

1 **SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**
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3 Make the following amendments to said Section:
4

5 **(I) Amend 102.01 Prequalification of Bidders** to read as follows:
6

7 **"102.01 Prequalification of Bidders.** Prospective bidders shall be capable
8 of performing the work for which they are bidding.
9

10 According to said Section 103D-310, HRS, the Department may require
11 any prospective bidder to submit answers to questions contained in the
12 'Standard Qualification Questionnaire For Prospective Bidders On Public Works
13 Contracts' on the form furnished by the Department, properly executed and
14 notarized, setting forth a complete statement of the experience of such
15 prospective bidder and its organization in performing similar work and a
16 statement of the equipment proposed to be used, together with adequate proof
17 of the availability of such equipment. Whenever it appears to the Department,
18 from answers to the questionnaire or otherwise, that the prospective bidder is
19 not fully qualified and able to perform the intended work, the Department will,
20 after affording the prospective bidder an opportunity to be heard and if still of the
21 opinion that the bidder is not fully qualified to perform the work, refuse to receive
22 or consider any bid offered by the prospective bidder. All information
23 contained in the answers to the questionnaire shall be kept confidential.
24 Questionnaire so submitted shall be returned to the bidders after serving their
25 purpose.
26

27 No person, firm or corporation may bid where (1) the person, firm, or
28 corporation, or (2) a corporation owned substantially by the person, firm, or
29 corporation, or (3) a substantial stockholder or an officer of the corporation, or
30 (4) a partner or substantial investor in the firm is in arrears in payments owed to
31 the State of Hawaii or its political subdivisions or is in default as a surety or
32 failure to do faithfully and diligently previous contracts with the State."
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34 **(II) Amend 102.04 Estimated Quantities** by revising the last sentence of
35 the last paragraph to read as follows:
36

37 "The Department may increase, decrease, or omit each scheduled
38 quantities of work to be done and materials to be furnished. When the
39 Department increases or decreases the estimated quantity of a contract item by
40 more than 15% the Department will make payment for such items according to
41 Subsection 104.11 – Variations in Estimated Quantities."
42

43 **(III) Amend 102.07 Irregular Proposals** by adding the following after
44 item (5):
45

46 “(6) If in the opinion of the Director, the bidder and its listed
47 subcontractors do not have the Contactor's licenses or combination of
48 Contractor's licenses necessary to complete the work.”
49

50 **(IV) Amend 102.08 Proposal Guaranty** to read as follows:
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52 **"102.08 Proposal Guaranty.** The Department will not consider a proposal of
53 \$25,000 or more unless accompanied by:
54

55 (1) a deposit of legal tender; or
56

57 (2) a valid surety bid bond, underwritten by a company licensed to
58 issue bonds in the State of Hawaii, in the form and composed,
59 substantially, with the same language as provided herewith and signed by
60 both parties; or
61

62 (3) a certificate of deposit, share certificate, cashier's check,
63 treasurer's check, teller's check, or official check drawn by, or a certified
64 check accepted by and payable on demand to the State by a bank,
65 savings institution, or credit union insured by the Federal Deposit
66 Insurance Corporation (FDIC) or the National Credit Union Administration
67 (NCUA).
68

69 (a) The bidder may use these instruments only to a maximum of
70 \$100,000
71

72 (b) If the required security or bond amount totals over \$100,000
73 more than one instrument not exceeding \$100,000 each and
74 issued by different financial institutions shall be acceptable.
75

76 (c) The instrument shall be made payable at sight to the
77 Department of Transportation, State of Hawaii.
78

79 According to Section 103D-323, H.R.S., the above shall be in a sum not
80 less than 5% of the amount bid.”
81

82 **(V) Amend 102.12 Disqualification of Bidders** to read as follows:
83

84 **"102.12 Disqualification of Bidders.** The Department may disqualify a
85 bidder and reject its proposal for the following reasons:
86

87 (1) Submittal of more than one proposal whether under the same or
88 different name.
89

(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 according to Subsection 102.07 - Irregular Proposals.

(7) Failure to submit and comply with the Statement of Affirmation and Acknowledgment of Disadvantaged Business Enterprise (DBE).

(8) 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 Section 84-15, HRS.

(9) Suspended or debarred in accordance with HRS 104-25.

(10) Failure to complete the prequalification questionnaire.

(11) Failure to attend the mandatory pre-bid meeting."

(VI) Amend **Section 102.14 - American Products Preference** to read as follows:

"102.14 American Products Preference. The 'Buy America' provision in the Surface Transportation Assistance Act of 1982 is applicable to Federal-Aid projects. The bidders shall give preference to American products, materials and supplies.

Bidders may submit a bid based upon furnishing domestic or foreign steel. The basis for determining the foreign or domestic character of the steel is on the place of manufacture. Any domestic steel furnished shall be manufactured from materials and supplies mined, produced or manufactured in the United States.

The 'Buy America' provision does not apply to minimal use of foreign steel such that the cost, delivered to the project site, is less than \$2,500 or 0.1% of the total contract amount, whichever is greater.

