

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

3 **“SECTION 103 - AWARD AND EXECUTION OF CONTRACT**  
4  
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 “Buy America” provisions in the Surface Transportation Assistance Act  
13 of 1982 is applicable to Federal-aid projects. Bidders may submit a bid based  
14 upon the furnishing and use of domestic steel or foreign steel. Manufacturing  
15 processes for domestic steel shall occur in the United States.  
16

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

21 **103.02 Award of Contract.** The award of contract, if it be awarded, will be  
22 made within 60 calendar days after the opening of bids, to the lowest responsible  
23 and responsive bidder whose bid meets all the requirements and criteria set forth  
24 in the invitation for bids. (Through HlePRO). The successful bidder will be notified  
25 by letter mailed to the address shown in its proposal, that its proposal has been  
26 accepted, and that it has been awarded the contract.  
27

28 **(1) Requirement for Award.** To be eligible for award, the  
29 apparent low bidder will be contacted to submit copies of the  
30 documents listed below to demonstrate compliance with HRS  
31 Section 103D-310(c). The documents shall be submitted to the  
32 Department within 14 days after bid opening unless otherwise  
33 specified in the invitation for bids or an extension is granted in writing  
34 by the Department. If a valid certificate/clearance is not submitted  
35 on a timely basis for award of a contract, a bidder otherwise  
36 responsive and responsible may not receive the award. See also  
37 Subsection 108.03 – Preconstruction Data Submittal.  
38

39 The Department may request the bidders to allow the  
40 Department to consider the bids for the issuance of an award beyond  
41 the 60 calendar day period. Agreement to such an extension must  
42 be made by a bidder in writing. Only bidders who have agreed to  
43 such an extension will be eligible for the award.  
44

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

53  
54 FORM A6, TAX CLEARANCE CERTIFICATE, is available at the  
55 following website:

56  
57 <https://tax.hawaii.gov/>  
58

59 To receive DOTAX Forms by fax or mail, phone  
60 (808) 587-7572 or 1-800-222-7572.  
61

62 The application for the Tax Clearance Certificate is the responsibility  
63 of the bidder and must be submitted directly to the DOTAX or IRS. The  
64 approved certificate may then be submitted to the Department.  
65

66 **(B) DLIR Certificate of Compliance.** Pursuant to HRS Section 103D-  
67 310(c), the successful bidder shall be required to submit a copy (faxed  
68 copies are acceptable) of its approved certificate of compliance issued by  
69 the Hawaii State Department of Labor and Industrial Relations (DLIR) to  
70 demonstrate its compliance with unemployment insurance (HRS Chapter  
71 383), workers' compensation (HRS Chapter 386), temporary disability  
72 insurance (HRS Chapter 392), and prepaid health care (HRS Chapter 393).  
73 The certificate is valid for six (6) months from the most recent approval  
74 stamp date on the certificate and must be valid on the bid's first legal  
75 advertisement date or any date thereafter up to the bid opening date. For  
76 certificates which receive a "pending" approval stamp, a DLIR approval  
77 stamp is required prior to the issuance of the Notice to Proceed.  
78

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

82  
83 <http://labor.hawaii.gov/>  
84

85 More information is available by calling the DLIR Unemployment Insurance  
86 Division at (808) 586-8926.  
87

88 Inquiries regarding the status of a LIR#27 Form may be made by  
89 calling the DLIR Disability Compensation Division at (808) 586-9200.  
90

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

**(C) DCCA Certificate of Good Standing.** 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 Good Standing issued by the Hawaii State Department of Commerce and Consumer Affairs (DCCA), Business Registration Division (BREG) to demonstrate that 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.

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:

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

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/>

**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.

136 **103.04 Return of Proposal Guaranty.** The Department will return the proposal  
137 guaranties, except those of the three lowest bidders, after the Department checks  
138 the proposals. The Department will return the proposal guaranties of the remaining  
139 two lowest bidders, not awarded the contract, within five working days following  
140 the execution of the contract. The Department will return the successful bidder's  
141 proposal guaranty after the successful bidder furnishes a bond and executes the  
142 contract.

143  
144 **103.05 Requirement of Contract Bond.** At the time of execution of the  
145 contract, the successful bidder shall file a good and sufficient performance bond  
146 and a payment bond on the forms furnished by the Department conditioned for the  
147 full and faithful performance of the contract in accordance with the terms and intent  
148 thereof and for the prompt payment to all others for all labor and material furnished  
149 by them to the bidder and used in the prosecution of the work provided for in the  
150 contract. The bonds shall be of an amount equal to 100 percent of the amount of  
151 the contract price and include 5 percent of the contract amount estimated to be  
152 required for extra work. The bidder shall limit the acceptable performance and  
153 payment bonds to the following:

154  
155 (a) Legal tender;

156  
157 (b) Surety bond underwritten by a company licensed to issue bonds in  
158 the State of Hawaii; or

159  
160 (c) A certificate of deposit; share certificate; cashier's check; treasurer's  
161 check, teller's check drawn by or a certified check accepted by and payable  
162 on demand to the State by a bank savings institution or credit union insured  
163 by the Federal Deposit Insurance Corporation (FDIC) or the National Credit  
164 Union Administration (NCUA).

165  
166 1. The bidder may use these instruments only to a maximum of  
167 \$100,000.

168  
169 2. If the required security or bond amount totals over \$100,000  
170 more than one instrument not exceeding \$100,000 each and issued  
171 by different financial institutions shall be acceptable.

172  
173 Such bonds shall also by the terms insure to the benefit of any and all  
174 persons entitled to file claims for labor done or material furnished in the work so as  
175 to give them a right of action as contemplated by HRS Section 103D-324.

176  
177 **103.06 Execution of the Contract.** The contract bond and HRS Chapter 104  
178 - Compliance Certificate, similar to a copy of the same annexed hereto, shall be  
179 executed by the successful bidder and returned within ten days after the award  
180 of the contract or within such further time as the Director may allow after the  
181 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**