

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

**PROJECT: KAMEHAMEHA HIGHWAY
REPLACEMENT OF NORTH KAHANA STREAM BRIDGE
DISTRICT OF KOOLAULOA
ISLAND OF OAHU**

PROJECT NO.: BR-083-1(53)

**COMPLETION TIME: 385 Working days from the date indicated in the
Notice to Proceed from the Department.**

**Note: Completion time does not include plant
establishment period.**

DBE PROJECT GOAL: None specified.

DESIGN PROJECT MANAGER:

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1 Amend **Section 108 - Prosecution and Progress** to read as follows:
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3 **"SECTION 108 - PROSECUTION AND PROGRESS**
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5 **108.01 Subcontracts.**
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7 **(A) Subcontract Requirements.** Nothing contained in the contract
8 documents shall create a contractual relationship between the State and
9 any subcontractor.

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11 Subject to the provisions of HRS Chapter 103D-302, the
12 Contractor may subcontract a portion of the work but the Contractor shall
13 remain responsible for the work so subcontracted.
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15 The Contractor shall not sublet, sell, transfer, assign, or
16 otherwise dispose of any duty the Contractor may have pursuant to the
17 contract without the written consent of the State.
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19 The Contractor shall perform with his/her own organization, work
20 amounting to not less than 30 percent of the total contract cost, except
21 that any items designated by the State in the contract as 'specialty items'.
22 Where an entire item is subcontracted, the value of work subcontracted
23 will be based on the contract item bid price. When a portion of an item
24 is subcontracted, the value of work subcontracted will be estimated by
25 the Engineer and be based on the cost of such portion of the contract
26 items.
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28 The 'Specialty Items' of work for this project are as follows:
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30 Section	Description
31 No.	
32 312	33 Contract Item No. 312.0100 under Section - 312 Plant Mix 34 Glassphalt Concrete Base Course
35 401	36 Contract Item No. 401.0410 under Section 401 - Asphalt 37 Concrete Pavement
38 411	39 Contract Item No. 411.0000 under Section 411 - Portland 40 Cement Concrete Pavement
41 503	42 All Contract Items under Section 503 - Concrete Structures 43
44 512	45 Contract Item No. 512.1000 under Section 512 - 46 Prefabricated Steel Truss Bridge 47

- 48 602 All Contract Items under Section 602 – Reinforcing Steel
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50 606 All Contract Items under Section 606 - Guardrail
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52 621B All Contract Items under Section 621B - Traffic Control
53 Regulatory, Warning, and Miscellaneous Signs
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55 621C All Contract Items under Section 621C - Markers
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57 622 All Contract Items under Section 622 - Highway Lighting
58 System
59
60 629 All Contract Items under Section 629 – Pavement Markings
61
62 645 Contract Item No. 645.1000 under Section 649 – Work Zone
63 Traffic Control
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65 No subcontract shall release the Contractor of any liability under
66 the contract and bonds.
67

68 **(B) Substituting Subcontractors.** Under HRS Chapter 103D-302,
69 the Contractor is required to list the names of persons or firms to be
70 engaged by the Contractor as a subcontractor or joint contractor in the
71 performance of the contract. Contractors may enter into subcontracts
72 only with subcontractors listed in the proposal or with non-listed joint
73 contractors/subcontractors permitted under Subsection 102.06 –
74 Preparation of Proposal. No subcontractor may be added or deleted
75 and substitutions will be allowed only if the subcontractor:
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- 77 (1) Fails, refuses or is unable to enter into a subcontract, or
78
79 (2) Becomes insolvent; or
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81 (3) Has its Contractor's license suspended or revoked; or
82
83 (4) Has defaulted or has otherwise breached the subcontract in
84 connection with the subcontracted work; or
85
86 (5) Is unable to comply with other requirements of law
87 applicable to Contractors, subcontractors and public works
88 projects.
89

90 Bids that do not comply with the above requirements may be
91 accepted if acceptance is in the best interest of the State and the value of
92 the work to be performed by the subcontractor or joint contractor is equal
93 to or less than one percent of the total bid amount.
94

95 When the subcontractor is not prosecuting the work in accordance
96 with the contract, the Contractor shall immediately remove the
97 subcontractor from the project, upon receipt of a written notice from the
98 Engineer. The subcontractor shall not again be employed on the
99 project.

100
101 Requests to substitute a subcontractor shall be allowed only upon
102 the written approval of the Engineer. The Contractor agrees to hold the
103 State harmless, defend and indemnify the State for all claims, liabilities,
104 or damages whatsoever, including attorney's fees arising out of or related
105 to the approval or disapproval of the substitution.
106

107 **108.02 Notice to Proceed (NTP).**

108
109 **1st NTP – Site Specific BMP Plan.**

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111 A site specific BMP Plan NTP will be given to the Contractor not later
112 than 90 days from the date of execution of the contract. The site specific BMP
113 Plan NTP will indicate the date the Contractor is expected to begin the
114 preparation of site specific BMP in order to complete the various permit
115 application, including but not limited to NPDES individual permit, DOH 401 & DA
116 404 permits, and from which contract time will be charged. Total contract time for
117 1st NTP will be up to 12 months, including potential public hearing in compliance
118 with DOH individual permit requirements.
119

120 **2nd NTP – Construction.**

121
122 2nd notice to proceed will be issued to the Contractor following the
123 completion of work specified in the 1st NTP. It shall establish the date the
124 Contractor is expected to start work and from which contract time will
125 commence.
126

