penalize and suspend the contractor as described above, **except that if the contractor continues to violate the law, then the department shall immediately suspend the contractor for a mandatory three years. The contractor shall remain suspended until all wages and penalties are paid in full.** [§§104-24, 104-25, HRS]
- **Suspension:** Any contractor who fails to make payroll records accessible or provide requested information within 10 days, or fails to keep or falsifies any required record, shall be assessed a penalty including suspension as provided in Section 104-22(b) and 104-25(a)(3), HRS. [§104-3(c), HRS; §12-22-26, HAR]
- If any contractor interferes with or delays any investigation, the contracting agency shall withhold further payments until the delay has ceased. Interference or delay includes failure to provide requested records or information within ten days, failure to allow employees to be interviewed during working hours on the job, and falsification of payroll records. The department shall assess a penalty of \$10,000 per project, and \$1,000 per day thereafter, for interference or delay. [§104-22(b), HRS; §12-22-26, HAR]
- Failure by the contracting agency to include in the provisions of the contract or specifications the requirements of Chapter 104, HRS, relating to coverage and the payment of prevailing wages and overtime, is not a defense of the contractor or subcontractor for noncompliance with the requirements of this chapter. [§104-2(f), HRS]



For additional information, visit the department's website at <http://labor.hawaii.gov/wsd> or contact any of the following DLIR offices:

Oahu (Wage Standards Division).....(808) 586-8777
Hawaii Island(808) 974-6464
Maui and Kauai(808) 243-5322

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION
HONOLULU, HAWAII

P R O P O S A L

6/02/98

**PROPOSAL TO THE
STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION**

**PROJECT: GUARDRAIL REPAIRS AT VARIOUS LOCATIONS
ISLAND OF KAUAI**

PROJECT NO.: HWY-KM-2024-01K

COMPLETION TIME: TWELVE (12) MONTHS from the date indicated in the Notice to Proceed from the Department with an option to extend for four (4) additional twelve (12) month periods upon mutual agreement.

DESIGN PROJECT MANAGER:

**NAME: Eric Fujikawa
ADDRESS: 1270 Haleukana St.
Lihue, Hawaii 96766
PHONE NO.: (808) 241-3015
EMAIL: eric.i.fujikawa@hawaii.gov
FAX NO.: (808) 241-3011**

ELECTRONIC SUBMITTAL:

Bidders shall submit and upload the complete proposal to HIePRO prior to the bid opening date and time. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HIePRO. Do not include confidential and/or proprietary documents with the proposal. See SPECIAL PROVISIONS 102.09 Delivery of Proposal for complete details. FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HIePRO SHALL BE GROUNDS FOR REJECTION OF THE BID.

Director of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813

Dear Sir:

The undersigned bidder declares the following:

1. It has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with this proposal.
2. It has not been assisted or represented on this matter by any individual who has, in a State capacity, been involved in the subject matter of this contract within the past two years.
3. It has not and will not, either directly or indirectly offered or given a gratuity (i.e.. an entertainment or gift) to any State or County employee to obtain a contract or favorable treatment under a contract.

The undersigned bidder further agrees to the following:

1. If this proposal is accepted, it shall execute a contract with the Department to provide all necessary labor, machinery, tools, equipment, apparatus and any other means of construction, to do all the work and to furnish all the materials specified in the contract in the manner and within the time therein prescribed in the contract, and that it shall accept in full payment therefore the sum of the unit and/or lump sum prices as set forth in the attached proposal schedule for the actual quantities of work performed and materials furnished and furnish satisfactory security in accordance with Section 103D-324, Hawaii Revised Statutes, within 10 days after the award of the contract or within such time as the Director of Transportation may allow after the undersigned has received the contract documents for execution, and is fully aware that non-compliance with the aforementioned terms will result in the forfeiture of the full amount of the bid guarantee required under Section 103D-323, Hawaii Revised Statutes.
2. That the quantities given in the attached proposal schedule are approximate only and are intended principally to serve as a guide in determining and comparing the bids.
3. That the Department does not either expressly or by implication, agree that the actual amount of work will correspond therewith, but reserves the right to increase or decrease the amount of any class or portion of the work, or to omit portions of the work, as may be deemed necessary or advisable by the Director of Transportation, and that all increased or decreased quantities of work shall be performed at the unit prices set forth in the attached proposal schedule except as provided for in the specifications.

