

1 Make this section a part of the Standard Specifications:

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

4
5 **102.01 Prequalification of Bidders.** Prospective bidders shall be capable
6 of performing the work for which they are bidding.

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8 In accordance with HRS Chapter 103D-310, the Department may require
9 any prospective bidder to submit answers to questions contained in the 'Standard
10 Qualification Questionnaire For Prospective Bidders On Public Works Contracts'
11 furnished by the Department, properly executed and notarized, setting forth a
12 complete statement of the experience of such prospective bidder and its
13 organization in performing similar work and a statement of the equipment proposed
14 to be used, together with adequate proof of the availability of such equipment.
15 Whenever it appears to the Department, from answers to the questionnaire or
16 otherwise, that the prospective bidder is not fully qualified and able to perform the
17 intended work, the Department will, after affording the prospective bidder an
18 opportunity to be heard and if still of the opinion that the bidder is not fully qualified
19 to perform the work, refuse to receive or consider any bid offered by the
20 prospective bidder. All information contained in the answers to the questionnaire
21 shall be kept confidential. Questionnaire so submitted shall be returned to the
22 bidders after serving their purpose.

23
24 No person, firm or corporation may bid where (1) the person, firm, or
25 corporation, or (2) a corporation owned substantially by the person, firm, or
26 corporation, or (3) a substantial stockholder or an officer of the corporation, or (4)
27 a partner or substantial investor in the firm is in arrears in payments owed to the
28 State or its political subdivisions or is in default as a surety or failure to do faithfully
29 and diligently previous contracts with the State.

30
31 **102.02 Contents of Proposal Forms.** The Department will furnish
32 prospective bidders with proposal forms stating:

- 33
34 (1) The location,
35
36 (2) Description of the proposed work,
37
38 (3) The approximate quantities,
39
40 (4) Items of work to be done or materials to be furnished,
41
42 (5) A schedule of items, and
43
44 (6) The time in which the work shall be completed.
45

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.

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

102.03 Issuance of Proposal Forms. The Department reserves the right to refuse to issue proposal forms to prospective bidders, which refusal may be based on the following:

- (1) Lack of competency or adequate machinery, plant, and other equipment (which determination may be based on the financial statement and experience questionnaires required under Subsection 102.01 - Prequalification of Bidders);
- (2) Uncompleted work that might hinder or prevent the prompt completion of additional work if awarded;
- (3) Failure to pay or settle bills due for labor and material on former contracts in force at the time of issuance of the project proposal forms;
- (4) Failure to comply with qualification regulations of the Department;
- (5) Default under previous contracts; or
- (6) Lack of responsibility and cooperation from past work.

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.

91 **102.05 Examination of Contract and Site of Work.** The bidder shall
92 examine carefully the site of the proposed work and contract before submitting a
93 proposal.

94
95 By the act of submitting a bid for the proposed contract, the bidder warrants
96 that:

97
98 (1) The bidder and its Subcontractors have reviewed the contract
99 documents and found them free from ambiguities and sufficient for the
100 purpose intended;

101
102 (2) The bidder and its workers, employees and subcontractors have the
103 skills and experience in the type of work required by the contract documents
104 bid upon;

105
106 (3) Neither the bidder nor its employees, agents, suppliers or
107 subcontractors have relied upon verbal representations from the
108 Department, its employees or agents, including architects, engineers or
109 consultants, in assembling the bid figure; and

110
111 (4) The bases for the bid figure are solely on the construction contract
112 documents.

113
114 Also, the bidder warrants that the bidder has examined the site of the work.
115 From its investigations, the bidder acknowledges satisfaction on:

116
117 (1) The nature and location of the work;

118
119 (2) The character, quality, and quantity of materials;

120
121 (3) The difficulties to be encountered; and

122
123 (4) The kind and amount of equipment and other facilities needed;

124
125 Subsurface information or hydrographic survey data furnished are for the
126 bidders' convenience only. The data and information furnished are the product
127 of the Department's interpretation gathered in investigations made at the specific
128 locations. These conditions may not be typical of conditions at other locations
129 within the project area or that such conditions remain unchanged. Also, conditions
130 found at the time of the subsurface explorations may not be the same conditions
131 when work starts. The bidder shall be solely responsible for assumptions,
132 deductions, or conclusions the bidder may derive from the subsurface information
133 or data furnished.

