

1 Make this section a part of the Standard Specifications:

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

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

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

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

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

- 34
35 (1) The location,
36
37 (2) Description of the proposed work,
38
39 (3) The approximate quantities,
40
41 (4) Items of work to be done or materials to be furnished,
42
43 (5) A schedule of items, and
44
45 (6) The time in which the work shall be completed.
46

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 through HlePRO.

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

102.03 (Unassigned)

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.

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

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

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

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

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

(4) The basis for the bid figure is solely on the construction contract documents.

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

- (1) The nature and location of the work;
- (2) The character, quality, and quantity of materials;
- (3) The difficulties to be encountered; and
- (4) The kind and amount of equipment and other facilities needed.

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

If the Engineer determines that the natural conditions differ from that 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.

138 When an item in the proposal contains an option to be made, the bidder
139 shall choose in accordance with the contract for that particular item.
140 Determination of an option will not permit the Contractor to choose again.

141
142 The bidder shall sign the proposal properly in ink. A duly authorized
143 representatives of the bidder or by an agent of the bidder legally qualified and
144 acceptable to the Department shall sign, including one or more partners of the
145 bidder and one or more representatives of each entity comprising a joint venture.

146
147 When an agent, other than the officer(s) of a corporation authorized to
148 sign contracts for the corporation or a partner of a partnership, signs the
149 proposals, a 'Power of Attorney' shall be on file with the Department or submitted
150 with the proposal. Otherwise, the Department will reject the proposal as irregular
151 and unauthorized.

152
153 The bidder shall submit acceptable evidence of the authority of the
154 partner, member(s) or officer(s) to sign for the partnership, joint venture, or
155 corporation respectively with the proposal. Otherwise, the Department will reject
156 the proposal as irregular and unauthorized.

157
158 **102.07 Irregular Proposals.** The Department may consider proposals
159 irregular and may reject the proposals for the following reasons:

160
161 (1) The proposal is a form not furnished by the Department, altered,
162 or detached;

163
164 (2) The proposal contains unauthorized additions, conditions, or
165 alternates. Also, the proposal contains irregularities that may tend to
166 make the proposal incomplete, indefinite, or ambiguous to its meaning;

167
168 (3) The bidder adds provisions reserving the right to accept or reject an
169 award. Also, the bidder adds provisions into a contract before an award;

170
171 (4) The proposal does not contain a unit price for each pay item listed
172 except authorized optional pay items; and

173
174 (5) Prices for some items are out of proportion to the prices for other
175 items.

176
177 (6) If in the opinion of the Director, the bidder and its listed
178 subcontractors do not have the Contractor's licenses or combination of
179 Contractor's licenses necessary to complete the work.
180

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.

(d) Proposal Guaranty listed in (1) and (3) shall be in its original form, and shall be received at the Contracts Office, Department of Transportation, 869 Punchbowl Street, Honolulu, Hawaii 96813 before the bid deadline.

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 HlePRO. Bids received after said due date and time shall not be considered. Original bid documents do not have to be submitted. The Proposal shall be uploaded to HlePRO. Award will be made based on proposals submitted in HlePRO.

102.10 Withdrawal or Revision of Proposals. A bidder may withdraw or revise a proposal after the bidder submits the proposal in HlePRO. Withdrawal or revision of proposal must be completed before the time set for the receiving of bids.

102.11 Public Opening of Proposals. Not applicable.

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 (2) 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, if applicable.

(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.

272 **(A) General.** When brand names of materials or equipment are
273 specified in the contract documents, they are to indicate a quality, style,
274 appearance, or performance and not to limit competition. The bidder shall
275 base its bid on one of the specified brand names unless alternate brands
276 are qualified as equal or better in an addendum. Qualification of such
277 proposed alternate brands shall be submitted via email to the Contact
278 person listed in HlePRO for the solicitation and also post a question in
279 HlePRO under the question/answer tab referencing the email with the
280 request. The request must be posted in HlePRO no later than fourteen
281 (14) calendar days before the bid opening date, not including the bid
282 opening date
283

284 An addendum will be issued to inform all prospective bidders of any
285 accepted substitution in accordance with Subsection 102.17 – Addenda .
286

