

SPECIAL PROVISIONS

These Special Provisions shall supplement and/or amend the applicable provisions of the Hawaii Standard Specifications for Road and Bridge Construction, 2005, hereinafter referred to as the "Standard Specifications."

SCOPE OF WORK

See attached Section 104 Scope of Work

CONTRACT ADMINISTRATOR

For the purposes of this contract, Ms. Annette Matsuda, Maintenance Engineer or her duly appointed representative or successor in office, is designated the Contract Administrator (CA). She can be contacted at telephone (808) 873-3540, or via e-mail at annette.dh.matsuda@hawaii.gov.

TERM OF CONTRACT

The contract shall commence on the date of Notice to Proceed, shall remain in effect for 90 calendar days, and subject to availability of funds.

RESPONSIBILITY OF BIDDER

Bidder is advised that if awarded a contract under this solicitation. Bidder shall furnish proof of compliance with the requirements of §3-122-112, HAR:

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.

Refer to the "Proof of Compliance" provision for instructions regarding the furnishing of documents that is acceptable to the State as proof of compliance with the above-mentioned requirements.

ELECTRONIC PROCUREMENT

The State has established the Hawaii Electronic Procurement System (HlePro) to solicit request for quotations (RFQ) for goods and services. Bidders interested in responding to this electronic solicitation must be registered on the HlePro. Registration information is available at the website:
<http://hiepro.hawaii.gov>

As part of this procurement process, bidders are informed that awards made for this solicitation, if any, shall be done through the HlePro and shall therefore be subject to a mandatory 0.75% (0.0075) and must pay Hawaii Information Consortium, LLC (HIC) the transaction fee, which shall not exceed \$5,000.

BIDDER QUALIFICATION

To be eligible to bid, bidders must possess a valid State of Hawaii General Engineering Contractor's "A" license prior to bidding. Bidders shall meet the requirements as outlined in each of the respective special provision sections. Bidders must be able to produce documentation to substantiate their claim of experience in this area. Bidders shall certify full compliance with Federal & State DOT requirements in last 12 months.

At the time of bid opening and throughout the life of the contract, the Bidder must have a permanent service facility in the State of Hawaii from where the Bidder conducts business and must be accessible to telephone calls, complaints or emergency service requests requiring immediate attention (answering machine or service is not acceptable) and from where the service personnel are dispatched to perform the work specified in this contract. Service facility shall include warehousing and a readily available inventory of materials and other equipment as needed or listed in this contract.

Falsification of Contractor's or personnel qualifications, inability to perform the work in accordance with these specifications, utilization of unqualified personnel, or excessively high turnover of personnel assigned to this project shall constitute a breach of contract.

Failure on the part of any Bidder to meet any of the above Bidder Qualifications may result in the rejection of bid.

CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a bid in response to this RFQ, bidder certifies as follows:

1. The costs in this RFQ have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the cost which have been quoted in this RFQ have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

EXAMINATION OF SERVICE AREAS

Prior to submittal of a bid, bidder shall thoroughly familiarize him/her self with existing conditions and the amount and kind of work to be performed. Submission of a bid shall be evidence that bidder understands the scope of work and shall comply with these special provisions and specifications. No additional compensation will be made by reason of any misunderstanding or error regarding conditions or the amount and kind of work to be performed.

BID PREPARATION

Offer Form, Page OF-1. In the appropriate space(s) on Offer page OF-1, bidder is requested to submit bid under the company's exact legal name as registered at the Department of Commerce and Consumer Affairs, if applicable. Failure to do so may delay proper execution at contract.

If Offer page OF-1 is unsigned, the offer shall be automatically rejected.

Hawaii Business, A business entity referred to as a "Hawaii Business", is registered and incorporated or organized under the laws of the State of Hawaii.

Compliant Non-Hawaii Business. A business entity referred to as a “compliant non-Hawaii business,” is not incorporated or organized under the laws of the State of Hawaii but is registered to do business in the State.

Tax Liability. Unless the HRS exempts a person from paying the applicable general excise tax, work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii-based companies are advised that the gross receipts derived from this contract are subject to the general excise tax imposed by Chapter 237, HRS, at the current rate and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the applicable use tax imposed by Chapter 238, HRS. If, however, a Bidder is exempt by the HRS from paying the general excise tax and therefore not liable for the taxes on this solicitation, Bidder shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

Taxpayer Preference. For evaluation purposes, pursuant to §103D-1008, HRS, the Bidders’ exempt price bid submitted in response to an RFQ shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

Hawaii General Excise Tax License. Bidder shall submit his current Hawaii General Excise Tax (GET) identification number in the space provided on Offer page OF-1.

