

1 Make this section a part of the Standard Specifications:

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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
8 quantities and the unit bid prices after the Contracts Officer opens and reads the
9 proposals. The Department will make the results immediately available to the
10 public. If a discrepancy occurs between the unit bid price and the bid price, the
11 unit bid price shall govern.

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

16
17 **103.02 Award of Contract.** The award of contract, if it be awarded, will be
18 made within 60 calendar days after the opening of bids, to the lowest
19 responsible bidder whose proposal complies with all the requirements. The
20 successful bidder will be notified by letter mailed to the address shown in its
21 proposal, that its proposal has been accepted, and that it has been awarded
22 the contract.

23
24 **(1) Requirement for Award.** To be eligible for award, the apparent
25 low bidder will be contacted to submit copies of the documents listed
26 below to demonstrate compliance with HRS Section 103D-310(c). The
27 documents should be submitted to the Department as soon as possible.
28 If a valid certificate/clearance is not submitted on a timely basis for
29 award of a contract, a bidder otherwise responsive and responsible may
30 not receive the award. See also Subsection 108.03 – Preconstruction
31 Data Submittal.

32
33 **(A) Tax Clearance.** Pursuant to HRS Sections 103D-310(c), 103-53
34 and 103D-328, the successful bidder shall be required to submit a certified
35 copy of its tax clearance issued by the Hawaii State Department of Taxation
36 (DOTAX) and the Internal Revenue Service (IRS) to demonstrate its
37 compliance with HRS Chapter 237. A tax clearance is valid for six (6)
38 months from the most recent approval stamp date on the tax clearance and
39 must be valid on the bid's first legal advertisement date or any date
40 thereafter up to the bid opening date.

41
42 FORM A6, TAX CLEARANCE CERTIFICATE, is available at
43 the following website:

44
45 <http://www.hawaii.gov/tax/>
46

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

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

(B) DLIR Certificate of Compliance. 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 compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR) to demonstrate its compliance with unemployment insurance (HRS Chapter 383), workers' compensation (HRS Chapter 386), temporary disability insurance (HRS Chapter 392), and prepaid health care (HRS Chapter 393). The certificate is valid for six (6) months from the most recent approval stamp 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. For certificates which receive a "pending" approval stamp, a DLIR approval stamp is required prior to the issuance of the Notice to Proceed.

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

www.hawaii.gov/labor

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

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 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:

www.hawaii.gov/dcca/

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:

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

END OF SECTION 103