

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

2
3 **107.01 Insurance Requirements.**

4
5 **(A) Obligation of Contractor.** Contractor shall obtain all required
6 insurance as part of the contract price. The Contractor shall not
7 commence any work until it obtains all required insurance. All required
8 insurance must be maintained with a company authorized by law to issue
9 such insurance in the State of Hawaii. The Contractor shall maintain all
10 insurance until final acceptance of the work by the State.

11
12 A certificate of insurance shall be from an insurance company or
13 agency licensed in the State of Hawaii. Certificates shall contain a
14 provision that coverages being certified will not be cancelled or materially
15 changed without giving the Engineer at least 30 days prior written notice
16 by registered mail. If the State and its officers and employees are to be
17 Additional Insureds on any of the required insurance, it shall be so noted
18 on the certificate. Should any policy be cancelled before final
19 acceptance of the work by the State, and the Contractor fails to
20 immediately procure replacement insurance as specified, the State, in
21 addition to all other remedies it may have for such breach, reserves the
22 right to procure such insurance and deduct the cost thereof from any
23 money due to the Contractor.

24
25 Nothing contained in these insurance requirements is to be
26 construed as limiting the extent of Contractor's responsibility for payment
27 of damages resulting from its operations under this contract, including the
28 Contractor's obligation to pay liquidated damages, nor shall it affect the
29 Contractor's separate and independent duty to defend, indemnify and
30 hold the State and its officers and employees, harmless pursuant to other
31 provisions of the contract documents. The State's exercise of an option
32 to occupy and use portions of the work does not relieve the Contractor of
33 its obligation to maintain the required insurance until the date of final
34 acceptance.

35
36 All insurance described herein shall be primary and cover the
37 insured for all work to be performed under the contract, including
38 changes, and all work performed incidental thereto or directly or indirectly
39 connected therewith, including but not limited to traffic detours,
40 barricades, warnings, diversions, lane closures, and other work
41 performed outside the work area.

42
43 Upon request, the Contractor shall furnish the Engineer, a copy of
44 required policies or other proof of coverage satisfactory to the Engineer, of
45 each type of insurance covering the work. Failure to comply with the
46 Engineer's request may result in suspension of the work, and shall be

47 sufficient grounds to withhold future payments due the Contractor and to
48 terminate the contract for the Contractor's default.

49

50 **(B) Types of Insurance.** Contractor shall purchase and maintain
51 insurance described below:

52

53 **(1) Commercial General Liability (Occurrence form).**
54 Minimum limit of \$2,000,000 combined single limit per occurrence
55 for each of the following:

56

57 (a) Products - Completed/Operations Aggregate,

58

59 (b) Personal & Advertising Injury, and

60

61 (c) Bodily Injury & Property Damage insurance with the
62 following minimum limits of liability:

63

64 The State of Hawaii, its officers and employees, shall be as
65 additional insureds under these coverages.

66

67 **(2) Comprehensive Automobile Liability.** Minimum limit of
68 \$1,000,000 combined single limit per accident for bodily injury and
69 property damage

70

71 The State of Hawaii, its officers and employees, shall be as
72 additional insureds under these coverages.

73

74 **(3) Workers Compensation.** Workers' Compensation
75 insurance coverage shall be for all persons whom the Contractor
76 and all its subcontractors employ in carrying out the work under this
77 contract. This insurance shall be in strict conformity with the
78 requirements of the most current and applicable State of Hawaii
79 Worker's Compensation Insurance laws in effect on the date of the
80 execution of this contract and as modified during the duration of the
81 contract.

82

83 **(C) Breach of Duty by Contractor or Insurer.** If either the
84 Contractor or its insurer wrongfully fails to defend or indemnify the State of
85 Hawaii, its officers and employees, against any claims, the State may
86 debar or suspend the Contractor from bidding, or working on construction
87 projects, and may refuse to permit the insurer to provide insurance on
88 construction projects.

89

90 The State may exercise these remedies in addition to other legal or
91 equitable remedies it may have against the Contractor, insurer, or both.