127 The Engineer will consult with the Contractor in an effort to set a mutually
128 agreeable notice to proceed date. When the notice to proceed date is set by
129 mutual agreement, Contractor shall have no claim for delay impact costs
130 resulting from the issuance of the notice to proceed for such date.
131

132 In the absence of an agreed notice to proceed date, the Engineer will
133 issue a notice to proceed to the Contractor. In the event that the Engineer
134 establishes a starting date that is more than 90 days after the effective date of
135 the contract the Contractor may submit a claim in accordance with Subsection
136 105.18 – Disputes and Claims for increased labor and material costs which are
137 directly attributable to the delay beyond the first 90 days. The Engineer may
138 suspend the contract before issuing the notice to proceed, in which case the
139 Contractor's remedies are exclusively those set forth in Subsection 108.11 –
140 Suspension of Work.
141

142 The Contractor shall begin work within 10 working days from the date in
143 the notice to proceed and shall diligently prosecute the same to completion
144 within the contract time. In the event that the Contractor fails to start the work,
145 the Engineer may terminate the contract in accordance with Subsection 108.12 –
146 Termination of Contract for Cause. The Contractor shall notify the Engineer at
147 least three working days before beginning work.

148
149 The Contractor shall notify the Engineer at least 24 hours before restarting
150 work after a suspension of work pursuant to Subsection 108.11 – Suspension of
151 Work.

152
153 The Contractor shall not begin work before the date in the notice to
154 proceed. Any work done prior to the notice to proceed date will be considered
155 unauthorized work. If the Engineer does not direct that the unauthorized work
156 be removed, it shall be paid for after the notice to proceed date and only if it is
157 acceptable. The Contractor shall secure all permits and obtain environmental
158 clearances and approvals prior to the start of any construction activities.

159
160 When construction is started, the Contractor shall work expeditiously and
161 pursue the work diligently until it is complete. If only a portion of the work is to
162 be done in stages, the Contractor shall leave the area safe and usable for the
163 user agency at the end of each stage.

164
165 **108.03 Prosecution of Work.** Unless otherwise permitted by the Engineer,
166 in writing the Contractor shall not commence with physical construction unless
167 sufficient materials and equipment are available for either continuous
168 construction or completion of a specified portion of the work.

169
170 **108.04 Preconstruction Data Submittal.** The awardee shall submit to the
171 Engineer for information and review the pre-construction data within 15 days
172 from the date of notice of intent to enter the contract. Until the items listed
173 below are received and found acceptable by the Engineer, the Contractor shall
174 not commence work unless otherwise authorized to do so in writing and subject
175 to such conditions set by the Engineer. No progress payment will be made to
176 the Contractor until the Engineer acknowledges, in writing, receipt of the
177 following preconstruction data submittals acceptable to the Engineer:

- 178
179 (1) List of the Superintendent and other Supervisory Personnel;
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181 (2) Name of person(s) authorized to sign for the Contractor;
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183 (3) Work Schedule;
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185 (4) Initial Progress Schedule (See Subsection 108.07 – Progress
186 Schedules);
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188 (5) Water Pollution and Siltation Control Submittals;

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- (6) Solid Waste Disposal form;
- (7) Tax Rates;
- (8) Insurance Rates;
- (9) Certificate of Insurance satisfactory to the Engineer that the Contractor has in place all insurance coverage required by the contract documents;
- (10) Schedule of agreed prices; and
- (11) List of Suppliers.

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

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

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

108.06 Contract Time.

(A) Calculation of Contract Time. When the contract time is on a working day basis, the total contract time allowed for the performance of the work will be the number of working days shown in the contract plus any additional working days authorized in writing as provided hereinafter. The count of elapsed working days to be charged against contract time, will begin from the date of notice to proceed and will continue consecutively to the date of final acceptance. When multiple shifts are used to perform the work, the State will not consider the hours worked over the normal eight working hours per day or night as an additional working day.

When the contract is on a calendar day basis, the total contract time allowed for the performance of the work will be the number of days shown

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in the contract plus any additional days authorized in writing as provided hereinafter. The count of elapsed days to be charged against contract time will begin from the date of notice to proceed and will continue consecutively to the date of final acceptance. The Engineer will exclude days elapsing between the orders of the Engineer to suspend work and resume work for suspensions not the fault of the Contractor.

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

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

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

(2) Delay for Permits. For delays in the routine application and processing time required to obtain necessary permits, including permits to be obtained from State agencies, on the condition that the delay is not caused by the Contractor, and provided that as soon as the delay occurs, the Contractor notifies the Engineer in writing that the permits are not available. Time extensions will be the exclusive relief granted on account of such delays.

(3) Delays Beyond Contractor's Control. For delays caused by acts of God, a public enemy, fire, inclement weather days or adverse conditions resulting therefrom, earthquakes, floods, epidemics, quarantine restrictions, labor disputes impacting the Contractor or the State, freight embargoes and other

283 reasons beyond the Contractor's control, the Contractor may be
284 granted an extension of time provided that:

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286 (a) In the written notice of delay to the Engineer, the
287 Contractor describes possible effects on the completion date
288 of the contract. The description of delays shall:

289
290 1. State specifically the reason or reasons for the
291 delay and fully explain in a detailed chronology how
292 the delay affects the critical path.

