

1 Make this section a part of the Standard Specifications:
2

3 **“SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**
4

5
6 **102.01 Prequalification of Bidders.** Prospective bidders shall be capable of
7 performing the work for which they are bidding.
8

9 In accordance with HRS Chapter 103D-310, the Department may require
10 any prospective bidder to submit answers to questions contained in the 'Standard
11 Qualification Questionnaire For Prospective Bidders On Public Works Contracts'
12 furnished by the Department, properly executed and notarized, setting forth a
13 complete statement of the experience of such prospective bidder and its
14 organization in performing similar work and a statement of the equipment
15 proposed to be used, together with adequate proof of the availability of such
16 equipment. Whenever it appears to the Department, from answers to the
17 questionnaire or otherwise, that the prospective bidder is not fully qualified and
18 able to perform the intended work, the Department will, after affording the
19 prospective bidder an opportunity to be heard and if still of the opinion that the
20 bidder is not fully qualified to perform the work, refuse to receive or consider any
21 bid offered by the prospective bidder. All information contained in the answers to
22 the questionnaire shall be kept confidential. Questionnaire so submitted shall be
23 returned to the bidders after serving their purpose.
24

25 No person, firm or corporation may bid where (1) the person, firm, or
26 corporation, or (2) a corporation owned substantially by the person, firm, or
27 corporation, or (3) a substantial stockholder or an officer of the corporation, or (4)
28 a partner or substantial investor in the firm is in arrears in payments owed to the
29 State or its political subdivisions or is in default as a surety or failure to do faithfully
30 and diligently previous contracts with the State.
31

32 **102.02 Contents of Proposal Forms.** The Department will furnish prospective
33 bidders with proposal forms posted in HlePRO stating:
34

- 35 (1) The location,
- 36
- 37 (2) Description of the proposed work,
- 38
- 39 (3) The approximate quantities,
- 40
- 41 (4) Items of work to be done or materials to be furnished,
- 42
- 43 (5) A schedule of items, and
- 44
- 45 (6) The time in which the work shall be completed.
46

102.04

47 Papers bound with or attached to the proposal form are part of the
48 proposal. The bidder shall not detach or alter the papers bound with or attached
49 to the proposal when the bidder submits its proposal through HlePRO.
50

51 Also, the bidder shall consider other documents including the plans and
52 specifications a part of the proposal form whether attached or not.
53

54 **102.03 Issuance of Proposal Forms.** The Department reserves the right to
55 refuse to issue proposal forms to prospective bidders, which refusal may be based
56 on the following:
57

58 (1) Lack of competency or adequate machinery, plant, and other
59 equipment (which determination may be based on the financial statement
60 and experience questionnaires required under Subsection 102.01 -
61 Prequalification of Bidders);
62

63 (2) Uncompleted work that might hinder or prevent the prompt
64 completion of additional work if awarded;
65

66 (3) Failure to pay or settle bills due for labor and material on former
67 contracts in force at the time of issuance of the solicitation;
68

69 (4) Failure to comply with qualification regulations of the Department;
70

71 (5) Default under previous contracts; or
72

73 (6) Lack of responsibility and cooperation from past work.
74

75 **102.04 Estimated Quantities.** The quantities shown in the contract are
76 approximate and are for the comparison of bids only. The actual quantity of work
77 may not correspond with the quantities shown in the contract. The Department will
78 make payment to the Contractor for unit price items in accordance with the
79 contract for only the following:
80

81 (1) Actual quantities of work done and accepted, not the estimated
82 quantities; or
83

84 (2) Actual quantities of materials furnished, not the estimated quantities.
85

86 The Department may increase, decrease, or omit each scheduled quantities
87 of work to be done and materials to be furnished. When the Department increases
88 or decreases the estimated quantity of a contract item by more than 15% the
89 Department will make payment for such items in accordance with Subsection
90 104.06 - Methods of Price Adjustment.
91

92 **102.05 Examination of Contract and Site of Work.** The bidder shall examine
93 carefully the site of the proposed work and contract before submitting a proposal.

94
95 By the act of submitting a bid for the proposed contract, the bidder warrants that:

96
97 (1) The bidder and its Subcontractors have reviewed the contract
98 documents and found them free from ambiguities and sufficient for the
99 purpose intended;

100
101 (2) The bidder and its workers, employees and subcontractors have the
102 skills and experience in the type of work required by the contract
103 documents bid upon;

104
105 (3) Neither the bidder nor its employees, agents, suppliers or
106 subcontractors have relied upon verbal representations from the
107 Department, its employees or agents, including architects, engineers or
108 consultants, in assembling the bid figure; and

109
110 (4) The basis for the bid figure are solely on the construction contract
111 documents.

