

**STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
HIGHWAYS DIVISION**

**ADDENDUM NO. 2
FOR
ASPHALT PAVEMENT PRESERVATION, RESURFACING, AND
RECONSTRUCTION AT VARIOUS LOCATIONS, ISLAND OF KAUAI
PROJECT NO. STP-0700(089)**

The following amendments shall be made to the Bid Documents:

A. NOTICE TO BIDDERS

1. Prospective bidders are hereby notified that receiving of sealed bids scheduled for Thursday, December 1, 2022, at 2:00 P.M. Hawaii Standard Time (HST) will be postponed and rescheduled for Thursday, December 8, 2022, at 2:00 P.M. HST. The attached NOTICE TO BIDDERS shall be incorporated and made a part of the NOTICE TO BIDDERS.
2. Prospective bidders are hereby notified that the submission of the Disadvantaged Business Enterprise (DBE) Contract Goal Verification and Good Faith Efforts Documentation for Construction, DBE Confirmation and Commitment Agreement – Trucking Company, and DBE Confirmation and Commitment Agreement – Subcontractor, Manufacturer, or Supplier scheduled for December 6, 2022 will be postponed and rescheduled for December 13, 2022. The attached NOTICE TO BIDDERS shall be incorporated and made a part of the NOTICE TO BIDDERS.

B. SPECIAL PROVISIONS

1. Replace **SECTION 102 – BIDDING REQUIREMENTS AND CONDITIONS**, pages 102-1a to 102-12a, dated r11/4/22 with attached Section 102 – BIDDING REQUIREMENTS AND CONDITIONS, pages 102-1a to 102-12a, dated r11/28/22.

Please acknowledge receipt of this Addendum No. 2 by recording the date of its receipt in the space provided on page P-4 of the Proposal.



JADE T. BUTAY
Director of Transportation

NOTICE TO BIDDERS

The receiving of sealed bids for **ASPHALT PAVEMENT PRESERVATION, RESURFACING, AND RECONSTRUCTION AT VARIOUS LOCATIONS, ISLAND OF KAUAI, PROJECT NO. STP-0700(089)**, in HlePRO, scheduled for Thursday, December 1, 2022, at 2:00 P.M. Hawaii Standard Time (HST), is hereby POSTPONED UNTIL Thursday, December 8, 2022, at 2:00 P.M. HST. Bids received after said due date and time shall not be considered.

The submission of the Disadvantaged Business Enterprise (DBE) Contract Goal Verification and Good Faith Efforts Documentation for Construction, DBE Confirmation and Commitment Agreement – Trucking Company and DBE Confirmation and Commitment Agreement – Subcontractor, Manufacturer, or Supplier scheduled for December 6, 2022 is hereby POSTPONED UNTIL December 13, 2022.



JADE T. BUTAY
Director of Transportation

Posted:

1 Make this section a part of the Standard Specifications:

2
3 **“SECTION 102 - BIDDING REQUIREMENTS AND CONDITIONS**

4
5
6 **102.01 Prequalification of Bidders.** Prospective bidders shall be capable of
7 performing the work for which they are bidding.

8
9 In accordance with HRS Chapter 103D-310, the Department may require
10 any prospective bidder to submit answers to questions contained in the 'Standard
11 Qualification Questionnaire For Prospective Bidders On Public Works Contracts'
12 furnished by the Department, properly executed and notarized, setting forth a
13 complete statement of the experience of such prospective bidder and its
14 organization in performing similar work and a statement of the equipment proposed
15 to be used, together with adequate proof of the availability of such equipment.
16 Whenever it appears to the Department, from answers to the questionnaire or
17 otherwise, that the prospective bidder is not fully qualified and able to perform the
18 intended work, the Department will, after affording the prospective bidder an
19 opportunity to be heard and if still of the opinion that the bidder is not fully qualified
20 to perform the work, refuse to receive or consider any bid offered by the
21 prospective bidder. All information contained in the answers to the questionnaire
22 shall be kept confidential. Questionnaire so submitted shall be returned to the
23 bidders after serving their purpose.

24
25 No person, firm or corporation may bid where (1) the person, firm, or
26 corporation, or (2) a corporation owned substantially by the person, firm, or
27 corporation, or (3) a substantial stockholder or an officer of the corporation, or (4)
28 a partner or substantial investor in the firm is in arrears in payments owed to the
29 State or its political subdivisions or is in default as a surety or failure to do faithfully
30 and diligently previous contracts with the State.

