

1                   **SECTION 103 - AWARD AND EXECUTION OF CONTRACT**

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3       Make the following amendments to said Section

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5       **(I)     Amend 103.01     Consideration of Proposal** to read as follows

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

13  
14           The Department reserves the right to reject proposals, waive technicalities  
15      or advertise for new proposals, if the rejection, waiver, or new advertisement  
16      favors the Department "

17  
18       **(II)    Amend 103.03    Award of Contract** to read as follows

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20       **"103.03     Award of Contract.**    The award of contract, if it be awarded, will  
21      be made within 60 calendar days after the opening of bids, to the lowest  
22      responsible bidder whose proposal complies with all the requirements   The  
23      successful bidder will be notified by letter mailed to the address shown on his/her  
24      proposal, that his/her proposal has been accepted, and that he/she has been  
25      awarded the contract

26  
27           **(1)     Requirement for Award.**   To be eligible for award, the  
28      apparent low Bidder will be contacted to submit copies of the  
29      documents listed below to demonstrate compliance with Section  
30      103D-310(c), HRS   The documents should be submitted to the  
31      Department as soon as possible   If a valid certificate/clearance is not  
32      submitted on a timely basis for award of a contract, a Bidder  
33      otherwise responsive and responsible may not receive the award

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

43  
44           DOTAX Website (Forms & Information)  
45           <http://www.state.hi.us/tax/alphalist.html#a>

46  
47           To receive DOTAX Forms by Fax or mail, phone  
48           (808)587-7572 or 1-800-222-7572  
49

50 The application for the clearance is the responsibility of the bidder,  
51 and must be submitted directly to the DOTAX or IRS and not to the  
52 Department  
53

54 **(B) DLIR Certificate of Compliance.** Pursuant to §103D-310(c), HRS,  
55 the successful bidder shall be required to submit a copy (faxed copies are  
56 acceptable) of its approved certificate of compliance issued by the Hawaii  
57 State Department of Labor and Industrial Relations (DLIR) to demonstrate its  
58 compliance with unemployment insurance (Chapter 383, HRS), workers'  
59 compensation (Chapter 386, HRS), temporary disability insurance (Chapter  
60 392, HRS), and prepaid health care (Chapter 393, HRS). The certificate is  
61 valid for 6 months from the most recent approval stamp date on the  
62 certificate. The DLIR certificate must be valid on the bid's first legal  
63 advertisement date or any date thereafter up to the bid opening date. For  
64 DLIR certificates which receive a "pending" approval stamp, a DLIR approval  
65 stamp is required prior to the issuance of the Notice to Proceed  
66

67 The 'APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH  
68 SECTION 3-122-112, HAR', Form LIR#27 is available at the following  
69 website [www.dlir.state.hi.us](http://www.dlir.state.hi.us)  
70

71 The form is also available at the DLIR Administrative Services Office,  
72 phone no (808)586-8888 and fax no (808)586-8899, or any of its District  
73 Offices. The DLIR will return the form to the bidder who in turn shall submit  
74 a copy to the Department  
75

76 The application for the certificate is the responsibility of the bidder,  
77 and must be submitted directly to the DLIR and not to the Department  
78

79 **(C) DCCA Certificate of Good Standing.** Pursuant to §103D-310(c),  
80 HRS, the successful bidder shall be required to submit a copy (faxed copies  
81 are acceptable) of its approved Certificate of Good Standing issued by the  
82 Hawaii State Department of Commerce and Consumer Affairs (DCCA),  
83 Business Registration Division (BREG) to demonstrate that it is either  
84

85 (1) Incorporated or organized under the laws of the State, or  
86

87 (2) Registered to do business in the State as a separate branch or  
88 division that is capable of fully performing under the contract  
89

90 The DCCA certificate is valid for 6 months from the approval date on  
91 the certificate. The DCCA certificate must be valid on the bid's first legal  
92 advertisement date or any date thereafter up to the bid opening date. A  
93 Hawaii business that is a sole proprietorship, however, is not required to  
94 register with the BREG, and therefore not required to submit the certificate.  
95 Bidders are advised that there are costs associated with registering and  
96 obtaining a "Certificate of Good Standing" from the DCCA  
97  
98  
99  
100

To obtain this certificate, go online to [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com) and follow the prompt instructions To register or to obtain a certificate by phone, call (808)586-2727 (M-F 7 45 am to 4 30 pm Hawaii Standard Time)

The application for the DCCA certificate is the responsibility of the bidder, and must be submitted directly to the DCCA and not to the Department "

**(III) Amend 103.06 Requirement of Contract Bond to read as follows**

**"103.06 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 (see attached) conditioned for the full and faithful performance of the contract according to 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 bonds, each of which shall be of an amount equal to 100% of the amount of the contract price and including 5% of the contract amount estimated to be required for extra work 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 Section 103D-324, HRS "

**(IV) Amend 103.07 Execution of the Contract by revising the first paragraph to read as follows**

147 **"103.07 Execution of Contract.** The contract bond and Chapter 104, HRS  
148 Compliance Certificate, similar to a copy of the same annexed hereto, shall be  
149 executed by the successful bidder and returned within ten days after the award of  
150 the contract or within such further time as the Director may allow after the bidder  
151 has received the contract for execution "

152  
153 **(V) Amend 103.09 Submission of Insurance Certification** to read as follows

154  
155 **"103.09 Insurance Requirements.**

156  
157 **(A) Obligation of Contractor.** Contractor shall obtain all required  
158 insurance as part of the contract price. The Contractor shall not commence  
159 any work until it obtains all required insurance. All required insurance  
160 must be maintained with a company authorized by law to issue such  
161 insurance in the State of Hawaii. The Contractor shall maintain all  
162 insurance until final acceptance of the work by the State.

