

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  
30 faithfully and diligently previous contracts with the State.

31  
32 **102.02 Contents of Proposal Forms.** The Department will furnish  
33 prospective 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

Papers bound with or attached to the proposal form are part of the proposal. The bidder shall not detach or alter the papers bound with or attached to the proposal when the bidder submits its proposal through HlePRO.

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

### **102.03 (Unassigned)**

**102.04 Estimated Quantities.** The quantities shown in the contract are approximate and are for the comparison of bids only. The actual quantity of work may not correspond with the quantities shown in the contract. The Department will make payment to the Contractor for unit price items in accordance with the contract for only the following:

(1) Actual quantities of work done and accepted, not the estimated quantities; or

(2) Actual quantities of materials furnished, not the estimated quantities.

The Department may increase, decrease, or omit each scheduled quantities of work to be done and materials to be furnished. When the Department increases or decreases the estimated quantity of a contract item by more than 15% the Department will make payment for such items in accordance with Subsection 104.06 - Methods of Price Adjustment.

**102.05 Examination of Contract and Site of Work.** The bidder shall examine carefully the site of the proposed work and contract before submitting a proposal.

By the act of submitting a bid for the proposed contract, the bidder warrants that:

(1) The bidder and its Subcontractors have reviewed the contract documents and found them free from ambiguities and sufficient for the purpose intended;

(2) The bidder and its workers, employees and subcontractors have the skills and experience in the type of work required by the contract documents bid upon;

(3) Neither the bidder nor its employees, agents, suppliers or subcontractors have relied upon verbal representations from the Department, its employees or agents, including architects, engineers or consultants, in assembling the bid figure; and

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

Also, the bidder warrants that the bidder has examined the site of the work. From its investigations, the bidder acknowledges satisfaction on:

(1) The nature and location of the work;

(2) The character, quality, and quantity of materials;

(3) The difficulties to be encountered; and

(4) The kind and amount of equipment and other facilities needed;

Subsurface information or hydrographic survey data furnished are for the bidders' convenience only. The data and information furnished are the product of the Department's interpretation gathered in investigations made at the specific locations. These conditions may not be typical of conditions at other locations within the project area or that such conditions remain unchanged. Also, conditions found at the time of the subsurface explorations may not be the same conditions when work starts. The bidder shall be solely responsible for assumptions, deductions, or conclusions the bidder may derive from the subsurface information or data furnished.

If the Engineer determines that the natural conditions differ from that originally anticipated or contemplated by the Contractor in the items of excavation, the State may treat the difference in natural conditions, as falling within the meaning of Subsection 104.02 – Changes.

**102.06 Preparation of Proposal.** The submittal of its proposal shall be on forms furnished by the Department. The bidder shall specify in words or figures:

(1) A unit price for each pay item with a quantity given;

(2) The products of the respective unit prices and quantities

(3) The lump sum amount; and

(4) The total amount of the proposal obtained by adding the amounts of the several items.

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

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

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

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

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

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

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

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

167  
168 (3) The bidder adds provisions reserving the right to accept or reject an  
169 award. Also, the bidder adds provisions into a contract before an award;

170  
171 (4) The proposal does not contain a unit price for each pay item listed  
172 except authorized optional pay items; and

173  
174 (5) Prices for some items are out of proportion to the prices for other  
175 items.

176  
177 (6) If in the opinion of the Director, the bidder and its listed  
178 subcontractors do not have the Contractor's licenses or combination of  
179 Contractor's licenses necessary to complete the work.  
180

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.

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

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. Original bid documents do not have to be submitted. Award will be made based on proposals submitted in HlePRO.

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

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

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

- (1) Submittal of more than one proposal whether under the same or different name.
- (2) Evidence of collusion among bidders. The Department will not recognize participants in collusion as bidders for any future work of the Department until such participants are reinstated as qualified bidders.
- (3) Lack of proposal guaranty.
- (4) Submittal of an unsigned or improperly signed proposal.
- (5) Submittal of a proposal without a listing of subcontractors or containing only a partial or incomplete listing of subcontractors.
- (6) Submittal of an irregular proposal in accordance with Subsection 102.07 - 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) Failure to complete the prequalification questionnaire, if applicable.
- (10) 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.

