ARTICLE II - STANDARD PROVISIONS FOR COMPETITIVE SEALED BIDS AND AWARDS

2.1 Purpose. The provisions in this Article are standard provisions that are deemed incorporated by reference into all invitations for competitive sealed bids. If language in any invitation for competitive sealed bids varies from these standard provisions, the language in the invitation shall control. These standard provisions are intended to conform with all laws and regulations governing the competitive sealed bid process. In the event of any variance between these standard provisions and the procurement laws and the procurement regulations, the laws and regulations shall control.

2.2 Contractor’s License. Attention is directed to the provisions of Chapter 444, H.R.S., and related regulations in Title 16, Chapter 77, H.A.R., regarding the licensing of contractors in the State. Holders of the General Engineering “A” and General Building “B” licenses are deemed to hold the additional specialty licenses specified therein.

If a specialty contractor’s license is required by law for the performance of the work which is called for in this bid and the bidder does not hold such a required license, the bidder must list in the proposal the name of each joint contractor and subcontractor that the bidder intends to engage to perform work on the project that holds such required license. Each such required license must be held by the named joint contractor or subcontractor at the time of bid opening as stated in the invitation. For federal–aid projects, the bidder and all named joint contractors and subcontractors must hold each such required license prior to the award of contract. The bidder shall also describe, in the proposal, the nature and scope of work to be performed by each such licensee.

Construction bids that do not comply with this requirement are non-responsive and shall be rejected. However, upon petition of a rejected bidder and submission of any evidence requested by the Department, such a bid may
be accepted if acceptance is in the best interest of the State, as determined by the Department, and the value of the work to be performed by the unnamed specialty licensee is equal to or less than one percent of the total bid amount.

2.3 Qualification of Bidders. In accordance with Section 103D-310, H.R.S., the Department may require any bidder or prospective bidder (hereinafter collectively referred to in this section as “bidder”) to submit answers to questions contained in a qualification questionnaire for prospective bidders, on a form furnished by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and its organization in performing similar work and a statement of the equipment proposed to be used, together with adequate proof of the availability of such equipment. Whenever it appears to the Department, from answers to the questionnaire or otherwise, that the bidder is not fully qualified and able to perform the intended work, the Department will, after affording the bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to perform the work, make a written determination of non-responsibility and refuse to consider any bid offered by the bidder. All information contained in the answers to the questionnaire shall be kept confidential except disclosure may be made to law enforcement agencies as provided in Chapter 92F, H.R.S.

Failure to complete the qualification questionnaire will be sufficient cause for the Department to disqualify a prospective bidder.

The Department, in its sole discretion, may declare a bidder to be non-responsible if (1) the bidder; (2) a corporation or other business entity owned substantially by the bidder; (3) a substantial stockholder or an officer of the bidder; or (4) a partner or substantial investor of the bidder is in arrears in payments owed to the State of Hawaii or its political subdivisions, is in default as a surety, or has failed or is failing to properly perform existing or previous contracts with the State.
2.4 Contents of Invitations for Bids. The Department will make available to prospective bidders an invitation for bids, which will state the location and description of the contemplated work, an estimate of the various quantities and items of work to be performed or materials to be furnished, and a proposal schedule of items for which bid prices are required. The invitation for bids will also state the time within which the work must be completed; the date, time, and place of the bid opening; and the maximum time from bid opening in which the Department may make the award.

The plans, specifications, and other documents designated or incorporated by reference in the invitation for bids are also a part thereof, whether attached or not.

2.5 Estimated Quantities. All quantities appearing in the proposal schedule, for which unit prices must be entered by the bidder, are estimates. The State does not expressly or impliedly warrant that the actual amount of work will correspond with the estimated quantities. Payment to the Contractor will be made only for the actual quantities of work performed and accepted or materials furnished in accordance with the contract, and no change will be made in the contract unit prices if overruns and underruns occur except as provided for in the General Provisions for Construction Projects.

2.6 Examination of Plans, Specifications, and Site of Work; Patent Ambiguities; Requests for Clarification.

(a) A bidder has an obligation to carefully review the plans, specs, and other contract documents. If a bidder discovers a patent ambiguity, i.e., any discrepancy, omission, conflict, or other obvious error or ambiguity in the contract documents that affects its ability to prepare a complete and accurate bid, it must submit a written request for clarification as described in the subsection below.
(b) The Department shall make the site of work available for inspection by prospective bidders. However, the Department may limit the site inspection to a one time only opportunity either in connection with a pre-bid meeting and invitation for bids or at a time scheduled by the Department. The submission of a bid is a warranty that the bidder is fully aware of all conditions to be encountered in performing the work and of the requirements in the invitation for bids.

