

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

2
3 Make the following amendments to said Section:

4
5 **(I) Amend 102.01 Prequalification of Bidders** to read as follows:

6
7 **"102.01 Prequalification of Bidders.** Prospective bidders shall be capable
8 of performing the work for which they are bidding.

9
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
24 shall be returned to the bidders after serving their purpose.

25
26 Failure to complete the prequalification questionnaire will be sufficient
27 cause for the Department to disqualify a prospective bidder.

28
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
32 (4) a partner or substantial investor in the firm is in arrears in payments owed to
33 the State of Hawaii or its political subdivisions or is in default as a surety or
34 failure to do faithfully and diligently previous contracts with the State."

35
36 **(II) Amend 102.04 Estimated Quantities** by revising the last sentence of
37 the last paragraph to read as follows:

38
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 104.09 - Method of Price Adjustment."

44
45 **(III) Amend 102.07 Irregular Proposals** by adding the following after item
46 (5):

47 “(6) If in the opinion of the Director, the bidder and its listed
48 subcontractors do not have the Contactor’s licenses or combination of
49 Contractor’s licenses necessary to complete the work.”
50

51 **(IV) Amend 102.08 Proposal Guaranty to read as follows:**
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53 **“102.08 Proposal Guaranty.** The Department will not consider a proposal of
54 \$25,000 or more unless accompanied by:
55

56 **(1)** a deposit of legal tender; or
57

58 **(2)** a valid surety bid bond, underwritten by a company licensed to
59 issue bonds in the State of Hawaii, in the form and composed,
60 substantially, with the same language as provided herewith and signed
61 by both parties; or
62

63 **(3)** a certificate of deposit, share certificate, cashier’s check,
64 treasurer’s check, teller’s check, or official check drawn by, or a certified
65 check accepted by and payable on demand to the State by a bank,
66 savings institution, or credit union insured by the Federal Deposit
67 Insurance Corporation (FDIC) or the National Credit Union Administration
68 (NCUA).
69

70 **(a)** The bidder may use these instruments only to a maximum of
71 \$100,000
72

73 **(b)** If the required security or bond amount totals over \$100,000
74 more than one instrument not exceeding \$100,000 each and
75 issued by different financial institutions shall be acceptable.
76

77 **(c)** The instrument shall be made payable at sight to the
78 Department of Transportation, State of Hawaii.
79

80 According to Section 103D-323, HRS, the above shall be in a sum not
81 less than 5% of the amount bid.”
82

83 **(V) Amend 102.12 Disqualification of Bidders to read as follows:**
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85 **“102.12 Disqualification of Bidders.** The Department may disqualify a
86 bidder and reject its proposal for the following reasons:
87

88 **(1)** Submittal of more than one proposal whether under the same or
89 different name.
90

- 91 (2) Evidence of collusion among bidders. The Department will not
92 recognize participants in collusion as bidders for any future work of the
93 Department until such participants are reinstated as qualified bidders.
94
- 95 (3) Lack of proposal guaranty.
96
- 97 (4) Submittal of an unsigned or improperly signed proposal.
98
- 99 (5) Submittal of a proposal without a listing of subcontractors or
100 containing only a partial or incomplete listing of subcontractors.
101
- 102 (6) Submittal of an irregular proposal according to Subsection 102.07 -
103 Irregular Proposals.
104
- 105 (7) Evidence of assistance from a person who has been an employee
106 of the agency within the preceding two years and who participated while
107 in State office or employment in the matter with which the contract is
108 directly concerned, pursuant to Section 84-15, HRS.
109
- 110 (8) Suspended or debarred in accordance with HRS 104-25.
111
- 112 (9) Failure to complete the prequalification questionnaire.
113
- 114 (10) Failure to attend the mandatory pre-bid meeting."
115
- 116 (VI) Delete **Section 102.14 - American Products Preference** in its entirety.
117
- 118 (VII) Amend **102.15 Declaration of Non-Collusion** to read as follows:
119
- 120 "**102.15** (Unassigned)."
121
- 122 (VIII) Amend **102.16 Substitution Of Materials and Equipment** to read as
123 follows:
124
- 125 "**102.16 Substitution Of Materials and Equipment.**
126
- 127 (A) **Substitution Before Bid Opening.**
128
- 129 (1) **General.** When brand names of materials or equipment
130 are specified in the contract documents, they are to indicate a
131 quality, style, appearance, or performance and not to limit
132 competition. The bidder shall base its bid on one of the specified
133 brand names unless alternate brands are qualified as equal or
134 better in an addendum. Qualification of such proposed alternate
135 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 and Bid Clarification.

(2) 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.

