

1 Make this section a part of the Standard Specifications:
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3 **"SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**
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5 **102.01 Prequalification of Bidders.** Prospective bidders shall be
6 capable of performing the work for which they are bidding.
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8 In accordance with HRS Chapter 103D-310, the Department may require
9 any prospective bidder to submit answers to questions contained in the
10 'Standard Qualification Questionnaire For Prospective Bidders On Public Works
11 Contracts' furnished by the Department, properly executed and notarized,
12 setting forth a complete statement of the experience of such prospective bidder
13 and its organization in performing similar work and a statement of the equipment
14 proposed to be used, together with adequate proof of the availability of such
15 equipment. Whenever it appears to the Department, from answers to the
16 questionnaire or otherwise, that the prospective bidder is not fully qualified and
17 able to perform the intended work, the Department will, after affording the
18 prospective bidder an opportunity to be heard and if still of the opinion that the
19 bidder is not fully qualified to perform the work, refuse to receive or consider any
20 bid offered by the prospective bidder. All information contained in the answers
21 to the questionnaire shall be kept confidential. Questionnaire so submitted
22 shall be returned to the bidders after serving their purpose.
23

24 No person, firm or corporation may bid where (1) the person, firm, or
25 corporation, or (2) a corporation owned substantially by the person, firm, or
26 corporation, or (3) a substantial stockholder or an officer of the corporation, or
27 (4) a partner or substantial investor in the firm is in arrears in payments owed to
28 the State or its political subdivisions or is in default as a surety or failure to do
29 faithfully and diligently previous contracts with the State.
30

31 **102.02 Contents of Proposal Forms.** The Department will furnish
32 prospective bidders with proposal forms stating:
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- 34 (1) The location,
- 35
- 36 (2) Description of the proposed work,
- 37
- 38 (3) The approximate quantities,
- 39
- 40 (4) Items of work to be done or materials to be furnished,
- 41
- 42 (5) A schedule of items, and
- 43
- 44 (6) The time in which the work shall be completed.
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Papers bound with or attached to the proposal form are part of the proposal. The bidder shall not detach or alter the papers bound with or attached to the proposal when the bidder submits its proposal.

Also, the bidder shall consider other documents including the plans and specifications a part of the proposal form whether attached or not.

102.03 Issuance of Proposal Forms. The Department reserves the right to refuse to issue proposal forms to prospective bidders, which refusal may be based on the following:

(1) Lack of competency or adequate machinery, plant, and other equipment (which determination may be based on the financial statement and experience questionnaires required under Subsection 102.01 - Prequalification of Bidders);

(2) Uncompleted work that might hinder or prevent the prompt completion of additional work if awarded;

(3) Failure to pay or settle bills due for labor and material on former contracts in force at the time of issuance of the project proposal forms;

(4) Failure to comply with qualification regulations of the Department;

(5) Default under previous contracts; or

(6) Lack of responsibility and cooperation from past work.

102.04 Estimated Quantities. The quantities shown in the contract are approximate and are for the comparison of bids only. The actual quantity of work may not correspond with the quantities shown in the contract. The Department will make payment to the Contractor for unit price items in accordance with the contract for only the following:

(1) Actual quantities of work done and accepted, not the estimated quantities; or

(2) Actual quantities of materials furnished, not the estimated quantities.

The Department may increase, decrease, or omit each scheduled quantities of work to be done and materials to be furnished. When the Department increases or decreases the estimated quantity of a contract item by more than 15% the Department will make payment for such items in accordance with Subsection 104.06 - Methods of Price Adjustment.

102.05 Examination of Contract and Site of Work. The bidder shall examine carefully the site of the proposed work and contract before submitting a proposal.

By the act of submitting a bid for the proposed contract, the bidder warrants that:

(1) The bidder and its Subcontractors have reviewed the contract documents and found them free from ambiguities and sufficient for the purpose intended;

(2) The bidder and its workers, employees and subcontractors have the skills and experience in the type of work required by the contract documents bid upon;

(3) Neither the bidder nor its employees, agents, suppliers or subcontractors have relied upon verbal representations from the Department, its employees or agents, including architects, engineers or consultants, in assembling the bid figure; and

(4) The bases for the bid figure are solely on the construction contract documents.