The bidder shall have the sole responsibility of satisfying himself concerning the nature and location of work and the general and local conditions and particularly, but without limitation, with respect to the following: those affecting transportation access; disposal, handling, and storage of materials; availability and quality of labor, water, and electric power; availability and condition of roads; climatic conditions and seasons; physical conditions at the worksites and the project area as a whole; topography and ground surface conditions; the nature and quantity of surface and subsurface materials to be encountered as described in or may reasonably be inferred from information contained in the invitation for bids; equipment and facilities needed preliminary to and during performance of the contract; and all other matters which can in any way affect performance of the contract or the time and/or the cost associated with such performance. The failure of the Contractor to acquaint himself with any applicable condition will not relieve it from the responsibility for properly estimating either the difficulties, the time, or the costs of successfully performing the contract. If, as a result of its review and consideration of the foregoing, the bidder discovers a patent ambiguity, i.e., any discrepancy, omission, conflict or other obvious error or ambiguity that affects its ability to prepare a complete and accurate bid, it must submit a written request for clarification as described in the subsection below.
(c) A written request for clarification shall be submitted to the Department for review at the earliest date possible; but, in any event, such request must be received at the Project Manager’s Office designated in the invitation for bids not later than fourteen (14) calendar days before the bid opening date, not including the bid opening date. It shall be titled “Request for Clarification”. All bidders on the Department’s plan holders list will be notified of all Departmental responses by an addendum to the invitation for bids.

If a patent ambiguity is not brought to the attention of the Department within the timeframe specified herein, the Department reserves the right to deny the successful bidder any adjustment in contract price or time in order to meet contract requirements as determined by the Department.

2.7 Request for Substitution of Specified Materials and Equipment Before Bid Opening. When the invitation for bids specify materials or equipment by make and or model to indicate a quality, style, appearance, or performance, the bidder will be assumed to have based its bid on one of the specified products. Where a bidder intends to use a material or equipment of an unspecified brand, make, or model, the bidder must submit a request to the Department for review and approval at the earliest date possible; but, in any event, such request must be received at the Project Manager’s Office designated in the invitation for bids not later than fourteen (14) calendar days before the bid opening date, not including the bid opening date.

It shall be the responsibility of the bidder to submit, in quintuplicate, sufficient evidence based upon which a determination can be made by the Department that the alternate brand is a qualified equivalent. The bidder must list in its submission all deviations and variances from the requirements of the contract documents. The Department reserves the right to reject an approved substitution during construction if it discovers unlisted deviations or variances.
that result in noncompliance with the contract requirements. In the event of such rejection, the bidder will not be entitled to any adjustment in contract price or time in order to meet contract requirements.

If the evidence accompanying a request for substitution is insufficient to qualify a particular brand, make, or model, the request shall be denied. All bidders on the Department’s plan holders list will be notified of all approved substitution requests by an addendum to the invitation for bids.

**2.8 Preparation and Delivery of Bid.** The bidder shall submit the bid upon the forms furnished by the Department or a facsimile thereof. The bidder shall specify prices in numerals for each pay item as required on the proposal schedule. The bidder shall also show in numerals the products of any unit prices and their estimated quantities in the column provided for that purpose. The bidder shall enter the total amount of the bid obtained by adding the amounts of all pay items. All numerals shall be in ink or typed.

When an item in the bid contains a choice to be made by the bidder, the bidder shall indicate its choice in accordance with the invitation for bids for that particular item.

The bid must be signed with ink by the person or persons legally authorized to submit a bid on behalf of the bidder.

When a bid is signed by an agent, proof of the authority to sign the bid for the bidder must be on file with the State prior to the opening of bids or shall be submitted with the bid; otherwise, the bid will be rejected as irregular and unauthorized.

The bidder shall submit the bid in a sealed envelope bearing on the outside the identity of the project and the name of the bidder. A bid not received at the place specified in the invitation for bids prior to the time set for the opening
of bids will be rejected and returned unopened.

2.9  **Irregular Bids.**  Bids will be considered irregular and may be rejected for any of the following reasons:

(1) If the bid is in a form other than that furnished by the Department or if the form is altered or any part thereof is missing.

