

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

2
3 Make the following amendments to said Section:

4
5 **(I) Amend 102.01 Prequalification of Bidders** to read as follows:

6
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 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:

38
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 102.08 Proposal Guaranty** to read as follows:
46

47 **"102.08 Proposal Guaranty.** The Department will not consider a proposal of
48 \$25,000 or more unless accompanied by:

49
50 (1) a deposit of legal tender; or

51
52 (2) a valid surety bid bond, underwritten by a company licensed to
53 issue bonds in the State of Hawaii, in the form and composed,
54 substantially, with the same language as provided herewith and signed
55 by both parties; or

56
57 (3) a certificate of deposit, share certificate, cashier's check,
58 treasurer's check, teller's check, or official check drawn by, or a certified
59 check accepted by and payable on demand to the State by a bank,
60 savings institution, or credit union insured by the Federal Deposit
61 Insurance Corporation (FDIC) or the National Credit Union Administration
62 (NCUA).

63
64 (a) The bidder may use these instruments only to a maximum of
65 \$100,000

66
67 (b) If the required security or bond amount totals over \$100,000
68 more than one instrument not exceeding \$100,000 each and
69 issued by different financial institutions shall be acceptable.

70
71 (c) The instrument shall be made payable at sight to the
72 Department of Transportation, State of Hawaii.

73
74 According to Section 103D-323, HRS, the above shall be in a sum not
75 less than 5% of the amount bid."

76
77 (IV) Amend **102.12 Disqualification of Bidders** to read as follows:

78
79 **"102.12 Disqualification of Bidders.** The Department may disqualify a
80 bidder and reject its proposal for the following reasons:

81
82 (1) Submittal of more than one proposal whether under the same or
83 different name.

84
85 (2) Evidence of collusion among bidders. The Department will not
86 recognize participants in collusion as bidders for any future work of the
87 Department until such participants are reinstated as qualified bidders.

88
89 (3) Lack of proposal guaranty.

90
91 (4) Submittal of an unsigned or improperly signed proposal.

92
93 (5) Submittal of a proposal without a listing of subcontractors or
94 containing only a partial or incomplete listing of subcontractors.
95

96 (6) Submittal of an irregular proposal according to Subsection 102.07 -
97 Irregular Proposals.
98

99 (7) Evidence of assistance from a person who has been an employee
100 of the agency within the preceding two years and who participated while
101 in State office or employment in the matter with which the contract is
102 directly concerned, pursuant to Section 84-15, HRS."
103

104 (V) Delete **Section 102.14 - American Products Preference** in its entirety.
105

106 (VI) Amend **102.15 Declaration of Non-Collusion** to read as follows:
107

108 "102.15 (Unassigned)."
109

110 (VII) Amend **102.16 Substitution Of Materials and Equipment** to read as
111 follows:
112

113 "102.16 **Substitution Of Materials and Equipment.**
114

115 (A) **Substitution Before Bid Opening.**
116

117 (1) **General.** When brand names of materials or equipment are
118 specified in the contract documents, they are to indicate a quality,
119 style, appearance, or performance and not to limit competition.
120 The bidder shall base its bid on one of the specified brand names
121 unless alternate brands are qualified as equal or better in an
122 addendum. Qualification of such proposed alternate brands shall
123 be submitted in writing and addressed to the Contracts Officer.
124 The face of the envelope containing the request must be clearly
125 marked 'SUBSTITUTION REQUEST'. The request may be hand-
126 carried or mailed to the DOT Contracts Office, Room 105, 869
127 Punchbowl Street, Honolulu, Hawaii 96813. In either case,
128 the written request must be received by the DOT Contracts Office
129 no later than 14 calendar days before the bid opening date, not
130 including the bid opening date. The written request will be time
131 stamped by the DOT Contracts Office. For the purpose of this
132 section, the time designated by the time stamping device in the
133 DOT Contracts Office shall be official. If the written request is
134 hand-carried, the bearer is responsible to ensure that the request
135 is time stamped by the DOT Contracts Office.
136

137 Submit 5 sets of the written request, technical brochures,
138 and a statement of variances.
139

140 An addendum will be issued to inform all prospective
141 bidders of any accepted substitution in accordance with Subsection
142 102.21 – Addenda and Bid Clarification.
143