271 **(A) General.** When brand names of materials or equipment are  
272 specified in the contract documents, they are to indicate a quality, style,  
273 appearance, or performance and not to limit competition. The bidder shall  
274 base its bid on one of the specified brand names unless alternate brands  
275 are qualified as equal or better in an addendum. Qualification of such  
276 proposed alternate brands shall be submitted via email to the Contact  
277 person listed in HlePRO for the solicitation and also post a question in  
278 HlePRO under the question/answer tab referencing the email with the  
279 request. The request must be posted in HlePRO no later than 14  
280 calendar days before the bid opening date, not including the bid opening  
281 date

282  
283 An addendum will be issued to inform all prospective bidders of any  
284 accepted substitution in accordance with Subsection 102.17 – Addenda .  
285

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

298 **(C) Substitution Denial.** Any substitution request not complying with  
299 the above requirements will be denied.  
300

## 301 **102.15 Preferences.**

302

303 **(A) Preference for Hawaii Products.** The bidder's attention is  
304 directed to Sections 103D-1001 and 103D-1002, HRS and Subchapter 1,  
305 Chapter 124, Subtitle 11 of Title 3, HAR which provide preferences for  
306 Hawaii Products. According to Section 103D-1002, HRS, the bidder may  
307 examine the Hawaii Products List at the State Procurement Office, State  
308 Office Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813.  
309

310 If a product listed in the Hawaii Products List is available and meets  
311 project specifications, such product will be designated in the contract  
312 documents as a qualified product which may be used in the performance  
313 of the project.  
314

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

319  
320 It is further understood by the bidder that if the bidder elects to  
321 furnish qualified Hawaii Products, and is awarded the contract, then fails  
322 to use such products or meet the requirements of such preference, the  
323 bidder shall be subject to the statutory penalties, provided in HRS Chapter  
324 103D-1002, and such other remedies as may be available to the State.

325  
326 For the purpose of determining the lowest bid price only, the  
327 provisions of HRS Chapter 103D-1002 shall apply. Any contract awarded  
328 or executed in violation of HRS Chapter 103D-1002 shall be void and no  
329 payment shall be made on account of such contract.

330  
331 **(B) Preferences for Apprenticeship Programs.** In accordance with  
332 ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for  
333 bidders that are parties to apprenticeship agreements pursuant to Hawaii  
334 Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's  
335 price for evaluation purposes. These procedures apply to public works  
336 projects with estimated cost of \$250,000 or more and entered into under  
337 the provisions of HRS Chapter 103.

338  
339 The following provisions apply to this Apprenticeship Program.

340  
341 **(1) Definitions**

342  
343 **(a)** “Apprenticeable trade”, HRS Section 103-55.6 (c),  
344 shall have the same meaning as ‘apprenticeable occupation’  
345 pursuant to Hawaii Administrative Rules ( HAR) Section 30-  
346 1-5.

347  
348 **(b)** “Department” means the department of labor and  
349 industrial relations.

350  
351 **(c)** “Director” means the director of labor and industrial  
352 relations.

353  
354 **(d)** “Employ” means the employment of a person in an  
355 employer-employee relations.

356  
357 **(e)** “Governmental body” means as defined in HRS  
358 Section 103D-104.



360 (f) "Party to an apprenticeship agreement" means party  
361 to a registered apprenticeship program with the department  
362 of labor and industrial relations.

363  
364 (g) "Preference" means the 5% by which the qualified  
365 bidder's offer amount would be decreased for evaluation  
366 purposes.

367 (h) "Public work" shall be as defined in HRS Section 104-  
368 2 and HAR Section 12-22-1.

369  
370 (i) "Registered apprenticeship program" means a  
371 construction trade program approved by the department  
372 pursuant to HAR Section 12-30-1 and Section 12-30-4.

373 (j) "Sponsor" means an operator of an apprenticeship  
374 program and in whose name the program is approved and  
375 registered with the department of labor and industrial  
376 relations pursuant to HAR Section 12-30-1.

377  
378 (k) Offeror – Entity/bidder submitting a proposal to  
379 undertake a project.

380  
381 (l) Procurement Officer – Director of Transportation or  
382 his authorized representative.

383  
384 (2) Qualification Procedures

385  
386 (a) Any bidder seeking the preference must be a party to  
387 an apprenticeship agreement registered with the department  
388 at the time the offer is made for each apprenticeable trade  
389 the bidder will employ to construct the public works projects  
390 for which the offer is being made.

391  
392 1. The apprenticeship agreement shall be  
393 registered and conform to the requirements of HRS  
394 Chapter 372.

395  
396 2. Subcontractors do not have to be a party to an  
397 apprenticeship agreement for the bidder to obtain the  
398 preference.

399  
400 3. The bidder is not required to have apprentices in  
401 its employ at the time of submittal of an offer to qualify  
402 for the preference.  
403

(b) The department shall:

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

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

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

(d) Bidder shall provide a certification by the sponsor of the respective registered apprenticeship programs covering the relevant trade(s) for the public works project.

(e) *Certification Form 1* issued by the department shall include:

1. Contractor information;

2. Solicitation reference;

3. Trade(s);

4. Date and name of apprenticeship program;

5. Signature of authorized training coordinator or training trust fund administrator certifying that the contractor is a participant in the program, and that the program is registered with the department;

6. Contract information for sponsor's authorized representative signing the form;

7. Number of apprentices enrolled in the program, number who successfully completed the apprenticeship program in the past 12 months, including whether the contractor is signatory to a collective bargaining agreement for that trade, or if not, provide for attachment of a copy of the agreement between the contractor and the program.

