

## SPECIAL NOTICE TO BIDDERS - CONSTRUCTION

QUALIFICATIONS OF BIDDERS - Prospective bidders must be capable of performing the work for which bids are being called.

The Department of Defense no longer requires a submittal of "INTENTION TO BID" unless otherwise stated in the notice to bidders.

If two (2) or more prospective bidders desire to bid jointly as a joint venture on a single project, they must file an affidavit of joint venture with their notice of intention to bid or if no intent to bid is required, shall submit an affidavit of joint venture prior to bid opening. Such affidavit of joint venture will be valid only for the specific project for which it is filed. No further license is required when all parties to the joint venture possess current and appropriate contractor's licenses. Joint venture is required to be licensed in accordance with Chapter 444 of the Hawaii Revised Statutes, as amended, and the rules and regulations of the Contractor's License Board when any party to the joint venture agreement does not hold a current or appropriate contractor's license.

The Adjutant General or his designated representative, henceforth referred to as Department, may, in accordance with Section 103D-310, Hawaii Revised Statutes, require the prospective bidder to submit answers to questions in the "Standard Questionnaire and Financial Statement for Bidders," on the form provided by the Department, properly executed and notarized, setting forth a complete statement of the experience of such prospective bidder and his 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, at least forty-eight (48) hours prior to the time advertised for the opening of bids. If the information in the questionnaire proves satisfactory, the bidder's proposal will be received. All information contained in the answers to the questionnaire shall be kept confidential. The questionnaire will be returned to the bidder after it has served its purpose.

If upon review of the Questionnaire, or otherwise, the bidder appears not fully qualified or able to perform the intended work, the Department shall, 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, refuse to receive or to consider any bid offered by the prospective bidder.

Failure to complete the prequalification questionnaire, (IF SENT TO YOU), will be sufficient cause for the Department to disqualify a prospective bidder.

INTERPRETATION OF QUANTITIES IN BID SCHEDULE - When quantities for individual items of work are listed in the bid form for which respective unit prices are asked, said quantities are to be considered as approximate and are to be used by the Department only for the purpose of comparing on a uniform basis bids offered for the work. The Department does not, expressly or by implication, agree that the actual

quantity of work will correspond therewith. The undersigned agrees that his is satisfied with and will at no time dispute said estimated quantities as a means of comparing the bids.

After determining the low bidder by comparison of bids submitted in accordance with the proposal form, the Department reserves the right to increase or decrease the scope of the improvement.

On unit price bids, payment will be made only for the actual number of units incorporated into the finished project at the unit price bid.

It is understood and agreed that the contractor will make no claim for anticipated profit or loss of profit due to the Department's right to eliminate entirely portions of the work or to increase or decrease any or all of the quantities shown in the proposal form and/or scope of work.

CONTENTS OF CONTRACT FORMS – The Statement of Work will provide the location, description, and the contract time of the work contemplated for which a lump sum bid price is asked or containing a schedule of items, together with estimated quantities of work to be performed and materials to be furnished, for which unit bid prices and/or lump sum bid prices are asked.

Proposal forms will include a listing of joint contractor and/or subcontractors asking the name of each person or firm to be engaged on the project as a joint contractor or subcontractor and the work requiring a specialty contractor's license that each such listed subcontractor will perform in whole or part.

All papers bound with or attached to the offer form shall be considered a part thereof and shall not be detached or altered when the bid is submitted.

The plans, specifications and other documents designated in the bid document package, will also be considered a part thereof whether attached or not.

BIDDERS RESPONSIBILITY FOR EXAMINATION OF PLANS, SPECIFICATIONS, SITE OF WORK, ETC. - The bidder shall examine carefully the site work contemplated and the proposal, plans, specifications, supplemental specifications, special provisions and contract and bond forms therefore. The submission of a bid shall be considered as a warranty that the bidder has made such examination and is satisfied with the conditions to be encountered in performing the work and with the requirements of the plans, specifications, supplemental specifications, special provisions, contract and bond.

No extra compensation will be given by reason of the Contractor's misunderstanding or lack of knowledge of the requirements of the work to be accomplished or the conditions to be encountered in performing the project. If any discrepancy, variation or other ambiguity in the above documents is discovered, the bidder shall ask for

clarification pre-bid or else be foreclosed from making a claim for extra work or extra time based upon its own interpretation of such discrepancy, variation, or other ambiguity.

Where an investigation of subsurface conditions has been made by the Department in respect to foundation or other design, the bidders may inspect the records of the Department as to such investigation, including examination of samples, if any. It is understood, however, that any such information furnished is for the bidders' convenience only and no assurance is given that conditions found at the time of subsurface investigation, such as the presence or absence of water, will be conditions that prevail at the time of construction. Bidders will be deemed to know of any conditions disclosed in such records or investigation, whether inspected or not.