Bid Price. Bid price shall include all costs for labor, equipment, transportation, mileage, supervision, all applicable taxes, and any other incidental and operational expenses incurred to provide services as specified herein. Bid price shall be the all-inclusive cost to then no other charges will be honored.

Proposal Guaranty. Proposal guaranty (bid bond) is NOT required for this RFQ.

Insurance. Bidder shall provide the insurance information as requested on the appropriate Offer page.

Wage Certificate. The Bidder shall complete and submit a Wage Certificate by which the Bidder certifies that services required will be performed pursuant to Section 103-55, HRS.

DISQUALIFICATION OF BID

Any one or more of the following causes will be considered as sufficient for disqualification of the bid:

- a. Bid not signed by an authorized individual.
- b. More than one bid from an individual, firm, corporation or joint venture under the same or different names.
- c. Evidence of collusion among bidders or prices obviously unbalanced, lack of responsibility and cooperation as shown by past work, being in arrears on existing contracts with the State of Hawaii, or defaulting on previous contract(s).
- d. Lack of proper equipment and/or sufficient experience to perform the work contemplated.
- e. Bid received after specified deadline for opening of bids.
- f. Evidence of any noncompliance with any applicable law, any unauthorized additions or deletions, of submission of conditional bid, incomplete bid, or irregularities of any kind which may make the bid incomplete, indefinite, or ambiguous as to its meaning.

STATUTORY REQUIREMENTS OF SECTION 103-55, HRS

Section 103-55, HRS, stipulates that services to be performed shall be performed by employees paid at wages not less than wages paid to public officers and employees for similar work. Bidder is hereby advised that, in the event of an increase in wages for public employees’ performing similar work during the period of the contract, bidder shall be obliged to provide wages not less than those increased wages.

If awarded a contract, Bidder shall be obliged to notify his/her employees performing work under this contract of the provisions of Section 103-55, I-IRS, and of the current wage rates for public employees

performing similar work. This obligation may be met by posting a notice to this effect in the bidder's place of business in an area accessible to all employees, or the bidder may include such notice with each paycheck or pay envelope furnished to the employee.

To assist the bidder in determining whether the work his employees are to perform under this contract is similar to work performed by public employees class specifications for the State positions that perform similar duties can be viewed on the State of Hawaii's Human Resource Development website

SUBMISSION OF OFFER

Offers shall be received electronically through the HlePro. Offers received outside of the HlePro shall not be considered for award. To register for HlePro through the system manager, refer to the SPO website: www.spo.hawaii.gov. Click on the Hawaii Electronic Procurement System (HlePro), then, HlePro Vendor Registration Walk Through Instructions and HlePro VENDOR REGISTRATION.

Offeror's electronic response to this solicitation shall be deemed an offer to sell the specified goods and/or services to the State at the price(s) shown in the response and under the terms and conditions of this solicitation.

Offerors must attach a copy of all completed Offer Form pages, OF-1 to OF-3, and the Wage Certificate, WC-1. These documents must be submitted electronically through the HlePro.

AWARD OF RFQ

Method of Award. Award, if made, shall be to the responsive, responsible bidder submitting the lowest Total Bid Price.

Hawaii Compliance Express. A Certificate of Vendor Compliance may be obtained through the Hawaii Compliance Express (HCE). This service allows contractors to register online through a simple wizard interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. Contractors are required to pay an annual fee Hawaii Information Consortium, LLC (HIC).

LIABILITY INSURANCE

The Contractor shall maintain in full force and effect during the life of this contract, liability and property damage insurance to protect the Contractor and his subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations this contract whether such operations be by himself or by an subcontractor or anyone directly or indirectly employed by either of them, If any subcontractor is involved in the performance of the contract, the insurance policy or policies shall name the subcontractor as additional insured.

As an alternative to the Contractor providing insurance to cover operations performed by a subcontractor and naming the subcontractor as additional insured, Contractor may require subcontractor to provide its own insurance which meets the requirements herein. It is understood that a subcontractor insurance policy or policies are in addition to the Contractor's own policy or policies.