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

- 34
35 (1) The location,
36
37 (2) Description of the proposed work,
38
39 (3) The approximate quantities,
40
41 (4) Items of work to be done or materials to be furnished,
42
43 (5) A schedule of items, and
44
45 (6) The time in which the work shall be completed.
46

47 Papers bound with or attached to the proposal form are part of the proposal.
48 The bidder shall not detach or alter the papers bound with or attached to the
49 proposal when the bidder submits its proposal through HlePRO.
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51 Also, the bidder shall consider other documents including the plans and
52 specifications a part of the proposal form whether attached or not.
53

54 **102.03 (Unassigned)**
55

56 **102.04 Estimated Quantities.** The quantities shown in the contract are
57 approximate and are for the comparison of bids only. The actual quantity of work
58 may not correspond with the quantities shown in the contract. The Department will
59 make payment to the Contractor for unit price items in accordance with the contract
60 for only the following:
61

62 (1) Actual quantities of work done and accepted, not the
63 estimated quantities; or
64

65 (2) Actual quantities of materials furnished, not the estimated
66 quantities.
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68 The Department may increase, decrease, or omit each scheduled quantities
69 of work to be done and materials to be furnished. When the Department increases
70 or decreases the estimated quantity of a contract item by more than 15% the
71 Department will make payment for such items in accordance with Subsection
72 104.06 - Methods of Price Adjustment.
73

74 **102.05 Examination of Contract and Site of Work.** The bidder shall examine
75 carefully the site of the proposed work and contract before submitting a proposal.
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77 By the act of submitting a bid for the proposed contract, the bidder warrants
78 that:
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80 (1) The bidder and its Subcontractors have reviewed the contract
81 documents and found them free from ambiguities and sufficient for
82 the purpose intended;
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84 (2) The bidder and its workers, employees and subcontractors
85 have the skills and experience in the type of work required by the
86 contract documents bid upon;
87

88 (3) Neither the bidder nor its employees, agents, suppliers, or
89 subcontractors have relied upon verbal representations from the
90 Department, its employees, or agents, including architects,
91 engineers, or consultants, in assembling the bid figure; and
92

93 (4) The basis for the bid figure are solely on the construction
94 contract documents.

95 Also, the bidder warrants that the bidder has examined the site of the work.
96 From its investigations, the bidder acknowledges satisfaction on:

- 97
- 98 (1) The nature and location of the work;
 - 99
 - 100 (2) The character, quality, and quantity of materials;
 - 101
 - 102 (3) The difficulties to be encountered; and
 - 103
 - 104 (4) The kind and amount of equipment and other facilities
105 needed.
 - 106

107 Subsurface information or hydrographic survey data furnished are for the
108 bidders' convenience only. The data and information furnished are the product of
109 the Department's interpretation gathered in investigations made at the specific
110 locations. These conditions may not be typical of conditions at other locations
111 within the project area or that such conditions remain unchanged. Also, conditions
112 found at the time of the subsurface explorations may not be the same conditions
113 when work starts. The bidder shall be solely responsible for assumptions,
114 deductions, or conclusions the bidder may derive from the subsurface information
115 or data furnished.

116

117 If the Engineer determines that the natural conditions differ from that
118 originally anticipated or contemplated by the Contractor in the items of excavation,
119 the State may treat the difference in natural conditions, as falling within the
120 meaning of Subsection 104.02 – Changes.

121

122 **102.06 Preparation of Proposal.** The submittal of its proposal shall be on
123 forms furnished by the Department. The bidder shall specify in words or figures:

- 124
- 125 (1) A unit price for each pay item with a quantity given;
 - 126
 - 127 (2) The products of the respective unit prices and quantities;
 - 128
 - 129 (3) The lump sum amount; and
 - 130
 - 131 (4) The total amount of the proposal obtained by adding the
132 amounts of the several items.
 - 133

134 The words and figures shall be in ink or typed. If a discrepancy occurs
135 between the prices written in words and those written in figures, the prices written
136 in words shall govern.

137

138 When an item in the proposal contains an option to be made, the bidder
139 shall choose in accordance with the contract for that particular item. Determination
140 of an option will not permit the Contractor to choose again.

141 The bidder shall sign the proposal properly in ink. A duly authorized
142 representatives of the bidder or by an agent of the bidder legally qualified and
143 acceptable to the Department shall sign, including one or more partners of the
144 bidder and one or more representatives of each entity comprising a joint venture.

