

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,
10 the unit bid price shall govern.

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

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17 The Department will consider the bid based on furnishing domestic steel.

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

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23 **103.02 Award of Contract.** The award of contract, if it be awarded, will
24 be made within 60 calendar days after the opening of bids, to the lowest
25 responsible bidder whose proposal complies with all the requirements. The
26 successful bidder will be notified by letter mailed to the address shown in its
27 proposal, that its proposal has been accepted, and that it has been awarded
28 the contract.

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30 **(1) Requirement for Award.** To be eligible for award, the
31 apparent low bidder will be contacted to submit copies of the
32 documents listed below to demonstrate compliance with HRS
33 Section 103D-310(c). The documents should be submitted to the
34 Department as soon as possible. If a valid certificate/clearance is
35 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.

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

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48 FORM A6, TAX CLEARANCE CERTIFICATE, is available at
49 the following website:
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51 <http://www.hawaii.gov/tax/>

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53 To receive DOTAX Forms by fax or mail, phone
54 (808) 587-7572 or 1-800-222-7572.
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56 The application for the Tax Clearance Certificate is the
57 responsibility of the bidder and must be submitted directly to the DOTAX
58 or IRS. The approved certificate may then be submitted to the
59 Department.
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61 **(B) DLIR Certificate of Compliance.** Pursuant to HRS Section
62 103D-310(c), the successful bidder shall be required to submit a copy
63 (faxed copies are acceptable) of its approved certificate of compliance
64 issued by the Hawaii State Department of Labor and Industrial Relations
65 (DLIR) to demonstrate its compliance with unemployment insurance (HRS
66 Chapter 383), workers' compensation (HRS Chapter 386), temporary
67 disability insurance (HRS Chapter 392), and prepaid health care (HRS
68 Chapter 393). The certificate is valid for six (6) months from the most
69 recent approval stamp date on the certificate and must be valid on the
70 bid's first legal advertisement date or any date thereafter up to the bid
71 opening date. For certificates which receive a "pending" approval
72 stamp, a DLIR approval stamp is required prior to the issuance of the
73 Notice to Proceed.
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75 FORM LIR#27, APPLICATION FOR CERTIFICATE OF
76 COMPLIANCE WITH SECTION 3-122-112, HAR, is available at the
77 following website:
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79 www.hawaii.gov/labor
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81 More information is available by calling the DLIR Unemployment
82 Insurance Division at (808) 586-8926.
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84 Inquiries regarding the status of a LIR#27 Form may be made by
85 calling the DLIR Disability Compensation Division at (808) 586-9200.
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87 The application for the Certificate of Compliance is the
88 responsibility of the bidder and must be submitted directly to the DLIR.
89 The approved certificate may then be submitted to the Department.
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91 **(C) DCCA Certificate of Good Standing.** Pursuant to HRS Section
92 103D-310(c), the successful bidder shall be required to submit a copy
93 (faxed copies are acceptable) of its approved Certificate of Good Standing
94 issued by the Hawaii State Department of Commerce and Consumer
95 Affairs (DCCA), Business Registration Division (BREG) to demonstrate
96 that it is either:
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98 **(1)** Incorporated or organized under the laws of the State; or
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100 **(2)** Registered to do business in the State as a separate branch
101 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>

This contract to be awarded is considered a requirement contract, as the pavement preservation strategies and surface treatment installation 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 bonds shall be of an amount equal to 100 percent of the amount of the contract price and include 5 percent of the contract amount estimated to be required for extra work.

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 amounts required for the work at each Area shall be as follows:

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<u>Proposal</u>	<u>Security Amount</u>
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A – Area 1	\$2,500,000.00
B – Area 2	\$2,500,000.00
C – Area 3	\$2,500,000.00
D – Area 4	\$2,500,000.00

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

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

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

END OF SECTION 103