Also, the bidder warrants that the bidder has examined the site of the work. From its investigations, the bidder acknowledges satisfaction on:

(1) The nature and location of the work;

(2) The character, quality, and quantity of materials;

(3) The difficulties to be encountered; and

(4) The kind and amount of equipment and other facilities needed;

Subsurface information or hydrographic survey data furnished are for the bidders' convenience only. The data and information furnished are the product of the Department's interpretation gathered in investigations made at the specific locations. These conditions may not be typical of conditions at other locations within the project area or that such conditions remain unchanged. Also, conditions found at the time of the subsurface explorations may not be the same conditions when work starts. The bidder shall be solely responsible for assumptions, deductions, or conclusions the bidder may derive from the subsurface information or data furnished.

If the Engineer determines that the natural conditions differ from that originally anticipated or contemplated by the Contractor in the items of

excavation, the State may treat the difference in natural conditions, as falling within the meaning of Subsection 104.02 – Changes.

102.06 Preparation of Proposal. The submittal of its proposal shall be on forms furnished by the Department. The bidder shall specify in words or figures:

- (1) A unit price for each pay item with a quantity given;
- (2) The products of the respective unit prices and quantities
- (3) The lump sum amount; and
- (4) The total amount of the proposal obtained by adding the amounts of the several items.

The words and figures shall be in ink or typed. If a discrepancy occurs between the prices written in words and those written in figures, the prices written in words shall govern.

When an item in the proposal contains an option to be made, the bidder shall choose in accordance with the contract for that particular item. Determination of an option will not permit the Contractor to choose again.

The bidder shall sign the proposal properly in ink. A duly authorized representatives of the bidder or by an agent of the bidder legally qualified and acceptable to the Department shall sign, including one or more partners of the bidder and one or more representatives of each entity comprising a joint venture.

When an agent, other than the officer(s) of a corporation authorized to sign contracts for the corporation or a partner of a partnership, signs the proposals, a 'Power of Attorney' shall be on file with the Department or submitted with the proposal. Otherwise, the Department will reject the proposal as irregular and unauthorized.

The bidder shall submit acceptable evidence of the authority of the partner, member(s) or officer(s) to sign for the partnership, joint venture, or corporation respectively with the proposal. Otherwise, the Department will reject the proposal as irregular and unauthorized.

102.07 Irregular Proposals. The Department may consider proposals irregular and may reject the proposals for the following reasons:

- (1) The proposal is a form not furnished by the Department, altered, or detached;

(2) The proposal contains unauthorized additions, conditions, or alternates. Also, the proposal contains irregularities that may tend to make the proposal incomplete, indefinite, or ambiguous to its meaning;

(3) The bidder adds provisions reserving the right to accept or reject an award. Also, the bidder adds provisions into a contract before an award;

(4) The proposal does not contain a unit price for each pay item listed except authorized optional pay items; and

(5) Prices for some items are out of proportion to the prices for other items.

(6) If in the opinion of the Director, the bidder and its listed subcontractors do not have the Contactor's licenses or combination of Contractor's licenses necessary to complete the work.

Where the prospective bidder is bidding on multiple projects simultaneously and the proposal limits the maximum gross amount of awards that the bidder can accept at one bid letting, the proposal is not irregular if the limit on the gross amount of awards is clear and the Department selects the awards that can be given.

102.08 Proposal Guaranty. In as much as the contract to be executed is a price-term, open end, or requirements contract under which the contract price, or total amount to be paid the Contractor cannot be determined at the time the contract is executed, the proposal guaranty required shall be in the following amount:

<u>Proposal</u>	<u>Security Amount</u>
Area 1, 2, 3	\$18,750.00

The Department will not consider a proposal of \$25,000 or more unless accompanied by:

(1) A deposit of legal tender; or

(2) A valid surety bid bond, underwritten by a company licensed to issue bonds in the State of Hawaii, in the form and composed, substantially, with the same language as provided herewith and signed by both parties; or

(3) A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official 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).

(a) The bidder may use these instruments only to a maximum of \$100,000.

(b) 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.