112
113 Also, the bidder warrants that the bidder has examined the site of the work.
114 From its investigations, the bidder acknowledges satisfaction on:

115
116 (1) The nature and location of the work;

117
118 (2) The character, quality, and quantity of materials;

119
120 (3) The difficulties to be encountered; and

121
122 (4) The kind and amount of equipment and other facilities needed;

123
124 Subsurface information or hydrographic survey data furnished are for the
125 bidders' convenience only. The data and information furnished are the product of
126 the Department's interpretation gathered in investigations made at the specific
127 locations. These conditions may not be typical of conditions at other locations
128 within the project area or that such conditions remain unchanged. Also, conditions
129 found at the time of the subsurface explorations may not be the same conditions
130 when work starts. The bidder shall be solely responsible for assumptions,
131 deductions, or conclusions the bidder may derive from the subsurface information
132 or data furnished.

133
134 If the Engineer determines that the natural conditions differ from that
135 originally anticipated or contemplated by the Contractor in the items of excavation,
136 the State may treat the difference in natural conditions, as falling within the
137 meaning of Subsection 104.02 – Changes.

138 **102.06 Preparation of Proposal.** The submittal of its proposal shall be on
 139 forms furnished by the Department. The bidder shall specify in words or figures:

- 140
 141 (1) A unit price for each pay item with a quantity given;
 142
 143 (2) The products of the respective unit prices and quantities
 144
 145 (3) The lump sum amount; and
 146
 147 (4) The total amount of the proposal obtained by adding the amounts of
 148 the several items.

149
 150 The words and figures shall be in ink or typed. If a discrepancy occurs
 151 between the prices written in words and those written in figures, the prices written
 152 in words shall govern.

153
 154 When an item in the proposal contains an option to be made, the bidder
 155 shall choose in accordance with the contract for that particular item.
 156 Determination of an option will not permit the Contractor to choose again.

157
 158 The bidder shall sign the proposal properly in ink. A duly authorized
 159 representatives of the bidder or by an agent of the bidder legally qualified and
 160 acceptable to the Department shall sign, including one or more partners of the
 161 bidder and one or more representatives of each entity comprising a joint venture.

162
 163 When an agent, other than the officer(s) of a corporation authorized to sign
 164 contracts for the corporation or a partner of a partnership, signs the proposals, a
 165 'Power of Attorney' shall be on file with the Department or submitted with the
 166 proposal. Otherwise, the Department will reject the proposal as irregular and
 167 unauthorized.

168
 169 The bidder shall submit acceptable evidence of the authority of the partner,
 170 member(s) or officer(s) to sign for the partnership, joint venture, or corporation
 171 respectively with the proposal. Otherwise, the Department will reject the proposal
 172 as irregular and unauthorized.

173
 174 **102.07 Irregular Proposals.** The Department may consider proposals irregular
 175 and may reject the proposals for the following reasons:

- 176
 177 (1) The proposal is a form not furnished by the Department, altered, or
 178 detached;
 179
 180 (2) The proposal contains unauthorized additions, conditions, or
 181 alternates. Also, the proposal contains irregularities that may tend to make
 182 the proposal incomplete, indefinite, or ambiguous to its meaning;
 183

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

186
187 (4) The proposal does not contain a unit price for each pay item listed
188 except authorized optional pay items; and

189
190 (5) Prices for some items are out of proportion to the prices for other
191 items.

192
193 (6) If in the opinion of the Director, the bidder and its listed
194 subcontractors do not have the Contactor’s licenses or combination of
195 Contractor’s licenses necessary to complete the work.

196
197 Where the prospective bidder is bidding on multiple projects simultaneously
198 and the proposal limits the maximum gross amount of awards that the bidder can
199 accept at one bid letting, the proposal is not irregular if the limit on the gross
200 amount of awards is clear and the Department selects the awards that can be
201 given.