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

(B) Substitution After Bid Opening. Substitution of material or equipment will not be allowed after the bid opening date except under the following circumstances:

(1) A specified or pre-qualified item is delayed by a lengthy strike in the factory or other unforeseeable contingency beyond the control of the Contractor which would cause an abnormal delay in the project completion.

181 (2) A specified or pre-qualified item is found to be unusable or
182 discontinued due to change or other circumstances.
183

184 (3) If the Contractor is willing to provide a more recently
185 developed or manufactured item of material or equipment of the
186 same manufacturer which the Director determines to be equal or
187 better than the one specified or pre-qualified.
188

189 A substitution request, regardless of reason, shall be fully
190 explained in writing, by the Contractor and shall include his justification
191 for said request, the quantities and unit prices involved, quotations and
192 such other documents as are deemed necessary to support the request.
193 Substitutions allowed pursuant to this provision, with the exception of the
194 circumstance described under 102.16(B)3, do not qualify as value
195 engineering. Any savings in cost will accrue to the State except where
196 value engineering applies, and the Contractor will pay for any additional
197 cost for the substituted items.
198

199 The burden of proof as to the comparative quality and suitability of
200 alternate equipment, articles or materials shall be upon the Contractor.
201 The Contractor shall furnish, at no cost to the State, all information
202 required by the Director. The above shall not be construed to mean that
203 substitution for or permitting the use of brand name will be allowed.
204

205 The Director reserves the right to deny any request deemed
206 irregular or not in the best interest of the State and shall be the sole judge
207 of the comparative quality and suitability of alternates. The Director's
208 decision is final."
209

210 (IX) Add the following:

211
212 **"102.18 Preferences.**

213
214 (A) **Preference for Hawaii Products.** The bidder's attention is
215 directed to Sections 103D-1001 and 103D-1002, HRS and Subchapter 1,
216 Chapter 124, Subtitle 11 of Title 3, HAR which provide preferences for
217 Hawaii Products. According to Section 103D-1002, HRS, the bidder may
218 examine the Hawaii Products List at the State Procurement Office, State
219 Office Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813.
220

221 If a product listed in the Hawaii Products List is available and
222 meets project specifications, such product will be designated in the
223 contract documents as a qualified product which may be used in the
224 performance of the project.
225

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

230
231 It is further understood by the bidder that if the bidder elects to
232 furnish qualified Hawaii Products, and is awarded the contract, then fails
233 to use such products or meet the requirements of such preference, the
234 bidder shall be subject to the statutory penalties, provided in Section
235 103D-1002, HRS, and such other remedies as may be available to the
236 State.

237
238 For the purpose of determining the lowest bid price only, the
239 provisions of Section 103D-1002, HRS., shall apply. Any contract
240 awarded or executed in violation of Section 103D-1002, HRS, shall be
241 void and no payment shall be made on account of such contract.

242
243 **(B) Preference for Recycled Products.** Recycled Products shall
244 not apply to this project.

245
246 **(C) Evaluation Procedures and Contract Award.** For bid
247 evaluation, the Engineer will evaluate the bids by applying the applicable
248 preferences selected by the bidders according to the contract. The
249 Engineer will base the calculations for adjustments upon the original bid
250 prices offered. If more than one preference applies, the evaluated bid
251 price shall be the sum of the original bid price plus applicable preference
252 adjustments.

253
254 If a bidder has designated use of a Hawaii Product and fails to
255 provide the product, the contract will become void and no payments will
256 be made.

257
258 The Engineer will award the contract to the responsible bidder
259 submitting the responsive bid with the lowest evaluated bid price. The
260 contract amount of the contract awarded shall be the original bid price
261 offered exclusive of any preference.

262
263 **102.19 Certification for Safety and Health Program for Bids in excess of**
264 **\$100,000.** According to Section 396-18 of the Hawaii Revised Statutes, the
265 bidder or offeror, by signing and submitting this proposal, certifies that a written
266 safety and health plan for this project will be available and implemented by the
267 notice to proceed date for this project. Details of the requirements of this plan
268 may be obtained from the State Department of Labor and Industrial Relations,
269 Occupational Safety and Health Division (HIOSH).

270
271 **102.20** (Unassigned). (Tax clearance moved to 103.03 – Award of
272 Contract).

273 **102.21 Addendum.** The terms and requirements of the bid documents (i.e.
274 drawings, specifications and other bid and contract documents) cannot be
275 changed prior to the bid opening except by a duly issued addendum. All
276 addenda so issued shall become part of the contract documents.
277

278 The State may alter, increase or decrease the scope of the work or the
279 contract time, provisions and conditions by issuing a written addendum which
280 sets forth such alterations, increase or decrease.
281

282 Addendum to the bid documents will be provided to all prospective
283 bidders at the respective offices furnished for such purposes. Each addendum
284 shall be an addition to the contract documents."
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286
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289

290 **END OF SECTION**
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