

1                   **SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**

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3       Make the following amendments to said Section:

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

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

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

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26       Failure to complete the prequalification questionnaire will be sufficient  
27       cause for the Department to disqualify a prospective bidder.

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

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36       **(II)       Amend 102.04     Estimated Quantities** by revising the last sentence of  
37       the last paragraph to read as follows:

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

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

48           “(6) If in the opinion of the Director, the bidder and its listed  
49 subcontractors do not have the Contactor’s licenses or combination of  
50 Contractor’s licenses necessary to complete the work.”  
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52       **(IV) Amend 102.08 Proposal Guaranty to read as follows:**  
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54       **"102.08 Proposal Guaranty.** The Department will not consider a proposal of  
55 \$25,000 or more unless accompanied by:  
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57           (1) A deposit of legal tender; or  
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59           (2) A valid surety bid bond, underwritten by a company licensed to  
60 issue bonds in the State of Hawaii, in the form and composed,  
61 substantially, with the same language as provided herewith and signed by  
62 both parties; or  
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64           (3) A certificate of deposit, share certificate, cashier's check,  
65 treasurer's check, teller's check, or official check drawn by, or a certified  
66 check accepted by and payable on demand to the State by a bank,  
67 savings institution, or credit union insured by the Federal Deposit  
68 Insurance Corporation (FDIC) or the National Credit Union Administration  
69 (NCUA).  
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71                   (a) The bidder may use these instruments only to a maximum of  
72 \$100,000  
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74                   (b) If the required security or bond amount totals over \$100,000  
75 more than one instrument not exceeding \$100,000 each and  
76 issued by different financial institutions shall be acceptable.  
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78                   (c) The instrument shall be made payable at sight to the  
79 Department of Transportation, State of Hawaii.  
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81           According to Section 103D-323, HRS, the above shall be in a sum not  
82 less than 5% of the amount bid."  
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84       **(V) Amend 102.12 Disqualification of Bidders to read as follows:**  
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86       **"102.12 Disqualification of Bidders.** The Department may disqualify a  
87 bidder and reject its proposal for the following reasons:  
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89           (1) Submittal of more than one proposal whether under the same or  
90 different name.  
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92           (2) Evidence of collusion among bidders. The Department will not  
93 recognize participants in collusion as bidders for any future work of the  
94 Department until such participants are reinstated as qualified bidders.

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- (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) 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.
- (8) Suspended or debarred in accordance with HRS 104-25.
- (9) Failure to complete the prequalification questionnaire.
- (10) Failure to attend the mandatory pre-bid meeting, if applicable."

(VI) Delete Section 102.14 - American Products Preference in its entirety.

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

"102.15 (Unassigned)."

(VIII) Amend 102.16 Substitution Of Materials and Equipment to read as follows:

"102.16 Substitution Of Materials and Equipment Before Bid Opening. (See Subsection 106.16 for Substitution Of Materials and Equipment After Bid Opening).

(A) General. When brand names of materials or equipment are specified in the contract documents, they are to indicate a quality, style, appearance, or performance and not to limit competition. The bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualification of such proposed alternate brands shall be submitted in writing and addressed to the Contracts Officer. The face of the envelope containing the request must be clearly marked 'SUBSTITUTION REQUEST'. The request may be hand-carried or mailed to the DOT Contracts Office, Room 105, 869 Punchbowl Street, Honolulu, Hawaii 96813. In either case, the written request must be received by the DOT

Contracts Office no later than 14 calendar days before the bid opening date, not including the bid opening date. The written request will be time stamped by the DOT Contracts Office. For the purpose of this section, the time designated by the time stamping device in the DOT Contracts Office shall be official. If the written request is hand-carried, the bearer is responsible to ensure that the request is time stamped by the DOT Contracts Office.

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

An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.21 – Addenda.

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

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

**(IX) Add the following:**

**"102.18 Preferences.**

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

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

If the bidder intends to claim preference for products on the Hawaii Product List and such is not listed, the bidder shall immediately notify the

Contracts Office, Department of Transportation, so the Engineer may take corrective or other appropriate actions.

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

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

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

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

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

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

**102.19 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.** Addenda issued shall become part of the contract documents. Addenda to the bid documents will be provided to all prospective bidders at the respective offices furnished for such purposes. Each addendum

238 shall be an addition to the contract documents. The terms and requirements of  
239 the bid documents (i.e. drawings, specifications and other bid and contract  
240 documents) cannot be changed prior to the bid opening except by a duly issued  
241 addendum."  
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249 **END OF SECTION 102**  
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