

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 103.03     Award of Contract** to read as follows.

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7       **"103.03     Award of Contract.**     The award of contract, if it be awarded, will  
8       be made within 60 calendar days after the opening of bids, to the lowest  
9       responsible bidder whose proposal complies with all the requirements.     The  
10      successful bidder will be notified by letter mailed to the address shown on his/her  
11      proposal, that his/her proposal has been accepted, and that he/she has been  
12      awarded the contract.

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14               **(1)     Requirement for Award.**     To be eligible for award, the  
15               apparent low Bidder will be contacted to submit copies of the  
16               documents listed below to demonstrate compliance with Section  
17               103D-310(c), HRS. The documents should be submitted to the  
18               Department as soon as possible. If a valid certificate/clearance is  
19               not submitted on a timely basis for award of a contract, a Bidder  
20               otherwise responsive and responsible may not receive the award.

21       **(A)     Tax Clearance.**     Pursuant to §§103D-310(c), 103-53 and 103D-  
22       328, HRS, the successful bidder shall be required to submit a certified  
23       copy of its tax clearance issued by the Hawaii State Department of  
24       Taxation (DOTAX) and the Internal Revenue Service (IRS) to  
25       demonstrate its compliance with Chapter 237, HRS. The tax clearance  
26       is valid for 6 months from the most recent approval stamp date on the tax  
27       clearance. The tax clearance must be valid on the bid's first legal  
28       advertisement date or any date thereafter up to the bid opening date.

29  
30               DOTAX Website (Forms & Information):  
31               <http://www.state.hi.us/tax/alphalist.html#a>

32  
33               To receive DOTAX Forms by Fax or mail, phone  
34               (808)587-7572 or 1-800-222-7572.

35  
36               The application for the clearance is the responsibility of the bidder,  
37       and must be submitted directly to the DOTAX or IRS and not to the  
38       Department.

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

53 The 'APPLICATION FOR CERTIFICATE OF COMPLIANCE WITH  
54 SECTION 3-122-112, HAR', Form LIR#27 is available at the following  
55 website: [www.dlir.state.hi.us](http://www.dlir.state.hi.us)  
56

57 The form is also available at the DLIR Administrative Services  
58 Office, phone no. (808)586-8888 and fax no. (808)586-8899, or any of its  
59 District Offices. The DLIR will return the form to the bidder who in turn  
60 shall submit a copy to the Department.  
61

62 The application for the certificate is the responsibility of the bidder,  
63 and must be submitted directly to the DLIR and not to the Department.  
64

65 **(C) DCCA Certificate of Good Standing.** Pursuant to §103D-  
66 310(c), HRS, the successful bidder shall be required to submit a copy  
67 (faxed copies are acceptable) of its approved Certificate of Good Standing  
68 issued by the Hawaii State Department of Commerce and Consumer  
69 Affairs (DCCA), Business Registration Division (BREG) to demonstrate  
70 that it is either:  
71

72 (1) Incorporated or organized under the laws of the State; or  
73

74 (2) Registered to do business in the State as a separate branch  
75 or division that is capable of fully performing under the contract.  
76

77 The DCCA certificate is valid for 6 months from the approval date  
78 on the certificate. The DCCA certificate must be valid on the bid's first  
79 legal advertisement date or any date thereafter up to the bid opening  
80 date. A Hawaii business that is a sole proprietorship, however, is not  
81 required to register with the BREG, and therefore not required to submit  
82 the certificate. Bidders are advised that there are costs associated with  
83 registering and obtaining a "Certificate of Good Standing" from the DCCA.  
84

85 To obtain this certificate, go online to:  
86 [www.BusinessRegistrations.com](http://www.BusinessRegistrations.com) and follow the prompt instructions. To  
87 register or to obtain a certificate by phone, call (808)586-2727 (M-F 7:45  
88 am to 4:30 pm Hawaii Standard Time).  
89

90 The application for the DCCA certificate is the responsibility of the  
91 bidder, and must be submitted directly to the DCCA and not to the  
92 Department."  
93

94 **(II) Amend 103.06 Requirement of Contract Bond** to read as follows:  
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96 **"103.06 Requirement of contract Bond.** At the time of execution of the  
97 contract, the successful bidder shall file a good and sufficient performance bond  
98 and a payment bond on the forms furnished by the Department (see attached)  
99 conditioned for the full and faithful performance of the contract according to the  
100 terms and intent thereof and for the prompt payment to all others for all labor and  
101 material furnished by them to the bidder and used in the prosecution of the work  
102 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."

