

SECTION 106 – MATERIAL RESTRICTIONS AND REQUIREMENTS

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3 **106.01 Source of Supply and Quality Requirements.** The Contractor
4 shall furnish, pay for, and install all materials required to complete the work,
5 except materials that are designated in the contract documents to be furnished
6 by the State. Materials shall be in new condition at the time of final acceptance
7 subject to normal wear.

8
9 All materials proposed to be used may be inspected and tested at any
10 time and place including, but not limited to, the source of supply and locations of
11 manufacture and fabrication. When requested by the Engineer, the Contractor
12 shall notify the Engineer of the Contractor's proposed sources of materials prior
13 to delivery. At the request of the Engineer, the Contractor shall provide
14 reasonable and adequate testing facilities and equipment for the Engineer at the
15 inspection site, at no increase in contract price or contract time.

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17 **106.02 Material Sources.** Unless otherwise provided in the contract
18 documents, (1) Contractor may use any suitable materials (such as stone, sand,
19 gravel) found within the project limits in order to do the work, and (2) Contractor
20 shall not remove any material such as stone, sand, gravel from the project limits
21 without the written permission of the Engineer. Such permission will not be
22 considered a change and may be revoked at any time for any reason by the
23 Engineer at no increase in contract price or contract time.

24
25 The contract documents or Engineer may make available to the
26 Contractor the option to use material from sources made available by the State.
27 Designation of a source for material is not a representation by the Engineer of
28 the quantity or quality of material obtainable or the method, equipment or work
29 required to obtain material from the source. The Contractor is not obligated to
30 use material from such sources. The Contractor bears all costs of using such
31 material and assumes the risk that such material does not conform to contract
32 requirements.

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34 **106.03 Unauthorized Excavation.** Unless otherwise expressly directed or
35 authorized by the contract documents, Contractor shall not excavate beyond the
36 excavation limits for the purpose of obtaining materials. The site disturbed by
37 unauthorized excavation shall be returned to the condition existing before such
38 unauthorized excavation at no increase in contract price or contract time. Any
39 unauthorized excavation shall be filled, at the direction of the Engineer, with
40 either the material taken out or a substitute material selected by the Engineer.

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42 **106.04 Material Sample.** Submission of material samples and equipment
43 data required by the contract documents or by the Engineer are exclusively for
44 the benefit of the State's quality control monitoring of the project. Any
45 statement or representation by the Engineer that any submitted sample or
46 equipment data is "ACCEPTED", "APPROVED", or other words to similar effect,
47 shall not be deemed conclusive that the material and equipment data for which a

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48 sample was submitted will conform to the contract requirements when
49 incorporated into the work. The ‘ACCEPTANCE’ or ‘APPROVAL’ of any
50 sample by the Engineer does not change or modify any contract requirements.
51

52 The Engineer may conduct tests of or take samples of any materials at
53 any time to verify performance with the requirements of the contract documents.
54 The Contractor shall collect and forward samples and provide other assistance
55 when requested by the Engineer. In all cases, the Contractor shall furnish the
56 required samples at no increase in contract price or contract time. The
57 Contractor shall not be entitled to payment for work that incorporates materials
58 required to be tested or inspected until the Engineer completes the tests or
59 inspections. Where samples are required from the completed work, the
60 Contractor shall cut and furnish samples from the completed work at the sites
61 and quantities designated by the Engineer. The work where sample so
62 removed shall be restored with new material conforming to the contract
63 requirements or accepted by the Engineer at no increase in contract price or
64 contract time.
65

66 Tests of the material samples will be made in accordance with the contract
67 specifications, or in the absence thereof the latest standards of HDOT Hawaii
68 Test Methods, AASHTO, ASTM, or other recognized material organizations as
69 amended prior to the date of advertisement unless otherwise provided.
70 References to HDOT Hawaii Test Method means “Hawaii Test Methods”,
71 published by the State of Hawaii, Department of Transportation, Highways
72 Division, Materials Testing and Research Branch. The Engineer shall decide
73 the tests to be conducted and standards to be applied, whether a submitted
74 material sample passes the tests and meets the standards, and whether a
75 submitted material sample shall be retested.
76