92

93 **(D) Subcontractor Insurance.** The Contractor shall either:

94
95 (1) Require its subcontractors to procure and to maintain during
96 the life of its subcontract, subcontractor's comprehensive general
97 liability, automobile liability and property damage liability insurance
98 of the type and in the same amounts specified herein and further
99 require that such coverage be required by its subcontractors from
100 all lower tier subcontractors. On all such insurance coverages,
101 the State of Hawaii, its officers and employees, shall be additional
102 insureds.

103
104 (2) Insure the activities of its subcontractors and their lower tier
105 subcontractors in its own policy.

106
107 (E) **Self-Insured Retention.** The Contractor shall be permitted, in
108 cooperation with its insurers, to maintain a self insured retention for up to
109 25 percent of the per occurrence combined single limits of the commercial
110 general liability and the automobile liability policies required by the
111 contract documents. The existence of the self-insured retention must be
112 noted on the certificate of insurance coverage submitted to the State or
113 else it will be understood that the insurer is providing first dollar coverage
114 for all claims. For all claims within the self-insured retention amount,
115 the rights, duties and obligations between the Contractor and the State
116 shall be identical to that between a liability insurer and the State, as an
117 additional insured, as if there was no self-insured retention.

118
119 **107.02 Permits and Licenses.** As part of the contract price, the Contractor
120 shall obtain all permits and licenses required by law to perform the work and pay
121 charges, fees, and taxes incidental to obtaining such permits and licenses.
122 The Contractor assumes exclusive responsibility for identifying and acquiring all
123 permits and licenses necessary to perform the work, except for those permits
124 and licenses identified in the contract documents as being the responsibility of
125 the State.

126
127 The terms and conditions of any permit or license required for
128 performance of the work, whether or not issued in the name of the Contractor,
129 are incorporated into the contract. Compliance with such terms and conditions
130 are duties owed by the Contractor to the State under the contract.
131 Notwithstanding the enforcement authority of the permitting or licensing agency,
132 whether or not a State agency, non-compliance by the Contractor with any term
133 or condition of such license or permit shall be deemed non-compliance with the
134 contract and may constitute grounds for default.

135
136 The Engineer may grant a time adjustment, cost adjustment, or both, to
137 the extent the Engineer determines that the Contractor was not a contributing
138 factor for such delay.

139

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140 **107.03 Working Hours; Night Work.** Normal working hours shall be from
141 7:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Work
142 performed between 3:30 p.m. and 7:00 a.m. of the following day is “night work”.

143
144 **107.04 Overtime and Night Work.** Overtime work shall be considered as
145 work performed in excess of eight hours in any one day or work performed on
146 Saturday, Sunday or legal holiday of the State. Overtime and night work are
147 permissible when approved by the Engineer in writing, or as called for elsewhere
148 within the contract documents. The Contractor shall inform the Engineer in
149 writing at least three working days in advance of its intent to work overtime and
150 10 working days in advance of any night work. In addition the Contractor shall
151 inform the Engineer of what specific work is to be done during any overtime and
152 night period. When, in the opinion of the Engineer, an emergency exists
153 where overtime or night work is warranted, the written notice requirement may
154 be waived and verbal approval of the Engineer will be sufficient. The Engineer
155 may cancel any overtime or night work previously approved when the Engineer
156 finds that work during these periods is detrimental to public welfare, safety, or
157 the interest of the State.

158
159 **107.05 Overtime and Night Payment for State Inspection Service.**

160
161 **(A) State’s Responsibility for State’s Cost.** The State shall be
162 responsible for overtime or night work payment for State’s staff and
163 inspection personnel including consultants when the contract requires
164 overtime or night work to be performed, or directs the Contractor to work
165 additional shifts or overtime for State’s convenience

166
167 **(B) Contractor’s Responsibility for State’s Cost.** The Contractor
168 shall be responsible for overtime or night work payment for State’s staff
169 and inspection personnel including consultants when the Contractor does
170 any other overtime or night work.

171
172 The Contractor shall pay the following costs incurred by the State:

173
174 **(1)** The payroll costs for the State’s staff and inspection
175 personnel assigned in connection with such work, including but not
176 limited to salaries, the State’s share of contributions to the
177 employee’s retirement, medical plan, social security, vacation,
178 sick leave, worker’s compensation funds, per diem, and other
179 applicable fringe benefits and overhead expenses, incurred on
180 account of such work.