134
135 If the Engineer determines that the natural conditions differ from that
136 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 Contactor'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.

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 a sealed envelope, bearing on the outside the identity of the project and the its name and address. The Department will reject and return a proposal unopened if received after the time set for the opening of bids.

102.10 Withdrawal or Revision of Proposals. A bidder may withdraw or revise a proposal after the bidder deposits the proposal with the Department, provided the Department receives such withdrawal or revision request in writing before the time set for the opening of bids.

102.11 Public Opening of Proposals. The Department will open and read the proposals publicly at the time and place shown in the Notice to Bidders. Invited are bidders, their authorized agents, and other interested parties to be present.

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.

(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 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 102.17 – 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.

102.15 Preferences.

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

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

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

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

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

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

The following provisions apply to this Apprenticeship Program.

(1) Definitions

367 (a) "Apprenticeable trade", HRS Section 103-55.6 (c), shall
368 have the same meaning as 'apprenticeable occupation' pursuant
369 to Hawaii Administrative Rules (HAR) Section 30-1-5.

370
371 (b) "Department" means the department of labor and industrial
372 relations.

373
374 (c) "Director" means the director of labor and industrial
375 relations.

376
377 (d) "Employ" means the employment of a person in an
378 employer-employee relations.

379
380 (e) "Governmental body" means as defined in HRS Section
381 103D-104.

382
383 (f) "Party to an apprenticeship agreement" means party to a
384 registered apprenticeship program with the department of labor
385 and industrial relations.

386
387 (g) "Preference" means the 5% by which the qualified bidder's
388 offer amount would be decreased for evaluation purposes.

389
390 (h) "Public work" shall be as defined in HRS Section 104-2 and
391 HAR Section 12-22-1.

392
393 (i) "Registered apprenticeship program" means a construction
394 trade program approved by the department pursuant to HAR
395 Section 12-30-1 and Section 12-30-4.

396
397 (j) "Sponsor" means an operator of an apprenticeship program
398 and in whose name the program is approved and registered with
399 the department of labor and industrial relations pursuant to HAR
400 Section 12-30-1.

401
402 (k) Offeror – Entity/bidder submitting a proposal to undertake a
403 project.

404
405 (l) Procurement Officer – Director of Transportation or his
406 authorized representative.

407
408 (2) Qualification Procedures

409
410 (a) Any bidder seeking the preference must be a party to an
411 apprenticeship agreement registered with the department at the
412 time the offer is made for each apprenticeable trade the bidder
413 will employ to construct the public works projects for which the
414 offer is being made.

415
416 1. The apprenticeship agreement shall be registered and
417 conform to the requirements of HRS Chapter 372.

418
419 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://hawaii.gov/labor/wdd>).

(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

473 preference, and the offer is less than \$250,000 this preference
474 will still be applicable in determining the lowest bidder.
475

476 (b) A claim for this preference must include the following:
477

478 1. Allow bidder seeking to claim the preference to state
479 the trades the bidder will employ to perform the work;
480

481 2. For each trade to be employed to perform the work, the
482 bidder shall submit a completed signed original *Certification*
483 *Form 1* verifying participation in an apprenticeship program
484 registered with the department.
485

486 3. The *Certification Form 1* shall be authorized by an
487 apprenticeship sponsor of the department's list of registered
488 apprenticeship programs. The authorization shall be an
489 original signature by an authorized official of the
490 apprenticeship sponsor; and
491

492 4. The completed *Certification Form 1* for each trade must
493 be submitted by the bidder with the offer. Previous
494 certifications shall not apply unless allowed by the
495 solicitation.
496

497 (c) Upon receiving *Certification Form 1*, the procurement officer
498 will verify with the department that the apprenticeship program is
499 on the list of apprenticeship programs registered with the
500 department. If the programs are not confirmed by the
501 department, the bidder will not qualify for the preference.
502