(c) The instrument shall be made payable at sight to the Department.

The above shall be in the amount of \$6,250.00 for each Area.

102.09 Delivery of Proposal. The bidder shall submit the proposal in a sealed envelope, bearing on the outside the identity of the project and the its name and address. The Department will reject and return a proposal unopened if received after the time set for the opening of bids.

102.10 Withdrawal or Revision of Proposals. A bidder may withdraw or revise a proposal after the bidder deposits the proposal with the Department, provided the Department receives such withdrawal or revision request in writing before the time set for the opening of bids.

102.11 Public Opening of Proposals. The Department will open and read the proposals publicly at the time and place shown in the Notice to Bidders. Invited are bidders, their authorized agents, and other interested parties to be present.

102.12 Disqualification of Bidders. The Department may disqualify a bidder and reject its proposal for the following reasons:

(1) Submittal of more than one proposal whether under the same or different name.

(2) Evidence of collusion among bidders. The Department will not recognize participants in collusion as bidders for any future work of the Department until such participants are reinstated as qualified bidders.

(3) Lack of proposal guaranty.

- (4) Submittal of an unsigned or improperly signed proposal.
- (5) Submittal of a proposal without a listing of subcontractors or containing only a partial or incomplete listing of subcontractors.
- (6) Submittal of an irregular proposal in accordance with Subsection 102.07 - Irregular Proposals.
- (7) Evidence of assistance from a person who has been an employee of the agency within the preceding two years and who participated while in State office or employment in the matter with which the contract is directly concerned, pursuant to HRS Chapter 84-15.
- (8) Suspended or debarred in accordance with HRS Chapter 104-25.
- (9) Failure to complete the prequalification questionnaire.
- (10) Failure to attend the mandatory pre-bid meeting, if applicable.

102.13 Material Guaranty. The successful bidder may be required to furnish a statement of the composition, origin, manufacture of materials, and samples.

102.14 Substitution of Materials and Equipment Before Bid Opening. See Subsection 106.13 for Substitution Of Materials and Equipment After Bid Opening.

(A) General. When brand names of materials or equipment are specified in the contract documents, they are to indicate a quality, style, appearance, or performance and not to limit competition. The bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualification of such proposed alternate brands shall be submitted in writing and addressed to the Contracts Officer. The face of the envelope containing the request must be clearly marked 'SUBSTITUTION REQUEST'. The request may be hand-carried or mailed to the DOT Contracts Office, Room 105, 869 Punchbowl Street, Honolulu, Hawaii 96813. In either case, the written request must be received by the DOT Contracts Office no later than 14 calendar days before the bid opening date, not including the bid opening date. The written request will be time stamped by the DOT Contracts Office. For the purpose of this section, the time designated by the time stamping device in the DOT Contracts Office shall be official. If the written request is hand-carried, the bearer is responsible to ensure that the request is time stamped by the DOT Contracts Office.

Submit 5 sets of the written request, technical brochures, and a statement of variances.

An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.17 – Addenda .

(B) Statement of Variances. The statement of variances must list all features of the proposed substitution that differ from the contract documents and must further certify that the substitution has no other variant features. The brochure and information submitted shall be clearly marked showing make, model, size, options, and any other features requested by the Engineer and must include sufficient evidence to evaluate each feature listed as a variance. A request will be denied if submitted without sufficient evidence. If after installing the substituted product, an unlisted variance is discovered, the Contractor shall immediately replace the product with a specified product at no increase in contract price and contract time.

(C) Substitution Denial. Any substitution request not complying with the above requirements will be denied.

102.15 Preferences.

(A) Preference for Hawaii Products. The bidder's attention is directed to Sections 103D-1001 and 103D-1002, HRS and Subchapter 1, Chapter 124, Subtitle 11 of Title 3, HAR which provide preferences for Hawaii Products. According to Section 103D-1002, HRS, the bidder may examine the Hawaii Products List at the State Procurement Office, State Office Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813.

If a product listed in the Hawaii Products List is available and meets project specifications, such product will be designated in the contract documents as a qualified product which may be used in the performance of the project.