181
182 **(2)** The transportation costs incurred by the State’s staff and
183 inspection personnel, which are based on established rental rates
184 or mileage allowance in use by the State for the particular
185 equipment or vehicle.

186

187 (3) Fees and other costs billed the State by consultants
 188 engaged on the project for overtime and nighttime work.
 189

190 (C) **Payment for Inspection Service.** The monies due the State for
 191 costs described herein shall be deducted from the monies due or to
 192 become due the Contractor. The Contractor shall not pay the State's
 193 employees directly.
 194

195 **107.06 Contractor Duty Regarding Public Convenience.** The
 196 Contractor shall at all times conduct the work in such manner and in such
 197 sequence as will insure the least practicable interference with pedestrian,
 198 bicycle, and motor passageways. The Contractor shall plan and provide
 199 appropriate detours, signs, flashers, personnel, warnings, barricades and
 200 other devices for safely and legally handling pedestrian, bicycle, and motor
 201 traffic.
 202

203 **107.07 Assignment or Change of Name.**
 204

205 (A) **General.** The Contractor shall not sell, transfer, assign, or
 206 otherwise dispose of this contract or any part hereof or any right, title, or
 207 interest herein without the written consent of the Engineer.
 208

209 The Contractor may assign money due or to become due under the
 210 contract and such assignment will be recognized by the State, if given
 211 written notice thereof, to the extent permitted by law. Any assignment
 212 of monies shall be subject to all set-offs in favor of the State and to all
 213 deductions provided for in the contract including but not limited to
 214 liquidated or actual damages for delay and money retained by the State
 215 for the completion of the work in the event that the Contractors should be
 216 in default.
 217

218 (B) **Recognition of a Successor in Interest; Assignment.** When
 219 in the best interest of the State, a successor in interest may be
 220 recognized in an assignment agreement in which the Contractor and the
 221 transferee and the State shall agree that:
 222

223 (1) The transferee assumes all of the Contractor's obligation.
 224

225 (2) The Contractor remains liable for all obligations under the
 226 contract but waives all rights under the contract against the State.
 227

228 (3) The Contractor shall continue to furnish, and the transferee
 229 shall also furnish, all required bonds.
 230

231 (C) **Change of Name.** When a Contractor requests to change the
 232 name in which it holds a contract with the State, the Engineer shall, upon
 233 receipt of a document indicating such change of name (for example; an

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234 amendment to the articles of incorporation of the corporation), enter into
235 an agreement with the requesting Contractor to effect such a change of
236 name. The agreement changing the name shall specifically indicate that
237 no other terms and conditions of the contract are thereby changed.
238

239 **107.08 Laws to be Observed; Indemnity.** The Contractor at all times shall
240 observe and comply with all Federal, State, and local laws, ordinances, rules,
241 regulations, and permit and license requirements which in any manner affect
242 those engaged or employed in the work, the materials used in the work, and the
243 conduct of the work. The Contractor shall comply with all orders and decrees
244 of government bodies or officials having any jurisdiction or authority over the
245 work whether such orders or decrees are directed to the Contractor, its
246 subcontractors, vendors, and suppliers, or to the State.
247

248 No instruction in the contract documents or contained within any directive
249 from the Engineer to the Contractor to observe and comply with any specific law,
250 ordinance, rule, regulation, or permit or license requirement shall limit the duty
251 of the Contractor to observe and comply with all other laws, ordinances, rules,
252 regulations, or permit or license requirement that relate to the work.
253

254 The Contractor shall immediately notify the Engineer in writing of any
255 orders, directives, notices, decrees, or warnings issued by any governmental
256 agency to the Contractor, its subcontractors, vendors, and suppliers that a
257 violation of law, rules, regulations, or permit or license requirement is alleged to
258 have occurred or is occurring in connection with the work.
259

260 The Contractor shall defend, protect, hold harmless, compensate, and
261 indemnify the State, its officers and employees, against any claim or liability
262 arising from or based on the violation of any laws, ordinances, rules and
263 regulations, orders or decrees, or the terms and conditions of any permits and
264 licenses, whether such orders or decrees are directed to the Contractor, its
265 subcontractors, vendors, and suppliers or to the State.
266