4. In case of a discrepancy between unit prices and the totals in said Proposal Schedule, the unit prices shall prevail.
5. Agrees to begin work within 48 hours after the date of notification to commence with the work order and shall finish the entire work order within the time prescribed.
6. The Director of Transportation reserves the right to reject any or all bids and to waive any defects when in the Director's opinion such rejections or waiver will be for the best interest of the public.

The bidder acknowledges receipt of and certifies that it has completely examined the following listed items: Hawaii Standard Specifications for Road and Bridge Construction, 2005, the Notice to Bidders, the Special Provisions, the Technical Provisions, the Proposal, the Contract and Bond Forms, and the Project Plans.

In accordance with Section 103D-323, Hawaii Revised Statutes, this proposal is accompanied with a bid security in the amount of 5% of the total amount bid, in the form checked below. (Check applicable bid security submitted with bid.)

_____ Surety Bid Bond (Use standard form),

_____ Cash,

_____ Cashier's Check,

_____ Certified Check, or

_____ _____
(Fill in other acceptable security.)

The undersigned bidder acknowledges receipt of any addendum issued by the Department by recording in the space below the date of receipt.

Addendum No. 1 _____ Addendum No. 3 _____

Addendum No. 2 _____ Addendum No. 4 _____

In accordance with Section 103D-302, Hawaii Revised Statutes, the undersigned as bidder has listed the name of each person or firm, who will be engaged by the bidder on the project as Joint Contractor or Subcontractor and the nature of work to be done by each. It is understood that failure to comply with the aforementioned requirements may be cause for rejection of the bid submitted.

	<u>Name of Subcontractor</u>	<u>Nature and Scope of Work</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____

	<u>Name of Joint contractor</u>	<u>Nature and Scope of Work</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____

("None" or if left blank indicates no Subcontractor or Joint Contractor; if more space is needed, attach additional sheets.)

The undersigned hereby certifies that the bid prices contained in the attached proposal schedule have been carefully checked and are submitted as correct and final.

This declaration is made with the understanding that the undersigned is subject to the penalty of perjury under the laws of the United States and is in violation of the Hawaii Penal Code, Section 710-1063, unsworn falsification to authorities, of the Hawaii Revised Statutes, for knowingly rendering a false declaration.

Bidder

By _____
Authorized Signature

Title

Business Address

Email Address

Date

Contact Person (If different from above.)

Phone Number and Email Address

NOTE:

If bidder is a CORPORATION, the legal name of the corporation shall be set forth above, the corporate seal affixed, together with the signature(s) of the officer(s) authorized to sign contracts for the corporation. Please attach to this page current (not more than six months old) evidence of the authority of the officer(s) to sign for the corporation.

If bidder is a PARTNERSHIP, the true name of the partnership shall be set forth above, with the signature(s) of the general partner(s). Please attach to this page current (not more than six months old) evidence of the authority of the partner authorized to sign for the partnership.

If bidder is an INDIVIDUAL, the bidder's signature shall be placed above.

If signature is by an agent, other than an officer of a corporation or a partner of a partnership, a POWER OF ATTORNEY must be on file with the Department before opening bids or submitted with the bid. Otherwise, the Department may reject the bid as irregular and unauthorized.

PREFERENCES

Bidders agree that preferences shall be taken into consideration to determine the low bidder in accordance with said Sections and the rules promulgated, however, the award of contract will be in the amount of the bid offered exclusive of any preferences.

A. HAWAII PRODUCTS PREFERENCE

In accordance with ACT 174, SLH 2022, effective June 27, 2022, Hawaii Products Preference shall not apply to solicitations for public works construction. Therefore, the Hawaii Products Preference shall not apply to this project.

B. APPRENTICESHIP PROGRAMS PREFERENCE

In accordance with ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to Hawaii Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's price for evaluation purposes.

Any bidder seeking this preference must be a party to an apprenticeship agreement registered with the Department of Labor and Industrial Relations at the time the offer is made for each apprenticeable trade the bidder will employ to construct the public works projects for which the offer is being made.

The bidder is responsible for complying with all submission requirements for registration of its apprenticeship program before requesting the preference.

() Yes, I wish to be considered for the Apprenticeship Programs Preference. I have included Certification Form(s) 1 with my bid.

C. RECYCLED PRODUCT PREFERENCE

Recycled product preference shall not apply to this proposal.

