

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.

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

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

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

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

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

- (1) The proposal is a form not furnished by the Department, altered, or detached;
- (2) The proposal contains unauthorized additions, conditions, or alternates. Also, the proposal contains irregularities that may tend to make the proposal incomplete, indefinite, or ambiguous to its meaning;
- (3) The bidder adds provisions reserving the right to accept or reject an award. Also, the bidder adds provisions into a contract before an award;
- (4) The proposal does not contain a unit price for each pay item listed except authorized optional pay items; and
- (5) Prices for some items are out of proportion to the prices for other items.
- (6) If in the opinion of the Director, the bidder and its listed subcontractors do not have the Contractor's licenses or combination of 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.
 - (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

404 (b) The department shall:

405
406 1. Develop and maintain a list of construction
407 trades in registered apprenticeship programs which
408 conform to HRS Chapter 372; and

409
410 2. Electronically post the list; including any
411 amendments, on the department website
412 (<http://labor.hawaii.gov>).
413

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

417
418 (d) Bidder shall provide a certification by the sponsor of
419 the respective registered apprenticeship programs covering
420 the relevant trade(s) for the public works project.
421

422 (e) *Certification Form 1* issued by the department shall
423 include:
424

425 1. Contractor information;

426 2. Solicitation reference;

427 3. Trade(s);

428 4. Date and name of apprenticeship program;

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

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

435 7. Number of apprentices enrolled in the program,
436 number who successfully completed the
437 apprenticeship program in the past 12 months,
438 including whether the contractor is signatory to a
439 collective bargaining agreement for that trade, or if
440 not, provide for attachment of a copy of the
441 agreement between the contractor and the program.
442
443
444
445
446
447
448

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).
581

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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592

END OF SECTION 102