

1 Make this section a part of the Standard Specifications:

2
3 **“SECTION 103 - AWARD AND EXECUTION OF CONTRACT**
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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