

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
6 capable 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
14 proposed to be used, together with adequate proof of the availability of such
15 equipment. Whenever it appears to the Department, from answers to the
16 questionnaire or otherwise, that the prospective bidder is not fully qualified and
17 able to perform the intended work, the Department will, after affording the
18 prospective bidder an opportunity to be heard and if still of the opinion that the
19 bidder is not fully qualified to perform the work, refuse to receive or consider any
20 bid offered by the prospective bidder. All information contained in the answers
21 to the questionnaire shall be kept confidential. Questionnaire so submitted
22 shall be returned to the 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
27 (4) a partner or substantial investor in the firm is in arrears in payments owed to
28 the State or its political subdivisions or is in default as a surety or failure to do
29 faithfully 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.

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

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

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

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

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

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

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

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

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

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

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

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

135
136 If the Engineer determines that the natural conditions differ from that
137 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Qualification Procedures

418 (a) Any bidder seeking the preference must be a party to an
419 apprenticeship agreement registered with the department at the
420 time the offer is made for each apprenticeable trade the bidder
421 will employ to construct the public works projects for which the
422 offer is being made.

423
424 1. The apprenticeship agreement shall be registered and
425 conform to the requirements of HRS Chapter 372.

426
427 2. Subcontractors do not have to be a party to an
428 apprenticeship agreement for the bidder to obtain the
429 preference.

430
431 3. The bidder is not required to have apprentices in its
432 employ at the time of submittal of an offer to qualify for the
433 preference.

434
435 (b) The department shall:

436
437 1. Develop and maintain a list of construction trades in
438 registered apprenticeship programs which conform to HRS
439 Chapter 372; and

440
441 2. Electronically post the list; including any amendments,
442 on the department website (<http://hawaii.gov/labor/wdd>).

443
444 (c) Bidder is responsible to comply with all submission
445 requirements for registration of its apprenticeship program
446 before requesting a preference.

447
448 (d) Bidder shall provide a certification by the sponsor of the
449 respective registered apprenticeship programs covering the
450 relevant trade(s) for the public works project.

451
452 (e) *Certification Form 1* issued by the department shall
453 include:

454
455 1. Contractor information;

456
457 2. Solicitation reference;

458
459 3. Trade(s);

460
461 4. Date and name of apprenticeship program;

462
463 5. Signature of authorized training coordinator or training
464 trust fund administrator certifying that the contractor is a
465 participant in the program, and that the program is
466 registered with the department;

467
468
469 6. Contract information for sponsor's authorized
470 representative signing the form;

471
472 7. Number of apprentices enrolled in the program, number
473 who successfully completed the apprenticeship program in
474 the past 12 months, including whether the contractor is
475 signatory to a collective bargaining agreement for that
476 trade, or if not, provide for attachment of a copy of the
477 agreement between the contractor and the program.
478

479 (3) Solicitation Procedures
480

481 (a) If the NTB indicates that this project is covered by this
482 preference, and the offer is less than \$250,000 this preference
483 will still be applicable in determining the lowest bidder.
484

485 (b) A claim for this preference must include the following:
486

487 1. Allow bidder seeking to claim the preference to state
488 the trades the bidder will employ to perform the work;
489

490 2. For each trade to be employed to perform the work,
491 the bidder shall submit a completed signed original
492 *Certification Form 1* verifying participation in an
493 apprenticeship program registered with the department.
494

495 3. The *Certification Form 1* shall be authorized by an
496 apprenticeship sponsor of the department's list of
497 registered apprenticeship programs. The authorization
498 shall be an original signature by an authorized official of
499 the apprenticeship sponsor; and
500

501 4. The completed *Certification Form 1* for each trade
502 must be submitted by the bidder with the offer. Previous
503 certifications shall not apply unless allowed by the
504 solicitation.
505

506 (c) Upon receiving *Certification Form 1*, the procurement
507 officer will verify with the department that the apprenticeship
508 program is on the list of apprenticeship programs registered with
509 the department. If the programs are not confirmed by the
510 department, the bidder will not qualify for the preference.
511

