

1 Make this section a part of the Standard Specifications:
2

3 **"SECTION 103 - AWARD AND EXECUTION OF CONTRACT**
4

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.
31

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.
35

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 in its
40 proposal, that its proposal has been accepted, and that it has been awarded
41 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

documents listed below to demonstrate compliance with HRS Section 103D-310(c). The documents should be submitted to the Department as soon as possible. If a valid certificate/clearance is 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 Sections 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. A tax clearance is valid for six (6) months from the most recent approval stamp date on the tax clearance and must be valid on the bid's first legal advertisement date or any date thereafter up to the bid opening date.

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

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

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

The application for the Tax Clearance Certificate is the 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

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

96
97 Inquiries regarding the status of a LIR#27 Form may be made by
98 calling the DLIR Disability Compensation Division at (808) 586-9200.

99
100 The application for the Certificate of Compliance is the
101 responsibility of the bidder and must be submitted directly to the DLIR.
102 The approved certificate may then be submitted to the Department.

103
104 **(C) DCCA Certificate of Good Standing.** Pursuant to HRS Section
105 103D-310(c), the successful bidder shall be required to submit a copy
106 (faxed copies are acceptable) of its approved Certificate of Good Standing
107 issued by the Hawaii State Department of Commerce and Consumer
108 Affairs (DCCA), Business Registration Division (BREG) to demonstrate
109 that it is either:

110
111 **(1)** Incorporated or organized under the laws of the State; or

112
113 **(2)** Registered to do business in the State as a separate branch
114 or division that is capable of fully performing under the contract.

115
116 The Certificate of Good Standing is valid for six (6) months from the
117 approval date on the certificate and must be valid on the bid's first legal
118 advertisement date or any date thereafter up to the bid opening date. A
119 Hawaii business that is a sole proprietorship, however, is not required to
120 register with the BREG, and therefore not required to submit a Certificate
121 of Good Standing. Bidders are advised that there are costs associated
122 with registering and obtaining a Certificate of Good Standing from the
123 DCCA.

124
125 To purchase a CERTIFICATE OF GOOD STANDING, go to On-
126 Line Services at the following website:

127 www.hawaii.gov/dcca/

128
129
130 The application for the Certificate of Good Standing is the
131 responsibility of the bidder and must be submitted directly to the DCCA.
132 The approved certificate may then be submitted to the Department.

133
134 **(D) Hawaii Compliance Express (HCE).** In lieu of the certificates
135 referenced above, the bidder may make available proof of compliance
136 through the Hawaii Compliance Express or any other designated
137 certification process. Bidders may apply and register at the "Hawaii
138 Compliance Express" website:

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 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.

184
185 Such bonds shall also by the terms inure to the benefit of any and all
186 persons entitled to file claims for labor done or material furnished in the work so
187 as to give them a right of action as contemplated by HRS Section 103D-324.
188

189 **103.06 Execution of the Contract.** The contract bond and HRS Chapter
190 104 - Compliance Certificate, similar to a copy of the same annexed hereto,
191 shall be executed by the successful bidder and returned within ten days after the
192 award of the contract or within such further time as the Director may allow after
193 the bidder has received the contract for execution.
194

195 The contract shall not bind the Department unless said parties execute
196 the contract and the Director of Finance endorses the bidder's certificate in
197 accordance with HRS Section 103-39.
198

199 **103.07 Failure to Execute Contract.** Failure to execute the contract and
200 file acceptable bonds shall be cause for the cancellation of the award in
201 accordance with Subsection 103.06 - Execution of the Contract. Also, the
202 Contractor forfeits the proposal guaranty which becomes the property of the
203 Department. This is not a penalty, but liquidated damages sustained by the
204 State. The Department may then make award to the next lowest responsible
205 bidder or the Department may readvertise and construct the work under
206 contract."
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211

212 **END OF SECTION 103**
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