287 **(B) Statement of Variances.** The statement of variances must list all
288 features of the proposed substitution that differ from the contract
289 documents and must further certify that the substitution has no other
290 variant features. The brochure and information submitted shall be clearly
291 marked showing make, model, size, options, and any other features
292 requested by the Engineer and must include sufficient evidence to
293 evaluate each feature listed as a variance. A request will be denied if
294 submitted without sufficient evidence. If after installing the substituted
295 product, an unlisted variance is discovered, the Contractor shall
296 immediately replace the product with a specified product at no increase in
297 contract price and contract time.
298

299 **(C) Substitution Denial.** Any substitution request not complying with
300 the above requirements will be denied.
301

302 **102.15 Preferences.**

303
304 **(A) Preference for Hawaii Products.** In accordance with ACT 174,
305 SLH 2022, effective June 27, 2022, Hawaii Products Preference shall not
306 apply to solicitations for public works construction. Therefore, the Hawaii
307 Products Preference shall not apply to this project.
308

309 **(B) Preferences for Apprenticeship Programs.** In accordance with
310 ACT 17, SLH 2009 – Apprenticeship Program, a 5% bid adjustment for
311 bidders that are parties to apprenticeship agreements pursuant to Hawaii
312 Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's
313 price for evaluation purposes. These procedures apply to public works
314 projects with estimated cost of \$250,000 or more and entered into under
315 the provisions of HRS Chapter 103.
316

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.

362 **(2)** Qualification Procedures
363

364 **(a)** Any bidder seeking the preference must be a party to
365 an apprenticeship agreement registered with the department
366 at the time the offer is made for each apprenticeable trade
367 the bidder will employ to construct the public works projects
368 for which the offer is being made.

369 1. The apprenticeship agreement shall be
370 registered and conform to the requirements of HRS
371 Chapter 372.
372

373 2. Subcontractors do not have to be a party to an
374 apprenticeship agreement for the bidder to obtain the
375 preference.
376

377 3. The bidder is not required to have apprentices in
378 its employ at the time of submittal of an offer to qualify
379 for the preference.
380

381 **(b)** The department shall:
382

383 1. Develop and maintain a list of construction
384 trades in registered apprenticeship programs which
385 conform to HRS Chapter 372; and
386

387 2. Electronically post the list, including any
388 amendments, on the department website
389 (<http://labor.hawaii.gov>).
390

391 **(c)** Bidder is responsible to comply with all submission
392 requirements for registration of its apprenticeship program
393 before requesting a preference.
394

395 **(d)** Bidder shall provide a certification by the sponsor of
396 the respective registered apprenticeship programs covering
397 the relevant trade(s) for the public works project.
398

399 **(e)** *Certification Form 1* issued by the department shall
400 include:
401

402 1. Contractor information;
403

404 2. Solicitation reference;
405

406 3. Trade(s);
407

- 408 4. Date and name of apprenticeship program;
- 409
- 410 5. Signature of authorized training coordinator or
- 411 training trust fund administrator certifying that the
- 412 contractor is a participant in the program, and that the
- 413 program is registered with the department;
- 414
- 415 6. Contract information for sponsor's authorized
- 416 representative signing the form;
- 417
- 418 7. Number of apprentices enrolled in the program,
- 419 number who successfully completed the
- 420 apprenticeship program in the past twelve (12)
- 421 months, including whether the contractor is signatory
- 422 to a collective bargaining agreement for that trade, or
- 423 if not, provide for attachment of a copy of the
- 424 agreement between the contractor and the program.
- 425

426 (3) Solicitation Procedures.

427

428 (a) If the NTB indicates that this project is covered by this

429 preference, and the offer is less than \$250,000 this

430 preference will still be applicable in determining the lowest

431 bidder.

432

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

434

435 1. Allow bidder seeking to claim the preference to

436 state the trades the bidder will employ to perform the

437 work;

438

439 2. For each trade to be employed to perform the

440 work, the bidder shall submit a completed signed

441 original *Certification Form 1* verifying participation in

442 an apprenticeship program registered with the

443 department;

444

445 3. The *Certification Form 1* shall be authorized by

446 an apprenticeship sponsor of the department's list of

447 registered apprenticeship programs. The

448 authorization shall be an original signature by an

449 authorized official of the apprenticeship sponsor; and

450

451 4. The completed *Certification Form 1* for each
452 trade must be submitted by the bidder with the offer.
453 Previous certifications shall not apply unless allowed
454 by the solicitation.

455
456 (c) Upon receiving *Certification Form 1*, the procurement
457 officer will verify with the department that the apprenticeship
458 program is on the list of apprenticeship programs registered
459 with the department. If the programs are not confirmed by
460 the department, the bidder will not qualify for the preference.

