

1 Amend **Section 103 - Award and Execution of Contract** to read as follows:

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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.

11
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. The
15 Department will award the contract to the bidder who submits the lowest total bid
16 based on furnishing domestic steel unless such total bid exceeds the lowest
17 total bid based on furnishing foreign steel by more than 25 percent. The
18 bases for the determination of foreign or domestic character of the steel are on
19 place of manufacture. Manufacturing processes for domestic steel shall occur
20 in the United States.

21
22 The Department directs the bidder to the instructions in the Proposal
23 regarding alternate bidding procedures for foreign steel.

24
25 The Department will decide the total bid for bid comparison purposes as
26 provided in the proposal. The Department will consider the bid based on
27 furnishing domestic steel the lower of the bids if a tie occurs between a bid
28 based upon furnishing foreign steel for the steel items and a bid based upon
29 furnishing domestic steel for the steel items and including the 25 percent price
30 differential allowed to bids based on furnishing domestic steel.

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32 The Department reserves the right to reject proposals, waive
33 technicalities or advertise for new proposals, if the rejection, waiver, or new
34 advertisement favors the Department.

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36 **103.02 Award of Contract.** The award of contract, if it be awarded, will
37 be made within 60 calendar days after the opening of bids, to the lowest
38 responsible bidder whose proposal complies with all the requirements. The
39 successful bidder will be notified by letter mailed to the address shown on his/her
40 proposal, that his/her proposal has been accepted, and that he/she has been
41 awarded the contract.

42
43 (1) **Requirement for Award.** To be eligible for award, the
44 apparent low bidder will be contacted to submit copies of the
45 documents listed below to demonstrate compliance with HRS
46 Section 103D-310(c). The documents should be submitted to the
47 Department as soon as possible. If a valid certificate/clearance is
48 not submitted on a timely basis for award of a contract, a bidder

otherwise responsive and responsible may not receive the award.
See also Subsection 108.03 – Preconstruction Data Submittal.

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

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

To receive DOTAX Forms by Fax or mail, phone
(808)587-7572 or 1-800-222-7572.

The application for the clearance is the responsibility of the bidder and must be submitted directly to the DOTAX or IRS and not to the Department.

(B) DLIR Certificate of Compliance. Pursuant to HRS Chapter 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 6 months from the most recent approval stamp date on the certificate. The DLIR certificate must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date. For DLIR certificates which receive a "pending" approval stamp, a DLIR approval stamp is required prior to the issuance of the Notice to Proceed.

The 'Application For Certificate Of Compliance With Section 3-122-112, HAR', Form LIR#27 is available at the following website:
www.dlir.state.hi.us

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

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

(C) DCCA Certificate of Good Standing. Pursuant to HRS Chapter 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:

102
103 (1) Incorporated or organized under the laws of the State; or
104

105 (2) Registered to do business in the State as a separate branch
106 or division that is capable of fully performing under the contract.
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108 The DCCA certificate is valid for 6 months from the approval date
109 on the certificate. The DCCA certificate must be valid on the bid's first
110 legal advertisement date or any date thereafter up to the bid opening
111 date. A Hawaii business that is a sole proprietorship, however, is not
112 required to register with the BREG, and therefore not required to submit
113 the certificate. Bidders are advised that there are costs associated with
114 registering and obtaining a "Certificate of Good Standing" from the DCCA.
115

116 To obtain this certificate, go online to:
117 www.BusinessRegistrations.com and follow the prompt instructions. To
118 register or to obtain a certificate by phone, call (808)586-2727 (M-F 7:45
119 am to 4:30 pm Hawaii Standard Time).
120

121 The application for the DCCA certificate is the responsibility of the bidder,
122 and must be submitted directly to the DCCA and not to the Department.
123

124 **103.03 Cancellation of Award.** The Department reserves the right to
125 cancel the award of contracts before the execution of said contract by the
126 parties. There will be no liability to the awardee and to other bidders.
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128 **103.04 Return of Proposal Guaranty.** The Department will return the
129 proposal guaranties, except those of the three lowest bidders, after the
130 Department checks the proposals. The Department will return the proposal
131 guaranties of the remaining two lowest bidders not awarded the contract within
132 five working days following the execution of the contract. The Department will
133 return the successful bidder's proposal guaranty after the successful bidder
134 furnishes a bond and executes the contract.
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136 **103.05 Requirement of Contract Bond.** At the time of execution of the
137 contract, the successful bidder shall file a good and sufficient performance bond
138 and a payment bond on the forms furnished by the Department conditioned for
139 the full and faithful performance of the contract in accordance with the terms and
140 intent thereof and for the prompt payment to all others for all labor and material
141 furnished by them to the bidder and used in the prosecution of the work provided
142 for in the contract. The bonds shall be of an amount equal to 100 percent of
143 the amount of the contract price and include 5 percent of the contract amount
144 estimated to be required for extra work. The bidder shall limit the acceptable
145 performance and payment bonds to the following:
146

147 (a) Legal tender;
148

(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 Chapter 103D-324.

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 Chapter 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