77 Each sample submitted shall have a label indicating project title and
78 number, date sampled, the material represented, its place of origin, the names
79 of the producers and suppliers, the Contractor, and the portion of the work for
80 which the material is intended. Samples shall be marked to indicate where the
81 materials represented are required by the contract documents.
82

83 A letter in duplicate shall accompany each delivery of samples and shall
84 contain a list of the samples and the same information required on the labels
85 accompanying each sample.
86

87 For Sampling/Testing Guide for Acceptance and Verification, go to:
88 <http://www.state.hi.us/dot/highways/specs94/provisions/provhme.htm> (106A)
89

90 **106.05 Sample Submittals.**

91
92 **(A) Contractor’s Duty.** When sample submittals are required by the
93 contract documents, the Contractor shall review, approve, indicate its
94 approval and submit to the Engineer samples of the materials to be used

95 in the work. It is the responsibility of the Contractor to submit required
96 material and color samples for review at the earliest possible date after the
97 date of award. Delays caused by the failure of the Contractor to submit
98 material and color samples will not be considered as justifiable reasons for
99 contract time extension or additional compensation.

100
101 **(B) Deviations.** The Contractor shall include with the submittal of
102 samples written notification of, and shall clearly identify, all deviations
103 from the contract documents. Failure to so notify the Engineer of, and
104 identify, such deviations shall be grounds for the subsequent rejection of
105 the related work or materials, notwithstanding that the sample upon its
106 submittal was accepted by the Engineer. Any deviations will be subject
107 to Subsection 102.10 – Substitution of Materials and Equipment Before
108 Bid Opening. If the deviations are not acceptable to the Engineer, the
109 Contractor shall be required to furnish the samples as specified or
110 indicated on the contract documents at no increase in contract price or
111 time.

112
113 **(C) Review Process.** The Engineer will inspect or test samples and
114 communicate the results of the inspection or test within 45 days of receipt
115 unless otherwise agreed between the Contractor and the Engineer or as
116 stated in the contract documents. If the volumes of samples
117 submitted at any time for review is unusually large, the Contractor may
118 inform the Engineer of its preferred order for review and the Engineer will
119 use reasonable efforts to accommodate the Contractor's priorities.

120
121 If the Engineer notifies the Contractor that a sample does not
122 conform to the contract documents, the Contractor shall promptly submit
123 a sample conforming to the requirements of the contract documents,
124 indicating in writing on the transmittal and the subject sample what
125 portions of the resubmittal have been altered.

126
127 No mark or notation made by the Engineer on or accompanying the
128 return of any sample to the Contractor shall be considered a request or
129 order for a change or extra work. If the Contractor believes any such
130 mark or notation constitutes a request for a change or extra work for which
131 it is entitled to an adjustment in contract price, contract time, or both, the
132 Contractor must follow the procedures established in Subsection 104.02 –
133 Changes for oral orders, directions, instructions, interpretations, or
134 determinations from the Engineer or else lose its right to claim for an
135 adjustment.

136
137 **(D) Conformance of Material to Submittal.** After a material
138 submittal has been accepted by the Engineer, the Contractor shall
139 provide materials for the work that conform to such submittal. Materials
140 that do not conform to such submittal are non-conforming material in
141 accordance with Subsection 106.08 – Non-Conforming Materials, even if

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142 they otherwise meet the contract requirements. If Contractor intends to
143 substitute a material in place of a material for which a submittal has been
144 accepted, the Contractor shall submit the substitute material in
145 accordance with the sampling and testing procedures described herein.
146 The Contractor shall not use the substitute material until the Engineer
147 accepts it.

148
149 **106.06 Notice of Change.** If during the course of the work the
150 Contractor intends to change the source of supply of any previously submitted
151 material, or the location of any manufacturing or fabrication plant, the Contractor
152 shall provide the Engineer written notice of such intended change not less than
153 ten days before the change is made. The Engineer may require that the
154 Contractor repeat the submittal process in accordance with this Section 106 –
155 Material Restrictions and Requirements for any such material.

