

1 Make this section a part of the Standard Specifications:

2
3 **"SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**

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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

Documents attached to the proposal submittal are part of the proposal. The bidder shall not detach or alter the documents 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 Issuance of Proposal Forms. Not applicable.

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.

Due to the impacts of COVID 19, bidders must schedule their site visit with the Project Manager. **ALL PERSONS** examining the site of the proposed work will be **REQUIRED** to wear a mask for the entire duration of their stay. **NO PERSONS** will be allowed to enter the work site without a mask.

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.

137 The words and figures shall be in ink or typed. If a discrepancy occurs
138 between the prices written in words and those written in figures, the prices written
139 in words shall govern.

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

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

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

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

160
161 **102.07 Irregular Proposals.** The Department may consider proposals irregular
162 and may reject the proposals for the following reasons:

163
164 (1) The proposal is a form not furnished by the Department,
165 altered, or detached;

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

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

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

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

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

Where the prospective bidder is bidding on multiple projects simultaneously 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. 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.

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

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.

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 102.07 - 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 HRS Chapter 84-15.
- (8) Suspended or debarred in accordance with HRS Chapter 104-25.
- (9) Lack of competency or adequate machinery, plant, and other equipment (which determination may be based on the financial statement and experience questionnaires required under Subsection 102.01 - Prequalification of Bidders);
- (10) Uncompleted work that might hinder or prevent the prompt completion of additional work if awarded;
- (11) Failure to pay or settle bills due for labor and material on former contracts in force at the time of issuance of the solicitation;
- (12) Failure to comply with qualification regulations of the Department;
- (13) Default under previous contracts; or
- (14) Lack of responsibility and cooperation from past work.
- (15) Failure to complete the prequalification questionnaire, if applicable.
- (16) Failure to attend the mandatory pre-bid meeting, if applicable.

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

102.14 Substitution of Materials and Equipment Before Bid Opening. See Subsection 106.13 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 HlePRO. The request must be posted in HlePRO no later than 14 calendar days before the bid opening date, not including the bid opening date

An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.17 – 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 increase in contract price and contract time.

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

102.15 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.

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

325
326 It is further understood by the bidder that if the bidder elects to
327 furnish qualified Hawaii Products, and is awarded the contract, then fails to
328 use such products or meet the requirements of such preference, the bidder
329 shall be subject to the statutory penalties, provided in HRS Chapter 103D-
330 1002, and such other remedies as may be available to the State.

331
332 For the purpose of determining the lowest bid price only, the
333 provisions of HRS Chapter 103D-1002 shall apply. Any contract awarded
334 or executed in violation of HRS Chapter 103D-1002 shall be void and no
335 payment shall be made on account of such contract.

336
337 **(B) Preferences for Apprenticeship Programs.** In accordance with
338 ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for
339 bidders that are parties to apprenticeship agreements pursuant to Hawaii
340 Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's
341 price for evaluation purposes. These procedures apply to public works
342 projects with estimated cost of \$250,000 or more and entered into under the
343 provisions of HRS Chapter 103.

344
345 The following provisions apply to this Apprenticeship Program.

346
347 **(1) Definitions**

348
349 **(a)** “Apprenticeable trade”, HRS Section 103-55.6 (c), shall
350 have the same meaning as ‘apprenticeable occupation’
351 pursuant to Hawaii Administrative Rules (HAR) Section 30-1-
352 5.

353
354 **(b)** “Department” means the department of labor and
355 industrial relations.

356
357 **(c)** “Director” means the director of labor and industrial
358 relations.

359
360 **(d)** “Employ” means the employment of a person in an
361 employer-employee relations.

362
363 **(e)** “Governmental body” means as defined in HRS
364 Section 103D-104.

365
366 **(f)** “Party to an apprenticeship agreement” means party to
367 a registered apprenticeship program with the department of
368 labor and industrial relations.

369
370 **(g)** “Preference” means the 5% by which the qualified
371 bidder's offer amount would be decreased for evaluation
372 purposes.

373 (h) "Public work" shall be as defined in HRS Section 104-2
374 and HAR Section 12-22-1.

375
376 (i) "Registered apprenticeship program" means a
377 construction trade program approved by the department
378 pursuant to HAR Section 12-30-1 and Section 12-30-4.

379
380 (j) "Sponsor" means an operator of an apprenticeship
381 program and in whose name the program is approved and
382 registered with the department of labor and industrial relations
383 pursuant to HAR Section 12-30-1.

384
385 (k) Offeror – Entity/bidder submitting a proposal to
386 undertake a project.

387
388 (l) Procurement Officer – Director of Transportation or his
389 authorized representative.

390
391 (2) Qualification Procedures

392
393 (a) Any bidder seeking the preference must be a party to
394 an apprenticeship agreement registered with the
395 department at the time the offer is made for each
396 apprenticeable trade the bidder will employ to construct
397 the public works projects for which the offer is being
398 made.