202
203 **102.08 Proposal Guaranty.** In as much as the contract to be executed is a
204 price-term, open end, or requirements contract under which the contract price, or
205 total amount to be paid the Contractor cannot be determined at the time the
206 contract is executed, the proposal guaranty required shall be in the following
207 amounts:

<u>Proposal</u>	<u>Security Amount</u>
Area 1	\$25,000.00

208
209
210
211
212 The Department will not consider a proposal of \$25,000 or more unless
213 accompanied by:

- 214 (1) A deposit of legal tender; or
- 215
216 (2) A valid surety bid bond, underwritten by a company licensed to issue
217 bonds in the State of Hawaii, in the form and composed, substantially, with
218 the same language as provided herewith and signed by both parties; or
- 219
220 (3) A certificate of deposit, share certificate, cashier's check, treasurer's
221 check, teller's check, or official check drawn by, or a certified check
222 accepted by and payable on demand to the State by a bank, savings
223 institution, or credit union insured by the Federal Deposit Insurance
224 Corporation (FDIC) or the National Credit Union Administration (NCUA).

225
226
227 (a) The bidder may use these instruments only to a maximum of
228 \$100,000.
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230 (b) If the required security or bond amount totals over \$100,000
231 more than one instrument not exceeding \$100,000 each and issued
232 by different financial institutions shall be acceptable.

233
234 (c) The instrument shall be made payable at sight to the
235 Department.

236
237 (d) Proposal Guaranty listed in (1) and (3) shall be in its original
238 form, and shall be received at the Contracts Office, Department of
239 Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813
240 before the bid deadline.

241
242 **102.09 Delivery of Proposal.** The bidder shall submit the proposal in HlePRO.
243 Bids received after said due date and time shall not be considered. Original bid
244 documents do not have to be submitted. Award will be made based on proposals
245 submitted in HlePRO.

246
247 **102.10 Withdrawal or Revision of Proposals.** A bidder may withdraw or
248 revise a proposal after the bidder submits the proposal in HlePRO. Withdrawal or
249 revision of proposal must be completed before the time set for the receiving of
250 bids.

251
252 **102.11 Public Opening of Proposals.** Not applicable.

253
254 **102.12 Disqualification of Bidders.** The Department may disqualify a bidder
255 and reject its proposal for the following reasons:

256
257 (1) Submittal of more than one proposal whether under the same or
258 different name.

259
260 (2) Evidence of collusion among bidders. The Department will not
261 recognize participants in collusion as bidders for any future work of the
262 Department until such participants are reinstated as qualified bidders.

263
264 (3) Lack of proposal guaranty.

265
266 (4) Submittal of an unsigned or improperly signed proposal.

267
268 (5) Submittal of a proposal without a listing of subcontractors or
269 containing only a partial or incomplete listing of subcontractors.

270
271 (6) Submittal of an irregular proposal in accordance with Subsection
272 102.07 - Irregular Proposals.

273
274 (7) Evidence of assistance from a person who has been an employee of
275 the agency within the preceding two years and who participated while in

276 State office or employment in the matter with which the contract is directly
 277 concerned, pursuant to HRS Chapter 84-15.

278
 279 (8) Suspended or debarred in accordance with HRS Chapter 104-25.

280
 281 (9) Failure to complete the prequalification questionnaire, if applicable.

282
 283 (10) Failure to attend the mandatory pre-bid meeting, if applicable.

284
 285 **102.13 Material Guaranty.** The successful bidder may be required to furnish a
 286 statement of the composition, origin, manufacture of materials, and samples.

287
 288 **102.14 Substitution of Materials and Equipment Before Bid Opening.** See
 289 Subsection 106.13 for Substitution Of Materials and Equipment After Bid Opening.

290
 291 (A) **General.** When brand names of materials or equipment are
 292 specified in the contract documents, they are to indicate a quality, style,
 293 appearance, or performance and not to limit competition. The bidder shall
 294 base its bid on one of the specified brand names unless alternate brands
 295 are qualified as equal or better in an addendum. Qualification of such
 296 proposed alternate brands shall be submitted in HlePRO. The request
 297 must be posted in HlePRO no later than 14 calendar days before the bid
 298 opening date, not including the bid opening date

299
 300 An addendum will be issued to inform all prospective bidders of any
 301 accepted substitution in accordance with Subsection 102.17 – Addenda .