293
294 2. Include copies of pertinent documentation to
295 support the time extension request.

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

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

304
305 (b) The Contractor shall notify the Engineer in writing
306 when the delay ends. Time extensions will be the
307 exclusive relief granted and no additional compensation will
308 be paid the Contractor for such delays.

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

320
321 (a) The Contractor's written notice to the Engineer must
322 describe the delays and state the effect such delays may
323 have on the critical path.

324
325 (b) The Contractor, if requested, must submit to the
326 Engineer within five days after a firm delivery date for the
327 material and equipment is established, a written statement
328 regarding the delay. The Contractor must justify the delay
329 as follows:

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

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

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

(5) Delays for Suspension of Work. When the performance of the work is totally suspended for one or more days (calendar or working days, as appropriate) by order of the Engineer in accordance with Subsections 108.11(A)(1), 108.11(A)(2), or 108.11(A)(5) the number of days from the effective date of the Engineer's order to suspend operations to the effective date of the Engineer's order to resume operations shall not be counted as contract time and the contract completion date will be adjusted. During periods of partial suspensions of the work, the Contractor will be granted a time extension only if the partial suspension affects the critical path. If the Contractor believes that an extension of time is justified for a partial suspension of work, it must request the extension in writing at least five working days before the partial suspension will affect the critical operation(s) in progress. The Contractor must show how the critical path was increased based on the status of the work and must also support its claim if requested, with statements from its subcontractors. A suspension of work will not constitute a waiver of pre-existing Contractor delay.

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

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

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

(c) Delays requested for changes which do not affect the critical path.

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(d) Delays caused by the failure of the Contractor to make submittals in a timely manner for review and acceptance by the Engineer, such as but not limited to shop drawings, descriptive sheets, material samples, and color samples except as covered in Subsection 108.06(B)(3) and 108.06(B)(4).

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

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

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

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

108.07 Progress Schedules.

(A) **Forms of Schedule.** All schedules shall be submitted using the specific computer program designated in the bid documents. If no such scheduling software program is designated, then all schedules shall be submitted using the latest version of SureTrak Project Manager by Primavera Systems, Inc.

Schedule submittals shall be as follows:

(1) **For Contracts \$2,000,000 or less or For Contract Time 100 Working Days or 140 Calendar Days or less.** For contracts of \$2,000,000 or less or for contract time of 100 working days or 140 calendar days or less, the progress schedule will be a Time Scaled Logic Diagram (TSLD). The Contractor shall submit a TSLD submittal package and it shall meet the following requirements and have these essential and distinctive elements:

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

- 424 progress of the work, schedules, and coordination required
425 by any utility, off or on site fabrications, and other pertinent
426 factors that relate to progress;
- 427
- 428 **(b)** All features listed or not listed in the contract
429 documents that the Contractor considers a controlling factor
430 for the timely completion of the contract work;
- 431
- 432 **(c)** The time span and sequence of the activities or
433 events for each feature, and its interrelationship and
434 interdependencies in time and logic to other features in
435 order to complete the project;
- 436
- 437 **(d)** The total anticipated time necessary to complete work
438 required by the contract;
- 439
- 440 **(e)** A chronological listing of critical intermediate dates or
441 time periods for features or milestone or phases that can
442 affect timely completion of the project;
- 443
- 444 **(f)** Major activities related to the location on the project;
- 445
- 446 **(g)** Non-construction activities, such as submittal and
447 acceptance periods for shop drawings and material,
448 procurement, testing, fabrication, mobilization, and
449 demobilization or order dates of long lead material;
- 450
- 451 **(h)** Set schedule logic for out of sequence activities to
452 retain logic. In addition, open ends shall be non-critical;
- 453
- 454 **(i)** Show target bars for all activities;
- 455
- 456 **(j)** Vertical and horizontal sight lines both major and
457 minor shall be used as well as a separator line between
458 groups. The Engineer shall determine frequency and style;
- 459
- 460 **(k)** The file name, print date, revision number, data and
461 project title and number shall be included in the title block;
462 and
- 463
- 464 **(l)** Have columns with the appropriate data in them for
465 activity ID, Description, Original Duration, Remaining
466 Duration, Early Start, Early Finish, Total Float, Percent
467 Complete, Resources. The Resource column shall list
468 who is responsible for the work to be done in the activity.
469 These columns shall be to the left of the bar chart.
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471 (2) For Contracts Which Have A Contract Amount More
472 Than \$2,000,000 Or Having A Contract Time Of More Than 100
473 Working Days Or 140 Calendar Days. For contracts which
474 have a contract amount more than \$2,000,000 or contract time of
475 more than 100 working days or 140 calendar days, the Contractor
476 shall submit a Timed-Scaled Logic Diagram (TSLD) and it shall
477 meet the following requirements and have these essential and
478 distinctive elements:
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480 (a) The information and requirements listed in A above;

481
482 (b) Additional reports and graphics available from the
483 software as requested by the Engineer;

484
485 (c) Sufficient detail to allow at least weekly monitoring of
486 the Contractor and subcontractor's operations;

487
488 (d) The time scaled schematic shall be on a calendar or
489 working days basis. What will be used shall be
490 determined by how the Contract keeps track of time. It will
491 be the same. Plot the critical calendar dates anticipated;

