

SECTION 440: CERTIFICATION OF CONTRACTS

1. Purpose. The purpose of this section is to describe the requirements as set forth by the Comptroller for the certification of availability of funds for contracts and agreements entered into by departments and agencies and forwarded to DAGS Accounting Division for processing. This section applies to all contracts submitted to the Comptroller for certification.
2. Certification of Contracts Generally. Under Section 103-39 of the HAWAII REVISED STATUTES (HRS), a contract subject to the competitive bidding requirements of Section 103-22 is not ". . . binding or of any force unless the comptroller of the State . . . indorses thereon his certificate that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract."
3. Exceptions. Section 103-39 contains two exceptions to the above general requirement for contract certification; they are:
 - (a) ". . . provided that this section shall not apply to any price-term, open-end, or requirements contract under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded." Contracts that fall within this exception are referred to as "price-term" contracts.
 - (b) "In any contract involving not only local funds but supplemental funds from the federal government, this section shall be applicable only to that portion of the contract price involved in the contract as is payable out of local funds . . ." This statutory exception further states that the general requirement for certification of contracts partially or wholly funded by federal funds does apply as the federal funds are received, but that the exception is to be "liberally construed so as not to hinder or impede the State . . . in contracting for any project involving financial aid from the federal government."
4. Partial Certification of Contracts. Section 103-39 of the HRS also provides for partial certification of contracts under certain conditions. Departments and agencies requesting partial certification of a contract must make the request in writing, furnishing the information described below under Alternative No. 1 or Alternative No. 2.

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- (a) Alternative No. 1. Furnish evidence that an immediate call for tenders will result in significantly more favorable contract terms and conditions to the expending agency than a call for tenders at a later date. Evidence should include a comparison of specific terms and conditions showing the difference between what they would be under an immediate call for tenders and what they would be under a call for tenders at a later date when funds would be available to cover the entire contract.
- (b) Alternative No. 2. Furnish evidence that an extension of the contract period beyond the period permitted by currently available funds will have at least one of the following results:
- (1) A significant reduction in the amounts of the periodic payments to be made by the expending agency.
 - (2) Significantly more favorable contract terms and conditions to the expending agency.
 - (3) The promotion of competition among qualified bidders and the attraction of qualified bidders who otherwise may be precluded from bidding.
5. Additional Information for Partial Certification. In addition to the information described in items 4(a) and 4(b) above, a request for partial certification must contain an explanation as to how the necessary funds will be available for the payments set forth in the contract. This explanation must provide a sufficient justification on which the Comptroller can certify that there exists substantial assurance that the necessary funds will be available for the payments set forth in the contract or that special fund revenues will be sufficient to cover the cost of the contract. The most common justification that could be used to support "substantial assurance" would be in terms of appropriations that had already been made by the Legislature, although not yet made available. Justification of "substantial assurance" in terms of the on-going nature of a department or agency is not an acceptable justification.
6. Contract Provision for Partial Certification. Contracts for which partial certification is approved must contain the following statement:
- "Availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues; this contract is enforceable only to the extent to which funds have been certified as available."

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7. Documents Required. Departments and agencies requesting certification of contracts are required to submit the following documents:
- (a) Transmittal Letter. A transmittal letter to the Comptroller requesting certification of funds is required. The body of the letter should contain the name of the contractor, the appropriation account (Uniform Accounting Code) in which the funds are to be encumbered, the total amount to be encumbered, the number of certification forms being requested, and any other instruction required to complete the processing of the contract.
 - (b) Copies of Contracts and Agreements. Submit a sufficient number of copies of the contract or agreement entered into by the expending department or agency. When fully executed, one copy of the contract must be filed with DAGS Accounting Division.
8. Certification of Contract. When the contract review procedure performed by DAGS Accounting Division has been completed and it has been determined that the contract reviewed can be properly approved, the following documents are distributed to departments and agencies upon certification of the contract.
- (a) Contract Certification Form. A copy of the Comptroller's certification statement as to the availability of funds to cover the obligation of the State of Hawaii under the contract. The following forms of contract certification are approved:
 - (1) Regular. This form of contract certification is used for those contracts that are fully encumbered or that are partially or wholly funded by federal funds.
 - (2) Amended. Whenever an original certification must be amended, the form of the original certification is used with the notation "Amending Certificate Issued (date)" at the top of the form.
 - (3) Special. This form of contract certification is used for those contracts that are unusual in circumstances and, therefore, any one of the above approved forms of contract certification cannot be readily applied.
 - (b) CONTRACT INPUT, SAFORM C-41. A copy of the CONTRACT INPUT, SAFORM C-41 prepared by DAGS Accounting Division to record the contract encumbrance transaction in the APROPRIATION/ALLOTMENT LEDGER and in the CONTRACT LEDGER.
 - (c) Copies of Contracts and Agreements (Assignment of Comptroller's Contract Number). Copies of contracts and agreements, with a Comptroller's Contract Number assigned, are returned to the department or agency.