

1 Make this section a part of the Standard Specifications:

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3 **"SECTION 103 - AWARD AND EXECUTION OF CONTRACT**

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5 **103.01 Consideration of Proposals.** The Department will compare the
6 proposals in terms of the summation of the products of the approximate
7 quantities and the unit bid prices after the Contracts Officer opens and reads the
8 proposals. The Department will make the results immediately available to the
9 public. If a discrepancy occurs between the unit bid price and the bid price, the
10 unit bid price shall govern.

11
12 The Department reserves the right to reject proposals, waive technicalities
13 or advertise for new proposals, if the rejection, waiver, or new advertisement
14 favors the Department.

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16 **103.02 Award of Contract.** The award of contract, if it be awarded, will
17 be made within 60 calendar days after the opening of bids, to the lowest
18 responsible bidder whose proposal complies with all the requirements. The
19 successful bidder will be notified by letter mailed to the address shown in its
20 proposal, that its proposal has been accepted, and that it has been awarded the
21 contract.

22
23 **(1) Requirement for Award.** To be eligible for award, the
24 apparent low bidder will be contacted to submit copies of the
25 documents listed below to demonstrate compliance with HRS
26 Section 103D-310(c). The documents should be submitted to the
27 Department as soon as possible. If a valid certificate/clearance is
28 not submitted on a timely basis for award of a contract, a bidder
29 otherwise responsive and responsible may not receive the award.
30 See also Subsection 108.03 – Preconstruction Data Submittal.

31
32 **(A) Tax Clearance.** Pursuant to HRS Sections 103D-310(c), 103-53
33 and 103D-328, the successful bidder shall be required to submit a
34 certified copy of its tax clearance issued by the Hawaii State Department
35 of Taxation (DOTAX) and the Internal Revenue Service (IRS) to
36 demonstrate its compliance with HRS Chapter 237. A tax clearance is
37 valid for six (6) months from the most recent approval stamp date on the
38 tax clearance and must be valid on the bid's first legal advertisement date
39 or any date thereafter up to the bid opening date.

40
41 FORM A6, TAX CLEARANCE CERTIFICATE, is available at
42 the following website:

43
44 <http://www.hawaii.gov/tax/>

45
46 To receive DOTAX Forms by fax or mail, phone
47 (808) 587-7572 or 1-800-222-7572.

48
49 The application for the Tax Clearance Certificate is the
50 responsibility of the bidder and must be submitted directly to the DOTAX

or IRS. The approved certificate may then be submitted to the Department.

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

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

www.hawaii.gov/labor

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

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

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

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

- (1) Incorporated or organized under the laws of the State; or
- (2) Registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

The Certificate of Good Standing is valid for six (6) months from the approval date on the certificate and must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date. A Hawaii business that is a sole proprietorship, however, is not required to register with the BREG, and therefore not required to submit a Certificate

of Good Standing. Bidders are advised that there are costs associated with registering and obtaining a Certificate of Good Standing from the DCCA.

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

www.hawaii.gov/dcca/

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

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

<https://vendors.ehawaii.gov/hce/splash/welcome.html>

Prospective bidders may submit a bid for any or all groups on the basic proposal schedule. The awarding of the contract(s) will be made to the lowest responsible bidder for each group.

This contract to be awarded is considered a requirement contract, as the crack seal repairs by the Contractor will be made on an "as-needed" basis during the 12-month contract period. The State gives no assurance as to the number of services it will purchase.

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

In as much as the contract to be executed is a price-term, open end, or requirements contract under which the contract price, or total amount to be paid the Contractor cannot be determined at the time the contract is executed, the performance and payment bond amount required for the work at all Areas shall be as follows:

<u>Proposal</u>	<u>Security Amount</u>
Area 1, 2, 3	\$200,000.00

195 **103.06 Execution of the Contract.** The contract bond and HRS Chapter
196 104 - Compliance Certificate, similar to a copy of the same annexed hereto,
197 shall be executed by the successful bidder and returned within ten days after the
198 award of the contract or within such further time as the Director may allow after
199 the bidder has received the contract for execution.
200

201 The contract shall not bind the Department unless said parties execute
202 the contract and the Director of Finance endorses the bidder's certificate in
203 accordance with HRS Section 103-39.
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205 **103.07 Failure to Execute Contract.** Failure to execute the contract and
206 file acceptable bonds shall be cause for the cancellation of the award in
207 accordance with Subsection 103.06 - Execution of the Contract. Also, the
208 Contractor forfeits the proposal guaranty which becomes the property of the
209 Department. This is not a penalty, but liquidated damages sustained by the
210 State. The Department may then make award to the next lowest responsible
211 bidder or the Department may readvertise and construct the work under
212 contract."
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218 **END OF SECTION 103**
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