

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.

Act 52, SLH 2003, amended Section 103D-310, HRS, by adding subsection (c) which, in part follows:

'(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, and shall:

- (1) Be incorporated or organized under the laws of the State; or
- (2) Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.'

At the release of this solicitation, implementation of the law is pending guidance from the Departments of Labor and Industrial Relations and Commerce and Consumer Affairs. Should guidance be received and implemented prior to award of this contract, the prospective awardee will be required to comply."

(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 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.

A certificate of insurance shall identify if the insurance company is a

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

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

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

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

(B) Types of Insurance. Contractor shall purchase and maintain insurance described below:

(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

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:

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

Property Damage Liability \$1,000,000

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 they 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.

(4) Builder's Risk Insurance during the progress of the work and until final acceptance by the Engineer. It shall be "All Risk" (including but not limited to earthquake, windstorm and flood damage) completed value insurance coverage on all completed work and work in progress to the full replacement value thereof. Such insurance shall include the State as an additional insured under these coverages. The Contractor shall submit to the Engineer for its approval all items deemed to be uninsurable. The policy may provide for a deductible in an amount of up to 25 percent of the amount insured by the policy. With respect to all losses up to any deductible amount, the relationship between the Contractor and the State shall be that of insurer and additional insured as if no deductible existed.

(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.

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

END OF SECTION