136 The Department directs the bidder to the instructions in the Proposal
137 regarding alternate bidding procedures for foreign steel. The Department will
138 decide the total bid for bid comparison purposes as provided in the proposal.
139

140 The Department will award the contract to the bidder who submits the
141 lowest total bid based on furnishing domestic steel, unless such total bid
142 exceeds the lowest total bid based on furnishing foreign steel by more than 25%.
143 If a tie occurs between a bid based upon furnishing foreign steel and a bid based
144 upon furnishing domestic steel including the 25% price differential, the
145 Department will consider the bid based on furnishing domestic steel as the lower
146 bid.
147

148 The basis for the determination of foreign or domestic character of the
149 steel are on place of manufacture. Manufacturing processes and its coating, if
150 any, for domestic steel shall occur in the United States."
151

152 **(VII) Amend 102.15 Declaration of Non-Collusion to read as follows:**
153

154 **"102.15 (Unassigned)"**
155

156 **(VIII) Amend 102.16 Substitution Of Materials and Equipment to read as**
157 **follows:**
158

159 **"102.16 Substitution Of Materials and Equipment.**
160

161 **(A) Substitution Before Bid Opening.**
162

163 **(1) General.** When brand names of materials or equipment
164 are specified in the contract documents, they are to indicate a
165 quality, style, appearance, or performance and not to limit
166 competition. The bidder shall base its bid on one of the specified
167 brand names unless alternate brands are qualified as equal or
168 better in an addendum. Qualification of such proposed alternate
169 brands shall be submitted in writing and addressed to the Contracts
170 Officer. The face of the envelope containing the request must
171 be clearly marked 'SUBSTITUTION REQUEST'. The request
172 may be hand-carried or mailed to the DOT Contracts Office, Room
173 105, 869 Punchbowl Street, Honolulu, Hawaii 96813. In either
174 case, the written request must be received by the DOT Contracts
175 Office no later than 14 calendar days before the bid opening date,
176 not including the bid opening date. The written request will be
177 time stamped by the DOT Contracts Office. For the purpose of
178 this section, the time designated by the time stamping device in
179 the DOT Contracts Office shall be official. If the written request is
180 hand-carried, the bearer is responsible to ensure that the request
181 is time stamped by the DOT Contracts Office.

182
183 Submit 5 sets of the written request, technical brochures,
184 and a statement of variances.
185

186 An addendum will be issued to inform all prospective bidders
187 of any accepted substitution in accordance with Subsection 102.21
188 – Addenda and Bid Clarification.
189

190 **(2) Statement of Variances.** The statement of variances
191 must list all features of the proposed substitution that differ from the
192 contract documents and must further certify that the substitution
193 has no other variant features. The brochure and information
194 submitted shall be clearly marked showing make, model, size,
195 options, and any other features requested by the Engineer and
196 must include sufficient evidence to evaluate each feature listed as
197 a variance. A request will be denied if submitted without
198 sufficient evidence. If after installing the substituted product, an
199 unlisted variance is discovered, the Contractor shall immediately
200 replace the product with a specified product at no cost to the State.
201

202 **(3) Substitution Denial.** Any substitution request not
203 complying with the above requirements will be denied.
204

205 **(B) Substitution After Bid Opening.** Substitution of material or
206 equipment will not be allowed after the bid opening date except under the
207 following circumstances:
208

209 **(1)** A specified or pre-qualified item is delayed by a lengthy
210 strike in the factory or other unforeseeable contingency beyond the
211 control of the Contractor which would cause an abnormal delay in
212 the project completion.
213

214 **(2)** A specified or pre-qualified item is found to be unusable or
215 discontinued due to change or other circumstances.
216

217 **(3)** If the Contractor is willing to provide a more recently
218 developed or manufactured item of material or equipment of the
219 same manufacturer which the Director determines to be equal or
220 better than the one specified or pre-qualified.
221

222 A substitution request, regardless of reason, shall be fully
223 explained in writing, by the Contractor and shall include his justification for
224 said request, the quantities and unit prices involved, quotations and such
225 other documents as are deemed necessary to support the request.
226 Substitutions allowed pursuant to this provision, with the exception of the
227 circumstance described under 102.16(B)3, do not qualify as value

engineering. Any savings in cost will accrue to the State except where value engineering applies, and the Contractor will pay for any additional cost for the substituted items.

The burden of proof as to the comparative quality and suitability of alternate equipment, articles or materials shall be upon the Contractor. The Contractor shall furnish, at no cost to the State, all information required by the Director. The above shall not be construed to mean that substitution for or permitting the use of brand name will be allowed.

The Director reserves the right to deny any request deemed irregular or not in the best interest of the State and shall be the sole judge of the comparative quality and suitability of alternates. The Director's decision is final."

(IX) Add the following:

"102.18 Preferences. Hawaii Products, Recycled Products, and In-State Preferences shall not apply to this project."

102.19 Certification for Safety and Health Program for Bids in excess of \$100,000. According to Section 396-18 of the Hawaii Revised Statutes, 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)."

102.20 (Unassigned).(Tax clearance moved to 103.03 – Award of Contract)

102.21 Addendum. 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 addenda. All addenda so issued shall become part of the contract documents.

The State may alter, increase or decrease the scope of the work or the contract time, provisions and conditions by issuing a written addendum which sets forth such alterations, increase or decrease.

Addendum 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."

END OF SECTION 102