PROPOSAL SCHEDULE

ITEM NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT
209.0100	Installation, Maintenance, Monitoring, and Removal of BMP	FA	FA	\$ 10,000.00	\$ 10,000.00
606.2000	W-Beam Guardrail – 250 LF or Less	1	LF	\$ _____	\$ _____
606.2002	W-Beam Guardrail – 250 LF or Less (Route 560)	1	LF	\$ _____	\$ _____
606.2004	W-Beam Guardrail – Greater than 250 LF	1	LF	\$ _____	\$ _____
606.2006	W-Beam Guardrail – Greater than 250 LF (Route 560)	1	LF	\$ _____	\$ _____
606.2008	Midwest Guardrail System – 250 LF or Less	1	LF	\$ _____	\$ _____
606.2010	Midwest Guardrail System – 250 LF or Less (Route 560)	1	LF	\$ _____	\$ _____
606.2012	Midwest Guardrail System – Greater than 250 LF	1	LF	\$ _____	\$ _____
606.2014	Midwest Guardrail System – Greater than 250 LF (Route 560)	1	LF	\$ _____	\$ _____
606.2016	Spacer Block for W-Beam Guardrail or Midwest Guardrail System – 125 EA or Less	1	EA	\$ _____	\$ _____
606.2018	Spacer Block for W-Beam Guardrail or Midwest Guardrail System – Greater than 125	1	EA	\$ _____	\$ _____
606.2020	Thrie Beam Guardrail – 250 LF or Less	1	LF	\$ _____	\$ _____
606.2022	Thrie Beam Guardrail – 250 LF or Less (Route 560)	1	LF	\$ _____	\$ _____

PROPOSAL SCHEDULE

ITEM NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT
606.2024	Thrie Beam Guardrail – Greater than 250 LF	1	LF	\$ _____	\$ _____
606.2026	Thrie Beam Guardrail – Greater than 250 LF (Route 560)	1	LF	\$ _____	\$ _____
606.2028	Spacer Block for Thrie Beam Guardrail – 125 EA or Less	1	EA	\$ _____	\$ _____
606.2030	Spacer Block for Thrie Beam Guardrail – Greater than 125 EA	1	EA	\$ _____	\$ _____
606.2032	6-Foot W6x8.5 Post for Guardrail – 125 EA or Less	1	EA	\$ _____	\$ _____
606.2034	6-Foot W6x8.5 Post for Guardrail – 125 EA or Less (Route 560)	1	EA	\$ _____	\$ _____
606.2036	6-Foot W6x8.5 Post for Guardrail – Greater than 125 EA	1	EA	\$ _____	\$ _____
606.2038	6-Foot W6x8.5 Post for Guardrail – Greater than 125 EA (Route 560)	1	EA	\$ _____	\$ _____
606.2040	6.5-Foot W6x8.5 Post for Guardrail – 125 EA or Less	1	EA	\$ _____	\$ _____
606.2042	6.5-Foot W6x8.5 Post for Guardrail – 125 EA or Less (Route 560)	1	EA	\$ _____	\$ _____
606.2044	6.5-Foot W6x8.5 Post for Guardrail – Greater than 125 EA	1	EA	\$ _____	\$ _____
606.2046	6.5-Foot W6x8.5 Post for Guardrail – Greater than 125 EA (Route 560)	1	EA	\$ _____	\$ _____
606.2048	6.75-Foot W6x8.5 Post for Guardrail – 125 EA or Less	1	EA	\$ _____	\$ _____

PROPOSAL SCHEDULE

ITEM NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT
606.2050	6.75-Foot W6x8.5 Post for Guardrail – 125 EA or Less (Route 560)	1	EA	\$ _____	\$ _____
606.2052	6.75-Foot W6x8.5 Post for Guardrail – Greater than 125 EA	1	EA	\$ _____	\$ _____
606.2054	6.75-Foot W6x8.5 Post for Guardrail – Greater than 125 EA (Route 560)	1	EA	\$ _____	\$ _____
606.2056	8-Foot W6x8.5 Post for Guardrail – 125 EA or Less	1	EA	\$ _____	\$ _____
606.2058	8-Foot W6x8.5 Post for Guardrail – 125 EA or Less (Route 560)	1	EA	\$ _____	\$ _____
606.2060	8-Foot W6x8.5 Post for Guardrail – Greater than 125 EA	1	EA	\$ _____	\$ _____
606.2062	8-Foot W6x8.5 Post for Guardrail – Greater than 125 EA (Route 560)	1	EA	\$ _____	\$ _____
606.2064	Deck-Mounted Bridge Post – 50 EA or Less	1	EA	\$ _____	\$ _____
606.2066	Deck-Mounted Bridge Post – Greater than 50	1	EA	\$ _____	\$ _____
606.5000	Terminal Section – Type MSKT-SP-MGS	1	EA	\$ _____	\$ _____
606.5002	Terminal Section – Type MSKT-SP-MGS (Route 560)	1	EA	\$ _____	\$ _____
606.5004	Terminal Section – Type Soft Stop Terminal	1	EA	\$ _____	\$ _____
606.5006	Terminal Section – Type Soft Stop Terminal (Route 560)	1	EA	\$ _____	\$ _____

