

1 Make this section a part of the Standard Specifications:

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

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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.

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

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34 (1) The location,
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36 (2) Description of the proposed work,
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38 (3) The approximate quantities,
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40 (4) Items of work to be done or materials to be furnished,
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42 (5) A schedule of items, and
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44 (6) The time in which the work shall be completed.
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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 - Method 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 bases for the bid figure are 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.

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 Contactor'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.

231 **102.09 Delivery of Proposal.** The Bidder shall submit the proposal in a
232 sealed envelope, bearing on the outside the identity of the project and the its
233 name and address. The Department will reject and return a proposal
234 unopened if received after the time set for the opening of bids.
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236 **102.10 Withdrawal or Revision of Proposals.** A bidder may withdraw
237 or revise a proposal after the bidder deposits the proposal with the Department,
238 provided the Department receives such withdrawal or revision request in writing
239 before the time set for the opening of bids.
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241 **102.11 Disqualification of Bidders.** The Department may disqualify a
242 bidder and reject its proposal for the following reasons:
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244 (1) Submittal of more than one proposal whether under the same or
245 different name.
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247 (2) Evidence of collusion among bidders. The Department will not
248 recognize participants in collusion as bidders for any future work of the
249 Department until such participants are reinstated as qualified bidders.
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251 (3) Lack of proposal guaranty.
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253 (4) Submittal of an unsigned or improperly signed proposal.
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255 (5) Submittal of a proposal without a listing of subcontractors or
256 containing only a partial or incomplete listing of subcontractors.
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258 (6) Submittal of an irregular proposal in accordance with Subsection
259 102.07 - Irregular Proposals.
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261 (7) Evidence of assistance from a person who has been an employee
262 of the agency within the preceding two years and who participated while in
263 State office or employment in the matter with which the contract is directly
264 concerned, pursuant to HRS Chapter 84-15.
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266 (8) Suspended or debarred in accordance with HRS Chapter 104-25.
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268 (9) Failure to complete the prequalification questionnaire.
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270 (10) Failure to attend the mandatory pre-bid meeting, if applicable.
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272 **102.12 Material Guaranty.** The successful bidder may be required to
273 furnish a statement of the composition, origin, manufacture of materials, and
274 samples.
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276 **102.13 Substitution of Materials and Equipment Before Bid Opening.**

277 See Subsection 106.13 for Substitution Of Materials and Equipment After Bid
278 Opening.

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280 **(A) General.** When brand names of materials or equipment are
281 specified in the contract documents, they are to indicate a quality, style,
282 appearance, or performance and not to limit competition.

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

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296 **(C) Substitution Denial.** Any substitution request not complying with
297 the above requirements will be denied.

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299 **102.14 Preferences.** Hawaii Products and Recycled Products shall not
300 apply to this project.

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302 **102.15 Certification for Safety and Health Program for Bids in excess**
303 **of \$100,000.** In accordance with HRS Chapter 396-18, the bidder or offeror,
304 by signing and submitting this proposal, certifies that a written safety and health
305 plan for this project will be available and implemented by the notice to proceed
306 date for this project. Details of the requirements of this plan may be obtained
307 from the State Department of Labor and Industrial Relations, Occupational
308 Safety and Health Division (HIOSH).

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310 **102.16 Addenda.** Addenda issued shall become part of the contract
311 documents. Addenda to the bid documents will be provided to all prospective
312 bidders at the respective offices furnished for such purposes. Each addendum
313 shall be an addition to the contract documents. The terms and requirements of
314 the bid documents (i.e. drawings, specifications and other bid and contract
315 documents) cannot be changed prior to the bid opening except by a duly issued
316 addendum."

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322 **END OF SECTION 102**