

1 Make this section a part of the Standard Specifications:

2
3 **“SECTION 103 - AWARD AND EXECUTION OF CONTRACT**
4

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

11
12 The “Buy America” provisions in the Surface Transportation Assistance Act
13 of 1982 is applicable to Federal-aid projects. Bidders may submit a bid based
14 upon the furnishing and use of domestic steel or foreign steel. Manufacturing
15 processes for domestic steel shall occur in the United States.

16
17 The Department reserves the right to reject proposals, waive technicalities
18 or advertise for new proposals, if the rejection, waiver, or new advertisement
19 favors the Department.

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

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

38
39 The Department may request the bidders to allow the
40 Department to consider the bids for the issuance of an award beyond
41 the sixty (60) calendar day period. Agreement to such an extension
42 must be made by a bidder in writing. Only bidders who have agreed
43 to such an extension will be eligible for the award.
44

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

53
54 FORM A6, TAX CLEARANCE CERTIFICATE, is available at
55 the following website:

56
57 <https://tax.hawaii.gov/>
58

59 To receive DOTAX Forms by fax or mail, phone
60 (808) 587-7572 or 1-800-222-7572.
61

62 The application for the Tax Clearance Certificate is the responsibility
63 of the bidder and must be submitted directly to the DOTAX or IRS. The
64 approved certificate may then be submitted to the Department.
65

66 **(B) DLIR Certificate of Compliance.** Pursuant to HRS Section 103D-
67 310(c), the successful bidder shall be required to submit a copy (faxed
68 copies are acceptable) of its approved certificate of compliance issued by
69 the Hawaii State Department of Labor and Industrial Relations (DLIR) to
70 demonstrate its compliance with unemployment insurance (HRS Chapter
71 383), workers' compensation (HRS Chapter 386), temporary disability
72 insurance (HRS Chapter 392), and prepaid health care (HRS Chapter 393).
73 The certificate is valid for six (6) months from the most recent approval
74 stamp date on the certificate and must be valid on the bid's first legal
75 advertisement date or any date thereafter up to the bid opening date. For
76 certificates which receive a "pending" approval stamp, a DLIR approval
77 stamp is required prior to the issuance of the Notice to Proceed.
78

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

81
82 <http://labor.hawaii.gov/>
83

84 More information is available by calling the DLIR Unemployment Insurance
85 Division at (808) 586-8926.
86

87 Inquiries regarding the status of a LIR#27 Form may be made by
88 calling the DLIR Disability Compensation Division at (808) 586-9200.
89

90 The application for the Certificate of Compliance is the responsibility
91 of the bidder and must be submitted directly to the DLIR. The approved
92 certificate may then be submitted to the Department.
93

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

100 (1) Incorporated or organized under the laws of the State; or
101

102 (2) Registered to do business in the State as a separate branch
103 or division that is capable of fully performing under the contract.
104

105 The Certificate of Good Standing is valid for six (6) months
106 from the approval date on the certificate and must be valid on the
107 bid's first legal advertisement date or any date thereafter up to the
108 bid opening date. A Hawaii business that is a sole proprietorship,
109 however, is not required to register with the BREG, and therefore not
110 required to submit a Certificate of Good Standing. Bidders are
111 advised that there are costs associated with registering and
112 obtaining a Certificate of Good Standing from the DCCA.
113

114 To purchase a CERTIFICATE OF GOOD STANDING, go to On-Line
115 Services at the following website:
116

117 <http://cca.hawaii.gov/>
118

119 The application for the Certificate of Good Standing is the
120 responsibility of the bidder and must be submitted directly to the DCCA.
121 The approved certificate may then be submitted to the Department.
122

123 **(D) Hawaii Compliance Express (HCE).** In lieu of the certificates
124 referenced above, the bidder may make available proof of compliance
125 through the Hawaii Compliance Express or any other designated
126 certification process. Bidders may apply and register at the "Hawaii
127 Compliance Express" website:
128

129 <https://vendors.ehawaii.gov/hce/>
130

131 This contract, to be awarded, is considered a requirement contract, as the
132 pavement reconstruction, cold planing, and resurfacing by the Contractor will be
133 made on an "as-needed" basis during the twelve (12)-month contract period. The
134 State gives no assurance as to the number of services it will purchase.
135

The bidder must maintain an office on the Island of Kauai to be awarded the contract.

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

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

103.05 Requirement of Contract Bond. At the time of execution of the contract, the successful bidder shall file a good and sufficient performance bond and a payment bond on the forms furnished by the Department conditioned for the full and faithful performance of the contract in accordance with the terms and intent thereof and for the prompt payment to all others for all labor and material furnished by them to the bidder and used in the prosecution of the work provided for in the contract. The bidder shall limit the acceptable performance and payment bonds to the following:

- (a) Legal tender;
- (b) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii; or
- (c) A certificate of deposit; share certificate; cashier's check; treasurer's check, teller's check drawn by, or a certified check accepted by and payable on demand to the State by a bank savings institution or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA).
 - 1. The bidder may use these instruments only to a maximum of \$100,000.
 - 2. If the required security or bond amount totals over \$100,000 more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be acceptable.

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

182 The contract bond required shall be furnished by the Contractor for the term
183 of the contract (twelve (12) months). The bond of the contract shall be submitted
184 to the State, or such additional time as may be granted by the State. Such bond
185 for each extended year may be extensions of the original bond by endorsements
186 thereto.

187
188 In as much as the contract to be executed is a price-term, open end, or
189 requirements contract under which the contract price, or total amount to be paid
190 the Contractor cannot be determined at the time the contract is executed, the
191 performance and payment bond amounts required for the work shall be
192 \$3,000,000.00

193
194 The State and the Contractor may mutually agree to an adjustment of the
195 bond amount as the scope of work is completed or as negotiated in each work
196 order under the performance of this contract.

197
198 **103.06 Execution of the Contract.** The contract bond and HRS Chapter 104
199 - Compliance Certificate, similar to a copy of the same annexed hereto, shall be
200 executed by the successful bidder and returned within ten (10) days after the
201 award of the contract or within such further time as the Director may allow after the
202 bidder has received the contract for execution.

203
204 The contract shall not bind the Department unless said parties execute the
205 contract and the Director of Finance endorses the bidder's certificate in
206 accordance with HRS Section 103-39.

207
208 **103.07 Failure to Execute Contract.** Failure to execute the contract and file
209 acceptable bonds shall be cause for the cancellation of the award in accordance
210 with Subsection 103.06 - Execution of the Contract. Also, the Contractor forfeits
211 the proposal guaranty which becomes the property of the Department. This is not
212 a penalty, but liquidated damages sustained by the State. The Department may
213 then make award to the next lowest responsible and responsive bidder, or the
214 Department may readvertise and construct the work under contract."

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217
218
219 **END OF SECTION 103**