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

**"103.07 Execution of Contract.** The contract bond and Chapter 104, HRS 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."

(IV) Amend **103.09 Submission of Insurance Certification** to read as follows:

**"103.09 Insurance Requirements.**

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

149 A certificate of insurance shall identify if the insurance company is  
150 a "captive" insurance company or a "Non-Admitted" carrier to the State of  
151 Hawaii. The Best's rating must be stated for the "Non-Admitted" carrier.  
152 Certificates shall contain a provision that coverages being certified will not  
153 be cancelled or materially changed without giving the Engineer at least 30  
154 days prior written notice by registered mail. If the State and its officers  
155 and employees are to be Additional Insureds on any of the required  
156 insurance, it shall be so noted on the certificate. Should any policy be  
157 cancelled before final acceptance of the work by the State, and the  
158 Contractor fails to immediately procure replacement insurance as  
159 specified, the State, in addition to all other remedies it may have for such  
160 breach, reserves the right to procure such insurance and deduct the cost  
161 thereof from any money due to the Contractor.  
162

163 Nothing contained in these insurance requirements is to be  
164 construed as limiting the extent of Contractor's responsibility for payment  
165 of damages resulting from its operations under this contract, including the  
166 Contractor's obligation to pay liquidated damages, nor shall it affect the  
167 Contractor's separate and independent duty to defend, indemnify and  
168 hold the State and its officers and employees, harmless pursuant to other  
169 provisions of the contract documents. The State's exercise of an option  
170 to occupy and use portions of the work does not relieve the Contractor of  
171 its obligation to maintain the required insurance until the date of final  
172 acceptance.  
173

174 All insurance described herein shall be primary and cover the  
175 insured for all work to be performed under the contract, including  
176 changes, and all work performed incidental thereto or directly or indirectly  
177 connected therewith, including but not limited to traffic detours,  
178 barricades, warnings, diversions, lane closures and other work  
179 performed outside the work area.  
180

181 Upon request, the Contractor shall furnish the Engineer, a copy of  
182 required policies or other proof of coverage satisfactory to the Engineer, of  
183 each type of insurance covering the work. Failure to comply with the  
184 Engineer's request may result in suspension of the work, and shall be  
185 sufficient grounds to withhold future payments due the Contractor and to  
186 terminate the contract for the Contractor's default.  
187

188 **(B) Types of Insurance.** Contractor shall purchase and maintain  
189 insurance described below:  
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191 (1) Commercial General Comprehensive Personal Injury and  
192 Property Damage Liability insurance with the following minimum  
193 limits of liability:  
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195 Products - Completed/Operations Aggregate \$2,000,000

Personal and Advertising Injury	\$2,000,000
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<b>Bodily Injury and Property Damage</b>	<b>\$2,000,000 each occurrence</b>
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The State of Hawaii, its officers and employees, shall be as additional insureds under these coverages.

(2) Automobile Liability insurance with the following minimum limits of liability:

<b>Bodily Injury Liability</b>	<b>\$1,000,000 (Per accident)</b>
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Property Damage Liability	\$1,000,000
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The State of Hawaii, its officers and employees, shall be as additional insureds under these coverages.

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

**(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.**

243  
244 (E) **Self-Insured Retention.** The Contractor shall be permitted, in  
245 cooperation with its insurers, to maintain a self insured retention for up to  
246 25 percent of the per occurrence combined single limits of the commercial  
247 general liability and the automobile liability policies required by the  
248 contract documents. The existence of the self insured retention must be  
249 noted on the certificate of insurance coverage submitted to the State or  
250 else it will be understood that the insurer is providing first dollar coverage  
251 for all claims. For all claims within the self-insured retention amount,  
252 the rights, duties and obligations between the Contractor and the State  
253 shall be identical to that between a liability insurer and the state, as an  
254 additional insured, as if there was no self-insured retention."  
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260 **END OF SECTION 103**  
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