492
493 (e) Breakdown of activity, such as forming, placing
494 reinforcing steel, concrete pouring and curing, and stripping
495 in concrete construction. Indicate location of work to be
496 done in such detail that it would be easily determined where
497 work would be occurring within approximately 200 feet;

498
499 (f) Latest start and finish dates for critical path activities;

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501 (g) Identify responsible subcontractor, supplier, and
502 others for their respective activity;

503
504 (h) No individual activity shall have duration of more than
505 20 calendar days unless requested and approved by the
506 Engineer;

507
508 (i) All activities shall have work breakdown structure
509 codes and activity codes. The activity codes shall have
510 coding that incorporates information for phase, location,
511 who is responsible for doing work and type of operation and
512 activity description and

513
514 (j) Incorporate all physical access and availability
515 restraints.
516

517 **(B) Inspection and Testing.** All schedule shall provide reasonable
518 time and opportunity for the Engineer to inspect and test each work
519 activity.
520

521 **(C) Engineer's Acceptance of Progress Schedule.** The submittal
522 of, and the Engineer's receipt of any progress schedule shall not be
523 deemed an agreement to modify any terms or conditions of the contract.
524 Any modifications to the contract terms and conditions that appear in or
525 may be inferred from an acceptable schedule will not be valid or
526 enforceable unless and until the Engineer exercises discretion to issue an
527 appropriate change order. Nor shall any submittal or receipt imply the
528 Engineer's approval of the schedule's breakdown, its individual elements,
529 any critical path that may be shown nor shall it obligate the Department to
530 make its personnel available outside normal working hours or the working
531 hours established by the Contract in order to accommodate such
532 schedule. The Contractor has the risk of all elements (whether or not
533 shown) of the schedule and its execution. No claim for additional
534 compensation or time, or both shall be made by the Contractor or
535 recognized by the Engineer for delays during any period for which an
536 acceptable progress schedule or an updated progress schedule as
537 required by Subsection 108.07(E) – Contractor's Continuing Schedule
538 Submittal Requirements had not been submitted. Any acceptance or
539 approval of the schedule shall be for general format only and shall not be
540 deemed an agreement by the Department that the construction means,
541 methods and resources shown on the schedule will result in work that
542 conforms to the contract requirements or that the sequences or durations
543 indicated are feasible.
544

545 **(D) Initial Progress Schedule.** The Contractor shall submit an initial
546 progress schedule. The initial progress schedule shall consist of the
547 following:
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- 549 (1) Four sets of the TSLD schedule,
- 550
- 551 (2) All the software files and data to re-create the TSLD in a
552 computerized software format as specified by the Engineer.
553
- 554 (3) A listing of equipment that is anticipated to be used on the
555 project. Including the type, size, make, year of manufacture,
556 and all information necessary to identify the equipment in the
557 Rental Rate Blue Book for Construction Equipment,
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- 559 (4) An anticipated manpower requirement graph plotting
560 contract time and total manpower requirement. This may be
561 superimposed over the payment graph.
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(5) A Method Statement that is a detailed narrative describing the work to be done and the method by which the work shall be accomplished for each major activity. A major activity is an activity that:

- (a) Has a duration longer than five days;
- (b) Is a milestone activity;
- (c) Is a contract item that exceeds \$10,000 on the contract cost proposal;
- (d) Is a critical path activity; or
- (e) Is an activity designated as such by the Engineer.

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

- (i) Quantity, type, make, and model of equipment,
- (ii) The manpower to do the work, specifying worker classification, and
- (iii) The production rate per eight hour day, needed to meet the time indicated on the schedule.

(6) Two sets of color time-scaled project evaluation and review technique charts ("PERT") using the activity box template of Logic – Early Start or such other template designated by the Engineer.

If the Contract Documents establish a sequence or order for the work, the initial progress schedule shall conform to such sequence or order.

(E) Contractor's Continuing Schedule Submittal Requirements. After the acceptance of the initial TSLD and when construction starts, the Contractor shall submit four plotted progress schedules, two PERT charts, and reports on all construction activities every two weeks (bi-weekly). This scheduled bi-weekly submittal shall also include an updated version of the project schedule in a computerized software format as specified by the Engineer. The submittal shall have all the information needed to re-create that time period's TSLD plot and reports. The bi-weekly submittal shall include, but not limited to, an update of activities based on actual durations, all new activities and any changes in duration or start or finish dates of any activity.

610 The Contractor shall submit with every update, in report form
611 acceptable to the Engineer, a list of changes to the progress schedule
612 since the previous schedule submittal. The Engineer may change the
613 frequency of the submittal requirements but may not require a submittal of
614 the schedule to be more than once a week. The Engineer may
615 decrease the frequency of the submittal of the bi-weekly schedule.
616

617 The Contractor shall submit updates of the anticipated work
618 completion graph, equipment listing, manpower requirement graph or
619 method statement when requested by the Engineer. Such updates shall
620 be submitted within four calendar days from the date of the request by the
621 Engineer.
622

623 The Engineer may withhold progress payment until the Contractor
624 is in compliance with all schedule update requirements
625

626 **(F) Float.** All float appearing on a schedule is a shared commodity.
627 Float does not belong to or exist for the exclusive use or benefit of either
628 the State or the Contractor. The State or the Contractor has the
629 opportunity to use available float until it is depleted. Float has no
630 monetary value.
631

