

1 Make this section a part of the Standard Specifications:

2
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
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
30 faithfully and diligently previous contracts with the State.

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32 **102.02 Contents of Proposal Forms.** The Department will furnish
33 prospective 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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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.
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51 Also, the bidder shall consider other documents including the plans and
52 specifications a part of the proposal form whether attached or not.
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54 **102.03 (Unassigned)**
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56 **102.04 Estimated Quantities.** The quantities shown in the contract are
57 approximate and are for the comparison of bids only. The actual quantity of work
58 may not correspond with the quantities shown in the contract. The Department
59 will make payment to the Contractor for unit price items in accordance with the
60 contract for only the following:
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62 (1) Actual quantities of work done and accepted, not the estimated
63 quantities; or
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65 (2) Actual quantities of materials furnished, not the estimated
66 quantities.
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68 The Department may increase, decrease, or omit each scheduled
69 quantities of work to be done and materials to be furnished. When the
70 Department increases or decreases the estimated quantity of a contract item by
71 more than 15% the Department will make payment for such items in accordance
72 with Subsection 104.06 - Methods of Price Adjustment.
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74 **102.05 Examination of Contract and Site of Work.** The bidder shall
75 examine carefully the site of the proposed work and contract before submitting a
76 proposal.
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78 By the act of submitting a bid for the proposed contract, the bidder
79 warrants that:
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81 (1) The bidder and its Subcontractors have reviewed the contract
82 documents and found them free from ambiguities and sufficient for the
83 purpose intended;
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85 (2) The bidder and its workers, employees and subcontractors have
86 the skills and experience in the type of work required by the contract
87 documents bid upon;
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89 (3) Neither the bidder nor its employees, agents, suppliers or
90 subcontractors have relied upon verbal representations from the
91 Department, its employees or agents, including architects, engineers or
92 consultants, in assembling the bid figure; and

93 (4) The basis for the bid figure is solely on the construction contract
94 documents.

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96 Also, the bidder warrants that the bidder has examined the site of the
97 work. From its investigations, the bidder acknowledges satisfaction on:
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- 99 (1) The nature and location of the work;
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101 (2) The character, quality, and quantity of materials;
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103 (3) The difficulties to be encountered; and
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105 (4) The kind and amount of equipment and other facilities needed.
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107 If the Engineer determines that the natural conditions differ from that
108 originally anticipated or contemplated by the Contractor in the items of
109 excavation, the State may treat the difference in natural conditions, as falling
110 within the meaning of Subsection 104.02 – Changes.
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112 **102.06 Preparation of Proposal.** The submittal of its proposal shall be on
113 forms furnished by the Department. The bidder shall specify in words or figures:
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- 115 (1) A unit price for each pay item with a quantity given;
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117 (2) The products of the respective unit prices and quantities;
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119 (3) The lump sum amount; and
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121 (4) The total amount of the proposal obtained by adding the amounts
122 of the several items.
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124 The words and figures shall be in ink or typed. If a discrepancy occurs
125 between the prices written in words and those written in figures, the prices written
126 in words shall govern.
127

128 When an item in the proposal contains an option to be made, the bidder
129 shall choose in accordance with the contract for that particular item.
130 Determination of an option will not permit the Contractor to choose again.
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132 The bidder shall sign the proposal properly in ink. A duly authorized
133 representatives of the bidder or by an agent of the bidder legally qualified and
134 acceptable to the Department shall sign, including one or more partners of the
135 bidder and one or more representatives of each entity comprising a joint venture.
136

137 When an agent, other than the officer(s) of a corporation authorized to
138 sign contracts for the corporation or a partner of a partnership, signs the

139 proposals, a 'Power of Attorney' shall be on file with the Department or submitted
140 with the proposal. Otherwise, the Department will reject the proposal as irregular
141 and unauthorized.