399
400 1. The apprenticeship agreement shall be registered
401 and conform to the requirements of HRS Chapter 372.

402
403 2. Subcontractors do not have to be a party to an
404 apprenticeship agreement for the bidder to obtain the
405 preference.

406
407 3. The bidder is not required to have apprentices in
408 its employ at the time of submittal of an offer to qualify
409 for the preference.

410
411 (b) The department shall:

412
413 1. Develop and maintain a list of construction
414 trades in registered apprenticeship programs which
415 conform to HRS Chapter 372; and

416
417 2. Electronically post the list; including any
418 amendments, on the department website
419 (<http://hawaii.gov/labor/wdd>).

420
421 (c) Bidder is responsible to comply with all submission
422 requirements for registration of its apprenticeship program
423 before requesting a preference.
424

(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.

473 3. The *Certification Form 1* shall be authorized by
474 an apprenticeship sponsor of the department's list of
475 registered apprenticeship programs. The authorization
476 shall be an original signature by an authorized official
477 of the apprenticeship sponsor; and
478

479 4. The completed *Certification Form 1* for each
480 trade must be submitted by the bidder with the offer.
481 Previous certifications shall not apply unless allowed by
482 the solicitation.
483

484 (c) Upon receiving *Certification Form 1*, the procurement
485 officer will verify with the department that the apprenticeship
486 program is on the list of apprenticeship programs registered
487 with the department. If the programs are not confirmed by the
488 department, the bidder will not qualify for the preference.
489

490 (4) Evaluation and Contract Award
491

492 (a) If the bidder certifies participation in an apprenticeship
493 program for each trade which will be employed by the bidder
494 for the project, the procurement officer shall apply the
495 preference and decrease the bidder's total bid amount by five
496 per cent (5%) for evaluation purposes.
497

498 (b) Should the bidder qualify for other statutory
499 preferences (for example, Hawaii products), all applicable
500 preferences shall be applied to the bidder's price.
501

502 (c) The contract amount shall be the original offer amount,
503 exclusive of any preference; the preference is only for
504 evaluation purposes.
505

506 (d) Any claims challenging a bidder's representation that
507 the bidder is a participant in an apprenticeship program(s) as
508 claimed, shall be submitted to the procurement officer. The
509 procurement officer will refer the challenge to the department
510 of labor and industrial relations who shall investigate any such
511 claims and shall make a determination.
512

513 (5) Contract Administration
514

515 (a) For the duration of a contract awarded utilizing the
516 apprenticeship preference, the contractor shall certify each
517 month that work is being conducted on the project, that it
518 continues to be a participant in the relevant apprenticeship
519 program for each trade it employs.
520

521 (b) Monthly certification shall be made on *Monthly*
522 *Certification Form 2* prepared and made available by the
523 department, be a signed original by the respective
524 apprenticeship program sponsors authorized official, and
525 submitted by the contractor with its monthly payment
526 requests.

527 (c) Should the contractor fail or refuse to submit its
528 monthly certification forms, or at any time during the
529 construction of the project, cease to be a part to a registered
530 apprenticeship agreement for each apprenticeable trades the
531 contractor employs, or will employ, the contractor will be
532 subject to the following sanctions:
533

534 1. Withholding of the requested payment until the
535 required form(s) are submitted;
536

537 2. Temporary or permanent cessation of work on
538 the project , without recourse to breach of contract
539 claims by the contractor; provided the agency shall be
540 entitled to restitution for nonperformance or liquidated
541 damages claims; or
542

543 3. Proceed to debar or suspend pursuant to HRS
544 Section 103D-702.
545

546 (d) If events such as "acts of God," acts of a public enemy,
547 acts of the State or any other governmental body in its
548 sovereign or contractual capacity, fires, floods, epidemics,
549 freight embargoes, unusually severe weather, or strikes or
550 other labor disputes prevent the contractor from submitting the
551 certification forms, the contractor shall not be penalized as
552 provided herein, provided the contractor completely and
553 expeditiously complies with the certification process when the
554 event is over.
555

556 This subsection shall not apply when its application will disqualify the
557 State from receiving federal funds or aid.
558

559 **(C) Preference for Recycled Products.** Recycled Products shall not
560 apply to this project.
561

562 **(D) Evaluation Procedures and Contract Award.** For bid evaluation,
563 the Engineer will evaluate the bids by applying the applicable preferences
564 selected by the bidders according to the contract. The Engineer will base
565 the calculations for adjustments upon the original bid prices offered. If more
566 than one preference applies, the evaluated bid price shall be the sum of the
567 original bid price plus applicable preference adjustments.
568

569 If a bidder has designated use of a Hawaii Product and fails to
570 provide the product, the contract will become void and no payments will be
571 made.
572

573 The Engineer will award the contract to the responsible bidder
574 submitting the responsive bid with the lowest evaluated bid price. The
575 contract amount of the contract awarded shall be the original bid price
576 offered exclusive of any preference.
577

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