449                   **(3)**     Solicitation Procedures.

450  
451                   **(a)**     If the NTB indicates that this project is covered by this  
452                   preference, and the offer is less than \$250,000 this  
453                   preference will still be applicable in determining the lowest  
454                   bidder.

455  
456                   **(b)**     A claim for this preference must include the following:

457  
458                   1.       Allow bidder seeking to claim the preference to  
459                   state the trades the bidder will employ to perform the  
460                   work;

461  
462                   2.       For each trade to be employed to perform the  
463                   work, the bidder shall submit a completed signed  
464                   original *Certification Form 1* verifying participation in  
465                   an apprenticeship program registered with the  
466                   department.

467  
468                   3.       The *Certification Form 1* shall be authorized by  
469                   an apprenticeship sponsor of the department's list of  
470                   registered apprenticeship programs.       The  
471                   authorization shall be an original signature by an  
472                   authorized official of the apprenticeship sponsor; and

473  
474                   4.       The completed *Certification Form 1* for each  
475                   trade must be submitted by the bidder with the offer.  
476                   Previous certifications shall not apply unless allowed  
477                   by the solicitation.

478  
479                   **(c)**     Upon receiving *Certification Form 1*, the procurement  
480                   officer will verify with the department that the apprenticeship  
481                   program is on the list of apprenticeship programs registered  
482                   with the department. If the programs are not confirmed by  
483                   the department, the bidder will not qualify for the preference.

484  
485                   **(4)**     Evaluation and Contract Award

486  
487                   **(a)**     If the bidder certifies participation in an apprenticeship  
488                   program for each trade which will be employed by the bidder  
489                   for the project, the procurement officer shall apply the  
490                   preference and decrease the bidder's total bid amount by  
491                   five per cent (5%) for evaluation purposes.  
492

493 (b) Should the bidder qualify for other statutory  
494 preferences (for example, Hawaii products), all applicable  
495 preferences shall be applied to the bidder's price.  
496

497 (c) The contract amount shall be the original offer  
498 amount, exclusive of any preference; the preference is only  
499 for evaluation purposes.  
500

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

508 (5) Contract Administration  
509

510 (a) For the duration of a contract awarded utilizing the  
511 apprenticeship preference, the contractor shall certify each  
512 month that work is being conducted on the project, that it  
513 continues to be a participant in the relevant apprenticeship  
514 program for each trade it employs.  
515

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

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

530 1. Withholding of the requested payment until the  
531 required form(s) are submitted;  
532

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

539 3. Proceed to debar or suspend pursuant to HRS  
540 Section 103D-702.

541  
542 (d) If events such as “acts of God,” acts of a public  
543 enemy, acts of the State or any other governmental body in  
544 its sovereign or contractual capacity, fires, floods, epidemics,  
545 freight embargoes, unusually severe weather, or strikes or  
546 other labor disputes prevent the contractor from submitting  
547 the certification forms, the contractor shall not be penalized  
548 as provided herein, provided the contractor completely and  
549 expeditiously complies with the certification process when  
550 the event is over.

551  
552 This subsection shall not apply when its application will disqualify  
553 the State from receiving federal funds or aid.

554  
555 (C) **Preference for Recycled Products.** Recycled Products shall not  
556 apply to this project.

557  
558 (D) **Evaluation Procedures and Contract Award.** For bid evaluation,  
559 the Engineer will evaluate the bids by applying the applicable preferences  
560 selected by the bidders according to the contract. The Engineer will base  
561 the calculations for adjustments upon the original bid prices offered. If  
562 more than one preference applies, the evaluated bid price shall be the  
563 sum of the original bid price plus applicable preference adjustments.

564  
565 If a bidder has designated use of a Hawaii Product and fails to  
566 provide the product, the contract will become void and no payments will be  
567 made.

568  
569 The Engineer will award the contract to the responsible bidder  
570 submitting the responsive bid with the lowest evaluated bid price. The  
571 contract amount of the contract awarded shall be the original bid price  
572 offered exclusive of any preference.

573  
574 **102.16 Certification for Safety and Health Program for Bids in excess of**  
575 **\$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by  
576 signing and submitting this proposal, certifies that a written safety and health plan  
577 for this project will be available and implemented by the notice to proceed date  
578 for this project. Details of the requirements of this plan may be obtained from the  
579 State Department of Labor and Industrial Relations, Occupational Safety and  
580 Health Division (HIOSH).

582 **102.17 Addenda.** Addenda issued shall become part of the contract  
583 documents. Addenda to the bid documents will be provided to all prospective  
584 bidders via HlePRO. Each addendum shall be an addition to the contract  
585 documents. The terms and requirements of the bid documents (i.e. drawings,  
586 specifications and other bid and contract documents) cannot be changed prior to  
587 the bid opening except by a duly issued addendum.”  
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589  
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591

592 **END OF SECTION 102**  
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