(2) If there are additions or irregularities of any kind which make the bid incomplete, indefinite, or ambiguous as to its meaning.

(3) If the bid does not contain a bid price for each pay item listed.

(4) Unbalanced proposals in which the prices for some items are out of proportion to the prices for other items.

2.10  **Disqualification of Bidders.**  Any of the following reasons shall result in the disqualification of a bidder and the rejection of its bid(s).

(1) More than one bid for the same work from an individual, firm, or corporation under the same or different name.

(2) Evidence of collusion among bidders.

(3) Evidence of assistance from a person who has been an employee of the Department 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 Section 84-15, H.R.S.

(4) Lack of bid security.
(5) Unsigned bid that is not correctable or waivable.

(6) Any provisions added reserving the right to accept or reject an award or to enter into a contract pursuant to an award.

2.11 Bid Security.

(a) Unless directed otherwise in the invitation for bids, each bid shall be accompanied by bid security which is intended to protect the Department against the failure or refusal of a bidder to execute the contract for the work bid or to supply the required performance and payment bonds. Bid security shall be in an amount equal to at least five percent of the base bid and additive alternates.

Bid security shall be in one of the following forms:

(1) A deposit of legal tender;

(2) A valid surety bid bond, underwritten by a company licensed to issue bonds in the State of Hawaii; or

(3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) and payable at sight or unconditionally assigned to the Department. These instruments may be utilized only to a maximum of one hundred thousand dollars ($100,000.00). If the required amount totals over one hundred thousand dollars ($100,000.00), more than one instrument not exceeding one hundred thousand dollars

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($100,000.00) each and issued by different financial institutions shall be accepted.

(b) If a bidder fails to accompany its bid with the bid security, the bid shall be deemed nonresponsive, unless the failure to comply is determined by the Department to be nonsubstantial where:

(1) Only one bid is received, and there is not sufficient time to resolicit the contract;

(2) The amount of the bid security submitted, though less than the amount required by the solicitation, is equal to or greater than the difference in the price stated in the next higher acceptable bid plus an amount to cover reasonable administrative costs and expenses, including the cost of rebidding the project, resulting from the failure of the bonded bidder to enter into a contract for the work bid; or

(3) The bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification, if the bidder increases the amount of security to required limits within the time established by the Department.

(c) The Department will be damaged in the event of the failure or refusal of a bidder to execute the contract for the work bid or to supply the required performance and payment bonds. Such damages will be equal to the difference between the defaulting bidder’s bid and the price stated in the next higher acceptable bid, plus an amount to cover reasonable administrative and legal costs and expenses, including the cost of rebidding the project. If the amount of bid security is greater than the Department’s damages, only an amount equal to the damages shall be recovered from the bid security. If the amount of bid security is insufficient
to cover the Department’s damages, the Department shall have the right to recover the balance of the damages from the defaulting bidder.

2.12 Pre-Opening Modification or Withdrawal of Bids. Bids may be modified or withdrawn prior to the due date and time established for bid opening by the following documents:

(a) Modification of bids.

(1) A written notice accompanying the actual modified bid proposal, in its entirety, conforming to all the requirements of an original bid proposal, delivered and received in the same manner as the original bid proposal designated in the invitation for bids, and stating that a modification to the bid is submitted; or

(2) A facsimile or electronic notice accompanying the actual modification submitted either by facsimile machine, electronic mail, or an electronic procurement system, pursuant to Section 3-122-9, H.A.R., to the office designated in the invitation for bids; provided if other than through an electronic system, the bidder submits the actual written notice and the modified bid proposal, in its entirety, conforming to all the requirements of an original bid proposal, delivered and received in the same manner as the original bid proposal within two working days of receipt of the facsimile or the electronic transmittal.

(b) Withdrawal of bids.

(1) A written notice received in the office designated in the invitation for bids; or

(2) A notice by facsimile machine or other electronic method,
pursuant to Section 3-122-9, H.A.R., to the office designated in the invitation for bids.

2.13 Cancellation of Invitation for Bids Before Bid Opening. An invitation for bids may be cancelled prior to bid opening for reasons including, but not limited to, the following:

(1) The Department no longer requires the construction;

(2) The Department no longer can reasonably expect to fund the construction;

(3) Proposed amendments to the invitation for bids would be of a magnitude that a new invitation for bids is desirable; or

(4) A determination by the Department that a cancellation is in the public interest.