PROPOSAL SCHEDULE

ITEM NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT
606.5008	Terminal Section – Type-MAX-Tension	1	EA	\$ _____	\$ _____
606.5010	Terminal Section – Type-MAX-Tension (Route 560)	1	EA	\$ _____	\$ _____
606.5012	Terminal Section – Type A	1	EA	\$ _____	\$ _____
606.5014	Terminal Section – Type A (Route 560)	1	EA	\$ _____	\$ _____
606.5016	Terminal Section – FLEAT 350	1	EA	\$ _____	\$ _____
606.5018	Terminal Section – FLEAT 350 (Route 560)	1	EA	\$ _____	\$ _____
606.5020	Terminal Section – SKT 350	1	EA	\$ _____	\$ _____
606.5022	Terminal Section – SKT 350 (Route 560)	1	EA	\$ _____	\$ _____
606.6000	Trailing End-Anchorage System	1	EA	\$ _____	\$ _____
606.6002	Trailing End-Anchorage System (Route 560)	1	EA	\$ _____	\$ _____
606.7000	End Section – Type G Anchor Block Assembly	1	EA	\$ _____	\$ _____
606.7002	End Section – Type G Anchor Block Assembly (Route 560)	1	EA	\$ _____	\$ _____
606.7004	End Section – Type G-1d Anchor Block Assembly	1	EA	\$ _____	\$ _____
606.7006	End Section – Type G-1d Anchor Block Assembly (Route 560)	1	EA	\$ _____	\$ _____

PROPOSAL SCHEDULE

ITEM NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT
606.7008	End Section – W-Beam (Rounded RWE03a)	1	EA	\$ _____	\$ _____
606.7010	End Section – W-Beam (Rounded RWE03a) (Route 560)	1	EA	\$ _____	\$ _____
606.7500	Thrie Beam to W-Beam Transition Symmetrical Section	1	EA	\$ _____	\$ _____
606.7502	Thrie Beam to W-Beam Transition Symmetrical Section (Route 560)	1	EA	\$ _____	\$ _____
606.7504	Thrie Beam to W-Beam Transition Asymmetrical Section	1	EA	\$ _____	\$ _____
606.7506	Thrie Beam to W-Beam Transition Asymmetrical Section (Route 560)	1	EA	\$ _____	\$ _____
636.1000	Additional E-Construction Programs, Additional Licenses, or Additional Equipment	FA	FA	\$ 10,000.00	\$ 10,000.00
645.2000	Traffic Control	FA	FA	\$ 10,000.00	\$ 10,000.00
671.1000	Protection of Threatened and Endangered Species	FA	FA	\$ 10,000.00	\$ 10,000.00
694.1000	Inertial Barrier System – Module – 200 lbs.	1	EA	\$ _____	\$ _____
694.1002	Inertial Barrier System – Module – 400 lbs.	1	EA	\$ _____	\$ _____
694.1004	Inertial Barrier System – Module – 700 lbs.	1	EA	\$ _____	\$ _____
694.1006	Inertial Barrier System – Module – 1400 lbs.	1	EA	\$ _____	\$ _____
694.1008	Inertial Barrier System – Module – 2100 lbs.	1	EA	\$ _____	\$ _____

PROPOSAL SCHEDULE

ITEM NO.	ITEM	APPROX. QUANTITY	UNIT	UNIT PRICE	AMOUNT
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Total Amount for Comparison of Bids..... \$ _____

- 1.0 Bids shall include all Federal, State, County and other applicable taxes and fees.
- 2.0 The Total Amount for Comparison of Bids will be used to determine the lowest responsible bidder.
- 3.0 Bidders must complete all unit prices and amounts. Failure to do so may be grounds for rejection of bid.
- 4.0 If a discrepancy occurs between unit bid price and the bid price, the unit bid price shall govern.

