

1 Make this section a part of the Standard Specifications:

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

4
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. (for Kauai – Traffic Management Center)

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.

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

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

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

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

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

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

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

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

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

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

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

180
181 (6) If in the opinion of the Director, the bidder and its listed
182 subcontractors do not have the Contractor's licenses or combination of
183 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.

276 **102.13 Material Guaranty.** The successful bidder may be required to furnish a
277 statement of the composition, origin, manufacture of materials, and samples.
278

279 **102.14 Substitution of Materials and Equipment Before Bid Opening.** See
280 Subsection 106.13 for Substitution Of Materials and Equipment After Bid Opening.
281

282 **(A) General.** When brand names of materials or equipment are
283 specified in the contract documents, they are to indicate a quality, style,
284 appearance, or performance and not to limit competition. The bidder shall
285 base its bid on one of the specified brand names unless alternate brands
286 are qualified as equal or better in an addendum. Qualification of such
287 proposed alternate brands shall be submitted in HlePRO. The request
288 must be posted in HlePRO no later than 14 calendar days before the bid
289 opening date, not including the bid opening date
290

291 An addendum will be issued to inform all prospective bidders of any
292 accepted substitution in accordance with Subsection 102.17 – Addenda .
293

294 **(B) Statement of Variances.** The statement of variances must list all
295 features of the proposed substitution that differ from the contract
296 documents and must further certify that the substitution has no other
297 variant features. The brochure and information submitted shall be clearly
298 marked showing make, model, size, options, and any other features
299 requested by the Engineer and must include sufficient evidence to evaluate
300 each feature listed as a variance. A request will be denied if submitted
301 without sufficient evidence. If after installing the substituted product, an
302 unlisted variance is discovered, the Contractor shall immediately replace
303 the product with a specified product at no increase in contract price and
304 contract time.
305

306 **(C) Substitution Denial.** Any substitution request not complying with
307 the above requirements will be denied.
308

309 **102.15 Preferences.**
310

311 **(A) Preference for Hawaii Products.** The bidder's attention is directed
312 to Sections 103D-1001 and 103D-1002, HRS and Subchapter 1, Chapter
313 124, Subtitle 11 of Title 3, HAR which provide preferences for Hawaii
314 Products. According to Section 103D-1002, HRS, the bidder may examine
315 the Hawaii Products List at the State Procurement Office, State Office
316 Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813.
317

318 If a product listed in the Hawaii Products List is available and meets
319 project specifications, such product will be designated in the contract
320 documents as a qualified product which may be used in the performance of
321 the project.
322

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

327
328 It is further understood by the bidder that if the bidder elects to
329 furnish qualified Hawaii Products, and is awarded the contract, then fails to
330 use such products or meet the requirements of such preference, the bidder
331 shall be subject to the statutory penalties, provided in HRS Chapter 103D-
332 1002, and such other remedies as may be available to the State.

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

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

346
347 The following provisions apply to this Apprenticeship Program.

348
349 **(1) Definitions**

350
351 **(a)** “Apprenticeable trade”, HRS Section 103-55.6 (c), shall
352 have the same meaning as ‘apprenticeable occupation’
353 pursuant to Hawaii Administrative Rules (HAR) Section 30-1-
354 5.

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

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

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

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

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

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

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

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

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

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

389
390 (l) Procurement Officer – Director of Transportation or his
391 authorized representative.

392
393 (2) Qualification Procedures

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

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

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

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

412
413 (b) The department shall:

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

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

422
423 (c) Bidder is responsible to comply with all submission
424 requirements for registration of its apprenticeship program
425 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.

477 3. The *Certification Form 1* shall be authorized by
478 an apprenticeship sponsor of the department's list of
479 registered apprenticeship programs. The authorization
480 shall be an original signature by an authorized official
481 of the apprenticeship sponsor; and
482

483 4. The completed *Certification Form 1* for each
484 trade must be submitted by the bidder with the offer.
485 Previous certifications shall not apply unless allowed
486 by the solicitation.
487

488 (c) Upon receiving *Certification Form 1*, the procurement
489 officer will verify with the department that the apprenticeship
490 program is on the list of apprenticeship programs registered
491 with the department. If the programs are not confirmed by the
492 department, the bidder will not qualify for the preference.
493

494 (4) Evaluation and Contract Award
495

496 (a) If the bidder certifies participation in an apprenticeship
497 program for each trade which will be employed by the bidder
498 for the project, the procurement officer shall apply the
499 preference and decrease the bidder's total bid amount by five
500 per cent (5%) for evaluation purposes.
501

502 (b) Should the bidder qualify for other statutory
503 preferences (for example, Hawaii products), all applicable
504 preferences shall be applied to the bidder's price.
505

506 (c) The contract amount shall be the original offer amount,
507 exclusive of any preference; the preference is only for
508 evaluation purposes.
509

510 (d) Any claims challenging a bidder's representation that
511 the bidder is a participant in an apprenticeship program(s) as
512 claimed, shall be submitted to the procurement officer. The
513 procurement officer will refer the challenge to the department
514 of labor and industrial relations who shall investigate any such
515 claims and shall make a determination.
516

517 (5) Contract Administration
518

519 (a) For the duration of a contract awarded utilizing the
520 apprenticeship preference, the contractor shall certify each
521 month that work is being conducted on the project, that it
522 continues to be a participant in the relevant apprenticeship
523 program for each trade it employs.
524

525 (b) Monthly certification shall be made on *Monthly*
526 *Certification Form 2* prepared and made available by the
527 department, be a signed original by the respective
528 apprenticeship program sponsors authorized official, and
529 submitted by the contractor with its monthly payment
530 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.

(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.

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.

582 **102.16 Certification for Safety and Health Program for Bids in excess of**
583 **\$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by
584 signing and submitting this proposal, certifies that a written safety and health plan
585 for this project will be available and implemented by the notice to proceed date for
586 this project. Details of the requirements of this plan may be obtained from the
587 State Department of Labor and Industrial Relations, Occupational Safety and
588 Health Division (HIOSH).

589
590 **102.17 Addenda.** Addenda issued shall become part of the contract
591 documents. Addenda to the bid documents will be provided to all prospective
592 bidders via HlePRO. Each addendum shall be an addition to the contract
593 documents. The terms and requirements of the bid documents (i.e. drawings,
594 specifications and other bid and contract documents) cannot be changed prior to
595 the bid opening except by a duly issued addendum.”

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599
600 **END OF SECTION 102**