267 **107.09 Patented Devices, Materials, And Processes.** If the Contractor
268 desires or is required to use any designs, devices, materials, or processes
269 covered by letters of patent or copyright, the right for such use shall be procured
270 by the Contractor from the patentee or owner. The Contractor shall defend,
271 protect, indemnify and hold harmless, compensate, and where appropriate,
272 insure, the State from any and all claims, demands, liabilities actions and
273 judgements for infringement by reason of the use of any such patented designs,
274 devices, materials or processes, or any trademark or copyright in connection
275 with the work to be performed under the contract.
276

277 **107.10 Furnishing Right-Of-Way.** Except as noted in the contract
278 documents, the State will be responsible for securing necessary rights-of-way.
279
280

281 **107.11 Safety: Accident Prevention.**
282

283 (1) The Contractor shall provide all safeguards, safety devices and
284 protective equipment and take any other needed actions as it determines,
285 or as the Engineer may determine, to be reasonably necessary to protect
286 the life and health of employees and other persons on and around the
287 worksite and the safety of the public and to protect property in connection
288 with the performance of the work covered by the contract.
289

290 (2) The Contractor and any subcontractor shall not permit any
291 employee, in performance of the contract, to work in surroundings or
292 under conditions which are unsanitary, hazardous or dangerous to his/her
293 health or safety, as determined under construction safety and health
294 standards promulgated by the Federal, State, and local authorities.
295

296 (3) Authorized Federal, State, and local officials shall have right of
297 entry to any site of contract performance to inspect, investigate, and
298 enforce the matter of compliance with the construction safety and health
299 standards referred to herein.
300

301 **107.12 Protection of Persons and Property.**
302

303 (A) **Contractor's Responsibility for Damage to Property.** All
304 damage, injury or loss to any property caused during the course of, or
305 arising out of the work, whether or not caused by negligent acts or
306 omissions, shall be the responsibility of the Contractor and shall be
307 remedied promptly by the Contractor. This provision shall not affect the
308 Contractor's legal rights of subrogation, contribution, and indemnity to
309 recover the costs of remedial measures and other damages to which it
310 may be entitled.
311

312 (B) **Safety Precautions and Programs.** The Contractor shall notify
313 owners of adjacent properties and of underground (or overhead) utilities
314 when performing work which may affect the owners; and shall cooperate
315 with the owners in the protection, removal and replacement of their
316 property.
317

318 The Contractor shall not permit any load to be placed on the work,
319 any structure, or roadway or any other location that may endanger the
320 safety of any persons or cause damage to any property. The Contractor
321 shall not injure or destroy trees or shrubs that are identified in the contract
322 documents for preservation nor remove or cut them without permission of
323 the Engineer. Contractor shall protect all land monuments and property
324 marks until an authorized agent has witnessed or otherwise referenced
325 their location and shall not remove them until directed.
326

107.12

327 In the event the Contractor encounters on the site material
328 reasonably believed to be asbestos or other hazard material that has not
329 been rendered harmless, the Contractor shall stop work in the area and
330 notify the Engineer promptly. The work in the affected area shall be
331 resumed in the absence of hazard materials or when the hazard has been
332 rendered harmless.

333

334 **(C) Notification to the Engineer.** The Contractor shall notify the
335 Engineer in writing not later than noon of the following working day
336 whenever:

337

338 **(1)** Police, fire or other public safety officers are called to the
339 work site for any reason or are present at the work site for any
340 public safety related reason.

341

342 **(2)** Any person is treated or evacuated from the work site by
343 emergency medical services personnel.

344

345 **(3)** Any member of the public claims to have been injured at the
346 work site.

347

348 **(4)** The Contractor witnesses a member of the public being
349 involved in an accident at the worksite, or on account of conditions
350 related to the work, whether or not visible injuries occur.

351

352 **(5)** Any representative of a Federal, State, or County
353 regulatory or enforcement agency is present at the work site
354 including but not limited to any representative of Department of
355 Health, EPA, OSHA, and public works.

356

357 **107.13 Pollution Control and Protection Of Archeological, Historical,**
358 **and Burial Sites.**

359

360 **(A) Erosion, Siltation and Pollution Control.** The Contractor shall
361 exercise precaution to prevent silting and pollution of oceans, rivers,
362 streams, lakes, and reservoirs and other bodies and conveyances of
363 water.