NOTE:

Bidders shall submit and upload the complete proposal to HIePRO prior to the bid opening date and time. Proposals received after said due date and time shall not be considered. Original (wet ink, hard copy) proposal documents are not required to be submitted. **Contract award shall be based on evaluation of proposals submitted and uploaded to HIePRO. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HIePRO. Do not include confidential and/or proprietary documents with the proposal. The record of each bidder and respective bid shall be open to public inspection.**

FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HIePRO SHALL BE GROUNDS FOR REJECTION OF THE BID.

If there is a conflict between the specification document and the HIePRO solicitation, the specifications shall govern and control, unless otherwise specified.

1 **PROPOSAL SCHEDULE**

2
3 The bidder is directed to Subsection 105.16 – Subcontracts.

4
5 If the bid price for any proposal item having a maximum allowable bid
6 indicated therefore in any of the contract documents is in excess of such a
7 maximum amount, the bid price for such proposal item shall be adjusted to reflect
8 the limitation thereon. The comparison of bids to determine the successful bidder
9 and the amount of contract to be awarded shall be determined after such
10 adjustments are made, and such adjustments shall be binding upon the bidder.

11
12 The “TOTAL AMOUNT FOR COMPARISON OF BIDS” will be used to
13 determine the lowest responsible bidder.

14
15 Notes:

- 16
17 1. Bid prices are for travel time, mileage and furnishing all labor, tools, traffic
18 controls, all applicable taxes, fees and equipment necessary for all work
19 shown and called for in accordance with the true intent and meaning of the
20 specifications.
21
22 2. Any contract which is awarded shall be an open-ended contract since the
23 exact value of work to be performed during the contract period cannot be
24 determined beforehand. The unit price for each item of work on any
25 particular work order shall be that which corresponds to the quantity of
26 work for that item actually performed for each work order.
27
28 3. The sum of all work and materials required to perform the required repairs
29 are issued on a “single work order.”
30
31 4. The “Approx. Quantity” column on the proposal schedules reflect a typical
32 quantity for each repair location to be used for bidding purposes.
33
34 5. Preference for Hawaii Products – It should be noticed that ACT 174, SLH
35 2022 has changed the application related to the use of Hawaii products.
36
37 6. Completed Proposal file shall be uploaded into HlePRO prior to bid
38 opening date and time. All other required confidential or proprietary
39 document shall be uploaded separately.

SURETY BID BOND

Bond No. _____

KNOW ALL BY THESE PRESENTS:

That we, _____
(Full name or legal title of offeror)

as Offeror, hereinafter called the Principal, and

(Name of bonding company)

as Surety, hereinafter called Surety, a corporation authorized to transact business as a
Surety in the State of Hawaii, are held and firmly bound unto

(State/county entity)

as Owner, hereinafter called Owner, in the penal sum of

(Required amount of bid security)

Dollars (\$ _____), lawful money of the United States of
America, for the payment of which sum well and truly to be made, the said Principal and
the said Surety bind ourselves, our heirs, executors, administrators, successors and
assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for _____

(Project by number and brief description)

NOW, THEREFORE:

The condition of this obligation is such that if the Owner shall reject said offer, or
in the alternate, accept the offer of the Principal and the Principal shall enter into a
contract with the Owner in accordance with the terms of such offer, and give such bond
or bonds as may be specified in the solicitation or Contract Documents with good and
sufficient surety for the faithful performance of such Contract and for the prompt
payment of labor and material furnished in the prosecution thereof as specified in the
solicitation then this obligation shall be null and void, otherwise to remain in full force
and effect.

Signed this _____ day of _____, _____

(Seal) _____
Name of Principal (Offeror)

Signature

Title

(Seal) _____
Name of Surety

Signature

Title

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HONOLULU, HAWAII

FORMS

Contents

Contract

Performance Bond (Surety)

Performance Bond

Labor and Material Payment Bond (Surety)

Labor and Material Payment Bond

Chapter 104 Compliance Certificate

Certification of Compliance for Employment of State Residents

CONTRACT

THIS AGREEMENT, made this day of _____, by and between the STATE OF HAWAII, by its Director of Transportation, hereinafter referred to as "STATE", and «CONTRACTOR», «STATE_OF_INCORPORATON», whose business/post office address is «ADDRESS», hereinafter referred to as CONTRACTOR";