302
 303 (B) **Statement of Variances.** The statement of variances must list all
 304 features of the proposed substitution that differ from the contract documents
 305 and must further certify that the substitution has no other variant features.
 306 The brochure and information submitted shall be clearly marked showing
 307 make, model, size, options, and any other features requested by the
 308 Engineer and must include sufficient evidence to evaluate each feature
 309 listed as a variance. A request will be denied if submitted without sufficient
 310 evidence. If after installing the substituted product, an unlisted variance is
 311 discovered, the Contractor shall immediately replace the product with a
 312 specified product at no increase in contract price and contract time.

313
 314 (C) **Substitution Denial.** Any substitution request not complying with
 315 the above requirements will be denied.

316
 317 **102.15 Preferences.**

318
 319 (A) **Preference for Hawaii Products.** The bidder's attention is directed
 320 to Sections 103D-1001 and 103D-1002, HRS and Subchapter 1, Chapter
 321 124, Subtitle 11 of Title 3, HAR which provide preferences for Hawaii
 322 Products. According to Section 103D-1002, HRS, the bidder may examine

323 the Hawaii Products List at the State Procurement Office, State Office
324 Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813.

325
326 If a product listed in the Hawaii Products List is available and meets
327 project specifications, such product will be designated in the contract
328 documents as a qualified product which may be used in the performance of
329 the project.

330
331 If the bidder intends to claim preference for products on the Hawaii
332 Product List and such is not listed, the bidder shall immediately notify the
333 Contracts Office, Department of Transportation, so the Engineer may take
334 corrective or other appropriate actions.

335
336 It is further understood by the bidder that if the bidder elects to
337 furnish qualified Hawaii Products, and is awarded the contract, then fails to
338 use such products or meet the requirements of such preference, the bidder
339 shall be subject to the statutory penalties, provided in HRS Chapter 103D-
340 1002, and such other remedies as may be available to the State.

341
342 For the purpose of determining the lowest bid price only, the
343 provisions of HRS Chapter 103D-1002 shall apply. Any contract awarded
344 or executed in violation of HRS Chapter 103D-1002 shall be void and no
345 payment shall be made on account of such contract.

346
347 **(B) Preferences for Apprenticeship Programs.** In accordance with
348 ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for
349 bidders that are parties to apprenticeship agreements pursuant to Hawaii
350 Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's
351 price for evaluation purposes. These procedures apply to public works
352 projects with estimated cost of \$250,000 or more and entered into under the
353 provisions of HRS Chapter 103.

354
355 The following provisions apply to this Apprenticeship Program.

- 356 **(1) Definitions**
- 357 **(a)** “Apprenticeable trade”, HRS Section 103-55.6 (c), shall
- 358 have the same meaning as ‘apprenticeable occupation’
- 359 pursuant to Hawaii Administrative Rules (HAR) Section 30-1-
- 360 5.
- 361 **(b)** “Department” means the department of labor and
- 362 industrial relations.
- 363 **(c)** “Director” means the director of labor and industrial
- 364 relations.
- 365 **(d)** “Employ” means the employment of a person in an
- 366 employer-employee relations.
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- 373 (e) "Governmental body" means as defined in HRS
 374 Section 103D-104.
 375
- 376 (f) "Party to an apprenticeship agreement" means party to
 377 a registered apprenticeship program with the department of
 378 labor and industrial relations.
 379
- 380 (g) "Preference" means the 5% by which the qualified
 381 bidder's offer amount would be decreased for evaluation
 382 purposes.
 383
- 384 (h) "Public work" shall be as defined in HRS Section 104-2
 385 and HAR Section 12-22-1.
 386
- 387 (i) "Registered apprenticeship program" means a
 388 construction trade program approved by the department
 389 pursuant to HAR Section 12-30-1 and Section 12-30-4.
 390
- 391 (j) "Sponsor" means an operator of an apprenticeship
 392 program and in whose name the program is approved and
 393 registered with the department of labor and industrial relations
 394 pursuant to HAR Section 12-30-1.
 395
- 396 (k) Offeror – Entity/bidder submitting a proposal to
 397 undertake a project.
 398
- 399 (l) Procurement Officer – Director of Transportation or his
 400 authorized representative.
 401
- 402 (2) Qualification Procedures
 403
- 404 (a) Any bidder seeking the preference must be a party to
 405 an apprenticeship agreement registered with the
 406 department at the time the offer is made for each
 407 apprenticeable trade the bidder will employ to construct
 408 the public works projects for which the offer is being
 409 made.
 410
- 411 1. The apprenticeship agreement shall be registered
 412 and conform to the requirements of HRS Chapter 372.
 413
- 414 2. Subcontractors do not have to be a party to an
 415 apprenticeship agreement for the bidder to obtain the
 416 preference.
 417
- 418 3. The bidder is not required to have apprentices in
 419 its employ at the time of submittal of an offer to qualify
 420 for the preference.
 421
- 422 (b) The department shall:
 423
- 424 1. Develop and maintain a list of construction
 425 trades in registered apprenticeship programs which