364

365 The Contractor shall provide for pollution and erosion control
366 during the work including periods of suspension of contract performance.
367 If material begins to erode, the Contractor shall act immediately to bring
368 the siltation, erosion, and pollution under control. See Section 209 –
369 Temporary Water Pollution, Dust and Erosion Control.

370

371 Follow guidelines in the City and County of Honolulu's "Best
372 Management Practices Manual for Construction Sites in Honolulu", in
373 developing, installing, and maintaining BMPs for all projects. Follow City

374 and County of Honolulu’s “Rules for Soil Erosion Standards and
375 Guidelines” for all projects on Oahu. Use appropriate Soil Erosion
376 Guidelines for Maui, Kauai, and Hawaii projects.
377

378 **(B) Archaeological, Historical, and Burial Sites.** Whenever the
379 Contractor encounters sites of potentially historic or archaeological
380 significance such as walls, platforms, pavements and mounds, or
381 remains such as artifacts, burials, concentration of charcoal or shells,
382 work shall cease in the immediate vicinity of the site and the site shall be
383 protected from damage. The Contractor shall suspend any work that
384 may affect the site and inform the Engineer immediately. Upon direction
385 by the Engineer, the Contractor shall provide and install temporary
386 fencing to protect such sites. The Contractor shall not resume the work
387 suspended without the prior written direction of and subject to the
388 conditions set by the Engineer.
389

390 **107.14 Responsibility For Damage Claims; Indemnity.** The Contractor
391 shall compensate and make whole the State for all loss or damage to the State’s
392 property and facilities arising out of any act or omission in the performance of the
393 work by the Contractor, any subcontractor, or their employees and agents.
394

395 The Contractor shall defend, hold harmless, compensate, and indemnify
396 the State, its employees and officers, against any loss, demand, claim,
397 liability, suit, action, cause of action, judgment, cost and expenses including
398 attorney’s fees, based upon personal injury, death, or property damage which
399 arise out of the Contractor’s performance under the contract, including the
400 operations and performance of one or more subcontractors, whether or not a
401 lawsuit is filed against the State and whether or not the Contractor is named as a
402 party to any such lawsuit, unless and until a court of competent jurisdiction
403 makes a final non-reviewable determination that the personal injury, death, or
404 property damage was caused solely by the negligence of the State.
405

406 The State may participate in the defense of any claim or suit brought
407 against its officers or employees, without relieving the Contractor of any
408 obligation hereunder. The purchase of liability insurance shall not relieve the
409 Contractor of the obligations described herein. If the Contractor and its insurer
410 fail to undertake the defense of the State, its employees and officers, after a
411 tender of defense has been duly made, the State may retain and withhold
412 money to cover the Contractor’s obligation whether or not the Contractor is
413 terminated for cause.
414

415 The Contractor shall pay all just claims for materials, supplies, tools,
416 labor and other just claims against the Contractor or any subcontractor in
417 connection with this contract, and the payment bond or security will not be
418 released by final acceptance and payment by the State unless all such claims
419 are paid or released. The State may, but is not obligated to, withhold or retain
420 as much of the monies due or to become due the Contractor under this contract

107.15

421 considered necessary by the Engineer to cover such just claims until satisfactory
422 proof of payment or the establishment of an acceptable payment plan.”
423

424 **107.15 Disputes and Claims.**

425

426 **(A) Written Notice A Condition Precedent to Claim.** As a
427 condition precedent to any claim for damages, or any matter dealing with
428 contract price or contract time, the Contractor must give all notices of a
429 potential claim as required by the contract documents including but not
430 limited to the following Subsections of these general provisions:
431

432

(1) 104.02 – Changes

433

(2) 104.03 – Field Orders

434

(3) 104.04 – Contract Change Orders

435

(4) 104.08 – Differing Site Conditions

436

(5) 105.04 – Review and Acceptance Process

437

(6) 106.05 – Sample Submittals

438

(7) 108.05 – Contract Time

439

440

441 **(B) Contractor’s Duty to Maintain Accurate and Contemporaneous**
442 **Records.** Upon delivering written notice of a potential claim as
443 described in Subsection 107.15(A) – Written Notice A Condition Precedent
444 to Claim, the Contractor has the duty to support and substantiate all
445 claims by maintaining accurate, contemporaneous records of the subject
446 work and the time and costs thereof. The Engineer may direct the
447 manner and the format in which such records must be prepared,
448 maintained, and verified. The Contractor shall comply with such
449 directives at no increase in contract price or contract time. Any directive
450 from the Engineer regarding the manner and format for the keeping of
451 records associated with the potential claim shall not in any way be
452 deemed an agreement by the State regarding the validity of any element
453 of the claim.