145
146 When an agent, other than the officer(s) of a corporation authorized to sign
147 contracts for the corporation or a partner of a partnership, signs the proposals, a
148 'Power of Attorney' shall be on file with the Department or submitted with the
149 proposal. Otherwise, the Department will reject the proposal as irregular and
150 unauthorized.

151
152 The bidder shall submit acceptable evidence of the authority of the partner,
153 member(s), or officer(s) to sign for the partnership, joint venture, or corporation
154 respectively with the proposal. Otherwise, the Department will reject the proposal
155 as irregular and unauthorized.

156
157 **102.07 Irregular Proposals.** The Department may consider proposals irregular
158 and may reject the proposals for the following reasons:

159
160 (1) The proposal is a form not furnished by the Department,
161 altered, or detached;

162
163 (2) The proposal contains unauthorized additions, conditions, or
164 alternates. Also, the proposal contains irregularities that may tend
165 to make the proposal incomplete, indefinite, or ambiguous to its
166 meaning;

167
168 (3) The bidder adds provisions reserving the right to accept or
169 reject an award. Also, the bidder adds provisions into a contract
170 before an award;

171
172 (4) The proposal does not contain a unit price for each pay item
173 listed except authorized optional pay items; and

174
175 (5) Prices for some items are out of proportion to the prices for
176 other items.

177
178 (6) If in the opinion of the Director, the bidder and its listed
179 subcontractors do not have the Contractor's licenses or combination
180 of Contractor's licenses necessary to complete the work.

181
182 Where the prospective bidder is bidding on multiple projects simultaneously
183 and the proposal limits the maximum gross amount of awards that the bidder can

184 accept at one bid letting, the proposal is not irregular if the limit on the gross
185 amount of awards is clear, and the Department selects the awards that can be
186 given.

187 **102.08 Proposal Guaranty.** In as much as the contract to be executed is a
188 price-term, open end, or requirements contract under which the contract price or
189 total amount to be paid the Contractor cannot be determined at the time the
190 contract is executed, the proposal guaranty required shall be in the following
191 amounts.

192	<u>Proposal</u>	<u>Security Amount</u>
193		
194		
195	A – Area 1	\$500,000.00
196	B – Area 2	\$500,000.00
197	C – Area 3	\$500,000.00
198	D – Area 4	\$500,000.00
199		

200 The Department will not consider a proposal of \$25,000 or more unless
201 accompanied by:

- 202
- 203 (1) A deposit of legal tender; or
- 204
- 205 (2) A valid surety bid bond, underwritten by a company licensed
206 to issue bonds in the State of Hawaii, in the form and composed,
207 substantially, with the same language as provided herewith and
208 signed by both parties; or
- 209
- 210 (3) A certificate of deposit, share certificate, cashier's check,
211 treasurer's check, teller's check, or official check drawn by, or a
212 certified check accepted by and payable on demand to the State by
213 a bank, savings institution, or credit union insured by the Federal
214 Deposit Insurance Corporation (FDIC) or the National Credit Union
215 Administration (NCUA).
- 216
- 217 (a) The bidder may use these instruments only to a
218 maximum of \$100,000.
- 219
- 220 (b) If the required security or bond amount totals over
221 \$100,000 more than one instrument not exceeding \$100,000
222 each and issued by different financial institutions shall be
223 acceptable.
- 224
- 225 (c) The instrument shall be made payable at sight to the
226 Department.
- 227
- 228 (d) Proposal Guaranty listed in (1) and (3) shall be in its
229 original form, and shall be received at the Contracts Office,

230 Department of Transportation, 869 Punchbowl Street,
231 Honolulu, Hawaii 96813 before the bid deadline.

232

233 The above shall be in the amount of \$500,000.00 for each Area.

234

235 **102.09 Delivery of Proposal.** The bidder shall submit the proposal in HlePRO.
236 Bids received after said due date and time shall not be considered. Original bid
237 documents do not have to be submitted. Award will be made based on proposals
238 submitted in HlePRO.

239

240 **102.10 Withdrawal or Revision of Proposals.** A bidder may withdraw or
241 revise a proposal after the bidder submits the proposal in HlePRO. Withdrawal or
242 revision of proposal must be completed before the time set for the receiving of
243 bids.

244

245 **102.11 Public Opening of Proposals.** Not applicable.

246

247 **102.12 Disqualification of Bidders.** The Department may disqualify a bidder
248 and reject its proposal for the following reasons:

249

250 (1) Submittal of more than one proposal whether under the same
251 or different name.