461
462 **(4)** Evaluation and Contract Award

463
464 (a) If the bidder certifies participation in an apprenticeship
465 program for each trade which will be employed by the bidder
466 for the project, the procurement officer shall apply the
467 preference and decrease the bidder's total bid amount by
468 five per cent (5%) for evaluation purposes.

469
470 (b) Should the bidder qualify for other statutory
471 preferences, all applicable preferences shall be applied to
472 the bidder's price.

473
474 (c) The contract amount shall be the original offer
475 amount, exclusive of any preference; the preference is only
476 for evaluation purposes.

477
478 (d) Any claims challenging a bidder's representation that
479 the bidder is a participant in an apprenticeship program(s) as
480 claimed, shall be submitted to the procurement officer. The
481 procurement officer will refer the challenge to the department
482 of labor and industrial relations who shall investigate any
483 such claims and shall make a determination.

484
485 **(5)** Contract Administration

486
487 (a) For the duration of a contract awarded utilizing the
488 apprenticeship preference, the contractor shall certify each
489 month that work is being conducted on the project, that it
490 continues to be a participant in the relevant apprenticeship
491 program for each trade it employs.

493 (b) Monthly certification shall be made on *Monthly*
494 *Certification Form 2* prepared and made available by the
495 department, be a signed original by the respective
496 apprenticeship program sponsors authorized official, and
497 submitted by the contractor with its monthly payment
498 requests.
499

500 (c) Should the contractor fail or refuse to submit its
501 monthly certification forms, or at any time during the
502 construction of the project, cease to be a part to a registered
503 apprenticeship agreement for each apprenticeable trades
504 the contractor employs, or will employ, the contractor will be
505 subject to the following sanctions:
506

507 1. Withholding of the requested payment until the
508 required form(s) are submitted;
509

510 2. Temporary or permanent cessation of work on
511 the project , without recourse to breach of contract
512 claims by the contractor; provided the agency shall be
513 entitled to restitution for nonperformance or liquidated
514 damages claims; or
515

516 3. Proceed to debar or suspend pursuant to HRS
517 Section 103D-702.
518

519 (d) If events such as “acts of God,” acts of a public
520 enemy, acts of the State or any other governmental body in
521 its sovereign or contractual capacity, fires, floods, epidemics,
522 freight embargoes, unusually severe weather, or strikes or
523 other labor disputes prevent the contractor from submitting
524 the certification forms, the contractor shall not be penalized
525 as provided herein, provided the contractor completely and
526 expeditiously complies with the certification process when
527 the event is over.
528

529 This subsection shall not apply when its application will disqualify
530 the State from receiving federal funds or aid.
531

532 **(C) Preference for Recycled Products.** Recycled Products shall not
533 apply to this project.
534

535 **(D) Evaluation Procedures and Contract Award.** For bid evaluation,
536 the Engineer will evaluate the bids by applying the applicable preferences
537 selected by the bidders according to the contract. The Engineer will base
538 the calculations for adjustments upon the original bid prices offered. If
539 more than one preference applies, the evaluated bid price shall be the
540 sum of the original bid price plus applicable preference adjustments.

541
542 If a bidder has designated use of a Hawaii Product and fails to
543 provide the product, the contract will become void, and no payments will
544 be made.

545
546 The Engineer will award the contract to the responsible bidder
547 submitting the responsive bid with the lowest evaluated bid price. The
548 contract amount of the contract awarded shall be the original bid price
549 offered exclusive of any preference.

550
551 **102.16 Certification for Safety and Health Program for Bids in excess of**
552 **\$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror, by
553 signing and submitting this proposal, certifies that a written safety and health plan
554 for this project will be available and implemented by the notice to proceed date
555 for this project. Details of the requirements of this plan may be obtained from the
556 State Department of Labor and Industrial Relations, Occupational Safety and
557 Health Division (HIOSH).

558
559 **102.17 Addenda.** Addenda issued shall become part of the contract
560 documents. Addenda to the bid documents will be provided to all prospective
561 bidders via HlePRO. Each addendum shall be an addition to the contract
562 documents. The terms and requirements of the bid documents (i.e., drawings,
563 specifications and other bid and contract documents) cannot be changed prior to
564 the bid opening except by a duly issued addendum.”

565
566
567
568
569 **END OF SECTION 102**