The following minimum insurance coverage(s) and limit(s) shall be provided by the Contractor, including its subcontractor(s) where appropriate.

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (Occurrence form)	\$2,000,000 combined single limit per occurrence for bodily injury and property damage
Basic Motor Vehicle Insurance and Liability Policies	\$1,000,000 combined single limit
Workers Compensation	The CONTRACTOR shall maintain workers' compensation and employer's liability insurance that comply with statutory limits.

Each insurance policy required by this contract, including a subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days written notice has been given to the State of Hawaii, Department of Transportation, Highways Division, 650 Palapala Drive, Kahului, Maui, HI 96732."
2. "The State of Hawaii is added as an additional insured as respects to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The minimum insurance required shall be in full compliance with the Hawaii Insurance Code throughout the entire term of the contract, including supplemental agreements.

Upon Contractors execution of the contract, the Contractor agrees to deposit with Hawaii Department of Transportation, Highways Division (HDOT-HWY) certificate(s) of insurance necessary to satisfy HDOT-HWY that the insurance provisions of this contract have been complied with and to keep such insurance in effect and the certificate(s) there on deposit with HDOT-HWY during the entire term of this contract, including those of its subcontractor(s), where appropriate. Upon request by HDOT-HWY, Contractor shall be responsible for furnishing a copy of the policy or policies.

Failure of the Contractor to provide and keep in force such insurance shall be regarded as material default under this contract entitling HDOT-HWY to exercise any or all of the remedies provided in this contract for a default of the Contractor.

The procuring of such required insurance shall not be construed to limit Contractor's liability hereunder or to fulfill the indemnification provisions and requirements of this contract. Notwithstanding said policy or policies of insurance, Contractor shall be obliged for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

PERFORMANCE OR PAYMENT BOND

Only when required by the proposal, the successful bidder at the time of the execution of the contract shall file good and sufficient performance and payment bonds on the forms furnished by the Department, or a facsimile thereof, conditioned for the full and faithful performance of the contract in accordance with the terms and intent thereof and also for the prompt payment to all others for all labor and materials furnished by them to it and use in the prosecution of the work provided for in such contract, in the manner, form and amount required by Section 3-122-224(b) (2), H.A.R., which bonds shall be in an amount equal to fifty percent (50%) of the contract price, including amounts estimated to be required for extra work, or in the case of price-term, open-end, or requirements contract under which the total amount to be paid to the

Contractor cannot be accurately estimated at the time the contract is to be awarded, the bond amounts shall be as designated in the bid documents. Such bonds shall also by their terms inure to the benefit of any and all persons entitled to file claims for labor performed or materials furnished in the work so as to give them a right of action as contemplated by Section 103D-324, H.R.S.

The bidder shall limit the acceptable performance and payment bonds to the following:

- (a) Legal tender; or
- (b) Surety bond underwritten by a company licensed to issue bonds in the State of Hawaii; or
- (c) A certificate of deposit; share certificate; cashier's check; treasurer's check; teller's 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 National Credit Union Administration (NCUA).
 - 1. The bidder may use these instruments only to a maximum of one hundred thousand dollars (\$100,000.00).
 - 2. If the required security or bond amount totals over one hundred thousand dollars (\$100,000.00) more than one instrument not exceeding one hundred thousand dollars (\$100,000.00) each and issued by different financial institutions shall be acceptable.

NOTICE TO PROCEED

HDOT-HWY will issue a Notice to Proceed, specifying the contract commencement date.

No work shall be undertaken by the successful bidder prior to issuance of the Notice to Proceed. HDOT-HWY is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to official starting date.

INVOICING

Contractor shall send an original monthly invoice to:

Hawaii Department of Transportation
Highways Division, Maui District Office
650 Palapala Drive
Kahului, Hawaii 96732

All invoices shall reference the RFQ.

The following shall accompany the final payment invoice:

- A valid (not over 2 months old) and **original** *Tax Clearance Certificate* (TCC) must accompany the final payment invoice. In accordance with Section 103-53, HRS, all contractors must provide a TCC from the State of Hawaii Department of Taxation and the U.S. Internal Revenue Service as a prerequisite to receipt of final payment.
- The *Certification of Compliance for Final Payment* (DOE Form-22) with an original signature of an authorized representative of the CONTRACTOR.
- In lieu of the above, CONTRACTOR may submit an original *Certificate of Vendor Compliance* as issued by the State Procurement Office via an online system, also referred to as "Hawaii Compliance Express". Details regarding this online application process can be viewed at: <http://vendors.ehawaii.gov/hce/>.