WITNESSETH: That for and in consideration of the payments hereinafter mentioned, the CONTRACTOR hereby covenants and agrees with the STATE to complete in place, furnish and pay for all labor and materials necessary for "«PROJECT_NAME_AND_NO»", or such a part thereof as shall be required by the STATE, the total amount of which labor, material and construction shall be computed at the unit and/or lump sum prices set forth in the attached proposal schedule and shall be the sum of «BASIC»----DOLLARS (\$«BASIC_NUMERIC») as follows:

TOTAL AMOUNT FOR COMPARISON OF BIDS.....\$«BASIC_NUMERIC»

which sum shall be provided from State funds, all in accordance with the specifications, the special provisions, if any, the notice to bidders, the instructions to bidders, the proposal and plans for «PROJECT_NO_ONLY», and any supplements thereto, on file in the office of the Director of Transportation. These documents, together with all alterations, amendments, and additions thereto and deductions therefrom, are attached hereto or incorporated herein by reference and made a part of this contract.

The CONTRACTOR hereby covenants and agrees to complete such construction within «WORKING_DAYS» from the date indicated in the Notice to Proceed from the State subject, however, to such extensions as may be provided for in writing under the specifications.

For and in consideration of the covenants, undertakings and agreements of the CONTRACTOR herein set forth and upon the full and faithful performance thereof by the CONTRACTOR, the STATE hereby agrees to pay the CONTRACTOR the sum of «BASIC»---DOLLARS (\$«BASIC_NUMERIC») in lawful money, but not more than such part of the same as is actually earned according to the STATE's determination of the actual quantities of work performed and materials furnished by the CONTRACTOR at the unit or lump sum prices set forth in the attached proposal schedule. Such payment, including any extras, shall be made, subject to such additions or deductions hereto or hereafter made in the manner and at the time prescribed in the specifications and this contract.

An additional sum of «EXTRAS»-----DOLLARS (\$«EXTRA_NUMERIC») is hereby provided for extra work.

All words used herein in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. The use of any gender shall extend to and include all genders.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed the day and year first above written.

STATE OF HAWAII

Director of Transportation

«CONTRACTOR»

(Seal)

Signature

Print name

Print Title

Date

PERFORMANCE BOND (SURETY)
(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a
surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Obligee, in the amount of _____

_____ DOLLARS (\$ _____), to which payment Principal and Surety bind themselves,
their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by
these presents.

WHEREAS, the above-bound Principal has signed a Contract with Obligee on
_____, for the following project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part
hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Contract in
strict accordance with the terms of the Contract as said Contract may be modified or amended
from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

In the event of Default by the Principal, of the obligations under the Contract, then after written Notice of Default from the Oblige to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Oblige in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

PERFORMANCE BOND

KNOW ALL BY THESE PRESENTS:

That we, _____
(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto the

(State/County entity)

its successors and assigns, as Obligee, hereinafter called Obligee, in the amount

_____ DOLLARS (\$ _____),
(Dollar amount of Contract)

lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heir, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- Legal Tender;**

- Share Certificate** unconditionally assigned to or made payable at sight to _____
Description: _____;

- Certificate of Deposit, No.** _____, dated _____
issued by _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

- Cashier's Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

- Teller's Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

- Treasurer's Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

- Official Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

- Certified Check No.** _____, dated _____
accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a contract with Obligee for the following Project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE,

The Condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, and shall deliver the Project to the Obligee, or to its successors or assigns, fully completed as in the Contract specified and free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed and sealed this _____ day of _____, _____.

(Seal) _____
Name of Contractor

* _____
Signature

Title

*ALL SIGNATURES MUST BE
ACKNOWLEDGED BY A NOTARY PUBLIC

LABOR AND MATERIAL PAYMENT BOND (SURETY)
(6/21/07)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full Legal Name and Street Address of Contractor)

as Contractor, hereinafter called Principal, and _____

(Name and Street Address of Bonding Company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County Entity)

its successors and assigns, hereinafter called Oblige, in the amount of _____

_____ Dollars (\$_____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above-bound Principal has signed Contract with the Oblige on _____ for the following project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE, the condition of this obligation is such that if the Principal shall promptly make payment to any Claimant, as hereinafter defined, for all labor and materials supplied to the Principal for use in the performance of the Contract, then this obligation shall be void; otherwise to remain in full force and effect.

1. Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Contract, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Contract.

2. A "Claimant" shall be defined herein as any person who has furnished labor or materials to the Principal for the work provided in the Contract.