156
157 **106.07 Certificate of Compliance.** In addition to or instead of the
158 submission of material samples for inspection or testing, the Engineer or the
159 contract documents may require the Contractor to submit to the Engineer a
160 Certificate of Compliance from the manufacturer, supplier, or both.

161
162 A Certificate of Compliance shall be an English language document
163 containing:

- 164
165 (1) A description of the material supplied.
166
167 (2) Means of material identification, including but not limited to label,
168 lot number, heat number, batches, or marking including the respective
169 quantities of each supplied for the work.
170
171 (3) Statement that the material complies in all respects with the
172 requirements of the cited specifications within the contract documents.
173
174 (4) When required by the Engineer, test results confirming that the
175 material complies in all respect with the requirements of the contract
176 documents.
177
178 (5) The name, title, and signature of the authorized person acting on
179 behalf of the manufacturer or the supplier of the material, the date of the
180 signature, and the name and address of the manufacturer or supplier of
181 the material.

182
183 **106.08 Non-Conforming Materials.** All materials not conforming to the
184 contract requirements, whether in place or not, shall be promptly removed from
185 the site of the work when directed by the Engineer in writing. If the Contractor
186 fails to comply forthwith with any order of the Engineer made under the
187 provisions of this subsection, the Engineer shall have the authority to remove

188 and replace non-conforming materials and charge the removal and replacement
189 to the Contractor.

190

191 **106.09 State-Furnished Material.** The Contractor shall furnish all materials
192 required to complete the work, except those specified to be furnished by the
193 State. The contract documents or the Engineer will establish the time and
194 means of delivery or the turning over of State-furnished materials.

195

196 Unless otherwise stated in the contract documents, it shall be
197 conclusively presumed that State-furnished materials conform to the contract
198 documents as of the time of delivery to the Contractor

199

200 Upon receipt, the Contractor shall inventory, store, inspect, protect,
201 distribute, and install State-furnished material at its risk and cost.

202

203 **106.10 Payment for Deleted Materials.**

204

205 **(A) Canceled Orders.** If acceptable material was ordered by the
206 Contractor for any item deleted by an ordered change in the work prior to
207 the date of notification of such deletion by the Engineer, the Contractor
208 shall use its best efforts in a timely manner to cancel the order. The
209 State will pay reasonable cancellation charges required by the supplier.
210 The Contractor will be paid a 7 percent markup on all reasonable
211 cancellation charges for compensation for overhead and profit.

212

213 **(B) Returned Materials.** If acceptable deleted material is in the
214 possession of the Contractor or is ultimately received by the Contractor, if
215 such material is returnable to the supplier and the Engineer so directs, the
216 material shall be returned. After the Contractor returns acceptable
217 material to the supplier, the State will pay for the reasonable charges
218 made by the supplier or other source for the return of the material. The
219 Contractor shall be paid a markup for overhead and profit on charges
220 made by the supplier. The Contractor shall be paid a 7 percent markup
221 on the reasonable charges made by the supplier or other source for
222 returning the material for compensation for overhead and profit. The
223 cost to the Contractor for handling the returned material will be paid as
224 provided in Subsection 104.06 - Methods of Price Adjustment.

225

226 **(C) Uncancelled Material.** If orders for acceptable material that was
227 deleted cannot be canceled at a reasonable cost or returned, it will be paid
228 for at the actual cost to the Contractor including a markup for overhead
229 and profit of 7 percent. In such cases the material paid for shall become
230 the property of the State and the cost of further storage and handling will
231 be paid as provided in Subsection 104.06 - Methods of Price Adjustment.

232

233 All charges the Contractor proposes for the acceptable material that
234 was deleted shall be properly itemized and supported by sufficient

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235 substantiating legible data to permit evaluation. The Engineer will
236 determine whether the proposal is acceptable.