2.14 Public Opening of Bids. Bids will be opened and the name of the bidder, the bid price, and such other information deemed necessary by the Department shall be read aloud publicly in the presence of one or more witnesses at the date, time, and place(s) indicated in the invitation for bids. Bidders, their authorized agents, and other interested parties are invited to be present.

2.15 Acceptance of Bids; Correction of Mistakes.

(a) Bids shall be unconditionally accepted without alteration or correction, except as allowed in Subsection 2.12(a) Modification of Bids.

(b) A bid containing a mistake discovered after the deadline for receipt of bids but prior to award may be:
Corrected or the mistake waived under the following conditions:

(A) If the mistake is attributable to an arithmetical error, the Department shall so correct the mistake with or without a request or concurrence by the affected bidder. In case of error in the extension of the bid price, the unit price shall govern;

(B) If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Department may waive the informalities or allow the bidder to request correction by submitting documentation that demonstrates a mistake was made. Examples of mistakes include:

(i) Typographical errors;

(ii) Transposition errors;

(iii) Failure of a bidder to sign the bid or provide an original signature, but only if the unsigned bid or photocopy is accompanied by other material indicating the bidder’s intent to be bound; or

(C) The Department may correct or waive the mistake if it is not allowable under subparagraphs (A) and (B) but is an obvious mistake that if allowed to be corrected or waived is in the best interest of the Department and is fair to other bidders.
Withdrawn, if the mistake is attributable to an obvious error that shall affect price, quantity, quality, delivery, or contractual conditions, provided:

(A) The bidder requests withdrawal by submitting documentation that demonstrates a mistake was made; and

(B) The Department prepares a written approval or denial in response to this request.

(c) A mistake in a bid discovered after award of contract may be corrected or withdrawn if the Department makes a written determination that it would be unreasonable not to allow the mistake to be remedied or withdrawn.

(d) Any determination required by this section shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.

2.16 Preferences. Unless otherwise stated in the invitation for bids, all preferences applicable to any invitation for bids shall be considered solely for the comparison of bids to determine the low bidder. The contract amount will be at the bid price exclusive of any preferences.

2.17 Certification for Safety and Health Program for Bids in Excess of $100,000. In accordance with Sections 103D-327 and 396-18, H.R.S., the bidder or offeror, by signing and submitting a bid, certifies that a written safety and health plan for this project will be available and implemented by the notice to proceed date for this project. Details of the requirements of this plan may be obtained from said Statute or the Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).
2.18 Certification of Employment of State of Hawaii Residents. The bidder, by signing and submitting a bid, certifies that if awarded the contract, it will ensure that State of Hawaii residents will compose not less than 80% of the workforce employed by the bidder to perform the contract and all subcontracts of $50,000 or more as calculated by the method described in 7.2(a).

2.19 Cancellation of Invitation for Bids After Bid Opening. An invitation for bids may be cancelled after bid opening but prior to award for reasons including, but not limited to, the following:

1. The construction being procured is no longer required;

2. Ambiguous or otherwise inadequate specifications were part of the invitation for bids;

3. The invitation for bids did not provide for consideration of all factors of significance to the Department;

4. Prices exceed available funds and it would not be appropriate to adjust project scope to come within available funds;

5. All otherwise acceptable offers received are at clearly unreasonable prices;

6. There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

7. A determination by the Department that a cancellation is in the public interest.

2.20 Bid Evaluation and Award.
(a) The award shall be made to the lowest, responsive, responsible bidder within 60 days after bid opening and shall be based on the criteria set forth in the invitation for bids. The Department may request the bidders to allow the Department to consider the bids for the issuance of an award beyond the 60 day period. Agreement to such an extension must be made by a bidder in writing. Only bidders who have agreed to such an extension will be eligible for the award.

(b) No bid shall be withdrawn or corrected for a period of 60 days after bid opening except for a mistake as described in this article; however, a bidder may withdraw a bid without penalty anytime prior to award of the contract if it finds it is unable to comply with the provisions regarding the employment of State of Hawaii residents as described in Section 7.2 and 103B-3, H.R.S.

(c) As a condition for award, the apparent low bidder shall submit copies of the following documents as proof of compliance with the requirements with Section 103D-310(c), H.R.S.:

   (1) A tax clearance certificate from the Department of Taxation and the Internal Revenue Service, subject to Section 103D-328, H.R.S., current within six months of issuance date;

   (2) A certificate of compliance for Chapters 383, 386, 392, and 393, H.R.S., from the Department of Labor and Industrial Relations, current within six months of issuance date; and

   (3) A certificate of good standing from the business registration division of the Department of Commerce and Consumer Affairs, current within six months of issuance date.
In lieu of the certificates referenced in subsection (c), the bidder may make available proof of compliance through the Hawaii Compliance Express or any other designated certification process. Bidders may apply and register at the “Hawaii Compliance Express” website: https://vendors.ehawaii.gov/hce/splash/welcome.html.