252

253 (2) Evidence of collusion among bidders. The Department will
254 not recognize participants in collusion as bidders for any future work
255 of the Department until such participants are reinstated as qualified
256 bidders.

257

258 (3) Lack of proposal guaranty.

259

260 (4) Submittal of an unsigned or improperly signed proposal.

261

262 (5) Submittal of a proposal without a listing of subcontractors or
263 containing only a partial or incomplete listing of subcontractors.

264

265 (6) Submittal of an irregular proposal in accordance with
266 Subsection 102.06 - Irregular Proposals.

267

268 (7) Evidence of assistance from a person who has been an
269 employee of the agency within the preceding two years and who
270 participated while in State office or employment in the matter with
271 which the contract is directly concerned, pursuant to HRS Chapter
272 84-15.

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274 (8) Suspended or debarred in accordance with HRS Chapter
275 104-25.

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- (9) Failure to complete the prequalification questionnaire, if applicable.
- (10) Failure to attend the mandatory pre-bid meeting, if applicable.

102.13 Material Guaranty. The successful bidder may be required to furnish a statement of the composition, origin, manufacture of materials, and samples.

102.14 Substitution of Materials and Equipment Before Bid Opening. See Subsection 106.13 for Substitution Of Materials and Equipment After Bid Opening.

(A) General. When brand names of materials or equipment are specified in the contract documents, they are to indicate a quality, style, appearance, or performance and not to limit competition. The bidder shall base its bid on one of the specified brand names unless alternate brands are qualified as equal or better in an addendum. Qualification of such proposed alternate brands shall be submitted via email to the Contact person listed in HlePRO for the solicitation and also post a question in HlePRO under the question/answer tab referencing the email with the request. The request must be posted in HlePRO no later than 14 calendar days before the bid opening date, not including the bid opening date

An addendum will be issued to inform all prospective bidders of any accepted substitution in accordance with Subsection 102.16 – Addenda.

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

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

102.15 Bid Adjustment. The following preference shall apply to this project:

(A) Preferences for Apprenticeship Programs. In accordance with ACT 17, SLH 2009 – Apprenticeship Program and the Bipartisan Infrastructure Law Section 25019(a), a 5% bid adjustment for bidders that are parties to apprenticeship agreements pursuant to Hawaii Revised Statutes (HRS) Section 103-55.6 may be applied to the bidder's price for

322 evaluation purposes. These procedures apply to public works projects with
323 an estimated cost of \$250,000 or more and entered into under the
324 provisions of HRS Chapter 103.

325 The following provisions apply to this Apprenticeship Program.

326
327 **(1)** Definitions.

328
329 **(a)** “Apprenticeable trade”, HRS Section 103-55.6 (c),
330 shall have the same meaning as ‘apprenticeable occupation’
331 pursuant to Hawaii Administrative Rules (HAR) Section 30-1-
332 5.

333
334 **(b)** “Department” means the department of labor and
335 industrial relations.

336
337 **(c)** “Director” means the director of labor and industrial
338 relations.

339
340 **(d)** “Employ” means the employment of a person in an
341 employer-employee relations.

342
343 **(e)** “Governmental body” means as defined in HRS
344 Section 103D-104.

345
346 **(f)** “Party to an apprenticeship agreement” means party to
347 a registered apprenticeship program with the department of
348 labor and industrial relations.

349
350 **(g)** “Preference” means the 5% by which the qualified
351 bidder's offer amount would be decreased for evaluation
352 purposes.

353
354 **(h)** “Public work” shall be as defined in HRS Section 104-
355 2 and HAR Section 12-22-1.

356
357 **(i)** “Registered apprenticeship program” means a
358 construction trade program approved by the department
359 pursuant to HAR Section 12-30-1 and Section 12-30-4.

360
361 **(j)** “Sponsor” means an operator of an apprenticeship
362 program and in whose name the program is approved and
363 registered with the department of labor and industrial relations
364 pursuant to HAR Section 12-30-1.

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366 **(k)** Offeror – Entity/bidder submitting a proposal to
367 undertake a project.