237

238 **106.11 Steel and Iron Construction Material.** For Federal-Aid projects,
239 the major quantities of steel and iron construction material that are permanently
240 incorporated into the project shall consist of American-made materials only in
241 accordance with 23 CFR Subpart 635.410 and 49 CFR 661.

242

243 The Contractor may utilize minor amounts of foreign steel and iron
244 provided the cost of the foreign material used does not exceed one-tenth of 1
245 percent of the total contract cost or \$2,500.00, whichever is greater.

246

247 American-made material is defined as material having all manufacturing
248 processes occur in the United States. The action of applying a coating to steel
249 or iron is deemed a manufacturing process. Coating includes epoxy coating,
250 galvanizing, aluminizing, painting, and any other coating that protects or
251 enhances the value of steel or iron. Any process from the original reduction
252 from ore to the finished product constitutes a manufacturing process for iron.
253 The following are considered to be steel manufacturing processes.

254

255 (1) Production of steel by any of the following processes:

256

257 (a) Open hearth furnace.

258

259 (b) Basic oxygen.

260

261 (c) Electric furnace.

262

263 (d) Direct reduction.

264

265 (2) Rolling, heat treating, and any other similar processing.

266

267 (3) Fabrication of the products.

268

269 (a) Spinning wire into cable or strand.

270

271 (b) Corrugating and rolling into culverts.

272

273 (c) Shop fabrication.

274

275 A certification of materials origin will be required for any items comprised
276 of, or containing steel or iron construction materials prior to such items being
277 incorporated into the permanent work.

278

279 **106.12 Assignment Of Antitrust Claims For Overcharges For Goods and**
280 **Materials Purchased.** Vendor and purchaser recognize that in actual
281 economic practice, overcharges resulting from antitrust violations are in fact

282 usually borne by the purchaser. Therefore, vendor hereby assigns to
283 purchaser any and all claims for such overcharges as to goods and materials
284 purchased in connection with this order or contract, except as to overcharges
285 which result from antitrust violations commencing after the price is established
286 under this order or contract and which are not passed on to the purchaser under
287 an escalation clause.

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289 Contractor and owner recognize that in actual economic practice,
290 overcharges resulting from antitrust violations are in fact usually borne by the
291 owner. Therefore, Contractor hereby assigns to owner any and all claims for
292 such overcharges as to goods and materials purchased in connection with this
293 order or contract, except as to overcharges which result from antitrust violations
294 commencing after the price is established under this order or contract and any
295 contract change order. In addition, Contractor warrants and represents that
296 each of its first tier suppliers and subcontractors shall assign any and all such
297 claims to owner, subject to the aforementioned exception.

298

299 **106.13 Substitution Of Materials and Equipment After Bid Opening.**

300 Substitution of material or equipment will not be allowed after the bid opening
301 date except under the following circumstances:

302

303 (1) A specified or pre-qualified item is delayed by an unforeseeable
304 event beyond the control of the Contractor which would impact the timely
305 completion of the project.

306

307 (2) A specified or prequalified item is no longer being manufactured or
308 is no longer reasonably commercially available.

309

310 (3) A specified or pre-qualified item is found to be unsuitable for
311 reasons beyond the control of the Contractor.

312

313 (4) When a manufacturer or supplier of a prequalified or specified item
314 makes available at no increase in contract price or contract time a suitable
315 item, determined by the Engineer to be equal to or better than the item
316 prequalified or specified.

317

318 (5) Under such other terms and conditions acceptable to the Engineer

319

320 Every substitution request shall be fully explained in writing by the
321 Contractor and shall include the justification, the quantities and unit prices
322 involved, quotations and such other documents as are deemed necessary to
323 support the request. Any savings in cost will accrue to the State.

324

325 The burden of proof as to the comparative quality and suitability of
326 alternate equipment, articles or materials shall be upon the Contractor. The
327 Contractor shall furnish, at no increase in contract price or contract time, all
328 information required by the Engineer.

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The Engineer reserves the right to deny any request the Engineer deems irregular or not in the best interest of the State and shall be the sole judge of the comparative quality and suitability of alternates, equipment, articles, or materials.

END OF SECTION 106