When the contract plan includes a log of test borings showing a record of the data obtained by the Department's investigation of subsurface conditions, said log represents only the opinion of the Department as to the character of material encountered by it in its test borings and there is no warranty, either expressed implied, that the conditions indicated are representative of those existing throughout the work or any part of it, or that unforeseen developments may not occur.

Information regarding the site of work given on the drawings or specifications has been obtained by the Department and is believed to be reasonably correct, however, it is the responsibility of the bidder to verify all such information. Any utilities that the Contractor encounters during the progress of the work, such as telephone ducts, electric ducts, water lines, sewer lines, electric lines and drainage pipes, whether shown or not on the contract plans, shall not be disturbed or damaged unless otherwise instructed in the plans and specifications.

In the event the utilities are damaged or disturbed by the Contractor, the Contractor shall be held liable for the damage or disturbed utilities which were either:

- A. Shown on the plan,
- B. Located and exposed on the job as it progressed, or
- C. Pointed out to the Contractor in the field.

The Contractor shall repair the damaged or disturbed utilities to the existing condition at no cost to the Department or the project. Any damage claims due to the disruption of service caused by the utilities being damaged shall be paid by the Contractor who shall save harmless the Department from all suits, actions, or claims of any character brought on account of such damages.

"In the event utilities which were (1) not shown on the plans and specifications, or (2) not located and exposed on the job as it progressed, or (3) not pointed out to the Contractor in the field, are damaged or disturbed by the Contractor, the Contractor shall not be held liable but shall notify the Engineer. Upon instruction from the Engineer, the

Contractor shall repair damages as directed, which shall be considered to be additional work.

Utilities which must be relocated due to construction and not so indicated in the plans and specifications shall also be considered to be additional work. The Contractor shall not in any case, if he encounters underground utilities, proceed with any work until he has notified the Engineer.

No information derived from such inspection of records of subsurface investigations made by the Department or from the Engineer or from his authorized representative or from maps, plans, specifications or drawings will in any way relieve the Contractor from any risk or from properly fulfilling all the terms of the contract. The log tests borings if included in the plans are only for the convenience of the bidder and do not constitute a part of the contract. The Contractor is solely responsible for all assumptions, deductions, or conclusions he may make or derive from the subsurface records furnished.

ADDENDA AND INTERPRETATIONS - Discrepancies, omissions, or doubts as to the meaning of drawings and specifications should be communicated via email as directed in the Notice to Bidders and must be received by the Engineering Office, Department of Defense, no later than the date stated in the Notice to Bidders for submittal of questions. Any interpretation, if made, and any supplemental instructions will be in the form of written addenda. All addenda will be posted on the State Procurement Office website <http://spo.hawaii.gov> . Failure of any bidder to receive any such addendum or interpretations shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents.

PREPARATION OF PROPOSAL - The bidder's proposal must be submitted on the proposal form furnished by the Department. The proposal must be prepared in full accordance with the instructions therein. The bidder must state, both in words and numerals, the lump sum price at which the work contemplated is proposed to be done. These prices must be written in ink or typed. Prices written in pencil are not acceptable. In case of a discrepancy between the prices written in words and those written in figures, the words shall govern over the figures. The bidder shall sign the proposal in the spaces provided with ink.

If the proposal is made by an individual, his name and post office address must be shown in the space provided. If made by a partnership, the name and post office address of each member of the partnership must be shown and the proposal signed by all partners or evidence in the form of a partnership agreement must be submitted showing the authority of the partner to enter, on behalf of said partnership, into contract with the State. If made by a corporation, the proposal must show the name, titles, and business address of the president, secretary and treasurer and also evidence in the form of a corporate resolution must be submitted showing the authority of the particular corporate representative to enter on behalf of said corporation into contract with the State. (See sample). If made by a joint venture the name and post office address of

each member of the individual form, partnership or corporation comprising the joint venture must be shown with other pertinent information required of individuals, partnerships or corporations as the case may be. The proposal must be signed by all parties to the joint venture or evidence in the form of a Joint Venture Agreement must be submitted showing the authority of the Joint Venture's representative to enter on behalf of said Joint Venture into contract with the State.

Pursuant to the requirements of Section 103D-302, Hawaii Revised Statutes, each bidder shall include in his bid the name of each person or firm to be engaged by the bidder on the project as joint contractor or subcontractor indicating also the nature and scope of work to be performed by such joint contractor and/or subcontractor in whole or in part.

**BID SECURITY** - No proposal totaling \$25,000 or more will be considered unless accompanied by one of the following forms of bidder's security:

A. Surety bond underwritten by a company licensed to issue bonds in this State.

B. Legal Tender.

C. Certificate of Deposit; share certificate; or cashier's, treasurer's, tellers or official check drawn by, or certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(1) These instruments may be utilized only to a maximum of \$100,000.

