

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

Make the following amendments to said Section:

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

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

According to Section 103D-310, HRS, each prospective bidder shall file written notice of its intention to bid no later than 4:30 P.M., 10 calendar days before the bid opening date (not including the bid opening date), at the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813. If the tenth day is on a Saturday, Sunday, or State holiday, the Notice of Intention to Bid is due on the last working day before the due date. Mailed notice must be received in sufficient time to meet the deadline set above. Faxed notice is acceptable provided the Contracts Office receives the faxed notice within the time stated above. The fax number is (808) 587-2132. It is the bidder's responsibility to ensure that the Contracts Office receives the Notice of Intent on time and in a legible condition.

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

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

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

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

"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 according to Subsection 104.09 - Method of Price Adjustment."

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

"(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."

(IV) Amend **102.08 Proposal Guaranty** to read as follows:

**"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 of Transportation, State of Hawaii.

According to Section 103D-323, H.R.S., the above shall be in a sum not less than 5% of the amount bid."

**(V) Amend 102.12 Disqualification of Bidders to read as follows:**

**"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 according to Subsection 102.07 - Irregular Proposals.
- (7)** Failure to submit and comply with the Statement of Affirmation and Acknowledgment of Disadvantaged Business Enterprise (DBE).
- (8)** 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 Section 84-15, HRS."

**(VI) Amend Section 102.14 - American Products Preference to read as follows:**

**"102.14 American Products Preference.** The 'Buy America' provision in the Surface Transportation Assistance Act of 1982 is applicable to Federal-Aid projects. The bidders shall give preference to American products, materials and supplies.

Bidders may submit a bid based upon furnishing domestic or foreign steel. The basis for determining the foreign or domestic character of the steel is on the place of manufacture. Any domestic steel furnished shall be manufactured from materials and supplies mined, produced or manufactured in the United States.

The 'Buy America' provision does not apply to minimal use of foreign steel such that the cost, delivered to the project site, is less than \$2,500 or 0.1% of the total contract amount, whichever is greater.

The Department directs the bidder to the instructions in the Proposal regarding alternate bidding procedures for foreign steel. The Department will decide the total bid for bid comparison purposes as provided in the proposal.

The Department will award the contract to the bidder who submits the lowest total bid based on furnishing domestic steel, unless such total bid exceeds the lowest total bid based on furnishing foreign steel by more than 25%. If a tie occurs between a bid based upon furnishing foreign steel and a bid based upon furnishing domestic steel including the 25% price differential, the Department will consider the bid based on furnishing domestic steel as the lower bid.

The basis for the determination of foreign or domestic character of the steel are on place of manufacture. Manufacturing processes for domestic steel shall occur in the United States."

**(VII) Amend 102.15 Declaration of Non-Collusion** to read as follows:

**"102.15 (Unassigned)"**

**(VIII) Amend 102.16 Substitution Of Materials and Equipment** to read as follows:

**"102.16 Substitution Of Materials and Equipment.**

**(A) Substitution Before Bid Opening.** The Department will not review substitution request before bid opening. Bidders shall base bids on the specified item.

**(B) Substitution After Bid Opening.** The Contractor may make substitutions that are equal or better after bid opening with the written acceptance by the Engineer."

**(IX) Add the following:**

**"102.18 Preferences.** Hawaii Products, Recycled Products, and In-State Preferences shall not apply to this project."

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

**102.20 Tax Clearance.** All bidders should submit original tax clearance certificates or certified copies from the Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) with their bid proposals when the bid is \$25,000 or more. Bidders are required to provide a tax clearance prior to entering into a public contract of \$25,000 or more, pursuant to ACT 352, SLH 1997.

Tax clearances may be obtained by completing the Tax Clearance Application (Form A-6) and submitting it to the DOTAX or the IRS. The application may be obtained from the DOTAX, or the IRS. The application may be mailed in or walked in to either the DOTAX or the IRS. Both tax agencies encourage the use of their mail-in process, which should be completed within 21 calendar days. Tax clearance certificates will be issued to the applicant upon determination that the applicant has filed all tax returns due, and has paid all amounts owing on such returns, including penalty and interest."

Only original tax clearances or certified copies will be accepted for this purpose. Failure to submit the required tax clearance certificates will be sufficient grounds for the State to refuse to receive or consider the prospective bidder's proposal.

Tax clearance certificates are valid for 6 months. The validity period will begin with the later approval date stamped on the tax clearance.

The tax clearance submitted with the bid proposals must be valid on the solicitation's first legal advertisement date or any date thereafter up to the bid opening date. Valid tax clearances submitted with the proposal will remain valid for the contract award and encumbrance.

If a business cannot obtain a tax clearance certificate because of tax delinquencies, it may submit a 'special letter' from DOTAX and/or the IRS. The 'special letter' may only be obtained if

- (1) the business has an existing installment agreement with the tax agency, or
- (2) the delinquency is the subject of an administrative or judicial appeal.

The bidder is cautioned that the 'special letter' from the IRS must be certified by DOTAX. All conditions applied to tax clearance certificates for this purpose are applicable to these 'special letters'. Instructions to obtain the 'special letter' are available from each respective tax agency.

Various combinations of tax clearance certificates and 'special letters' are acceptable for this purpose as follows:

- (1) Tax clearance signed by both tax agencies;
- (2) Individual tax clearance certificates from each tax agency, respectively;
- (3) Tax clearance certificate from one tax agency and a 'special letter' from the other tax agency; or
- (4) 'Special letter' from both tax agencies."

**END OF SECTION**