454

455 **(C) Contractor to Proceed with Work.** The Contractor shall at all
456 times continue with performance of the contract in full compliance with the
457 directions of the Engineer. Continued performance by the Contractor
458 shall not prejudice any claim for damages or any matter dealing with
459 contract price or contract time provided that the notice of a potential claim
460 is given in writing by the Contractor in the manner and within the time set
461 forth in the contract documents.

462

463 **(D) Making of a Claim.** All Contractors’ claims for damages or any
464 matter dealing with contract price or contract time shall be submitted in
465 writing to the Engineer. The written submission (THE CLAIM) shall be
466 clearly identified and labeled as a claim. The Contractor shall
467 sequentially number its claims in the chronological order submitted to the
468 Engineer. No claim shall be valid if it is delivered to the Engineer after

468 the date of final acceptance or later than 180 days after Contractor's
469 delivery of its notice of potential claim, whichever comes first.

470
471 The Claim shall, at a minimum, contain the following:

472
473 **(1)** A detailed description of the facts and circumstances that
474 justify every element of claim. The detailed description shall
475 include, but is not limited to, providing all necessary dates,
476 locations, and items of work affected by the claim.

477
478 **(2)** The specific provisions of the contract or laws which support
479 the claim and a statement of the reasons why such provisions
480 support the claim.

481
482 **(3)** A copy of the related written notice of potential claim
483 required by Subsection 107.15(A) – Written Notice A Condition
484 Precedent to Claim.

485
486 **(4)** Any other documents that support the claim.

487
488 **(5)** If an adjustment of time for the performance of the contract
489 is sought:

490
491 **(a)** The specific days and dates for which it is sought.

492
493 **(b)** The specific reasons the Contractor believes a time
494 adjustment should be granted.

495
496 **(c)** The specific provisions of the contract under which
497 additional time is sought.

498
499 **(d)** The Contractor's detailed analysis of its previously
500 submitted time scaled logic diagram (TSLD) schedule and
501 impact on the critical path.

502
503 **(6)** If additional monetary compensation is sought, the claim
504 cannot be in an amount greater than the Contractor would be
505 entitled to under the terms, conditions and limitations set forth in
506 Subsection 109.06 – Force Account Provisions and Compensation,
507 however the Engineer may determine the Contractor's entitlement,
508 if any, in accordance with any payment method described in
509 104.06 – Methods of Price Adjustment. The exact amount sought
510 and a breakdown of that amount into the following categories shall
511 be provided to the Engineer:

512
513 **(a) Labor.** Categories such as listing of individuals,
514 description and location of work performed, classification,

515 hours worked, wage rate, fringe benefits, and employee
516 number if available.

517
518 **(b) Materials.** Categories such as invoices, purchase
519 orders, evidence of payment, descriptions and quantities.

520
521 **(c) Equipment.** Categories such as detailed
522 description (make, model, year, attachments, and serial
523 number), hours of use and dates of use.

524
525 **(d) Contractor’s Margin for Profit and Overhead.**

526
527 **(e)** Other categories as specified by the Contractor or the
528 State.

529
530 **(7)** The claim shall be certified on behalf of the Contractor by an
531 authorized representative, as follows:

532
533 Under penalty of law for submission of false claims, false
534 statements, and misrepresentation, the undersigned,

535
536 _____
(Name)

537
538 _____
(Title)

539
540 _____
(Company)

541
542 hereby certifies that the claim is made in good faith; that the
543 supporting data are accurate and complete to the best of my
544 knowledge and belief; that the amount requested accurately
545 reflects the contract adjustment for which the Contractor believes
546 the State of Hawaii is liable; and that I am duly authorized to certify
547 the claim on behalf of the Contractor.