142
143 The bidder shall submit acceptable evidence of the authority of the
144 partner, member(s) or officer(s) to sign for the partnership, joint venture, or
145 corporation respectively with the proposal. Otherwise, the Department will reject
146 the proposal as irregular and unauthorized.

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148 **102.07 Irregular Proposals.** The Department may consider proposals
149 irregular and may reject the proposals for the following reasons:

150
151 (1) The proposal is a form not furnished by the Department, altered,
152 or detached;

153
154 (2) The proposal contains unauthorized additions, conditions, or
155 alternates. Also, the proposal contains irregularities that may tend to
156 make the proposal incomplete, indefinite, or ambiguous to its meaning;

157
158 (3) The bidder adds provisions reserving the right to accept or reject an
159 award. Also, the bidder adds provisions into a contract before an award;

160
161 (4) The proposal does not contain a unit price for each pay item listed
162 except authorized optional pay items; and

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

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

170

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

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177 **102.08 Proposal Guaranty.** The Department will not consider a proposal of
178 \$25,000 or more unless accompanied by:

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180 (1) A deposit of legal tender; or

181
182 (2) A valid surety bid bond, underwritten by a company licensed to
183 issue bonds in the State of Hawaii, in the form and composed,
184 substantially, with the same language as provided herewith and signed by
185 both parties; or

186
187 (3) A certificate of deposit, share certificate, cashier's check,
188 treasurer's check, teller's check, or official check drawn by, or a certified
189 check accepted by and payable on demand to the State by a bank,
190 savings institution, or credit union insured by the Federal Deposit
191 Insurance Corporation (FDIC) or the National Credit Union Administration
192 (NCUA).

193
194 (a) The bidder may use these instruments only to a maximum of
195 \$100,000.

196
197 (b) If the required security or bond amount totals over \$100,000
198 more than one instrument not exceeding \$100,000 each and issued
199 by different financial institutions shall be acceptable.

200
201 (c) The instrument shall be made payable at sight to the
202 Department.

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204 (d) Proposal Guaranty listed in (1) and (3) shall be in its original
205 form, and shall be received at the Contracts Office, Department of
206 Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813
207 before the bid deadline.

208
209 In accordance with HRS Chapter 103D-323, the above shall be in a sum
210 not less than 5% of the amount bid.

211
212 **102.09 Delivery of Proposal.** The bidder shall submit the proposal in
213 HlePRO. Bids received after said due date and time shall not be considered.
214 Original bid documents do not have to be submitted. The award will be made
215 based on proposals uploaded in HlePRO. If there is a conflict between this

216 specification and its HlePRO solicitation, the specifications shall govern and
217 control unless otherwise specified.

218
219 **102.10 Withdrawal or Revision of Proposals.** A bidder may withdraw or
220 revise a proposal after the bidder submits the proposal in HlePRO. Withdrawal
221 or revision of proposal must be completed before the time set for the receiving of
222 bids.

223
224 **102.11 Public Opening of Proposals.** Not applicable.

225
226 **102.12 Disqualification of Bidders.** The Department may disqualify a bidder
227 and reject its proposal for the following reasons:

228
229 (1) Submittal of more than one proposal whether under the same or
230 different name.

231
232 (2) Evidence of collusion among bidders. The Department will not
233 recognize participants in collusion as bidders for any future work of the
234 Department until such participants are reinstated as qualified bidders.

235
236 (3) Lack of proposal guaranty.

237
238 (4) Submittal of an unsigned or improperly signed proposal.

239
240 (5) Submittal of a proposal without a listing of subcontractors or
241 containing only a partial or incomplete listing of subcontractors.

242
243 (6) Submittal of an irregular proposal in accordance with Subsection
244 102.07 - Irregular Proposals.

245
246 (7) Evidence of assistance from a person who has been an employee
247 of the agency within the preceding two years and who participated while in
248 State office or employment in the matter with which the contract is directly
249 concerned, pursuant to HRS Chapter 84-15.

