

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
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) If bidder elects options (1) or (3) above for its bid security, said bid security shall be in its **original form** and shall be **submitted before the bid deadline** to the Contract Office, Department of Transportation, AliiAIMoku Hale, 869 Punchbowl Street, Room 105, Honolulu, Hawaii 96813. Original surety bid bonds do **not** need to be submitted to the Contracts Office. Bidders are reminded that a copy of its surety bid bond shall be **included with its bid** submitted and uploaded to HlePRO.

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. Bidders shall submit and upload the complete proposal to HlePRO prior to the bid opening date and time. Proposals received after said due date and time shall not be considered. Any additional support documents explicitly designated as confidential and/or proprietary shall be uploaded as a separate file to HlePRO. Do not include confidential and/or proprietary documents with the proposal. The record of each bidder and respective bid shall be open to public inspection. Original (wet ink, hard copy) proposal documents are not required to be submitted. Contract award shall be based on evaluation of proposals submitted and uploaded to HlePRO.

FAILURE TO UPLOAD THE COMPLETE PROPOSAL TO HlePRO SHALL BE GROUNDS FOR REJECTION OF THE BID.

If there is a conflict between the specification document and the HlePRO solicitation, the specifications shall govern and control, unless otherwise specified.”

102.10 Withdrawal or Revision of Proposals. Bids may be modified or withdrawn prior to the bid opening date and time. Withdrawal or revision of proposal shall be completed and submitted and uploaded to HlePRO prior to the bid opening date and time.

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.

(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 via email to the Contact person listed in HlePRO for the solicitation and also post a question in HlePRO under the question/answer tab referencing the email with the request. The request must be posted in HlePRO no later than 14 calendar days before 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.

317 **102.15 Preferences.**

318
319 **(A) Preference for Hawaii Products.** In accordance with ACT 174,
320 SLH 2022, effective June 27, 2022, Hawaii Products Preference shall not
321 apply to solicitations for public works construction. Therefore, the Hawaii
322 Products Preference shall not apply to this project.
323

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

332 The following provisions apply to this Apprenticeship Program.
333

334 **(1) Definitions**

335
336 **(a)** “Apprenticeable trade”, HRS Section 103-55.6 (c),
337 shall have the same meaning as ‘apprenticeable occupation’
338 pursuant to Hawaii Administrative Rules (HAR) Section 30-
339 1-5.
340

341 **(b)** “Department” means the department of labor and
342 industrial relations.
343

344 **(c)** “Director” means the director of labor and industrial
345 relations.
346

347 **(d)** “Employ” means the employment of a person in an
348 employer-employee relations.
349

350 **(e)** “Governmental body” means as defined in HRS
351 Section 103D-104.
352

353 **(f)** “Party to an apprenticeship agreement” means party
354 to a registered apprenticeship program with the department
355 of labor and industrial relations.
356

357 **(g)** “Preference” means the 5% by which the qualified
358 bidder's offer amount would be decreased for evaluation
359 purposes.
360

361 **(h)** “Public work” shall be as defined in HRS Section 104-
362 2 and HAR Section 12-22-1.

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

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

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

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

(2) Qualification Procedures

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

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

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

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

(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.

(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;

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

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

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

(4) Evaluation and Contract Award

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

(b) Should the bidder qualify for other statutory preferences, all applicable preferences shall be applied to the bidder's price.

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

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

(5) Contract Administration

501
502 (a) For the duration of a contract awarded utilizing the
503 apprenticeship preference, the contractor shall certify each
504 month that work is being conducted on the project, that it
505 continues to be a participant in the relevant apprenticeship
506 program for each trade it employs.

507
508 (b) Monthly certification shall be made on *Monthly*
509 *Certification Form 2* prepared and made available by the
510 department, be a signed original by the respective
511 apprenticeship program sponsors authorized official, and
512 submitted by the contractor with its monthly payment
513 requests.
514

515 (c) Should the contractor fail or refuse to submit its
516 monthly certification forms, or at any time during the
517 construction of the project, cease to be a part to a registered
518 apprenticeship agreement for each apprenticeable trades
519 the contractor employs, or will employ, the contractor will be
520 subject to the following sanctions:
521

522 1. Withholding of the requested payment until the
523 required form(s) are submitted;
524

525 2. Temporary or permanent cessation of work on
526 the project, without recourse to breach of contract
527 claims by the contractor; provided the agency shall be
528 entitled to restitution for nonperformance or liquidated
529 damages claims; or
530

531 3. Proceed to debar or suspend pursuant to HRS
532 Section 103D-702.
533

534 (d) If events such as "acts of God," acts of a public
535 enemy, acts of the State or any other governmental body in
536 its sovereign or contractual capacity, fires, floods, epidemics,
537 freight embargoes, unusually severe weather, or strikes or
538 other labor disputes prevent the contractor from submitting
539 the certification forms, the contractor shall not be penalized
540 as provided herein, provided the contractor completely and
541 expeditiously complies with the certification process when
542 the event is over.
543

544 This subsection shall not apply when its application will disqualify
545 the State from receiving federal funds or aid.
546

547 **(C) Preference for Recycled Products.** Recycled Products shall not
548 apply to this project.
549

550 **(D) Evaluation Procedures and Contract Award.** For bid evaluation,
551 the Engineer will evaluate the bids by applying the applicable preferences
552 selected by the bidders according to the contract. The Engineer will base
553 the calculations for adjustments upon the original bid prices offered. If
554 more than one preference applies, the evaluated bid price shall be the
555 sum of the original bid price plus applicable preference adjustments.
556

557 If a bidder has designated use of a Hawaii Product and fails to
558 provide the product, the contract will become void, and no payments will
559 be made.
560

561 The Engineer will award the contract to the responsible bidder
562 submitting the responsive bid with the lowest evaluated bid price. The
563 contract amount of the contract awarded shall be the original bid price
564 offered exclusive of any preference.
565

566 **102.16 Certification for Safety and Health Program for Bids in excess**
567 **of \$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by
568 signing and submitting this proposal, certifies that a written safety and health plan
569 for this project will be available and implemented by the notice to proceed date
570 for this project. Details of the requirements of this plan may be obtained from the
571 State Department of Labor and Industrial Relations, Occupational Safety and
572 Health Division (HIOSH).
573

574 **102.17 Addenda.** Addenda issued shall become part of the contract
575 documents. Addenda to the bid documents will be provided to all prospective
576 bidders via HlePRO. Each addendum shall be an addition to the contract
577 documents. The terms and requirements of the bid documents (i.e., drawings,
578 specifications and other bid and contract documents) cannot be changed prior to
579 the bid opening except by a duly issued addendum.”
580

581
582
583 **END OF SECTION 102**
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585
586