

SECTION 00210 - INSTRUCTIONS TO BIDDERS

PART 1 - GENERAL

1.01 GENERAL

- A. Only bidders with the required Contractor's license(s) are eligible to submit a Bid.
- B. Bidders (Contractors) shall be incorporated or organized under the laws of the State or be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract. The following definitions are used in the solicitation documents.
 - 1. Hawaii Business §3-122-112 HAR: A bidder who is registered and incorporated or organized under the laws of the State is a "Hawaii Business" and eligible for an award.
 - 2. Compliant non-Hawaii Business §3-122-112 HAR: A bidder not incorporated or organized under the laws of the State, but is registered to do business in the State and complies with or is exempt from the requirements of §3-122-112 HAR, is a "Compliant Non-Hawaii Business" and eligible for an award.
 - 3. Non-compliant Bidder: If a bidder is a non-Hawaii business and is not registered with the DCCA Business Registration Division (BREG) or cannot comply with §3-122-112 HAR, then the bidder is non-compliant and is ineligible for an award.
- C. When announced by the NOTICE TO BIDDERS, all bidders who intend to submit a bid, are invited to attend an initial pre-bid meeting and the accompanying site visit(s). Other interested parties may attend the initial pre-bid meeting and the accompanying site visit(s). For other site visits not conducted by the Department, bidders shall contact and make arrangements with the Project Contact Person listed in SECTION 00800 - SPECIAL CONDITIONS of these specifications.
- D. Bidders shall submit the "Solicitation, Offer and Contract Form", bid bond (if required), and any other documents required by these solicitation documents.
- E. The GENERAL CONDITIONS set forth additional terms and conditions for the bid and award process. The GENERAL CONDITIONS will be part of the contract documents by which the State and the bidder (prospective Contractor) will be bound. Bidders are directed to the GENERAL CONDITIONS, for contract and statutory requirements and for Bidding and Execution of Contract Requirements. Bidders are also directed to SECTION 00700 - GENERAL CONDITIONS and SECTION 00800 - SPECIAL CONDITIONS of these specifications for definitions and modifications to the GENERAL CONDITIONS.
- F. Wherever the term "Comptroller" appears in the Contract Documents, it shall be replaced with the term "Director of Transportation."
- G. The terms "Solicitation, Offer and Contract Form" and "Proposal and Proposal Schedule" are synonymous in the Contract Documents.

1.02 OFFEROR(S) or BIDDER(S)

- A. The terms "Offeror" and "Bidder" are synonymous when used in this Section 00210 and other solicitation documents.

1.03 PRE-BID MEETING AND SITE VISIT(S)

A. General

1. The attendance of pre-bid meetings and site visits is strongly encouraged.
2. Failure to attend the pre-bid meeting(s) and site visit(s) for a project DOES NOT absolve the bidder from its responsibilities under section 2.4.1 of the DAGS Interim General Conditions.
3. Verbal responses and discussions may occur during the course of the pre-bid meeting or site visit and shall not be considered to alter any information in the solicitation documents (see Section 2.5.1 of the DAGS Interim General Conditions).

B. Mandatory Pre-bid Meetings and Site Visits

1. The Project Coordinator may require all prospective bidder/offerors to attend a mandatory Pre-bid Meeting(s) and Site Visit(s).
2. All bidders/offerors will be required to sign the attendance sheet.
3. Failure to attend mandatory pre-bid meetings and site visits, if required, will automatically be cause for rejection of the bid.