632 **(G) Scheduled Meetings.** The Contractor shall meet on a bi-weekly
633 basis with the Engineer to review the progress schedule. The
634 Contractor shall have someone attending the meeting that can answer all
635 questions on the TSLD and other schedule related submittals.
636

637 **(H) Accelerated Schedule; Early Completion.** If the Contractor
638 submits an accelerated schedule (shorter than the contract time), the
639 Engineer's review and acceptance of an accelerated schedule does not
640 constitute an agreement or obligation by the State to modify the contract
641 time or completion date. The Contractor is solely responsible for and
642 shall accept all risks and any delays, other than those that can be directly
643 and solely attributable to the State that may occur during the work, until
644 the contract completion date. The contract time or completion date is
645 established for the benefit of the State and cannot be changed without an
646 appropriate change order or final acceptance by the State. The State
647 may accept the work before the completions date is established, but is
648 not obligated to do so.
649

650 If the TSLD indicates an early completion of the project the
651 Contractor shall upon submittal of the schedule cooperate with the State
652 in explaining how it will be achieved. In addition, the Contractor shall
653 submit the above explanation in writing which shall include the State's
654 part, if any, in achieving the early completion date. Early completion of
655 the project shall not rely on changes to the Contract Documents unless
656 approved by the Engineer.

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

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

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

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

- (1)** All construction events, traffic control and BMP related activities in such detail that the Engineer will be able to determine at what location and type of work will be done for any day for the next three weeks. This is for the State to use to plan its manpower requirements for that time period;
- (2)** The duration of all events and delays;
- (3)** The critical path clearly marked in red or marked in a manner that makes it clearly distinguishable from other paths and is acceptable to the Engineer;
- (4)** Critical submittals and requests for information (RFI's);
- (5)** The project title, project number, dated created, period the schedule covers, Contractor's name and creator of the schedule on each page.

703 Two days prior to each weekly meeting, the Contractor shall
704 submit a list of outstanding submittals, RFIs and issues that require
705 discussion.
706
707
708

709 **108.09 Liquidated Damages for Failure to Complete the Work or Portions**
710 **of the Work on Time.** The actual amount of damages resulting from the
711 Contractor's failure to complete the contract in a timely manner is difficult to
712 accurately determine. Therefore the amount of such damages shall be
713 liquidated damages as set forth herein. The State may, at its discretion
714 deduct the amount from monies due or that may become due under the contract.
715

716 When the Contractor fails to reach substantial completion of the work for
717 which liquidated damages are specified, within the time or times fixed in the
718 contract or any extension thereof, in addition to all other remedies for breach
719 that may be available to the State, the Contractor shall pay liquidated damages
720 to the State, in the amount of \$5,000 per working day.
721

722 **(A) Liquidated Damages Upon Termination.** If the State
723 terminates on account of Contractor's default, liquidated damages may
724 be charged against the defaulting Contractor and its surety until final
725 completion of work.
726

727 **(B) Liquidated Damages for Failure to Complete the Punchlist.**
728 The Contractor shall complete the work on any punchlist created after
729 substantial completion, within the contract time or any extension thereof.
730

731 When the Contractor fails to complete the work on such punchlist
732 within the contract time or any extension thereof, the Contractor shall pay
733 liquidated damages to the State of 20 percent of the amount of liquidated
734 damages established for failure to substantially complete the work within
735 contract time. Liquidated damages shall not be assessed for the period
736 between
737

738 (1) Substantial completion of the work and the time the
739 punchlist is delivered to the Contractor,
740

741 (2) The date of the completion of punchlist as determined by the
742 Engineer and the date of the successful final inspection, and
743

744 (3) The date of the inspection that results in final acceptance
745 and the receipt by the Contractor of the written notice of the final
746 acceptance.
747

748 **(C) Actual Damages Recoverable If Liquidated Damages Deemed**
749 **Unenforceable.** In the event a court of competent jurisdiction holds that

750 any liquidated damages assessed pursuant to this contract are
751 unenforceable, the State will be entitled to recover its actual damages for
752 Contractor's failure to complete the work, or any designated portion of the
753 work within the time set by the contract.
754

755 **108.10 Rental Fees for Unauthorized Lane Closure or Occupancy.** In
756 addition to all other remedies available to the State for Contractor's breach of the
757 terms of the contract, the Engineer will assess the rental fees in the amount of
758 \$1,000 for every one-to fifteen-minute increment for each roadway lane closed
759 to the public use or occupied beyond the time periods authorized in the contract
760 or by the Engineer. The maximum amount assessed per day shall be \$10,000
761 The State may, at its discretion, deduct the amount from monies due or that
762 may become due under the contract. The rental fee may be waived in whole
763 or part if the Engineer determines that the unauthorized period of lane closure or
764 occupancy was due to factors beyond the control of the Contractor.
765 Equipment breakdown is not a cause to waive liquidated damages.
766

767 **108.11 Suspension of Work.**
768

769 **(A) Suspension of Work.** The Engineer may, by written order,
770 suspend the performance of the work, either in whole or in part, for such
771 periods as the Engineer may deem necessary, for any cause, including
772 but not limited to:
773

774 (1) Weather or soil conditions considered unsuitable for
775 prosecution of the work;
776

777 (2) Whenever a redesign that may affect the work is deemed
778 necessary by the Engineer;
779

780 (3) Unacceptable noise or dust arising from the construction
781 even if it does violate any law or regulation;
782

783 (4) Failure on the part of the Contractor to:
784

785 (a) Correct conditions unsafe for the general public or for
786 the workers;
787

788 (b) Carry out orders given by the Engineer;
789

790 (c) Perform the work in strict compliance with the
791 provisions of the contract; or
792

793 (d) Provide adequate supervision on the jobsite.
794

795 (5) The convenience of the State.
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(B) Partial and Total Suspension. Suspension of work on some but not all items of work shall be considered a "partial suspension". Suspension of work on all items shall be considered "total suspension". The period of suspension shall be computed from the date set out in the written order for work to cease until the date of the order for work to resume.