(2) If the required security amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.

**THE BID SECURITY SHALL BE AT LEAST FIVE (5) PERCENT OF THE BID AMOUNT.**

If the bidder is a corporation, evidence in the form of a corporate resolution, authorizing the corporate representative to execute the bond must be submitted with the proposal. If the bidder is a partnership, all partners must sign the bond or evidence in the form of a partnership agreement must be submitted showing the authority of the partner.

If the bidder is a joint venture, all parties to the joint venture must sign the bond or evidence in the form of a joint venture agreement must be submitted showing the authority of the bidder to sign the bond on behalf of the joint venture.

In the case where the award will be made on a group or item basis, the amount of proposal guaranty shall be based on the total bid for all groups or items submitted.

Bidders are cautioned that surety bid bonds, which place a limit in value to the difference between the bid amount and the next acceptable bid, such value not to exceed the purported amount of the bond, are not acceptable. Also, surety bid bonds which place a time limit on the right of the State to make a claim other than allowed by statutes or these General Conditions are not acceptable. Bidders are hereby notified that a surety bid bond containing such limitation(s) is not acceptable and a bidder's bid accompanied by such surety bid bond will be automatically rejected.

DELIVERY OF PROPOSALS - The entire proposal shall be placed together with the bid security, in a sealed envelope so marked as to indicate the identity of the project, the project number, the date of bid opening and the name and address of the bidder and then delivered as indicated in the Notice to Bidders. Bids which do not comply with this requirement may not be considered. Proposals will be received up to the time fixed in the public notice for opening of bids and must by that time be in the hands of the officials indicated. The words 'SEALED BID' must be clearly written or typed on the face of the sealed envelope containing the proposal guaranty.

WITHDRAWAL OR REVISION OF PROPOSALS - Any bid may be withdrawn or revised at any time prior to, but not after, the time fixed in the public notice for the opening of bids, provided that a request in writing, executed by the bidder or his duly authorized representative, for the withdrawal or revision of such bid is filed with the Department before the time set for the opening of bids. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. Whether or not bids are opened exactly at the time fixed in the public notice for opening bids, a bid will not be received after that time, nor may any bid be withdrawn after the time fixed in the public notice for the opening of bids.

PUBLIC OPENING OF PROPOSALS - Proposals will be opened and read publicly at the time and place indicated in the Notice to Bidders. Bidders, their authorized agents and other interested parties are invited to be present.

DISQUALIFICATION OF BIDDERS - Any one or more of the following causes will be considered as sufficient for the disqualification of a bidder and the rejection of his proposal or proposals:

- A. Non-compliance with "QUALIFICATION OF BIDDERS".
- B. Evidence of collusion among bidders.
- C. Lack of responsibility and cooperation as shown by past work.
- D. Being in arrears on existing contracts with the State of Hawaii or having defaulted on a previous contract.

E. Lack of proper equipment and/or sufficient experience to perform the work contemplated as revealed by the Standard Questionnaire and Financial Statement for Bidders.

F. Failure of the bidder itself to have, or bidder's failure to list subcontractors having all the necessary contractors' licenses to complete the work.

G. More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same or different name.

H. Delivery of bids after the deadline specified in the advertisement calling for bids.

I. Failure to pay, or satisfactorily settle, all claims overdue for labor and material on former contracts in force at the time of issuance of proposal forms.

CONSIDERATION OF PROPOSALS - After the proposals are opened and read, the figures will be extended and/or totaled in accordance with the bid prices of the acceptable proposals and the totals will be compared and the results of such comparison shall immediately be made public. In the comparison of bids, words written in the proposals will govern over figures and unit prices will govern over totals. Until the award of the contract, however, the right will be reserved to reject any and all proposals and to waive any defects or technicalities as may be deemed best for the interest of the State.

IRREGULAR PROPOSALS - Proposals will be considered irregular and may be rejected for the following reasons:

A. If the proposal is unsigned.

B. Bid security not in accordance with paragraph "BID SECURITY".

C. If proposal is on a form other than that furnished by the Department or if the form is altered or any part thereof detached.

D. If the proposal shows any non-compliance with applicable law, alteration of form, additions not called, conditional bids, incomplete bids, uninitiated erasures, other defects, or if the prices are obviously unbalanced, or if sufficient funds are not available to prosecute the work.

E. If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

This does not exclude a proposal limiting the maximum gross amount of awards acceptable to any one bidder at any one bid letting, provided that any selection of awards will be made by the Department.