1.04 ADDENDA AND CLARIFICATIONS

- A. The Department may periodically issue addenda and bid clarifications which may provide additional information or alter the plans and specifications.
- B. The Department will make addenda and bid clarifications available to Bidders via HlePRO. Bidders are responsible for the information contained in the addenda and bid clarifications whether or not the bidder receives the addenda or clarifications.
- C. Bidders discovering an ambiguity, inconsistency, or error when examining the bid documents or the site and bidders with questions or clarification requests shall transmit said discoveries, questions, and/or requests via HlePRO prior to the Question Due Date in General Information of the HlePRO Solicitation.
- D. All transmittals shall be brief, concise, but complete enough to properly evaluate and determine the merits of the question or request. Include references to appropriate section numbers, paragraphs, drawings, details, schedule numbers, and provide other information as appropriate.
- E. Requests transmitted or otherwise communicated directly to the Consultant will not be considered to be transmitted to the Department and will not be addressed.
- F. Requests for Substitution will only be entertained prior to bid opening if Section 00800 - SPECIAL CONDITIONS indicates that substitutions before award are allowed for this project. If allowed, requests of this nature must be submitted before the deadline specified for this purpose in the Notice to Bidders.

1.05 SOLICITATION, OFFER AND CONTRACT FORM (BID FORM)

- A. Bidder shall fill out the "Solicitation, Offer and Contract Form" completely. Write in ink or

type. Bidders must also comply with the supplemental instructions contained within the "Solicitation, Offer and Contract Form." Do not alter the "Solicitation, Offer and Contract Form", and maintain the form intact. When the State makes changes to the "Solicitation, Offer and Contract Form", a completely new bid form with appropriate addendum notation will be issued. Bidders shall use the most current version. Bidders shall use their exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable; and to indicate exact legal name in the appropriate space on the Solicitation, Offer and Contract Form.

B. Hawaii Product Preference:

1. In accordance with ACT 175, SLH 2009, the Hawaii products preference is applicable to this solicitation. Hawaii Products are available for those items noted on the offer form.
2. The Hawaii products list is available on the SPO webpage at: <https://spo.hawaii.gov/for-vendors/hawaii-product-preferences/>.
3. Offeror offering a Hawaii Product (HP) shall identify the HP on the solicitation offer page(s). Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii products list, prior to the deadline for receipt of offer(s) specified in the procurement notice and solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.
4. Persons desiring to qualify their product(s) not currently on the Hawaii product list shall complete form SPO-38, Certification for Hawaii Product Preference and submit to the Procurement Officer, and provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). Form SPO-38 is available on the SPO webpage at: <https://spo.hawaii.gov/all-forms/>.
5. When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting 10% for the class I or 15% for the class II HP items offered, respectively. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.
6. Change in availability of Hawaii product. In the event of any change that materially alters the offeror's ability to supply Hawaii products, the offeror shall immediately notify the procurement officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

C. Apprenticeship Agreement Preference:

1. If applicable to this project, any bidder seeking the preference must be a party

to an apprenticeship agreement registered with the State Department of Labor and Industrial Relations (DLIR) at the time the bid is submitted for each apprenticeable trade the bidder will employ to construct the project. "Employ" means the employment of a person in an employer-employee relationship.

- a. The apprenticeship agreement shall be registered with the DLIR and conform to the requirements of Hawaii Revised Statutes Chapter 372.
 - b. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.
 - c. The bidder is not required to have apprentices in its employ at the time the bid is submitted to qualify for the preference.
2. Self-Certification. A bidder seeking the preference must identify each apprenticeable trade the bidder will employ to perform the work by completing the self certification in the solicitation, offer and contract form. "Apprenticeable trade" shall have the same meaning as "apprenticeable occupation" pursuant to Hawaii Administrative Rules (HAR) §12-30-5.
3. The certification of bidder's participation (Form 1)
- a. The Certification of Bidder's Participation - Form 1 shall be authorized by an apprenticeship sponsor listed on the DLIR list of registered apprenticeship programs. "Sponsor" means an operator of an apprenticeship program and in whose name the program is approved and registered with the DLIR pursuant to HAR §12-30-1.
 - b. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor.
 - c. The completed Certification of Bidder's Participation - Form 1 for each trade must be submitted with the bid. A facsimile or copy is acceptable to be submitted with the bid, however the signed original must be submitted within five (5) working days of the bid open date. If the signed original is not received within this timeframe, the preference may be denied. Previous certifications shall not apply.
 - d. When filling out the Certification of Bidder's Participation - Form 1, the name of Apprenticeable Trade and Apprenticeship Sponsor must be the same as recorded in the List of Construction Trades in Registered Apprenticeship Programs that is posted on the State Department of Labor and Industrial Relations website. "Registered apprenticeship program" means a construction trade program approved by and registered with the DLIR pursuant to HAR §12-30-1 and §12-30-4.
 - e. The Certification of Bidder's Participation - Form 1 and the List of Construction Trades in Registered Apprenticeship Programs is available on the DLIR website at: <http://labor.hawaii.gov/wdd/files/2012/12/Form-1-Certification-of-Bidders-Participation.pdf>
4. Upon receiving the Self Certification and Certification of Bidder's Participation