If the bidder intends to claim preference for products on the Hawaii Product List and such is not listed, the bidder shall immediately notify the Contracts Office, Department of Transportation, so the Engineer may take corrective or other appropriate actions.

It is further understood by the bidder that if the bidder elects to furnish qualified Hawaii Products, and is awarded the contract, then fails to use such products or meet the requirements of such preference, the bidder shall be subject to the statutory penalties, provided in HRS Chapter 103D-1002, and such other remedies as may be available to the State.

For the purpose of determining the lowest bid price only, the provisions of HRS Chapter 103D-1002 shall apply. Any contract awarded or executed in violation of HRS Chapter 103D-1002 shall be void and no payment shall be made on account of such contract.

(B) Preferences for Apprenticeship Programs. In accordance with ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to Hawaii Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's price for evaluation purposes. These procedures apply to public works projects with estimated cost of \$250,000 or more and entered into under the provisions of HRS Chapter 103.

The following provisions apply to this Apprenticeship Program.

(1) Definitions

(a) “Apprenticeable trade”, HRS Section 103-55.6 (c), shall have the same meaning as ‘apprenticeable occupation’ pursuant to Hawaii Administrative Rules (HAR) Section 30-1-5.

(b) “Department” means the department of labor and industrial relations.

(c) “Director” means the director of labor and industrial relations.

(d) “Employ” means the employment of a person in an employer-employee relations.

(e) “Governmental body” means as defined in HRS Section 103D-104.

(f) “Party to an apprenticeship agreement” means party to a registered apprenticeship program with the department of labor and industrial relations.

(g) “Preference” means the 5% by which the qualified bidder's offer amount would be decreased for evaluation purposes.

(h) “Public work” shall be as defined in HRS Section 104-2 and HAR Section 12-22-1.

(i) “Registered apprenticeship program” means a construction trade program approved by the department pursuant to HAR Section 12-30-1 and Section 12-30-4.

(j) “Sponsor” means an operator of an apprenticeship program and in whose name the program is approved and registered with the department of labor and industrial relations pursuant to HAR Section 12-30-1.

419
420 (k) Offeror – Entity/bidder submitting a proposal to undertake
421 a project.

422
423 (l) Procurement Officer – Director of Transportation or his
424 authorized representative.

425
426 (2) Qualification Procedures

427
428 (a) Any bidder seeking the preference must be a party to an
429 apprenticeship agreement registered with the department at the
430 time the offer is made for each apprenticeable trade the bidder
431 will employ to construct the public works projects for which the
432 offer is being made.

433
434 1. The apprenticeship agreement shall be registered
435 and conform to the requirements of HRS Chapter 372.

436
437 2. Subcontractors do not have to be a party to an
438 apprenticeship agreement for the bidder to obtain the
439 preference.

440
441 3. The bidder is not required to have apprentices in its
442 employ at the time of submittal of an offer to qualify for the
443 preference.

444
445 (b) The department shall:

446
447 1. Develop and maintain a list of construction trades in
448 registered apprenticeship programs which conform to HRS
449 Chapter 372; and

450
451 2. Electronically post the list; including any
452 amendments, on the department website
453 (<http://hawaii.gov/labor/wdd>).

454
455 (c) Bidder is responsible to comply with all submission
456 requirements for registration of its apprenticeship program
457 before requesting a preference.

458
459 (d) Bidder shall provide a certification by the sponsor of the
460 respective registered apprenticeship programs covering the
461 relevant trade(s) for the public works project.

462
463 (e) *Certification Form 1* issued by the department shall
464 include:

465
466 1. Contractor information;

467
468 2. Solicitation reference;

469
470 3. Trade(s);
471

472 4. Date and name of apprenticeship program;

473
474 5. Signature of authorized training coordinator or training
475 trust fund administrator certifying that the contractor is a
476 participant in the program, and that the program is
477 registered with the department;

478
479 6. Contract information for sponsor's authorized
480 representative signing the form;

481
482 7. Number of apprentices enrolled in the program, number
483 who successfully completed the apprenticeship program in
484 the past 12 months, including whether the contractor is
485 signatory to a collective bargaining agreement for that
486 trade, or if not, provide for attachment of a copy of the
487 agreement between the contractor and the program.