Every Claimant who has not been paid amounts due for labor and materials furnished for work provided in the Contract may institute an action against the Principal and its Surety on this bond at the time and in the manner prescribed in Section 103D-324, Hawaii Revised Statutes, and have the rights and claims adjudicated in the action, and judgment rendered thereon; subject to the Obligee's priority on this bond. If the full amount of the liability of the Surety on this bond is insufficient to pay the full amount of the claims, then after paying the full amount due the Obligee, the remainder shall be distributed pro rata among the claimants.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Contractor)

*

Signature

Title

(Seal)

Name of Surety

*

Signature

Title

***ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL BY THESE PRESENTS:

That we, _____
(full legal name and street address of Contractor)

as Contractor, hereinafter called Contractor, is held and firmly bound unto _____
(State/County entity)

its successors and assigns, as Obligee, hereinafter called Obligee, in the amount
_____ DOLLARS (\$ _____),
(Dollar amount of Contract)

lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heir, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

- Legal Tender;**
- Share Certificate** unconditionally assigned to or made payable at sight to _____
Description: _____
- Certificate of Deposit, No.** _____, dated _____
issued by _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Cashier's Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Teller's Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Treasurer's Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Official Check No.** _____, dated _____
drawn on _____
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;
- Certified Check No.** _____, dated _____
accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to _____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into a contract with Obligee for the following Project: _____

hereinafter called Contract, which Contract is incorporated herein by reference and made a part hereof.

NOW THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Contract as it now exists or may be modified according to its terms, free from all liens and claims and without further cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the doing of said work or the repair or maintenance thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Contract by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

AND IT IS HEREBY STIPULATED AND AGREED that this bond shall inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in said work so as to give any and all such persons a right of action as contemplated by Sections 103D-324(d) and 103D-324(e), Hawaii Revised Statutes.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payments of mechanics' liens which may be filed of record against the Project, whether or not claim for the amount of such lien be presented under and against this bond.

Signed this _____ day of _____, _____.

(Seal) _____
Name of Contractor

* _____
Signature

Title

*ALL SIGNATURES MUST BE
ACKNOWLEDGED BY A NOTARY PUBLIC

CHAPTER 104, HRS COMPLIANCE CERTIFICATE

The undersigned bidder does hereby certify to the following:

1. Individuals engaged in the performance of the contract on the job site shall be paid:

A. Not less than the wages that the director of labor and industrial relations shall have determined to be prevailing for corresponding classes of laborers and mechanics employed on public works projects; and

B. Overtime compensation at one and one-half times the basic hourly rate plus fringe benefits for hours worked on Saturday, Sunday, or a legal holiday of the State or in excess of eight hours on any other day.

2. All applicable laws of the federal and state governments relating to workers' compensation, unemployment compensation, payment of wages, and safety shall be fully complied with.

DATED at Honolulu, Hawaii, this _____ day of _____, 20__.

«CONTRACTOR»
Name of Corporation, Partnership, or Individual

Signature and Title of Signer

Notary Seal
NOTARY ACKNOWLEDGEMENT

Subscribed and sworn before me this _____ day of _____
Notary signature _____
Notary public, State of _____
My Commission Expires: _____

Notary Seal
NOTARY CERTIFICATION

Doc. Date: _____ #Pages: _____
Notary Name: _____ Circuit _____
Doc. Description: _____

Notary signature _____
Date _____

PROVISIONS TO BE INCLUDED IN CONSTRUCTION PROCUREMENT SOLICITATIONS

1. Definitions for terms used in HRS Chapter 103B as amended by Act 192, SLH 2011:
 - a. "Contract" means contracts for construction under 103D, HRS.
 - b. "Contractor" has the same meaning as in Section 103D-104, HRS, provided that "contractor" includes a subcontractor where applicable.
 - c. "Construction" has the same meaning as in Section 103D-104, HRS.
 - d. "General Contractor" means any person having a construction contract with a governmental body.
 - e. "Procurement Officer" has the same meaning as in Section 103D-104, HRS.
 - f. "Resident" means a person who is physically present in the State of Hawai'i at the time the person claims to have established the person's domicile in the State of Hawai'i and shows the person's intent is to make Hawai'i the person's primary residence.
 - g. "Shortage trade" means a construction trade in which there is a shortage of Hawai'i residents qualified to work in the trade as determined by the Department of Labor and Industrial Relations.