144 **(2) Statement of Variances.** The statement of variances must
145 list all features of the proposed substitution that differ from the
146 contract documents and must further certify that the substitution
147 has no other variant features. The brochure and information
148 submitted shall be clearly marked showing make, model, size,
149 options, and any other features requested by the Engineer and
150 must include sufficient evidence to evaluate each feature listed as
151 a variance. A request will be denied if submitted without sufficient
152 evidence. If after installing the substituted product, an unlisted
153 variance is discovered, the Contractor shall immediately replace
154 the product with a specified product at no cost to the State.
155

156 **(3) Substitution Denial.** Any substitution request not
157 complying with the above requirements will be denied.
158

159 **(B) Substitution After Bid Opening.** Substitution of material or
160 equipment will not be allowed after the bid opening date except under the
161 following circumstances:
162

163 **(1)** A specified or pre-qualified item is delayed by a lengthy
164 strike in the factory or other unforeseeable contingency
165 beyond the control of the Contractor which would cause an
166 abnormal delay in the project completion.
167

168 **(2)** A specified or pre-qualified item is found to be unusable or
169 discontinued due to change or other circumstances.
170

171 **(3)** If the Contractor is willing to provide a more recently
172 developed or manufactured item of material or equipment of
173 the same manufacturer which the Director determines to be
174 equal or better than the one specified or pre-qualified.
175

176 A substitution request, regardless of reason, shall be fully
177 explained in writing, by the Contractor and shall include his justification
178 for said request, the quantities and unit prices involved, quotations and
179 such other documents as are deemed necessary to support the request.
180 Substitutions allowed pursuant to this provision, with the exception of the
181 circumstance described under 102.16(B)3, do not qualify as value
182 engineering. Any savings in cost will accrue to the State except where

value engineering applies, and the Contractor will pay for any additional cost for the substituted items.

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

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

(VIII) Add the following:

"102.18 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 Section 103D-1002, HRS, and such other remedies as may be available to the State.

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

229
230 **(B) Preference for Recycled Products.** Recycled Products shall
231 not apply to this project.
232

233 **(C) Evaluation Procedures and Contract Award.** For bid evaluation,
234 the Engineer will evaluate the bids by applying the applicable preferences
235 selected by the bidders according to the contract. The Engineer will base
236 the calculations for adjustments upon the original bid prices offered. If
237 more than one preference applies, the evaluated bid price shall be the
238 sum of the original bid price plus applicable preference adjustments.
239

240 If a bidder has designated use of a Hawaii Product and fails to
241 provide the product, the contract will become void and no payments will
242 be made.
243

244 The Engineer will award the contract to the responsible bidder
245 submitting the responsive bid with the lowest evaluated bid price. The
246 contract amount of the contract awarded shall be the original bid price
247 offered exclusive of any preference.
248

249 **102.19 Certification for Safety and Health Program for Bids in excess of**
250 **\$100,000.** According to Section 396-18 of the Hawaii Revised Statutes, the
251 bidder or offeror, by signing and submitting this proposal, certifies that a written
252 safety and health plan for this project will be available and implemented by the
253 notice to proceed date for this project. Details of the requirements of this plan
254 may be obtained from the State Department of Labor and Industrial Relations,
255 Occupational Safety and Health Division (HIOSH).
256

257 **102.20** (Unassigned). (Tax clearance moved to 103.03 – Award of Contract.)
258

259 **102.21 Addenda and Bid Clarification.** The terms and requirements of the
260 bid documents (i.e. drawings, specifications and other bid and contract
261 documents) cannot be changed prior to the bid opening except by a duly issued
262 addenda or bid clarification.
263

264 All addenda and bid clarifications so issued shall become part of the
265 Contract Documents.
266

267 **(A) Addenda.** The State may alter, increase or decrease the
268 scope of the work or the contract time, provisions and conditions by
269 issuing a written addendum which sets forth such alterations, increase
270 or decrease.
271

272 Addenda to the bid documents will be provided to all prospective
273 bidders at the respective offices furnished for such purposes. Each
274 addendum shall be an addition to the Contract Documents.
275

276 **(B) Bid Clarification.** If a bidder discovers what it considers to be a
277 discrepancy, ambiguity, omission or doubt as to the meaning of drawings,
278 specifications and any other bid or contract documents, the bidder shall
279 request in writing no later than 14 days before the bids are opened.
280

281 No claim for additional compensation and/or time for performance
282 will be allowed if the Contractor discovered, or in the exercise of
283 reasonable care, should have discovered a discrepancy, ambiguity,
284 omission or doubt for which an interpretation was not requested."
285

286
287
288 **END OF SECTION**
289
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291