

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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6 **102.01 Prequalification of Bidders.** Prospective bidders shall be capable of  
7 performing the work for which they are bidding.  
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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 proposed  
15 to be used, together with adequate proof of the availability of such equipment.  
16 Whenever it appears to the Department, from answers to the questionnaire or  
17 otherwise, that the prospective bidder is not fully qualified and able to perform the  
18 intended work, the Department will, after affording the prospective bidder an  
19 opportunity to be heard and if still of the opinion that the bidder is not fully qualified  
20 to perform the work, refuse to receive or consider any bid offered by the  
21 prospective bidder. All information contained in the answers to the questionnaire  
22 shall be kept confidential. Questionnaire so submitted shall be returned to the  
23 bidders after serving their purpose.  
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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.  
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32 **102.02 Contents of Proposal Forms.** The Department will furnish prospective  
33 bidders with proposal forms posted in HlePRO stating:  
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- 35 (1) The location,  
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37 (2) Description of the proposed work,  
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39 (3) The approximate quantities,  
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41 (4) Items of work to be done or materials to be furnished,  
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43 (5) A schedule of items, and  
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45 (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 through HlePRO.

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

### **102.03 (Unassigned)**

**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 basis 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.

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

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

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

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

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157 **102.07 Irregular Proposals.** The Department may consider proposals irregular  
158 and may reject the proposals for the following reasons:

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

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

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

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

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

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

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182 Where the prospective bidder is bidding on multiple projects simultaneously  
183 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 amounts.

<u>Proposal</u>	<u>Security Amount</u>
A – Area 1	\$500,000.00
B – Area 2	\$500,000.00
C – Area 3	\$500,000.00
D – Area 4	\$500,000.00

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.
  - (d) Proposal Guaranty listed in (1) and (3) shall be in its original form, and shall be received at the Contracts Office,

Department of Transportation, 869 Punchbowl Street,  
Honolulu, Hawaii 96813 before the bid deadline.

The above shall be in the amount of \$500,000.00 for each Area.

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

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

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

**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 102.06 - 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.

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277           (9) Failure to complete the prequalification questionnaire, if  
278 applicable.  
279       (10) Failure to attend the mandatory pre-bid meeting, if applicable.  
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281 **102.13 Material Guaranty.** The successful bidder may be required to furnish a  
282 statement of the composition, origin, manufacture of materials, and samples.  
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284 **102.14 Substitution of Materials and Equipment Before Bid Opening.** See  
285 Subsection 106.13 for Substitution Of Materials and Equipment After Bid Opening.  
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287       **(A) General.** When brand names of materials or equipment are  
288 specified in the contract documents, they are to indicate a quality, style,  
289 appearance, or performance and not to limit competition. The bidder shall  
290 base its bid on one of the specified brand names unless alternate brands  
291 are qualified as equal or better in an addendum. Qualification of such  
292 proposed alternate brands shall be submitted via email to the Contact  
293 person listed in HlePRO for the solicitation and also post a question in  
294 HlePRO under the question/answer tab referencing the email with the  
295 request. The request must be posted in HlePRO no later than 14 calendar  
296 days before the bid opening date, not including the bid opening date  
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298           An addendum will be issued to inform all prospective bidders of any  
299 accepted substitution in accordance with Subsection 102.16 – Addenda.  
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301       **(B) Statement of Variances.** The statement of variances must list all  
302 features of the proposed substitution that differ from the contract documents  
303 and must further certify that the substitution has no other variant features.  
304 The brochure and information submitted shall be clearly marked showing  
305 make, model, size, options, and any other features requested by the  
306 Engineer and must include sufficient evidence to evaluate each feature  
307 listed as a variance. A request will be denied if submitted without sufficient  
308 evidence. If after installing the substituted product, an unlisted variance is  
309 discovered, the Contractor shall immediately replace the product with a  
310 specified product at no increase in contract price and contract time.  
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312       **(C) Substitution Denial.** Any substitution request not complying with  
313 the above requirements will be denied.  
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315 **102.15 Bid Adjustment.** The following preference shall apply to this project:  
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317       **(A) Preferences for Apprenticeship Programs.** In accordance with  
318 ACT 17, SLH 2009 – Apprenticeship Program and the Bipartisan  
319 Infrastructure Law Section 25019(a), a 5% bid adjustment for bidders that  
320 are parties to apprenticeship agreements pursuant to Hawaii Revised  
321 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 an 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.

**(k)** Offeror – Entity/bidder submitting a proposal to undertake a project.



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- (l) Procurement Officer – Director of Transportation or his authorized representative.
- (2) Qualification Procedures.
- (a) Any bidder seeking the preference must be a party to an apprenticeship agreement registered with the department at the time the offer is made for each apprenticeable trade the bidder will employ to construct the public works projects for which the offer is being made.
1. The apprenticeship agreement shall be registered and conform to the requirements of HRS Chapter 372.
  2. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.
  3. The bidder is not required to have apprentices in its employ at the time of submittal of an offer to qualify for the preference.
- (b) The department shall:
1. Develop and maintain a list of construction trades in registered apprenticeship programs which conform to HRS Chapter 372; and
  2. Electronically post the list, including any amendments, on the department website (<http://labor.hawaii.gov>).
- (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 state the trades the bidder will employ to perform the work;
2. For each trade to be employed to perform the work, the bidder shall submit a completed signed original *Certification Form 1* verifying participation in an apprenticeship program registered with the department;
3. The *Certification Form 1* shall be authorized by an apprenticeship sponsor of the department's list of registered apprenticeship programs. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor; and
4. The completed *Certification Form 1* for each

trade must be submitted by the bidder with the offer.  
Previous certifications shall not apply unless allowed  
by the solicitation.

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

#### (4) Evaluation and Contract Award

(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.

**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 via HlePRO. 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.”

**END OF SECTION 102**