

SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS

102.01 Prequalification of Bidders. Prospective bidders shall do the work *|
for what they are bidding. *|

Each prospective bidder shall file written notice of its intention to *|
bid not less than six (6) calendar days before the bid opening date at the *|
location shown in the "Notice to Bidders" according to Section 103-25, H.R.S. *|
Each prospective bidder shall mail the notice in sufficient time to meet the *|
deadline set above if mailed. *|

The Department may require prospective bidders to complete and submit *|
the "Standard Questionnaire and Financial Statement for Bidders" form *|
furnished by the Department according to Section 103-25. Each prospective *|
bidder shall execute properly, notarize and submit such form: *|

(1) A complete statement of its experience with projects of the same *|
type as or similar to; *|

(2) A complete listing of its bidder's organization that has had *|
involvement with the same or similar work; and *|

(3) A complete listing of the equipment the prospective bidder proposes *|
to use. Also, the bidder shall show proof that such equipment is *|
available for use on the project by the prospective bidder. *|

If the Department determines that the prospective bidder is not fully *|
qualified and cannot do the required work, the Department will afford the *|
prospective bidder a hearing according to Department procedures. If after *|
such hearing the Department still finds that the prospective bidder is not *|
fully qualified and cannot do the required work, the Department will refuse *|
to receive or consider bids offered by the prospective bidder. The *|
Department will keep the information contained in the answers to the *|
questionnaire confidential. *|

Each prospective bidder shall complete and submit its notice of *|
intention to bid and "Standard Questionnaire and Financial Statement for *|
Bidders" form to the Department. Failure to do so will be sufficient cause *|
for the Department to disqualify a prospective bidder. *|

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

Persons, firms or corporations that submit a Notice of Intention to Bid *|
 must provide the State with a current statement or certificate from the *|
 Director of Taxation to the effect that delinquent taxes levied or accrued *|
 under State statutes against said person, firm or corporation have been paid, *|
 and other evidence requested by and acceptable to the contracting officer to *|
 demonstrate that the prospective bidder is not in default of obligations due *|
 to the State or its political subdivisions. *|

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

- (1) the location, *|
- (2) description of the proposed work, *|
- (3) the approximate quantities, *|
- (4) items of work to be done or materials to be furnished, *|
- (5) a schedule of items, and *|
- (6) the time in which the work shall be completed. *|

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. *|

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

The Department will require the prospective bidder to deposit the sum *|
 stated in the Notice to Bidders for each copy of the proposal form and each *|
 set of plans. Failure to return said documents within thirty (30) days after *|
 the opening of bids shall be cause for forfeiture of the sum deposited. |

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. No change in the contract unit price will occur for overruns or underruns. The Department will make payment to the Contractor for unit price items according to 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. If the Department increases or decreases the estimated quantity of a major contract item by more than twenty-five (25) percent, the Department will make payment for such items according to Subsection 104.02 - Alterations of Plans or Type of Work.

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 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 - Alterations of Plans or Type of Work. *|

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 according to 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 black 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.

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 the proposal unless accompanied by:

- (1) a deposit of legal tender;
- (2) 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 a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA); or
- (3) a surety bond.

The above shall be in a sum not less than five (5) percent of the amount bid according to Section 103-28, H.R.S. *

When the amount bid exceeds fifty thousand (\$50,000) dollars, the sum shall not be less than two thousand five hundred dollars (\$2,500) plus two (2) percent of the amount bid over fifty thousand dollars (\$50,000). 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 a bank, savings institution, or credit union insured by the FDIC or the NCUA may be used only when the required deposit does not exceed one hundred thousand dollars (\$100,000.00). *

A bid requiring a deposit over one hundred thousand dollars (\$100,000.00) shall be a legal tender or a surety bond form according to Section 103-31, H.R.S. *

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 a bank, savings institution, or credit union insured by the FDIC or the NCUA shall be made payable on sight to the Department. *

102.09 Delivery of Proposal. The Bidder shall submit the proposal in a sealed envelope, bearing on the outside the identity of the project and the its name and address. The Department will reject and return a proposal unopened if received after the time set for the opening of bids. *

102.10 Withdrawal or Revision of Proposals. A bidder may withdraw or revise a proposal after the bidder deposits the proposal with the Department, provided the Department receives such withdrawal or revision request in writing before writing before the time set for the opening of bids. *

102.11 Public Opening of Proposals. The Department will open and read the proposals publicly at the time and place shown in the Notice to Bidders. Invited are bidders, their authorized agents, and other interested parties to be present. *

102.12 Disqualification of Bidders. The Department may consider the following reasons for the disqualification of a bidder and the rejection of its proposal(s): *

- (1) Submittal of more than one (1) proposal for the same work by the bidder, whether under the same or different name.
- (2) Evidence of Collusion Among Bidders. The Department will not recognize participants in such collusion as bidders for future work of the Department until reinstated as a qualified bidder.
- (3) Lack of proposal guaranty.
- (4) Submittal of an unsigned or improperly signed proposal. *

(5) Submittal of a proposal that fails to contain a listing of subcontractors or contains only a partial or incomplete listing of subcontractors.

(6) Submittal of an irregular proposal according to Subsection 102.07 - *
Irregular Proposals.

102.13 Material Guaranty. The successful bidder may require furnishing a *
statement of the composition, origin, manufacture of materials, and samples. *

102.14 American Products Preference. According to Section 103 - 24, H.R.S., *
The Bidders shall give preference to American products, materials and *
supplies. *

102.15 Declaration of Non-Collusion. The Bidders shall execute and submit a *
"Declaration of Non-Collusion". The Department will not consider bid *
proposal unless accompanied by said declaration. *

102.16 Substitution of Materials and Equipment.

(A) Qualification Before Bid Opening. For County projects, when the *
contract shows manufacturers' brand names, the Bidders shall base its *
bids on the specified brands or a substitute brand. The Department may *
select a substitute brand if acceptable by the Department. *

Before submitting a bid based on substitute brand names, the bidder *
shall submit a written substitution request to the Department for *
acceptance ten (10) working days before the bid opening date. The *
Department will not accept substitution requests received after the *
deadline. *

Its written request to use substitute brand names includes *
supporting evidence that the Department can resolve the quality and *
suitability of the proposed substitute(s). The Bidder will transmit five *
(5) copies of its written request and supporting evidence with a cover *
letter listing the evidence submitted and the items for the requested *
substitution. The Engineer shall be the sole judge on the quality and *
suitability of the proposed substitute(s). The Department's decisions *
shall be final. *

The Department will make an addendum to inform the prospective *
bidders of acceptable substitutions for use on the proposed project. If *
the Department does not make an addendum, the Department denies the *
substitution request for use on the project. *

If there is addendum, the Department will mail the addendum to *
prospective bidders five (5) calendar days before the opening date of *
bids.

For Federal and State projects, the Department will not review *
substitution request before bid opening. Bidders shall base bids on the *
specified item. *

(B) Substitution After Bid Opening. The Department may not make *|
substitution for either specified items or substitutes found equal or *|
better after bid opening without the prior written acceptance of the *|
Department. |

102.17 Statement of Affirmation and Acknowledgement of Disadvantaged Business |
Enterprise (DBE) Requirements. For Federal-Aid projects, the bidder shall |
execute and submit the "Statement of Affirmation and Acknowledgement of |
Disadvantage Business Enterprise (DBE) Requirements" included in the bid |
documents with its bid. Failure by the bidder to comply with this requirement *|
shall be sufficient cause for rejection of bid. |