512 (4) Evaluation and Contract Award
513

514 (a) If the bidder certifies participation in an apprenticeship
515 program for each trade which will be employed by the bidder for
516 the project, the procurement officer shall apply the preference
517 and decrease the bidder's total bid amount by five per cent (5%)
518 for evaluation purposes.
519

520 (b) Should the bidder qualify for other statutory preferences
521 (for example, Hawaii products), all applicable preferences shall
522 be applied to the bidder's price.
523

524 (c) The contract amount shall be the original offer amount,
525 exclusive of any preference; the preference is only for
526 evaluation purposes.
527

528 (d) Any claims challenging a bidder's representation that the
529 bidder is a participant in an apprenticeship program(s) as
530 claimed, shall be submitted to the procurement officer. The
531 procurement officer will refer the challenge to the department of
532 labor and industrial relations who shall investigate any such
533 claims and shall make a determination.
534

535 (5) Contract Administration
536

537 (a) For the duration of a contract awarded utilizing the
538 apprenticeship preference, the contractor shall certify each
539 month that work is being conducted on the project, that it
540 continues to be a participant in the relevant apprenticeship
541 program for each trade it employs.
542

543 (b) Monthly certification shall be made on *Monthly Certification*
544 *Form 2* prepared and made available by the department, be a
545 signed original by the respective apprenticeship program
546 sponsors authorized official, and submitted by the contractor
547 with its monthly payment requests.
548

549 (c) Should the contractor fail or refuse to submit its monthly
550 certification forms, or at any time during the construction of the
551 project, cease to be a part to a registered apprenticeship
552 agreement for each apprenticeable trades the contractor
553 employs, or will employ, the contractor will be subject to the
554 following sanctions:
555

556 1. Withholding of the requested payment until the
557 required form(s) are submitted;
558

559 2. Temporary or permanent cessation of work on the
560 project, without recourse to breach of contract claims by
561 the contractor; provided the agency shall be entitled to
562 restitution for nonperformance or liquidated damages
563 claims; or
564

565 3. Proceed to debar or suspend pursuant to HRS
566 Section 103D-702.
567

568 (d) If events such as "acts of God," acts of a public enemy,
569 acts of the State or any other governmental body in its
570 sovereign or contractual capacity, fires, floods, epidemics,
571 freight embargoes, unusually severe weather, or strikes or other
572 labor disputes prevent the contractor from submitting the
573 certification forms, the contractor shall not be penalized as
574 provided herein, provided the contractor completely and
575 expeditiously complies with the certification process when the
576 event is over.

577
578 This subsection shall not apply when its application will disqualify
579 the State from receiving federal funds or aid.
580

581 **(C) Preference for Recycled Products.** Recycled Products shall
582 not apply to this project.
583

584 **(D) Evaluation Procedures and Contract Award.** For bid
585 evaluation, the Engineer will evaluate the bids by applying the applicable
586 preferences selected by the bidders according to the contract. The
587 Engineer will base the calculations for adjustments upon the original bid
588 prices offered. If more than one preference applies, the evaluated bid
589 price shall be the sum of the original bid price plus applicable preference
590 adjustments.
591

592 If a bidder has designated use of a Hawaii Product and fails to
593 provide the product, the contract will become void and no payments will be
594 made.
595

596 The Engineer will award the contract to the responsible bidder
597 submitting the responsive bid with the lowest evaluated bid price. The
598 contract amount of the contract awarded shall be the original bid price
599 offered exclusive of any preference.
600

601 **102.16 Certification for Safety and Health Program for Bids in excess**
602 **of \$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror,
603 by signing and submitting this proposal, certifies that a written safety and health
604 plan for this project will be available and implemented by the notice to proceed
605 date for this project. Details of the requirements of this plan may be obtained
606 from the State Department of Labor and Industrial Relations, Occupational
607 Safety and Health Division (HIOSH).
608

609 **102.17 Addenda.** Addenda issued shall become part of the contract
610 documents. Addenda to the bid documents will be provided to all prospective
611 bidders at the respective offices furnished for such purposes. Each addendum
612 shall be an addition to the contract documents. The terms and requirements of
613 the bid documents (i.e. drawings, specifications and other bid and contract
614 documents) cannot be changed prior to the bid opening except by a duly issued
615 addendum."
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END OF SECTION 102