The documents shall be submitted to the Department within 14 days after bid opening unless otherwise specified in the invitation for bids or an extension is granted in writing by the Department.

If the required documents are not submitted on a timely basis, the Department may disqualify the bidder.

(d) The successful bidder will be notified by letter mailed to the address shown in its bid that is has been awarded the contract.

2.21 Waiver to Competitive Sealed Bid. If, for a given invitation for bids, there is only one responsive, responsible bidder:

(1) An award may be made to the single bidder, provided:

(A) The Department determines in writing that the price submitted is fair and reasonable, and that either:

(i) Other prospective bidders had reasonable opportunity to respond; or

(ii) There is not adequate time for resolicitation; or

(B) The bid exceeds available funds as certified by the Department and the price is negotiated, pursuant to Section 103D-302(h), H.R.S.;
(2) The bid may be rejected and new bids or offers may be solicited if the Conditions in paragraph (1) are not met;

(3) The proposed procurement may be cancelled at the discretion of the Department; or

(4) An alternative procurement method may be conducted to include, but not be limited to, direct negotiations with the sole bidder first and then with any contractor should negotiations with the sole bidder fail, provided the Department determines in writing that the need for the construction continues but that the price of the one bid is not fair and reasonable and either that:

(A) There is no time for resolicitation, or

(B) Resolicitation would likely be futile.

2.22 Cancellation of Award. The State reserves the right to cancel the award of a contract at any time before the execution of said contract by all parties without any liability to the successful bidder or any other bidder.

2.23 Return of Bid Security. All bid securities, except those of the lowest two bidders, will be returned immediately following the opening and checking of the proposals. The bid security of the second lowest bidder, if not a bid bond, will be returned within ten (10) calendar days following the execution of a contract. The successful bidder’s bid security, if not a bid bond, will be returned after a satisfactory contract bond has been furnished and the contract has been executed.

2.24 Requirements of Contract Bonds.
(a) A contract performance bond indemnifies the State against loss resulting from the failure of the contractor to perform a contract, including the Contractor's warranty obligations, in accordance with the plans, specifications, and other contract documents.

(b) A contract payment bond guarantees payment and protection for those furnishing labor and materials to the contractor or its subcontractors for the work bonded.

(c) Prior to execution of the contract, the successful bidder shall file a good and sufficient performance bond and payment bond on the forms furnished by the Department, each in the amount equal to 100% of the contract price plus the amount estimated by the Department required for overruns in estimated quantities and change orders.

(d) Acceptable contract performance and payment bonds, pursuant to Sections 103D-323 and 103D-324, H.R.S., shall be limited to:

(1) Surety bond underwritten by a company licensed to issue bonds in this State;

(2) Legal tender; or

(3) A certificate of deposit; credit union share certificate; or cashier's, treasurer's, teller's, or official check drawn by or a certified check accepted by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, and payable at sight or unconditionally assigned to the Department advertising for bids. These instruments may be utilized only to a maximum of $100,000. If the required amount totals over $100,000, more than one
instrument not exceeding $100,000 each and issued by different financial institutions shall be accepted.

(e) All documentation provided to the Department shall contain the original signatures signed in ink.

2.25 Execution of Contract. The contract shall be executed by the successful bidder and returned within ten (10) days after the award of the contract or within such further time as the Department may allow after the bidder has received the contract for execution, along with the required bonds and Chapter 104, H.R.S., Compliance Certificate. The contract shall not bind the State in any way unless said contract has been fully and properly executed by all the parties thereto, the Comptroller has endorsed thereon its certificate that there is available an unexpended appropriation over and above all outstanding contracts, sufficient to cover the amount required by the contract, and the fully executed contract is received by the Contractor. If the Contractor fails to execute the contract and file acceptable bond(s) within ten (10) days after the award of the contract, or within such further time as the Department may allow, the Department may cancel the award and award the contract to the next lowest, responsive and responsible bidder. The Department may recover its damages against the bid security as described in Subsection 2.11(c) herein.

END OF ARTICLE II