(C) Reimbursement to Contractor. In the event that the Contractor is ordered by the Engineer in writing as provided herein to suspend all work under the contract for the reasons specified in Subsections 108.11(A)(2), 108.11(A)(3), or 108.11(A)(5) of the "Suspension of Work" paragraph, the Contractor may be reimbursed for actual direct costs incurred on work at the jobsite, as authorized in writing by the Engineer, including costs expended for the protection of the work. An allowance of 5 percent for indirect categories of delay costs will be paid on any reimbursed direct costs, including extended branch and home-office overhead and delay impact costs. No allowance will be made for anticipated profits. Payment for equipment which is ordered to standby during such suspension of work shall be made as described in Subsection 109.04(H) - Rental Rates for Idle and Standby Time.

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

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

- (1) For weather related conditions,
- (2) To the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor; or
- (3) 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 104.09 – Methods of Price Adjustment.

Any claims for such compensation shall be filed in writing with the Engineer within 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 105.18(D) – Making of a Claim. The

844 Engineer will take the claim under consideration, may make such
845 investigations as are deemed necessary and will be the sole judge as to
846 the equitability of the claim. The Engineer's decision will be final.
847

848 **(F) No Adjustment.** No provision of this clause shall entitle the
849 Contractor to any adjustments for delays due to failure of its surety, the
850 cancellation or expiration of any insurance coverage required by the
851 contract documents, for suspensions made at the request of the
852 Contractor, for any delay required under the contract, or for suspensions,
853 either partial or whole, made by the Engineer under Subsection
854 108.11(A)(4) of the "Suspension of work" paragraph.
855

856 **108.12 Termination of Contract for Cause.**

857

858 **(A) Default.** If the Contractor refuses or fails to perform the work, or
859 any separable part thereof, with such diligence as will assure its
860 completion within the time specified in this contract, or any extension
861 thereof, or commits any other material breach of this contract, and
862 further fails within seven days after receipt of written notice from the
863 Engineer to commence and continue correction of the refusal or failure
864 with diligence and promptness, the Engineer may, by written notice to
865 the Contractor, declare the Contractor in breach and terminate the
866 Contractor's right to proceed with the work or the part of the work as to
867 which there has been a delay or other breach of contract. In such
868 event, the State may take over the work, perform the same to
869 completion, by contract or otherwise, and may take possession of, and
870 utilize in completing the work, the materials, appliances, and plant as
871 may be on the site of the work and necessary therefore. Whether or not
872 the Contractor's right to proceed with the work is terminated, the
873 Contractor and the Contractor's sureties shall be liable for any damage to
874 the State resulting from the Contractor's refusal or failure to complete the
875 work within the specified time.
876

877 **(B) Additional Rights and Remedies.** The rights and remedies of
878 the State provided in this contract are in addition to any other rights and
879 remedies provided by law.
880

881 **(C) Costs and Charges.** All costs and charges incurred by the
882 State, together with the cost of completing the work under contract, will
883 be deducted from any monies due or which would or might have become
884 due to the Contractor had it been allowed to complete the work under the
885 contract. If such expense exceeds the sum which would have been
886 payable under the contract, then the Contractor and the surety shall be
887 liable and shall pay the State the amount of the excess.
888

889 In case of termination, the Engineer will limit any payment to the
890 Contractor to the part of the contract satisfactorily completed at the time of

891 termination. Payment will not be made until the work has satisfactorily
892 been completed and all required documents, including the tax clearance
893 required by Subsection 109.11 – Final Payment are submitted by the
894 Contractor. Termination shall not relieve the Contractor or Surety from
895 liability for liquidated damages.
896

897 **(D) Erroneous Termination for Cause.** If, after notice of
898 termination of the Contractor's right to proceed under this section, it is
899 determined for any reason that good cause did not exist to allow the State
900 to terminate as provided herein, the rights and obligations of the parties
901 shall be the same as, and the relief afforded the Contractor shall be
902 limited to, the provisions contained in Subsection 108.13 – Termination
903 for Convenience.
904

905 **108.13 Termination For Convenience.**
906

907 **(A) Terminations.** The Director may, when the interests of the
908 State so require, terminate this contract in whole or in part, for the
909 convenience of the State. The Director will give written notice of the
910 termination to the Contractor specifying the part of the contract terminated
911 and when termination becomes effective.
912

913 **(B) Contractor's Obligations.** The Contractor shall incur no further
914 obligations in connection with the terminated work and on the date set in
915 the notice of termination the Contractor shall stop work to the extent
916 specified. The Contractor shall also terminate outstanding orders and
917 subcontracts as they relate to the terminated work. The Contractor shall
918 settle the liabilities and claims arising out of the termination of
919 subcontracts and orders connected with the terminated work subject to
920 the State's approval. The Engineer may direct the Contractor to assign
921 the Contractor's right, title, and interest under terminated orders or
922 subcontracts to the State. The Contractor must still complete the work
923 not terminated by the notice of termination and may incur obligations as
924 necessary to do so.
925

