

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

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3       Make the following amendments to said Section:

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

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

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

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

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

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

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39       "The Department may increase, decrease, or omit each scheduled  
40       quantities of work to be done and materials to be furnished.     When the  
41       Department increases or decreases the estimated quantity of a contract item by  
42       more than 15% the Department will make payment for such items according to  
43       Subsection 104.09 - Method of Price Adjustment."

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

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

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

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

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

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

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

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

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

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

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

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

(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) 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.

(8) Suspended or debarred in accordance with HRS 104-25.

(9) Failure to complete the prequalification questionnaire.

(10) Failure to attend the mandatory pre-bid meeting."

(VI) Delete **Section 102.14 - American Products Preference** in its entirety.

(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.**

(1) **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

136 Contracts Officer. The face of the envelope containing the request  
137 must be clearly marked 'SUBSTITUTION REQUEST'. The request  
138 may be hand-carried or mailed to the DOT Contracts Office, Room  
139 105, 869 Punchbowl Street, Honolulu, Hawaii 96813. In  
140 either case, the written request must be received by the DOT  
141 Contracts Office no later than 14 calendar days before the bid  
142 opening date, not including the bid opening date. The written  
143 request will be time stamped by the DOT Contracts Office. For  
144 the purpose of this section, the time designated by the time  
145 stamping device in the DOT Contracts Office shall be official. If  
146 the written request is hand-carried, the bearer is responsible to  
147 ensure that the request is time stamped by the DOT Contracts  
148 Office.  
149

150 Submit 5 sets of the written request, technical brochures,  
151 and a statement of variances.  
152

153 An addendum will be issued to inform all prospective  
154 bidders of any accepted substitution in accordance with Subsection  
155 102.21 – Addenda and Bid Clarification.  
156

157 **(2) Statement of Variances.** The statement of variances must  
158 list all features of the proposed substitution that differ from the  
159 contract documents and must further certify that the substitution  
160 has no other variant features. The brochure and information  
161 submitted shall be clearly marked showing make, model, size,  
162 options, and any other features requested by the Engineer and  
163 must include sufficient evidence to evaluate each feature listed as  
164 a variance. A request will be denied if submitted without sufficient  
165 evidence. If after installing the substituted product, an unlisted  
166 variance is discovered, the Contractor shall immediately replace  
167 the product with a specified product at no cost to the State.  
168

169 **(3) Substitution Denial.** Any substitution request not  
170 complying with the above requirements will be denied.  
171

172 **(B) Substitution After Bid Opening.** Substitution of material or  
173 equipment will not be allowed after the bid opening date except under the  
174 following circumstances:  
175

176 **(1)** A specified or pre-qualified item is delayed by a lengthy  
177 strike in the factory or other unforeseeable contingency beyond the  
178 control of the Contractor which would cause an abnormal delay in  
179 the project completion.  
180

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

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

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

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

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

210 (IX) Add the following:  
211

212 **"102.18 Preferences.**  
213

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

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

226 If the bidder intends to claim preference for products on the Hawaii  
227 Product List and such is not listed, the bidder shall immediately notify the  
228 Contracts Office, Department of Transportation, so the Engineer may  
229 take corrective or other appropriate actions.  
230

231 It is further understood by the bidder that if the bidder elects to  
232 furnish qualified Hawaii Products, and is awarded the contract, then fails  
233 to use such products or meet the requirements of such preference, the  
234 bidder shall be subject to the statutory penalties, provided in Section  
235 103D-1002, HRS, and such other remedies as may be available to the  
236 State.  
237

238 For the purpose of determining the lowest bid price only, the  
239 provisions of Section 103D-1002, HRS., shall apply. Any contract  
240 awarded or executed in violation of Section 103D-1002, HRS, shall be  
241 void and no payment shall be made on account of such contract.  
242

243 **(B) Preference for Recycled Products.** Recycled Products shall  
244 not apply to this project.  
245

246 **(C) Evaluation Procedures and Contract Award.** For bid  
247 evaluation, the Engineer will evaluate the bids by applying the applicable  
248 preferences selected by the bidders according to the contract. The  
249 Engineer will base the calculations for adjustments upon the original bid  
250 prices offered. If more than one preference applies, the evaluated bid  
251 price shall be the sum of the original bid price plus applicable preference  
252 adjustments.  
253

254 If a bidder has designated use of a Hawaii Product and fails to  
255 provide the product, the contract will become void and no payments will  
256 be made.  
257

258 The Engineer will award the contract to the responsible bidder  
259 submitting the responsive bid with the lowest evaluated bid price. The  
260 contract amount of the contract awarded shall be the original bid price  
261 offered exclusive of any preference.  
262

263 **102.19 Certification for Safety and Health Program for Bids in excess of**  
264 **\$100,000.** According to Section 396-18 of the Hawaii Revised Statutes, the  
265 bidder or offeror, by signing and submitting this proposal, certifies that a written  
266 safety and health plan for this project will be available and implemented by the  
267 notice to proceed date for this project. Details of the requirements of this plan  
268 may be obtained from the State Department of Labor and Industrial Relations,  
269 Occupational Safety and Health Division (HIOSH).  
270

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

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

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

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

**END OF SECTION**