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conform to HRS Chapter 372; and

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

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

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

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

1. Contractor information;
2. Solicitation reference;
3. Trade(s);
4. Date and name of apprenticeship program;
5. Signature of authorized training coordinator or training trust fund administrator certifying that the contractor is a participant in the program, and that the program is registered with the department;
6. Contract information for sponsor’s authorized representative signing the form;
7. Number of apprentices enrolled in the program, number who successfully completed the apprenticeship program in the past 12 months, including whether the contractor is signatory to a collective bargaining agreement for that trade, or if not, provide for attachment of a copy of the agreement between the contractor and the program.

(3) Solicitation Procedures

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

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

1. Allow bidder seeking to claim the preference to

476 state the trades the bidder will employ to perform the
477 work;

478
479 **2.** For each trade to be employed to perform the
480 work, the bidder shall submit a completed signed
481 original *Certification Form 1* verifying participation in an
482 apprenticeship program registered with the department.

483
484 **3.** The *Certification Form 1* shall be authorized by
485 an apprenticeship sponsor of the department's list of
486 registered apprenticeship programs. The authorization
487 shall be an original signature by an authorized official
488 of the apprenticeship sponsor; and

489
490 **4.** The completed *Certification Form 1* for each
491 trade must be submitted by the bidder with the offer.
492 Previous certifications shall not apply unless allowed by
493 the solicitation.

494
495 **(c)** Upon receiving *Certification Form 1*, the procurement
496 officer will verify with the department that the apprenticeship
497 program is on the list of apprenticeship programs registered
498 with the department. If the programs are not confirmed by the
499 department, the bidder will not qualify for the preference.

500
501 **(4)** Evaluation and Contract Award

502
503 **(a)** If the bidder certifies participation in an apprenticeship
504 program for each trade which will be employed by the bidder
505 for the project, the procurement officer shall apply the
506 preference and decrease the bidder's total bid amount by five
507 per cent (5%) for evaluation purposes.

508
509 **(b)** Should the bidder qualify for other statutory
510 preferences (for example, Hawaii products), all applicable
511 preferences shall be applied to the bidder's price.

512
513 **(c)** The contract amount shall be the original offer amount,
514 exclusive of any preference; the preference is only for
515 evaluation purposes.

516
517 **(d)** Any claims challenging a bidder's representation that
518 the bidder is a participant in an apprenticeship program(s) as
519 claimed, shall be submitted to the procurement officer. The
520 procurement officer will refer the challenge to the department
521 of labor and industrial relations who shall investigate any such
522 claims and shall make a determination.

523
524 **(5)** Contract Administration

525
526 **(a)** For the duration of a contract awarded utilizing the
527 apprenticeship preference, the contractor shall certify each
528 month that work is being conducted on the project, that it
529 continues to be a participant in the relevant apprenticeship

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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.

581 If a bidder has designated use of a Hawaii Product and fails to
582 provide the product, the contract will become void and no payments will be
583 made.
584

585 The Engineer will award the contract to the responsible bidder
586 submitting the responsive bid with the lowest evaluated bid price. The
587 contract amount of the contract awarded shall be the original bid price
588 offered exclusive of any preference.
589

590 **102.16 Certification for Safety and Health Program for Bids in excess of**
591 **\$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by
592 signing and submitting this proposal, certifies that a written safety and health plan
593 for this project will be available and implemented by the notice to proceed date for
594 this project. Details of the requirements of this plan may be obtained from the
595 State Department of Labor and Industrial Relations, Occupational Safety and
596 Health Division (HIOSH).
597

598 **102.17 Addenda.** Addenda issued shall become part of the contract
599 documents. Addenda to the bid documents will be provided to all prospective
600 bidders via HlePRO. Each addendum shall be an addition to the contract
601 documents. The terms and requirements of the bid documents (i.e. drawings,
602 specifications and other bid and contract documents) cannot be changed prior to
603 the bid opening except by a duly issued addendum.”
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END OF SECTION 102