

1 Make this section a part of the Standard Specifications:

2
3 **“SECTION 103 - AWARD AND EXECUTION OF CONTRACT**
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5
6 **103.01 Consideration of Proposals.** The Department will compare the
7 proposals in terms of the summation of the products of the approximate quantities
8 and the unit bid prices after the submittal date and time established in HlePRO. If
9 a discrepancy occurs between the unit bid price and the bid price, the unit bid price
10 shall govern.

11
12 The Department reserves the right to reject proposals, waive technicalities or
13 advertise for new proposals, if the rejection, waiver, or new advertisement favors
14 the Department.

15
16 **103.02 Award of Contract.** The award of contract, if it be awarded, will be
17 made within 60 calendar days after the opening of bids, to the lowest responsible
18 and responsive bidder whose proposal complies with all the prescribed
19 requirements. The Department may request the bidders to allow the Department
20 to consider the bids for the issuance of an award beyond the 60-calendar day
21 period. Agreement to such an extension must be made by a bidder in writing. Only
22 bidders who have agreed to such an extension will be eligible for the award.

23
24 **(1) Requirement for Award.** The Bidder, as proof of compliance
25 with the requirements of section 103D-310(c), HRS, upon award
26 of a contract made pursuant to section 103D-302, HRS, shall
27 provide the documents listed below. The documents shall be
28 submitted promptly to the Department. If a valid
29 certificate/clearance is not submitted on a timely basis upon
30 award, the Bidder may be deemed non-responsible. See also
31 Subsection 108.03 – Preconstruction Data Submittal.

32
33 **(A) Tax Clearance.** Pursuant to §103D-310(c), 103-53 and 103D-328, HRS,
34 the bidder shall submit a tax clearance certificate from the State of Hawaii
35 Department of Taxation (DOTAX) and the Internal Revenue Service (IRS),
36 subject to section 103D-328, HRS, current within six months of issuance
37 date.

38
39 FORM A6, TAX CLEARANCE CERTIFICATE, is available at the
40 following website:

41
42 <https://tax.hawaii.gov/>

To receive DOTAX Forms by fax or mail, phone
(808) 587-4242 or 1-800-222-3229.

The application for the Tax Clearance Certificate is the responsibility
of the bidder. Bidder shall submit directly to the DOTAX or IRS. The
approved certificate may then be submitted to the Department.

(B) DLIR Certificate of Compliance. Pursuant to §103D-310(c), HRS, the
bidder shall submit a certificate of compliance for Hawaii Employment
Security Law (Chapter 383, HRS), Workers' Compensation Law (Chapter
386, HRS), Temporary Disability Insurance (Chapter 392, HRS), and
Prepaid Health Care Act (Chapter 393, HRS), from the State of Hawaii
Department of Labor and Industrial Relations (DLIR), current within six
months of issuance date.

FORM LIR#27, APPLICATION FOR CERTIFICATE OF
COMPLIANCE WITH SECTION 3-122-112, HAR, is available at the
following website:

<http://labor.hawaii.gov/>

Contact the DLIR Unemployment Insurance Division at (808) 586-8926 for
additional information.

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

The application for the Certificate of Compliance is the responsibility of the
bidder. Bidder shall submit directly to the DLIR. The approved certificate
may then be submitted to the Department.

(C) DCCA Certificate of Good Standing. Pursuant to §103D-310(c), HRS,
the bidder shall submit a certificate of good standing from the business
registration division (BREG) of the State of Hawaii Department of

Commerce and Consumer Affairs (DCCA), current within six months of issuance date, to demonstrate it is either:

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

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

A Hawaii business that is a sole proprietorship, is not required to register with the BREG, and therefore not required to submit a certificate of good standing. Bidders are advised of 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:

<http://cca.hawaii.gov/>

The application for the Certificate of Good Standing is the responsibility of the bidder. Bidder shall submit 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 in subsection A, B, and C, the bidder may make available proof of compliance through a state procurement office designated certification process.

PROPOSAL SCHEDULE NOTE

1. Bids shall include all Federal, State, County and other applicable taxes and fees.

- 111
- 112 2. The TOTAL AMOUNT FOR COMPARISON OF BIDS shall be used to
- 113 determine the lowest responsible bidder.
- 114
- 115 3. Bidders shall complete all unit prices and amounts. Failure to do so shall
- 116 be grounds for rejection of bid.
- 117
- 118 4. If a discrepancy occurs between unit bid price and the bid price, the unit
- 119 bid price shall govern.
- 120
- 121 5. **Bidders shall submit and upload the complete proposal to HlePRO**
- 122 **prior to the bid opening date and time. Proposals received after said**
- 123 **due date and time shall not be considered. Any additional support**
- 124 **documents explicitly designated as confidential and/or proprietary**
- 125 **shall be uploaded as a separate file to HlePRO. Bidders shall not**
- 126 **include confidential and/or proprietary documents with the proposal.**
- 127 **The record of each bidder and respective bid shall be open to public**
- 128 **inspection. Original (wet ink, hard copy) proposal documents are not**
- 129 **required to be submitted. Contract award shall be based on evaluation**
- 130 **of proposals submitted and uploaded to HlePRO.**

131

132 **FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HlePRO**

133 **SHALL BE GROUNDS FOR REJECTION OF THE BID.**

134 If there is a conflict between the specification document and the HlePRO

135 solicitation, the specifications shall govern and control, unless otherwise

136 specified.

- 137 6. Prior to opening bids, the State will announce the project control budget.
- 138 All bids will be evaluated on the basis of the same alternate item.
- 139
- 140 7. The TOTAL - ADDITIVE ALTERNATE NO. 1 is added to the TOTAL -
- 141 BASE BID price. This sum is compared to the project control budget, and
- 142 must be within the project control budget.
- 143
- 144 8. The bidder with the lowest aggregate amount, within the project control
- 145 budget, for the TOTAL - BASE BID plus TOTAL - BASE BID is the lowest
- 146 responsible bidder.
- 147
- 148 9. Should the TOTAL - BASE BID price exceed the project control budget,
- 149 the State reserves the right to negotiate with the lowest responsible bidder

as permitted under Section 103D-302, Hawaii Revised Statutes, to further reduce the scope of work and award a contract thereafter.

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.

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.

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 and responsive bidder or the Department may readvertise and construct the work under contract."

END OF SECTION 103