503 (4) Evaluation and Contract Award
504

505 (a) If the bidder certifies participation in an apprenticeship
506 program for each trade which will be employed by the bidder for
507 the project, the procurement officer shall apply the preference
508 and decrease the bidder's total bid amount by five per cent (5%)
509 for evaluation purposes.
510

511 (b) Should the bidder qualify for other statutory preferences (for
512 example, Hawaii products), all applicable preferences shall be
513 applied to the bidder's price.
514

515 (c) The contract amount shall be the original offer amount,
516 exclusive of any preference; the preference is only for evaluation
517 purposes.
518

519 (d) Any claims challenging a bidder's representation that the
520 bidder is a participant in an apprenticeship program(s) as
521 claimed, shall be submitted to the procurement officer. The
522 procurement officer will refer the challenge to the department of
523 labor and industrial relations who shall investigate any such
524 claims and shall make a determination.
525

526 (5) Contract Administration

527
528 (a) For the duration of a contract awarded utilizing the
529 apprenticeship preference, the contractor shall certify each
530 month that work is being conducted on the project, that it
531 continues to be a participant in the relevant apprenticeship
532 program for each trade it employs.

533
534 (b) Monthly certification shall be made on *Monthly Certification*
535 *Form 2* prepared and made available by the department, be a
536 signed original by the respective apprenticeship program
537 sponsors authorized official, and submitted by the contractor with
538 its monthly payment requests.

539
540 (c) Should the contractor fail or refuse to submit its monthly
541 certification forms, or at any time during the construction of the
542 project, cease to be a part to a registered apprenticeship
543 agreement for each apprenticeable trades the contractor
544 employs, or will employ, the contractor will be subject to the
545 following sanctions:

546
547 1. Withholding of the requested payment until the
548 required form(s) are submitted;

549
550 2. Temporary or permanent cessation of work on the
551 project, without recourse to breach of contract claims by the
552 contractor; provided the agency shall be entitled to
553 restitution for nonperformance or liquidated damages
554 claims; or

555
556 3. Proceed to debar or suspend pursuant to HRS Section
557 103D-702.

558
559 (d) If events such as "acts of God," acts of a public enemy, acts
560 of the State or any other governmental body in its sovereign or
561 contractual capacity, fires, floods, epidemics, freight embargoes,
562 unusually severe weather, or strikes or other labor disputes
563 prevent the contractor from submitting the certification forms, the
564 contractor shall not be penalized as provided herein, provided the
565 contractor completely and expeditiously complies with the
566 certification process when the event is over.

567
568 This subsection shall not apply when its application will disqualify the
569 State from receiving federal funds or aid.

570
571 (C) **Preference for Recycled Products.** Recycled Products shall not
572 apply to this project.

573
574 (D) **Evaluation Procedures and Contract Award.** For bid evaluation,
575 the Engineer will evaluate the bids by applying the applicable preferences
576 selected by the bidders according to the contract. The Engineer will base
577 the calculations for adjustments upon the original bid prices offered. If

578 more than one preference applies, the evaluated bid price shall be the sum
579 of the original bid price plus applicable preference adjustments.
580

581 If a bidder has designated use of a Hawaii Product and fails to
582 provide the product, the contract will become void and no payments will be
583 made.
584

585 The Engineer will award the contract to the responsible bidder
586 submitting the responsive bid with the lowest evaluated bid price. The
587 contract amount of the contract awarded shall be the original bid price
588 offered exclusive of any preference.
589

590 **102.16 Certification for Safety and Health Program for Bids in excess**
591 **of \$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by
592 signing and submitting this proposal, certifies that a written safety and health plan
593 for this project will be available and implemented by the notice to proceed date for
594 this project. Details of the requirements of this plan may be obtained from the
595 State Department of Labor and Industrial Relations, Occupational Safety and
596 Health Division (HIOSH).
597

598 **102.17 Addenda.** Addenda issued shall become part of the contract
599 documents. Addenda to the bid documents will be provided to all prospective
600 bidders at the respective offices furnished for such purposes. Each addendum
601 shall be an addition to the contract documents. The terms and requirements of
602 the bid documents (i.e. drawings, specifications and other bid and contract
603 documents) cannot be changed prior to the bid opening except by a duly issued
604 addendum."
605

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609
610 **END OF SECTION 102**