

SECTION 103 - AWARD AND EXECUTION OF CONTRACT

Make the following amendments to said Section:

(I) Amend 103.01 Consideration of Proposal to read as follows:

"103.01 Consideration of Proposals. The Department will compare the proposals in terms of the summation of the products of the approximate quantities and the unit bid prices after the Contracts Officer opens and reads the proposals. The Department will make the results immediately available to the public. If a discrepancy occurs between the unit bid price and the bid price, the unit bid price shall govern.

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

(II) Amend 103.03 Award of Contract by adding the following:

"According to Section 103-53, HRS, and as provided in Section 102.20 - Tax Clearance of the Special Provisions, the awardee is required to provide a valid state and federal tax clearance as a prerequisite to entering into a public contract."

(III) Amend 103.06 Requirement of Contract Bond to read as follows:

"103.06 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 (see attached) conditioned for the full and faithful performance of the contract according to 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, 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."

(IV) 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."

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

"103.09 Submission of Insurance Certification. The Contractor shall submit to the Engineer within 15 days of the contract award date, three copies each of insurance certification stating that the Contractor has taken out and is keeping in effect:

(1) Commercial General Comprehensive Personal Injury and Property Damage Liability insurance with the following minimum limits of liability:

Products - Completed/Operations Aggregate \$2,000,000

Personal and Advertising Injury \$2,000,000

Bodily Injury and Property Damage \$2,000,000 each occurrence

naming the State of Hawaii as additional insured.

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

Bodily Injury Liability \$1,000,000 (Per accident)

Property Damage Liability \$1,000,000

naming the State of Hawaii as additional insured.

(3) Workers' Compensation.

The insurance mentioned above shall cover the insured for work done:

- (1)** under the contract including force account work,
- (2)** incidental to the contract including traffic detour work or other work done out of the work area,
- (3)** outside the project limits including hauling of equipment and materials, and
- (4)** contract change orders including force account work.

If the Contractor and/or its insurer wrongfully fails to defend and/or indemnify the State of Hawaii in any liability claims, the Department may bar the Contractor and/or its insurance company from bidding, working on construction projects, and/or insuring construction projects for a period of up to two consecutive years from the date determined by the Department.

This remedy is non-exclusive. The Department may exercise this remedy in addition to other remedies for breach of the project contract on account of any failure to defend and/or indemnify."

END OF SECTION