548
549
550 _____
Signature Date

551
552 **(E) Subcontractor’s Claim.** When the Subcontractor submits a
553 claim to the Contractor and the Contractor, upon its review and
554 investigation of said claim, concludes that the State is ultimately liable for
555 payment of any part of said claim and the Contractor chooses to seek
556 recovery against the State for all or any part of the Subcontractor’s claim,
557 the Contractor shall:

558
559 **(1)** Independently verify the basis for and amount of said claim.

560

561 (2) Limit said claim to only those portions for which the State
562 may be liable.

563
564 (3) Submit said claim as a Contractor's claim, in accordance
565 with this section.

566
567 **(F) Engineer's Review and Decision.** The Engineer shall review
568 the claim, and may request and the Contractor shall provide additional
569 information, documentation, and other evidence. The Engineer may
570 conduct interviews with Contractor's employees and other persons having
571 knowledge related to the claim.

572
573 The Engineer shall render a written decision on the claim after the
574 claim is complete and fully documented, as follows:

575
576 (i) Within 60 days for claims less than \$50,000.

577
578 (ii) Within 90 days on claims exceeding \$50,000.

579
580 If the Engineer does not issue a written decision within the time
581 period described herein, then the Contractor may proceed as if the claim
582 has been denied in its entirety. If the claim submittal is found to be
583 incomplete, the Contractor shall be notified to provide the additional
584 information that is required. When this occurs, the Engineer's review
585 time will be adjusted as deemed appropriate and the Contractor will be
586 notified.

587
588 The decision will be sent to the Contractor by Certified Mail, Return
589 Receipt Requested.

590
591 **(G) Appeal of the Engineer's Decision.**

592
593 (1) Any Contractor aggrieved by an adverse decision by the
594 Engineer on a claim may appeal the decision to the Director, as
595 head of the purchasing agency as specified in the Hawaii
596 Administrative Rules for Procurement Disputes.

597
598 (2) Appeals of the Engineer's decision must be filed in writing
599 not later than 30 days after delivery of the Engineer's decision on
600 the claim to the Contractor, or if no written decision is delivered,
601 within 30 days after the deadline for the Engineer's decision. A
602 copy of the notice of appeal of the Engineer's decision shall be
603 delivered to the Engineer.

604
605 (3) The record on appeal by the Contractor to the Director shall
606 be limited to the Claim as submitted by the Contractor described in
607 Subsection 107.15(D) – Making of a Claim, the Engineer's

608 response to the claim, the project file, and any other material or
609 evidence the Director, in the Director's discretion, believes may be
610 useful in deciding the merits of the appeal.

611
612 **(4)** In its notice of appeal of the Engineer's decision, the
613 Contractor shall provide specific citations to the Engineer's decision
614 and explanations as to why the Contractor believes the Engineer's
615 decision was incorrect.

616
617 **(5)** All controversies and claims which are appealed to the
618 Director shall be decided by the Director within 90 days after the
619 filing of the appeal by the Contractor; provided that:

620
621 **(a)** If the Director does not issue a written decision within
622 90 calendar days after written request for a final decision, or
623 within such longer period as may be agreed upon by the
624 parties, then the Contractor may proceed as if the appeal
625 was denied.

626
627 **(b)** The Director immediately furnishes a copy of the
628 decision to the Contractor, by certified mail, return receipt
629 requested, or by any other method that provides evidence of
630 receipt.

631
632 **(c)** Any such decision shall be final and conclusive,
633 unless fraudulent, or unless the Contractor brings an action
634 seeking judicial review of the decision in a Hawaii circuit
635 court within the six months from the date of receipt of the
636 decision.

637
638 **(H) Contractor's Duty to Continue Work.** During the claim review
639 and appeal process including any litigation in relation to the Claim, the
640 Contractor shall proceed diligently with performance of this contract,
641 except where:

642
643 **(1)** The State has suspended the work, or has terminated the
644 contract for default of the Contractor or for the convenience of the
645 State.

646
647 **(2)** There has been an alleged material breach of contract by
648 the State excusing further performance by the Contractor; provided
649 that in such event the Contractor shall proceed diligently with the
650 performance of the contract where the Director has made a written
651 determination that continuation of work under the contract is
652 essential to the public health and safety.

