

1 Make this section a part of the Standard Specifications.

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

4
5 **103.01 Consideration of Proposals.** The Department will compare the
6 proposals in terms of the criteria set forth in Section Four – Evaluation Criteria.

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

11
12 **103.02 Award of Contract.** The award of contract, if it be awarded, will
13 be made within 120 calendar days after the proposal due date, to the proposer
14 selected in accordance with the criteria set forth in Section Four – Evaluation
15 Criteria. The successful proposer will be notified by letter mailed to the
16 address shown in its proposal, that its proposal has been accepted, and that it
17 has been awarded the contract.

18
19 **(1) Requirement for Award.** To be eligible for award, the
20 apparent low bidder will be contacted to submit copies of the
21 documents listed below to demonstrate compliance with HRS
22 Section 103D-310(c). The documents should be submitted to the
23 Department as soon as possible. If a valid certificate/clearance is
24 not submitted on a timely basis for award of a contract, a bidder
25 otherwise responsive and responsible may not receive the award.
26 See also Subsection 108.03 – Preconstruction Data Submittal.

27
28 **(A) Tax Clearance.** Pursuant to HRS Sections 103D-310(c), 103-53
29 and 103D-328, the successful bidder shall be required to submit a
30 certified copy of its tax clearance issued by the Hawaii State Department
31 of Taxation (DOTAX) and the Internal Revenue Service (IRS) to
32 demonstrate its compliance with HRS Chapter 237. A tax clearance is
33 valid for six (6) months from the most recent approval stamp date on the
34 tax clearance and must be valid on the bid's first legal advertisement date
35 or any date thereafter up to the bid opening date.

36
37 FORM A6, TAX CLEARANCE CERTIFICATE, is available at
38 the following website:

39
40 <http://www.hawaii.gov/tax/>

41
42 To receive DOTAX Forms by fax or mail, phone
43 (808) 587-7572 or 1-800-222-7572.

44
45 The application for the Tax Clearance Certificate is the
46 responsibility of the bidder and must be submitted directly to the DOTAX
47 or IRS. The approved certificate may then be submitted to the
48 Department.
49

50 **(B) DLIR Certificate of Compliance.** Pursuant to HRS Section
51 103D-310(c), the successful bidder shall be required to submit a copy
52 (faxed copies are acceptable) of its approved certificate of compliance
53 issued by the Hawaii State Department of Labor and Industrial Relations
54 (DLIR) to demonstrate its compliance with unemployment insurance (HRS
55 Chapter 383), workers' compensation (HRS Chapter 386), temporary
56 disability insurance (HRS Chapter 392), and prepaid health care (HRS
57 Chapter 393). The certificate is valid for six (6) months from the most
58 recent approval stamp date on the certificate and must be valid on the
59 bid's first legal advertisement date or any date thereafter up to the bid
60 opening date. For certificates which receive a "pending" approval
61 stamp, a DLIR approval stamp is required prior to the issuance of the
62 Notice to Proceed.
63

64 FORM LIR#27, APPLICATION FOR CERTIFICATE OF
65 COMPLIANCE WITH SECTION 3-122-112, HAR, is available at the
66 following website:
67

68 www.hawaii.gov/labor
69

70 More information is available by calling the DLIR Unemployment
71 Insurance Division at (808) 586-8926.
72

73 Inquiries regarding the status of a LIR#27 Form may be made by
74 calling the DLIR Disability Compensation Division at (808) 586-9200.
75

76 The application for the Certificate of Compliance is the
77 responsibility of the bidder and must be submitted directly to the DLIR.
78 The approved certificate may then be submitted to the Department.
79

80 **(C) DCCA Certificate of Good Standing.** Pursuant to HRS Section
81 103D-310(c), the successful bidder shall be required to submit a copy
82 (faxed copies are acceptable) of its approved Certificate of Good Standing
83 issued by the Hawaii State Department of Commerce and Consumer
84 Affairs (DCCA), Business Registration Division (BREG) to demonstrate
85 that it is either:
86

87 **(1)** Incorporated or organized under the laws of the State; or
88

89 **(2)** Registered to do business in the State as a separate branch
90 or division that is capable of fully performing under the contract.
91

92 The Certificate of Good Standing is valid for six (6) months from the
93 approval date on the certificate and must be valid on the bid's first legal
94 advertisement date or any date thereafter up to the bid opening date. A
95 Hawaii business that is a sole proprietorship, however, is not required to
96 register with the BREG, and therefore not required to submit a Certificate
97 of Good Standing. Bidders are advised that there are costs associated

98 with registering and obtaining a Certificate of Good Standing from the
99 DCCA.

100 To purchase a CERTIFICATE OF GOOD STANDING, go to On-
101 Line Services at the following website:
102

103 www.hawaii.gov/dcca/
104

105
106 The application for the Certificate of Good Standing is the
107 responsibility of the bidder and must be submitted directly to the DCCA.
108 The approved certificate may then be submitted to the Department.
109

110 **103.03 Cancellation of Award.** The Department reserves the right to
111 cancel the award of contracts before the execution of said contract by the parties.
112 There will be no liability to the awardee and to other bidders.
113

114 **103.04 Return of Proposal Guaranty.** The Department will return the
115 proposal guaranties, except those of the three lowest bidders, after the
116 Department checks the proposals. The Department will return the proposal
117 guaranties of the remaining two lowest bidders not awarded the contract within
118 five working days following the execution of the contract. The Department will
119 return the successful bidder's proposal guaranty after the successful bidder
120 furnishes a bond and executes the contract.
121

122 **103.05 Requirement of Contract Bond.** At the time of execution of the
123 contract, the successful bidder shall file a good and sufficient performance bond
124 and a payment bond on the forms furnished by the Department conditioned for
125 the full and faithful performance of the contract in accordance with the terms and
126 intent thereof and for the prompt payment to all others for all labor and material
127 furnished by them to the bidder and used in the prosecution of the work provided
128 for in the contract. The bonds shall be of an amount equal to 100 percent of
129 the amount of the contract price and include 5 percent of the contract amount
130 estimated to be required for extra work. The bidder shall limit the acceptable
131 performance and payment bonds to the following:
132

133 (a) Legal tender;
134

135 (b) Surety bond underwritten by a company licensed to issue bonds
136 in the State of Hawaii; or
137

138 (c) A certificate of deposit; share certificate; cashier's check;
139 treasurer's check, teller's check drawn by or a certified check
140 accepted by and payable on demand to the State by a bank savings
141 institution or credit union insured by the Federal Deposit Insurance
142 Corporation (FDIC) or the National Credit Union Administration
143 (NCUA).
144

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