

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

12 The "Buy America" provisions in the Surface Transportation Assistance  
13 Act of 1982 is applicable to Federal-aid projects. Bidders may submit a bid  
14 based upon the furnishing and use of domestic steel or foreign steel. The  
15 Department will award the contract to the bidder who submits the lowest total bid  
16 based on furnishing domestic steel unless such total bid exceeds the lowest  
17 total bid based on furnishing foreign steel by more than 25 percent. The  
18 bases for the determination of foreign or domestic character of the steel are on  
19 place of manufacture. Manufacturing processes for domestic steel shall occur  
20 in the United States.  
21

22 The Department directs the bidder to the instructions in the Proposal  
23 regarding alternate bidding procedures for foreign steel.  
24

25 The Department will decide the total bid for bid comparison purposes as  
26 provided in the proposal. The Department will consider the bid based on  
27 furnishing domestic steel the lower of the bids if a tie occurs between a bid  
28 based upon furnishing foreign steel for the steel items and a bid based upon  
29 furnishing domestic steel for the steel items and including the 25 percent price  
30 differential allowed to bids based on furnishing domestic steel.  
31

32 The Department reserves the right to reject proposals, waive  
33 technicalities or advertise for new proposals, if the rejection, waiver, or new  
34 advertisement favors the Department.  
35

36 **103.02 Award of Contract.** The award of contract, if it be awarded, will  
37 be made within 60 calendar days after the opening of bids, to the lowest  
38 responsible bidder whose proposal complies with all the requirements. The  
39 successful bidder will be notified by letter mailed to the address shown in its  
40 proposal, that its proposal has been accepted, and that it has been awarded  
41 the contract.  
42

43 **(1) Requirement for Award.** To be eligible for award, the  
44 apparent low bidder will be contacted to submit copies of the

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45 documents listed below to demonstrate compliance with HRS  
46 Section 103D-310(c). The documents should be submitted to the  
47 Department as soon as possible. If a valid certificate/clearance is  
48 not submitted on a timely basis for award of a contract, a bidder  
49 otherwise responsive and responsible may not receive the award.  
50 See also Subsection 108.03 – Preconstruction Data Submittal.  
51

52 **(A) Tax Clearance.** Pursuant to HRS Sections 103D-310(c), 103-53  
53 and 103D-328, the successful bidder shall be required to submit a  
54 certified copy of its tax clearance issued by the Hawaii State Department  
55 of Taxation (DOTAX) and the Internal Revenue Service (IRS) to  
56 demonstrate its compliance with HRS Chapter 237. A tax clearance is  
57 valid for six (6) months from the most recent approval stamp date on the  
58 tax clearance and must be valid on the bid’s first legal advertisement date  
59 or any date thereafter up to the bid opening date.  
60

61 FORM A6, TAX CLEARANCE CERTIFICATE, is available at  
62 the following website:

63 <http://www.hawaii.gov/tax/>  
64

65  
66 To receive DOTAX Forms by fax or mail, phone  
67 (808) 587-7572 or 1-800-222-7572.  
68

69 The application for the Tax Clearance Certificate is the  
70 responsibility of the bidder and must be submitted directly to the DOTAX  
71 or IRS. The approved certificate may then be submitted to the  
72 Department.  
73

74 **(B) DLIR Certificate of Compliance.** Pursuant to HRS Section  
75 103D-310(c), the successful bidder shall be required to submit a copy  
76 (faxed copies are acceptable) of its approved certificate of compliance  
77 issued by the Hawaii State Department of Labor and Industrial Relations  
78 (DLIR) to demonstrate its compliance with unemployment insurance (HRS  
79 Chapter 383), workers’ compensation (HRS Chapter 386), temporary  
80 disability insurance (HRS Chapter 392), and prepaid health care (HRS  
81 Chapter 393). The certificate is valid for six (6) months from the most  
82 recent approval stamp date on the certificate and must be valid on the  
83 bid’s first legal advertisement date or any date thereafter up to the bid  
84 opening date. For certificates which receive a “pending” approval  
85 stamp, a DLIR approval stamp is required prior to the issuance of the  
86 Notice to Proceed.  
87

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

91 [www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
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94 More information is available by calling the DLIR Unemployment  
95 Insurance Division at (808) 586-8926.

96  
97 Inquiries regarding the status of a LIR#27 Form may be made by  
98 calling the DLIR Disability Compensation Division at (808) 586-9200.  
99

100 The application for the Certificate of Compliance is the  
101 responsibility of the bidder and must be submitted directly to the DLIR.  
102 The approved certificate may then be submitted to the Department.  
103

104 **(C) DCCA Certificate of Good Standing.** Pursuant to HRS Section  
105 103D-310(c), the successful bidder shall be required to submit a copy  
106 (faxed copies are acceptable) of its approved Certificate of Good Standing  
107 issued by the Hawaii State Department of Commerce and Consumer  
108 Affairs (DCCA), Business Registration Division (BREG) to demonstrate  
109 that it is either:

110  
111 **(1)** Incorporated or organized under the laws of the State; or  
112

113 **(2)** Registered to do business in the State as a separate branch  
114 or division that is capable of fully performing under the contract.  
115

116 The Certificate of Good Standing is valid for six (6) months from the  
117 approval date on the certificate and must be valid on the bid's first legal  
118 advertisement date or any date thereafter up to the bid opening date. A  
119 Hawaii business that is a sole proprietorship, however, is not required to  
120 register with the BREG, and therefore not required to submit a Certificate  
121 of Good Standing. Bidders are advised that there are costs associated  
122 with registering and obtaining a Certificate of Good Standing from the  
123 DCCA.  
124

125 To purchase a CERTIFICATE OF GOOD STANDING, go to On-  
126 Line Services at the following website:

127 [www.hawaii.gov/dcca/](http://www.hawaii.gov/dcca/)  
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130 The application for the Certificate of Good Standing is the  
131 responsibility of the bidder and must be submitted directly to the DCCA.  
132 The approved certificate may then be submitted to the Department.  
133

134 **(D) Hawaii Compliance Express (HCE).** In lieu of the certificates  
135 referenced above, the bidder may make available proof of compliance  
136 through the Hawaii Compliance Express or any other designated  
137 certification process. Bidders may apply and register at the "Hawaii  
138 Compliance Express" website:  
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**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.

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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**