653

654 **107.16 Contaminated or Hazardous Items and Material; Regulated**
655 **Items and Material; Waste.**

656

657 **(A) Known or Suspected Contaminated or Hazardous Items and**
658 **Material.** If the contract documents have noted an area of known or
659 suspected contaminated or hazardous items or material within the project
660 limits, in the absence of specific orders from the Engineer or directions in
661 the contract documents, the Contractor shall report the discovery of such
662 items or material to the appropriate governmental agencies, cooperate
663 with all investigations and either remediate or remove and dispose of such
664 items or material as part of the contract price unless otherwise noted in
665 the contract documents. Upon encountering any such items or material
666 the Contractor shall immediately notify the Engineer.

667

668 **(B) Unknown Contaminated or Hazardous Items and Material.** If
669 the Contractor encounters or exposes any items, material or other
670 conditions within the worksite not previously known or suspected to be
671 contaminated or hazardous, but which exhibits properties which may
672 indicate the presence of such items or material, the Contractor shall
673 immediately notify the Engineer. Claims by the Contractor for additional
674 money or time arising from work involving such items, material or other
675 conditions, including the cost and time associated with notifying and
676 providing written reports to government agencies listed below, shall be
677 subject to the terms and conditions of Subsection 104.08 – Differing Site
678 Conditions.

679

680 **(C) Contractor's Duty to Report.** Whenever the Contractor
681 encounters or exposes any hazardous or contaminated items, material or
682 conditions at the worksite whether the existence of which was previously
683 known, suspected, or unknown, the Contractor shall notify the State
684 Department of Health/HEER office, the Federal Environmental Protection
685 agency, the U.S. Coast Guard, the National Response Center, and other
686 appropriate government agencies, and comply with any directives or
687 instructions provided by them.

688

689 **(D) Material and Waste Brought to the Worksite.** The Contractor
690 shall assume sole responsibility for

691

692 **(1)** The management of all regulated materials and items
693 brought to the worksite.

694

695 **(2)** The management of all waste generated by or incidental to
696 the Contractor's operations, including but not limited to lubricants,
697 antifreeze, engine fluids, paints, and solvents.

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699 Management of such materials and items includes, but is not
700 limited to, their transport, storage, handling, and disposal.

107.16

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(E) Reimbursement of State Expenses. In addition to all other remedies provided by law or contract, the State may withhold from or recover from the Contractor any money it is required to expend to remediate, remove, or dispose of any such items and material, as well as the cost of any fines or impositions made by appropriate enforcement agencies arising from the management of such items and material, whether or not the Contractor exercised due care.

107.17 Right to Audit Records, Records Maintenance, Retention and Access. Pursuant to HRS Chapter 103D-317 the State, at reasonable times and places, may audit the books and records of a Contractor, prospective contractor, subcontractor and prospective subcontractor relating to the Contractor's or subcontractor's cost or pricing data. Any such audits may be conducted by Federal and State employees or by consultants working on behalf of the State. The Contractor and subcontractor(s) shall maintain the books and records for a period of three years from the date of final payment under the contract.

The Contractor and its subcontractors shall, in accordance with generally acceptable accounting practices, maintain fiscal records and supporting documents and related files, papers, and reports that adequately reflect all direct and indirect expenditures and management and fiscal practices related to the Contractor and subcontractor's performance of work under this contract.

The representatives of the State (and Federal government representatives when federal funds are utilized), have the right to inspect and copy any book, document, paper, file, or other record, that is related to the performance of the work of the Contractor and any subcontractor.

The Contractor shall provide full cooperation during any audit or inspection and shall insure that its subcontractors comply with this requirement. The Contractor shall bear all costs (including attorney's fees) of enforcement in the event of its or its subcontractor's failure or refusal to fully cooperate.

This right of inspection and audit shall not be limited to the required retention period but shall last as long as records are retained. The Contractor and subcontractor shall retain all records related to the Contractor and subcontractor's performance of work under this Agreement for three years from the date of 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 three year period, the Contractor and subcontractors shall retain the records until final resolution of all issues that arise from it, or until the end of the three year retention period, whichever occurs later.

END OF SECTION 107