926 **(C) Right to Construction and Goods.** The Engineer may require
927 the Contractor to transfer title and to deliver to the State in the manner
928 and to the extent directed by the Engineer, the following:
929

930 (1) Any completed work and
931

932 (2) Any partially completed construction, goods, materials,
933 parts, tools, dies, jigs, fixtures, drawings, information, and
934 contract rights (hereinafter called "construction material") that the
935 Contractor has specifically produced or specially acquired for the
936 performance of the terminated part of this contract.
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(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 Subchapter 15, Chapter 3-122, HAR. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Engineer may pay the Contractor, if at all, an amount set in accordance with Subsection 108.13(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 108.13(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 paid to subcontractor, less amounts paid or to be paid for completed portions of such work; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss. No anticipated profit or consequential damage will be due or paid.

(b) Subcontractors shall be paid a markup of 10 percent on their direct job costs incurred to the date of termination. No anticipated profit or consequential damage will be due or paid to any subcontractor. These costs must not include

984 payments made to the Contractor for subcontract work
985 during the contract period.

986
987 (c) The total sum to be paid the Contractor shall not
988 exceed the total contract price reduced by the amount of any
989 sales of construction supplies, and construction materials.

990
991 (4) Cost claimed, agreed to, or established by the State shall
992 be in accordance with Chapter 3-123, HAR.

993
994 **108.14 Pre-Final and Final Inspections.**

995
996 (A) **Inspection Requirements.** Before the Engineer undertakes a
997 final inspection of any work, a pre-final inspection must first be
998 conducted. The Contractor shall notify the Engineer that the work has
999 reached substantial completion and is ready for pre-final inspection.

1000
1001 (B) **Pre-Final Inspection.** Before notifying the Engineer that the
1002 work has reached substantial completion, the Contractor shall inspect the
1003 project and test all installed items with all of its subcontractors as
1004 appropriate. The Contractor shall also submit the following documents
1005 as applicable to the work:

1006
1007 (1) All written guarantees required by the contract.

1008
1009 (2) Two accepted final field-posted drawings accepted by the
1010 Engineer in accordance with Section 648 – Field-Posted Drawings.

1011
1012 (3) Complete weekly certified payroll records for the Contractor
1013 and Subcontractors.

1014
1015 (4) Certificate of Plumbing and Electrical Inspection.

1016
1017 (5) Certificate of building occupancy as required.

1018
1019 (6) Certificate of Soil and Wood Treatments.

1020
1021 (7) Certificate of Water System Chlorination.

1022
1023 (8) Certificate of Elevator Inspection, Boiler and Pressure Pipe
1024 Inspection.

1025
1026 (9) Maintenance Service Contract and two copies of a list of all
1027 equipment installed.

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(10) Current Tax clearance. The contractor will be required to submit an additional tax clearance certificate when the final payment is made.

(11) Any other final items and submittals required by the contract documents.

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

The Engineer will then make a preliminary determination as to whether or not the project is substantially complete and ready for pre-final inspection. The Engineer may, in writing, postpone until after the pre-final inspection the Contractor's submittal of any of the items listed in Subsection 108.14(B) – Pre-Final Inspection, herein, if in the Engineer's discretion it is in the interest of the State to do so.

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

After the Engineer is satisfied that the project appears substantially complete a pre-final inspection shall be scheduled within ten working days after receipt of the Contractor's latest letter of notification that the project is ready for pre-final inspection.

If, as a result of the pre-final inspection, the Engineer determines the work is not substantially complete, the Engineer will inform the Contractor in writing as to specific deficiencies which must be corrected before the work will be ready for another pre-final inspection. If the Engineer finds the work is substantially complete but finds deficiencies that must be corrected before the work is ready for final inspection, the Engineer will prepare in writing and deliver to the Contractor a punchlist describing such deficiencies.

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

1076 When the date of substantial completion has been determined by
1077 the State, liquidated damages for the failure to complete the punchlist, if
1078 due to the State will be assessed in pursuant to Subsection 108.09(B) –
1079 Liquidated Damages for Failure to Complete the Punchlist.
1080

1081 **(D) Punchlist; Final Inspection.** Upon receiving a punchlist after
1082 substantial completion, the Contractor shall promptly devote all required
1083 time, labor, equipment, materials and incidentals to correct and remedy
1084 all punchlist deficiencies. The Engineer may add to or otherwise modify
1085 this punchlist until final acceptance of the project.
1086

1087 Before final inspection of the work, the Contractor shall clean all
1088 ground occupied by the Contractor in connection with the work of all
1089 rubbish, excess materials, temporary structures and equipment, and all
1090 parts of the work and the worksite must be left in a neat and presentable
1091 condition to the satisfaction of the Engineer.
1092

1093 Final inspection will occur within ten working days after the
1094 Contractor notifies the Engineer in writing that all punchlist deficiencies
1095 remaining after the pre-final inspection have been completed and the
1096 Engineer concurs. If the Engineer determines that deficiencies still
1097 remain at the final inspection, the work will not be accepted and the
1098 Engineer will in writing notify the Contractor of the deficiencies which shall
1099 be corrected and the steps above repeated.
1100