163  
164 A certificate of insurance shall identify if the insurance company is a  
165 "captive" insurance company or a "Non-Admitted" carrier to the State of  
166 Hawaii. The Best's rating must be stated for the "Non-Admitted" carrier.  
167 Certificates shall contain a provision that coverages being certified will not  
168 be cancelled or materially changed without giving the Engineer at least 30  
169 days prior written notice by registered mail. If the State and its officers and  
170 employees are to be Additional Insureds on any of the required insurance, it  
171 shall be so noted on the certificate. Should any policy be cancelled before  
172 final acceptance of the work by the State, and the Contractor fails to  
173 immediately procure replacement insurance as specified, the State, in  
174 addition to all other remedies it may have for such breach, reserves the right  
175 to procure such insurance and deduct the cost thereof from any money due  
176 to the Contractor.

177  
178 Nothing contained in these insurance requirements is to be construed  
179 as limiting the extent of Contractor's responsibility for payment of damages  
180 resulting from its operations under this contract, including the Contractor's  
181 obligation to pay liquidated damages, nor shall it affect the Contractor's  
182 separate and independent duty to defend, indemnify and hold the State and  
183 its officers and employees, harmless pursuant to other provisions of the  
184 contract documents. The State's exercise of an option to occupy and use  
185 portions of the work does not relieve the Contractor of its obligation to  
186 maintain the required insurance until the date of final acceptance.

187  
188 All insurance described herein shall be primary and cover the insured  
189 for all work to be performed under the contract, including changes, and all  
190 work performed incidental thereto or directly or indirectly connected  
191 therewith, including but not limited to traffic detours, barricades, warnings,  
192 diversions, lane closures and other work performed outside the work area.

193           Upon request, the Contractor shall furnish the Engineer, a copy of  
194 required policies or other proof of coverage satisfactory to the Engineer, of  
195 each type of insurance covering the work. Failure to comply with the  
196 Engineer's request may result in suspension of the work, and shall be  
197 sufficient grounds to withhold future payments due the Contractor and to  
198 terminate the contract for the Contractor's default  
199

200 **(B) Types of Insurance.** Contractor shall purchase and maintain  
201 insurance described below  
202

203           **(1)** Commercial General Comprehensive Personal Injury and  
204 Property Damage Liability insurance with the following minimum limits  
205 of liability:  
206

207           Products - Completed/Operations Aggregate                         \$2,000,000  
208

209           Personal and Advertising Injury   \$2,000,000  
210

211           Bodily Injury and Property Damage         \$2,000,000 each occurrence  
212

213           The State of Hawaii, its officers and employees, shall be as  
214 additional insureds under these coverages  
215

216           **(2)** Automobile Liability insurance with the following minimum  
217 limits of liability  
218

219           Bodily Injury Liability   \$1,000,000 (Per accident)  
220

221           Property Damage Liability   \$1,000,000  
222

223           The State of Hawaii, its officers and employees, shall be as  
224 additional insureds under these coverages  
225

226           **(3)** Workers' Compensation insurance coverage for all persons  
227 whom the Contractor and all its subcontractors they employ in  
228 carrying out the work under this contract. This insurance shall be in  
229 strict conformity with the requirements of the most current and  
230 applicable State of Hawaii Worker's Compensation Insurance laws in  
231 effect on the date of the execution of this contract and as modified  
232 during the duration of the contract  
233

234           **(4)** Builder's Risk Insurance during the progress of the work and  
235 until final acceptance by the Engineer. It shall be "All Risk"  
236 (including but not limited to earthquake, windstorm and flood  
237 damage) completed value insurance coverage on all completed work  
238 and work in progress to the full replacement value thereof. Such

insurance shall include the State as an additional insured under these coverages. The Contractor shall submit to the Engineer for its approval all items deemed to be uninsurable. The policy may provide for a deductible in an amount of up to 25 percent of the amount insured by the policy. With respect to all losses up to any deductible amount, the relationship between the Contractor and the State shall be that of insurer and additional insured as if no deductible existed.

**(C) Breach of Duty by Contractor or Insurer.** If the Contractor and/or its insurer wrongfully fails to defend and/or indemnify the State of Hawaii, its officers and employees, against any claims, the State may bar or suspend the Contractor and/or its insurance company from bidding, working on construction projects, and/or providing insurance on State construction projects.

The State may exercise these remedies in addition to other legal or equitable remedies it may have against the Contractor and/or insurer.

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

(1) Require its subcontractors to procure and to maintain during the life of its subcontract, subcontractor's comprehensive general liability, automobile liability and property damage liability insurance of the type and in the same amounts specified herein and further require that such coverage be required by its subcontractors from all lower tier subcontractors,

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

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

**END OF SECTION**