- Form 1, the Procurement Officer will verify that the apprenticeship program is on the List of Construction Trades in Registered Apprenticeship Programs and that the form is signed by an authorized official of the Apprenticeship Program Sponsor. If the programs and signature are not confirmed by the DLIR, the bidder will not qualify for the preference.

5. If the bidder is certified to participate in an apprenticeship program for each trade which will be employed by the bidder for the project, a preference will be applied to decrease the bidder's bid amount by five (5) percent for evaluation purposes.
 6. Should the bidder qualify for other preferences (for example, Hawaii Products), all applicable preferences shall be applied to the bid price.
- D. Other Conditions: Bidder acknowledges and agrees to the provisions and certifications stated in this article.
- E. Receipt of Addenda: Bidder shall fill in the appropriate dates any addenda were received.
- F. Listing Joint Contractors or Subcontractors:
1. Bidder shall complete the "Joint Contractors or Subcontractors List". It is the sole responsibility of the bidder to review the requirements of this project and determine the appropriate specialty Contractor's licenses that are required to complete the project. Failure of the bidder to provide the correct names and specialty Contractor's nature of work to be performed, may cause the bid to be rejected.
 2. Bidder agrees the completed listing of joint Contractors or Subcontractors is required for the project and that the bidder, together with the listed joint Contractors and Subcontractors, have all the specialty Contractor's licenses to complete the work.
 3. Based on the Hawaii Supreme Court's January 28, 2002 decision in Okada Trucking Co., Ltd. v. Board of Water Supply, et al., 97 Hawaii 450 (2002), the bidder as a general Contractor ('A' or 'B' license) is prohibited from undertaking any work solely or as part of a larger project, which would require the bidder ('A' or 'B' general Contractor) to act as a specialty ('C' license) Contractor in any area in which the bidder ('A' or 'B' general Contractor) has no specialty Contractor's license. Although the 'A' and 'B' Contractor may still bid on and act as the "Prime Contractor" on an 'A' or 'B' project (See, HRS §444-7 for the definitions of an "A" and "B" project), respectively, the 'A' and 'B' Contractor may only perform work in the areas in which they have the appropriate Contractor's license. The bidder ('A' or 'B' general Contractor) must have the appropriate 'C' specialty Contractor's licenses either obtained on its own, or obtained automatically under HAR §16-77-32.
 4. General Engineering 'A' Contractors automatically have these 'C' specialty Contractor's licenses: C-3, C-9, C-10, C-17, C-24, C-31a, C-32, C-35, C-37a, C-37b, C-38, C-43, C-49, C-56, C-57a, C-57b, and C-61.