2. HRS Chapter 103B as amended by Act 192, SLH 2011--Employment of State Residents Requirements:
 - a. A Contractor awarded a contract shall ensure that Hawai'i residents comprise not less than 80% of the workforce employed to perform the contract work on the project. The 80% requirement shall be determined by dividing the total number of hours worked on the contract by Hawai'i residents, by the total number of hours worked on the contract by all employees of the Contractor in the performance of the contract. The hours worked by any Subcontractor of the Contractor shall count towards the calculation for this section. The hours worked by employees within shortage trades, as determined by the Department of Labor and Industrial Relations (DLIR), shall not be included in the calculation for this section.

- b. Prior to award of a contract, an Offeror/Bidder may withdraw an offer/bid without penalty if the Offeror/Bidder finds that it is unable to comply with HRS Chapter 103B as amended by Act 192, SLH 2011.
- c. Prior to starting any construction work, the Contractor shall submit the subcontract dollar amount for each of its Subcontractors.
- d. The requirements of this section shall apply to any subcontract of \$50,000 or more in connection with the Contractor; that is, such Subcontractors must also ensure that Hawai'i residents comprise not less than 80% of the Subcontractor's workforce used to perform the subcontract.
- e. The Contractor and any Subcontractor whose subcontract is \$50,000 or more shall comply with the requirements of HRS Chapter 103B as amended by Act 192, SLH 2011.
 - 1) Certification of compliance shall be made in writing under oath by an officer of the General Contractor and applicable Subcontractors and submitted with the final payment request.
 - 2) The certification of compliance shall be made under oath by an officer of the company by completing a "Certification of Compliance for Employment of State Residents" form and executing the Certificate before a licensed notary public.
 - 3) In addition to the certification of compliance as indicated above, the Contractor and Subcontractors shall maintain records such as certified payrolls for laborers and mechanics who performed work at the site and time sheets for all other employees who performed work on the project. These records shall include the names, addresses and number of hours worked on the project by all employees of the Contractor and Subcontractor who performed work on the project to validate compliance with HRS Chapter 103B as amended by Act 192, SLH 2011. The Contractor and Subcontractors shall retain these records and provide access to the State for a minimum period of four (4) years after the final payment, except that if any litigation, claim, negotiation, investigation, audit or other action involving the records has been started before the expiration of the four-year period, the Contractor and Subcontractors shall retain the records until completion of the action and resolution of all issues that arise from it, or until the end of the four-year period, whichever occurs later. Furthermore, it shall be the Contractor's responsibility to enforce compliance with this provision by any Subcontractor.

- f. A General Contractor or applicable Subcontractor who fails to comply with this section shall be subject to any of the following sanctions:
- 1) With respect to the General Contractor, withholding of payment on the contract until the Contractor or its Subcontractor complies with HRS Chapter 103B as amended by Act 192, SLH 2011.
 - 2) Proceedings for debarment or suspension of the Contractor or Subcontractor under Hawai'i Revised Statutes §103D-702.
3. Conflict with Federal Law: This section shall not apply if the application of this section is in conflict with any federal law, or if the application of this section will disqualify the State from receiving Federal funds or aid.

**CERTIFICATION OF COMPLIANCE
FOR
EMPLOYMENT OF STATE RESIDENTS
HRS CHAPTER 103B, AS AMENDED BY ACT 192, SLH 2011**

Project Title: _____

Agency Project No: _____

Contract No.: _____

As required by Hawai'i Revised Statutes Chapter 103B, as amended by Act 192, Session Laws of Hawaii 2011--Employment of State Residents on Construction Procurement Contracts, I hereby certify under oath, that I am an officer of _____ and
(Name of Contractor or Subcontractor Company)
for the Project Contract indicated above, _____ was in
(Name of Contractor or Subcontractor Company)
compliance with HRS Chapter 103B, as amended by Act 192, SLH 2011, by employing a workforce of which not less than eighty percent are Hawai'i residents, as calculated according to the formula in the solicitation, to perform this Contract.

I am an officer of the **Contractor** for this contract.

I am an officer of a **Subcontractor** for this contract.

CORPORATE SEAL

(Name of Company)

(Signature)

(Print Name)

(Print Title)

Subscribed and sworn to me before this
____ day of _____, 2011.

Doc. Date: _____ # of Pages _____ 1st Circuit

Notary Name: _____

Doc. Description: _____

Notary Public, 1st Circuit, State of Hawai'i
My commission expires: _____

Notary Signature

Date

NOTARY CERTIFICATION