F. When a proposal is signed by an officer or officers of a corporation and a currently certified corporate resolution authorizing such signer(s) to submit such proposal is not submitted with the proposal or when the proposal is signed by an agent other than the officer or officers of a corporation or a member of a partnership and a Power of Attorney is not submitted with the proposal.

G. Where there is an incomplete or ambiguous listing of joint contractors and/or subcontractors the proposal may be rejected. All work which is not listed as being performed by joint contractor and/or subcontractors must be performed by the bidder with his own employees. Additions to the list of joint contractors or subcontractors will not be allowed pre-bid. Whenever there is a doubt as to the completeness of the list, the bidder will be required to submit within five (5) working days, written confirmation that the work in question will be performed with his own force. Whenever there is more than one joint contractor and/or subcontractor listed for the same item of work, the bidder will be required to either confirm in writing within five (5) working days that all joint contractors or subcontractors listed will actually be engaged on the project or obtain with five (5) working days, written releases from those joint contractor and/or subcontractors who will not be engaged.

AWARD OF CONTRACT - The award of contract, if it be awarded, will be made within ninety (90) consecutive calendar days after the opening of the proposals to the lowest responsible and responsive bidder (including the alternate or alternates which may be selected by the Department in the case of alternate bids) whose proposal complies with all the requirements prescribed, but in no case will an award be made until all necessary investigations are made. The successful bidder will be notified, by letter mailed to the address shown on the proposal that his bid has been accepted and that he has been awarded the contract.

No contract will be awarded to any person or firm suspended under the provisions of Chapter 104 and Chapter 444, Hawaii Revised Statutes, as amended.

CANCELLATION OF AWARD - The Department reserves the right to cancel the award of any contract at any time before the execution of said contract by all parties without any liability to the awardee and to any other bidder.

RETURN OF BID SECURITY – All bid securities, except those of the four (4) lowest bidders, may be returned following the opening and checking of the proposals and after receipt of a written request from the contractor. The bid securities of the remaining low bidders may be returned following the execution of a contract and after receipt of a written request from the contractor. The successful bidder's bid security may be returned after the contract has been completed and after receipt of a written request from the contractor.

REQUIREMENT OF PERFORMANCE AND PAYMENT BONDS - Performance and Payment Bonds shall be required for contracts exceeding \$50,000. At the time of the execution of the contract, the successful bidder shall file a good and sufficient



performance and payment bonds on the form furnished by the Department or the contractors Surety, each in an amount equal to one hundred percent (100%) of the amount of the contract price unless otherwise stated in the solicitation of bids.

Acceptable performance and payment bonds shall be limited to the following:

A. Surety bond underwritten by a company licensed to issue bonds in this State; or

B. Legal Tender; or

C. A certificate of deposit; share certificate; or cashier's, treasurer's, teller's or official check drawn by, or a certified check accepted by, and payable on demand to the State by a bank, a savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

(1) These instruments may be utilized only to a maximum of \$100,000.

(2) 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.

If the contractor fails to deliver the required performance and payment bonds, the contractor's award shall be canceled, its bid security enforced and award of the contract shall be made to the next lowest qualified bidder, or the State may re-bid the project.

EXECUTION OF THE CONTRACT - The contract shall be signed by the successful bidder and returned, together with a satisfactory performance and payment bonds, within ten (10) consecutive calendar days, after the bidder has received his contract for execution or within such further time as the Department may allow. No proposal or contract shall be considered binding upon the State until (1) the contract has been fully and properly executed by all parties thereto and the Department has endorsed therein his certificate, as required by Section 103D-309, Hawaii Revised Statutes, that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the State's amount required by such contract and (2) a fully executed contract has been delivered to the Contractor.

On any individual award totaling less than \$50,000, the State reserves the right to execute the contract by the issuance of a State Purchase Order. Acceptance shall result in a binding contract between the parties without further action by the State. Executing the contract by Purchase Order shall not be deemed a waiver of these specification requirements.

FAILURE TO EXECUTE THE CONTRACT - If the bidder to whom a contract is awarded shall fail or neglect to enter into the contract and to furnish satisfactory security within ten (10) consecutive calendar days after such award or within such further time as the Department may allow, the award shall be canceled and the bid security shall be declared forfeited. The bid security shall thereupon become a realization of the State,

not as a penalty, but in liquidation of the damages sustained. The Department may thereupon award the contract to the next lowest responsible bidder or may call for new bids, whichever method he may deem is to the best interest of the State.

NOTICE TO PROCEED - After the contract is fully executed, the Contractor will be sent a formal "Notice to Proceed" advising the Contractor of the date on which he may proceed with the work. The Contractor shall be allowed ten (10) consecutive working days from said date to begin his work. In the event that the Contractor refuses or neglects to start the work, the Department may terminate the contract.