488
489 (3) Solicitation Procedures

490
491 (a) If the NTB indicates that this project is covered by this
492 preference, and the offer is less than \$250,000 this preference
493 will still be applicable in determining the lowest bidder.

494
495 (b) A claim for this preference must include the following:

496
497 1. Allow bidder seeking to claim the preference to state
498 the trades the bidder will employ to perform the work;

499
500 2. For each trade to be employed to perform the work,
501 the bidder shall submit a completed signed original
502 *Certification Form 1* verifying participation in an
503 apprenticeship program registered with the department.

504
505 3. The *Certification Form 1* shall be authorized by an
506 apprenticeship sponsor of the department's list of
507 registered apprenticeship programs. The authorization
508 shall be an original signature by an authorized official of
509 the apprenticeship sponsor; and

510
511 4. The completed *Certification Form 1* for each trade
512 must be submitted by the bidder with the offer. Previous
513 certifications shall not apply unless allowed by the
514 solicitation.

515
516 (c) Upon receiving *Certification Form 1*, the procurement
517 officer will verify with the department that the apprenticeship
518 program is on the list of apprenticeship programs registered
519 with the department. If the programs are not confirmed by the
520 department, the bidder will not qualify for the preference.

521
522 (4) Evaluation and Contract Award

523
524 (a) If the bidder certifies participation in an apprenticeship

program for each trade which will be employed by the bidder for the project, the procurement officer shall apply the preference and decrease the bidder's total bid amount by five per cent (5%) for evaluation purposes.

(b) Should the bidder qualify for other statutory preferences (for example, Hawaii products), all applicable preferences shall be applied to the bidder's price.

(c) The contract amount shall be the original offer amount, exclusive of any preference; the preference is only for evaluation purposes.

(d) Any claims challenging a bidder's representation that the bidder is a participant in an apprenticeship program(s) as claimed, shall be submitted to the procurement officer. The procurement officer will refer the challenge to the department of labor and industrial relations who shall investigate any such claims and shall make a determination.

(5) Contract Administration

(a) For the duration of a contract awarded utilizing the apprenticeship preference, the contractor shall certify each month that work is being conducted on the project, that it continues to be a participant in the relevant apprenticeship program for each trade it employs.

(b) Monthly certification shall be made on *Monthly Certification Form 2* prepared and made available by the department, be a signed original by the respective apprenticeship program sponsors authorized official, and submitted by the contractor with its monthly payment requests.

(c) Should the contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a part to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

1. Withholding of the requested payment until the required form(s) are submitted;

2. Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the contractor; provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or

3. Proceed to debar or suspend pursuant to HRS Section 103D-702.

(d) If events such as "acts of God," acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and expeditiously complies with the certification process when the event is over.

This subsection shall not apply when its application will disqualify the State from receiving federal funds or aid.

(C) Preference for Recycled Products. Recycled Products shall not apply to this project.

(D) Evaluation Procedures and Contract Award. For bid evaluation, the Engineer will evaluate the bids by applying the applicable preferences selected by the bidders according to the contract. The Engineer will base the calculations for adjustments upon the original bid prices offered. If more than one preference applies, the evaluated bid price shall be the sum of the original bid price plus applicable preference adjustments.

If a bidder has designated use of a Hawaii Product and fails to provide the product, the contract will become void and no payments will be made.

The Engineer will award the contract to the responsible bidder submitting the responsive bid with the lowest evaluated bid price. The contract amount of the contract awarded shall be the original bid price offered exclusive of any preference.

102.16 Certification for Safety and Health Program for Bids in excess of \$100,000. In accordance with HRS Chapter 396-18, the bidder or offeror, by signing and submitting this proposal, certifies that a written safety and health plan for this project will be available and implemented by the notice to proceed date for this project. Details of the requirements of this plan may be obtained from the State Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).

102.17 Addenda. Addenda issued shall become part of the contract documents. Addenda to the bid documents will be provided to all prospective bidders at the respective offices furnished for such purposes. Each addendum shall be an addition to the contract documents. The terms and requirements of the bid documents (i.e. drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addendum."

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END OF SECTION 102