5. General Building 'B' Contractors automatically have these 'C' specialty Contractor's licenses: C-5, C-6, C-10, C-12, C-24, C-25, C-31a, C-32a, C-42a, and C-42b.
6. Instructions to complete the Joint Contractors or Subcontractors List:
 - a. Describe the specialty Contractor's nature of work to be performed for this project and provide the complete firm name of the joint Contractor or Subcontractor in the respective columns.
 - b. List only one entity per required specialty contractor's classification. A bidder who intends to use more than one entity with the same specialty contractor's classification, will not be permitted to do so unless the nature of work to be performed by each entity is both distinct and separate and is appropriately described (i.e. two C-13 contractors are listed but one has the responsibility for AC control and the other for AC power). A bidder who intends to perform work that falls under the same specialty contractor's classification as that of a listed joint contractor or subcontractor must list itself, ensure that the nature of work is both distinct and separate, and is appropriately described.
- G. Proposal Schedule: Bidders must complete all unit prices and amounts, then enter the TOTAL AMOUNT FOR COMPARISON OF BIDS. Refer to Bidder's Instructions located within the article.
 1. The bidder is directed to the CONTRACT TIME information in the "Solicitation, Offer and Contract Form" for the contract duration and construction time. Bidder shall refer to SECTION 01100 - PROJECT REQUIREMENTS of these specifications for additional construction time information, as applicable.

1.06 EVALUATION CRITERIA

- A. Evaluating Bids: The lowest responsive, responsible bid is determined by the following procedures:
 1. Chapter 103D, HRS, which provides for the preferences, shall apply.
 2. The total lump sum bid price is adjusted to reflect the applicable preferences.
 3. The project will be evaluated based on the adjusted bid price.

1.07 METHOD OF AWARD

- A. The contract will be awarded to the lowest responsive and responsible Bidder whose bid meets the requirements and criteria set forth in the solicitation documents and as determined by the Comptroller.
- B. In the event the total lump sum bid of all bidders exceeds the project control budget, the Department reserves the right to make an award to the apparent Low Bidder if additional funds are available or by reducing the scope of work through negotiation.

1.08 OTHER CONDITIONS FOR AWARD

- A. The Comptroller may reject any or all bids and waive any defects if the Comptroller believes the rejection or waiver is in the best interest of the State.
- B. The Comptroller may hold all bids up to 60 calendar days from the date bids were opened. Unless otherwise required by law, bids may not be withdrawn without penalty.

- C. The award of the contract is conditioned upon funds made available for the project (or projects if applicable).
- D. Any agreement or contract is subject to approval by the Department of the Attorney General, and the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

1.09 RESPONSIBILITY OF AWARDED BIDDER

- A. Pursuant to Section 103D-310(c), HRS, the responsive bidder recommended for contract award, if any, shall be compliant with all laws governing entities doing business in the State including the following chapters:
 - 1. Chapter 237, tax clearance;
 - 2. Chapter 383, unemployment insurance;
 - 3. Chapter 386, workers' compensation;
 - 4. Chapter 392, temporary disability insurance;
 - 5. Chapter 393, prepaid health care; and
 - 6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.
- B. The State will verify compliance on Hawaii Compliance Express (HCE). The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily obtain proof that they are compliant with applicable laws. The HCE certificate, 'Certificate of Vendor Compliance', allows this single printable electronic certificate to be substituted for the tax clearance, labor certificate, and a Certificate of Good Standing required in Hawaii Revised Statutes (HRS), Section 103D-310(c), and Hawaii Administrative Rules (HAR), Section 3-122-112. The HCE provides compliance status in real time.
- C. Bidders are advised to register with Hawaii Compliance Express at <https://vendors.ehawaii.gov> before submitting an offer. Bidders are strongly encouraged to submit a 'Certificate of Vendor Compliance' with their bid package to ensure the State's ability to quickly verify compliance at the time of award. If an offeror is not compliant at the time of award, an otherwise responsive and responsible offeror may not receive the award.

1.10 PRE-CONSTRUCTION MEETING

- A. General
 - 1. The attendance of pre-construction meetings is required.
 - 2. The contractor will be required to sign the attendance sheet.

PART 2 - PRODUCTS (Not Used)

PART 3- EXECUTION (Not Used)

END OF SECTION