250
251 (8) Suspended or debarred in accordance with HRS Chapter 104-25.

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

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

255
256 **102.13 Material Guaranty.** The successful bidder may be required to furnish
257 a statement of the composition, origin, manufacture of materials, and samples.

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259 **102.14 Substitution of Materials and Equipment Before Bid Opening.** See
260 Subsection 106.13 for Substitution Of Materials and Equipment After Bid
261 Opening.

262

263 **(A) General.** When brand names of materials or equipment are
264 specified in the contract documents, they are to indicate a quality, style,
265 appearance, or performance and not to limit competition. The bidder shall
266 base its bid on one of the specified brand names unless alternate brands
267 are qualified as equal or better in an addendum. Qualification of such
268 proposed alternate brands shall be submitted via email to the Contact
269 person listed in HlePRO for the solicitation and also post a question in
270 HlePRO under the question/answer tab referencing the email with the
271 request. The request must be posted in HlePRO no later than 14
272 calendar days before the bid opening date, not including the bid opening
273 date
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275 An addendum will be issued to inform all prospective bidders of any
276 accepted substitution in accordance with Subsection 102.17 – Addenda .
277

278 **(B) Statement of Variances.** The statement of variances must list all
279 features of the proposed substitution that differ from the contract
280 documents and must further certify that the substitution has no other
281 variant features. The brochure and information submitted shall be clearly
282 marked showing make, model, size, options, and any other features
283 requested by the Engineer and must include sufficient evidence to
284 evaluate each feature listed as a variance. A request will be denied if
285 submitted without sufficient evidence. If after installing the substituted
286 product, an unlisted variance is discovered, the Contractor shall
287 immediately replace the product with a specified product at no increase in
288 contract price and contract time.
289

290 **(C) Substitution Denial.** Any substitution request not complying with
291 the above requirements will be denied.
292

293 **102.15 Preferences.**

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295 **(A) Preference for Hawaii Products.** In accordance with ACT 174,
296 SLH 2022, effective June 27, 2022, Hawaii Products Preference shall not
297 apply to solicitations for public works construction. Therefore, the Hawaii
298 Products Preference shall not apply to this project.
299

300 **(B) Preferences for Apprenticeship Programs.** In accordance with
301 ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for
302 bidders that are parties to apprenticeship agreements pursuant to Hawaii
303 Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's
304 price for evaluation purposes. These procedures apply to public works
305 projects with estimated cost of \$250,000 or more and entered into under
306 the provisions of HRS Chapter 103.
307

308 The following provisions apply to this Apprenticeship Program.

309
310 (1) Definitions

311
312 (a) “Apprenticeable trade”, HRS Section 103-55.6 (c),
313 shall have the same meaning as ‘apprenticeable occupation’
314 pursuant to Hawaii Administrative Rules (HAR) Section 30-
315 1-5.

316
317 (b) “Department” means the department of labor and
318 industrial relations.

319
320 (c) “Director” means the director of labor and industrial
321 relations.

322
323 (d) “Employ” means the employment of a person in an
324 employer-employee relations.

325
326 (e) “Governmental body” means as defined in HRS
327 Section 103D-104.

328
329 (f) “Party to an apprenticeship agreement” means party
330 to a registered apprenticeship program with the department
331 of labor and industrial relations.

332
333 (g) “Preference” means the 5% by which the qualified
334 bidder's offer amount would be decreased for evaluation
335 purposes.

336 (h) “Public work” shall be as defined in HRS Section 104-
337 2 and HAR Section 12-22-1.

338
339 (i) “Registered apprenticeship program” means a
340 construction trade program approved by the department
341 pursuant to HAR Section 12-30-1 and Section 12-30-4.

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

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

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350 (l) Procurement Officer – Director of Transportation or
351 his authorized representative.
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(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);

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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

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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.

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(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.

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(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.

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 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