1101 If the Contractor fails to correct the deficiencies and complete the
1102 work by the established or agreed date, the State may correct the
1103 deficiencies by whatever method it deems appropriate and deduct the
1104 cost from any payments due the Contractor.
1105

1106 **108.15 Use of Structure or Improvement.** The State has the right to
1107 use the structure, equipment, improvement, or any part thereof, at any time
1108 after it is considered by the Engineer as available. In the event that the
1109 structure, equipment or any part thereof is used by the State before final
1110 acceptance, the Contractor is not relieved of its responsibility to protect and
1111 preserve all the work until final acceptance.
1112

1113 **108.16 Contractor's Responsibility for Work; Risk of Loss or**
1114 **Damage.** Until the written notice of final acceptance has been received, the
1115 Contractor shall take every precaution against loss or damage to any part of the
1116 work by the action of the elements or from any other cause whatsoever, whether
1117 arising from the performance or from the non-performance of the work. The
1118 Contractor shall rebuild, repair, restore and make good all loss or damage to
1119 any portion of the work resulting from any cause before its receipt of the written
1120 notice of final acceptance and shall bear the risk and expense thereof.
1121

1122 The risk of loss or damage to the work from any hazard or occurrence that
1123 may or may not be covered by a builder's risk policy is that of the Contractor and
1124 Surety, unless such risk of loss is placed elsewhere by express language in the
1125 contract documents.
1126

1127 **108.17 Final Acceptance.** When the Engineer finds that the project has
1128 been satisfactorily completed in compliance with the contract, the Engineer will
1129 notify the Contractor in writing of the project's completion and acceptance and
1130 will notify the Contractor in writing of its acceptance effective as of the date of the
1131 final inspection. The final acceptance date shall determine end of contract
1132 time, liquidated damages for failure to complete the punchlist and
1133 commencement of all guaranty periods subject to Subsection 108.16 –
1134 Contractor's Responsibility for Work; Risk of loss or Damage.
1135

1136 **108.18 Guarantee of Work.**
1137

1138 (1) Regardless of and in addition to any manufacturers' warranties, all
1139 work and equipment shall be guaranteed by the Contractor against
1140 defects in materials, equipment or workmanship for one year from the
1141 date of final acceptance or as otherwise specified in the contract
1142 documents.
1143

1144 (2) When the Engineer determines that repairs or replacements of any
1145 guaranteed work and equipment is necessary due to materials,
1146 equipment, or workmanship which are inferior, defective, or not in
1147 accordance with the terms of the contract, the Contractor shall at no
1148 increase in contract price or contract time and within five working days of
1149 receipt of written notice from the State, commence to:
1150

1151 (a) Correct all noted defects and make replacements, as
1152 directed by the Engineer, in the equipment and work; and
1153

1154 (b) Repair or replace to new or pre-existing condition any
1155 damages resulting from such defective materials, equipment or
1156 installation thereof.
1157

1158 (3) The State will be entitled to the benefit of all manufacturers and
1159 installers warranties that extend beyond the terms of the Contractor's
1160 guaranty regardless of whether or not such extended warranty is required
1161 by the contract documents. The Contractor shall prepare and submit all
1162 documents required by the providers of such warranties to make them
1163 effective, and submit copies of such documents to the Engineer. If an
1164 available extended warranty cannot be transferred or assigned to the
1165 State as the ultimate user, the Contractor shall notify the Engineer who
1166 may direct that the warranted items be acquired in the name of the State
1167 as purchaser.
1168

1169 (4) If a defect is discovered during a guarantee period, all repairs and
1170 corrections to the defective items when corrected shall be guaranteed for
1171 a new duration equal to the original full guarantee period. The running
1172 of the guarantee period shall be suspended for all other work affected by
1173 any defect. The guarantee period for all other work affected by any
1174 such defect shall restart for its remaining duration upon confirmation by
1175 the Engineer that the deficiencies have been repaired or remedied.

1176
1177 (5) Nothing in this section is intended to limit or affect the State's rights
1178 and remedies arising from the discovery of latent defects in the work after
1179 the expiration of any guarantee period.

1180
1181 **108.19 No Waiver of Legal Rights.** The following will not operate or be
1182 considered as a waiver of any portion of the contract, or any power herein
1183 reserved, or any right to damages provided herein or by law:

1184
1185 (1) Any payment for or acceptance of the whole or any part of the
1186 work, or

1187
1188 (2) Any extension of time, or

1189
1190 (3) Any possession taken by the Engineer.

1191
1192 A waiver of any notice requirement or of any noncompliance with the
1193 contract will not be held to be a waiver of any other notice requirement or any
1194 other noncompliance with the contract.

1195
1196 **108.20 Final Settlement of Contract.**

1197
1198 (A) **Closing Requirements.** The contract will be considered settled
1199 after the project acceptance date and when the following items have been
1200 satisfactorily submitted, where applicable:

1201
1202 (1) All written guarantees required by the contract.

1203
1204 (2) Complete and certified weekly payrolls for the Contractor
1205 and its Subcontractor's.

1206
1207 (3) Certificate of Plumbing and Electrical Inspection.

1208
1209 (4) Certificate of Building Occupancy.

1210
1211 (5) Certificate for Soil Treatment and wood Treatment.

1212
1213 (6) Certificate of Water System Chlorination.

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(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 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