PAYMENT TO HAWAII INFORMATION CONSORTIUM, LLC (HIC)

The Hawaii Electronic Procurement System (HlePro) is administered by Office of the State Auditor. The HlePro Contractor shall invoice the awarded vendor directly for payment of transaction fees. Payment must be made to HIC within thirty (30) days from receipt of invoice.

SUBCONTRACTORS

The Contractor shall not delegate any duties listed in this RFQ to any subcontractor unless the Contract Administrator has given written approval. The State reserves the right to approve all subcontractors and shall require the primary contractor to replace any subcontractors found to be unacceptable. The primary contractor will be the sole point of contact with regard to contractual matters, including payment of any and all charges, and shall be responsible for all services whether or not the primary contractor performs them.

INSPECTIONS

All work done and all materials furnished shall be subject to random periodic inspection and approval by the CA to verify that the services rendered are in accordance with requirements and intentions of these Special Provisions and the Specifications. The CA may require additional information as necessary to maintain a record of the service rendered, and also request that the Contractor accompany him on field inspections to be scheduled periodically.

RE-EXECUTION OF WORK

Contractor shall re-execute any work that fails to conform to contract requirements and shall immediately remedy any defects due to faulty workmanship by the Contractor. Should Contractor fail to comply, HDOT-HWY reserves the right to engage the services of another company to perform the services and to deduct such costs from monies due to the Contractor.

REMOVAL OF CONTRACTOR'S EMPLOYEES

Contractor agrees to remove any of its employees from services rendered and to be rendered to HDOT-HWY upon request in writing by the CA.

RIGHTS AND REMEDIES FOR DEFAULT

In the event the Contractor fails, refuses or neglects to perform the services in accordance with the requirements of this contract, HDOT-HWY reserves the right to purchase in the open market a corresponding quantity of the services specified herein and to deduct from any moneys due or that may thereafter become due the Contractor the difference between the price named in the RFQ and the actual cost to HDOT-HWY. In case any money due the Contractor is insufficient for said purpose, the Contractor shall pay the difference upon demand by HDOT-HWY. HDOT-HWY may utilize all other remedies provided by law.

APPROVALS

Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

INSTRUCTIONS FOR CONTRACTOR'S LICENSING

"A" general engineering contractors and "B" general building contractors are reminded that due to the Hawaii Supreme Court's January 28, 2002 decision in Okada Trucking Co., Ltd. V. Board of Water Supply, et al., 97 Haw. 450 (2002), they are prohibited from undertaking any work, solely or as part of a larger project, which would require the general contractor to act as a specialty contractor in any area where the general contractor has no 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 (*An "A" or "B" contractor obtains "C" specialty contractor's licenses either on its own, or automatically under HAR § 16-77-32.*). The remaining work must be performed by appropriately licensed entities. It is the sole responsibility of the contractor to review the requirements of this project and determine the appropriate licenses that are required to complete the project.

The undersigned bidder acknowledges receipt of any addendum issued by the Department by recording in the space below the date of receipt.

Addendum No. 1 _____

Addendum No. 3 _____

Addendum No. 2 _____

Addendum No. 4 _____

In accordance with Section 103D-302, Hawaii Revised Statutes, the undersigned as bidder has listed the name of each person or firm, who will be engaged by the bidder on the project as Joint Contractor or Subcontractor and the nature of work to be done by each. It is understood that failure to comply with the aforementioned requirements may be cause for rejection of the bid submitted.

<u>Name of Subcontractor</u>	<u>Nature and Scope of Work</u>
1. _____	_____
2. _____	_____
3. _____	_____
4. _____	_____
5. _____	_____
6. _____	_____
7. _____	_____
8. _____	_____
9. _____	_____

<u>Name of Joint Contractor</u>	<u>Nature and Scope of Work</u>
1. _____	_____
2. _____	_____
3. _____	_____

("None" or if left blank indicates no Subcontractor or Joint Contractor; if more space is needed, attach additional sheets.)