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- (l) Procurement Officer – Director of Transportation or his authorized representative.
- (2) Qualification Procedures.
- (a) Any bidder seeking the preference must be a party to an apprenticeship agreement registered with the department at the time the offer is made for each apprenticeable trade the bidder will employ to construct the public works projects for which the offer is being made.
1. The apprenticeship agreement shall be registered and conform to the requirements of HRS Chapter 372.
 2. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.
 3. The bidder is not required to have apprentices in its employ at the time of submittal of an offer to qualify for the preference.
- (b) The department shall:
1. Develop and maintain a list of construction trades in registered apprenticeship programs which conform to HRS Chapter 372; and
 2. Electronically post the list, including any amendments, on the department website (<http://labor.hawaii.gov>).
- (c) Bidder is responsible to comply with all submission requirements for registration of its apprenticeship program before requesting a preference.
- (d) Bidder shall provide a certification by the sponsor of the respective registered apprenticeship programs covering the relevant trade(s) for the public works project.
- (e) *Certification Form 1* issued by the department shall include:
1. Contractor information;

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2. Solicitation reference;
3. Trade(s);
4. Date and name of apprenticeship program;
5. Signature of authorized training coordinator or training trust fund administrator certifying that the contractor is a participant in the program, and that the program is registered with the department;
6. Contract information for sponsor's authorized representative signing the form;
7. Number of apprentices enrolled in the program, number who successfully completed the apprenticeship program in the past 12 months, including whether the contractor is signatory to a collective bargaining agreement for that trade, or if not, provide for attachment of a copy of the agreement between the contractor and the program.

(3) Solicitation Procedures.

(a) If the NTB indicates that this project is covered by this preference, and the offer is less than \$250,000 this preference will still be applicable in determining the lowest bidder.

(b) A claim for this preference must include the following:

1. Allow bidder seeking to claim the preference to state the trades the bidder will employ to perform the work;
2. For each trade to be employed to perform the work, the bidder shall submit a completed signed original *Certification Form 1* verifying participation in an apprenticeship program registered with the department;
3. The *Certification Form 1* shall be authorized by an apprenticeship sponsor of the department's list of registered apprenticeship programs. The authorization shall be an original signature by an authorized official of the apprenticeship sponsor; and
4. The completed *Certification Form 1* for each

460 trade must be submitted by the bidder with the offer.
461 Previous certifications shall not apply unless allowed
462 by the solicitation.

463 (c) Upon receiving *Certification Form 1*, the procurement
464 officer will verify with the department that the apprenticeship
465 program is on the list of apprenticeship programs registered
466 with the department. If the programs are not confirmed by the
467 department, the bidder will not qualify for the preference.

468
469 (4) Evaluation and Contract Award

470
471 (a) If the bidder certifies participation in an apprenticeship
472 program for each trade which will be employed by the bidder
473 for the project, the procurement officer shall apply the
474 preference and decrease the bidder's total bid amount by five
475 per cent (5%) for evaluation purposes.

476
477 (b) Should the bidder qualify for other statutory
478 preferences (for example, Hawaii products), all applicable
479 preferences shall be applied to the bidder's price.

480
481 (c) The contract amount shall be the original offer amount,
482 exclusive of any preference; the preference is only for
483 evaluation purposes.

484
485 (d) Any claims challenging a bidder's representation that
486 the bidder is a participant in an apprenticeship program(s) as
487 claimed, shall be submitted to the procurement officer. The
488 procurement officer will refer the challenge to the department
489 of labor and industrial relations who shall investigate any such
490 claims and shall make a determination.

491
492 (5) Contract Administration

493
494 (a) For the duration of a contract awarded utilizing the
495 apprenticeship preference, the contractor shall certify each
496 month that work is being conducted on the project, that it
497 continues to be a participant in the relevant apprenticeship
498 program for each trade it employs.

499
500 (b) Monthly certification shall be made on *Monthly*
501 *Certification Form 2* prepared and made available by the
502 department, be a signed original by the respective
503 apprenticeship program sponsors authorized official, and
504 submitted by the contractor with its monthly payment
505 requests.

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(c) Should the contractor fail or refuse to submit its monthly certification forms, or at any time during the construction of the project, cease to be a part to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the contractor will be subject to the following sanctions:

1. Withholding of the requested payment until the required form(s) are submitted;
2. Temporary or permanent cessation of work on the project , without recourse to breach of contract claims by the contractor; provided the agency shall be entitled to restitution for nonperformance or liquidated damages claims; or
3. Proceed to debar or suspend pursuant to HRS Section 103D-702.

(d) If events such as “acts of God,” acts of a public enemy, acts of the State or any other governmental body in its sovereign or contractual capacity, fires, floods, epidemics, freight embargoes, unusually severe weather, or strikes or other labor disputes prevent the contractor from submitting the certification forms, the contractor shall not be penalized as provided herein, provided the contractor completely and expeditiously complies with the certification process when the event is over.

102.16 Certification for Safety and Health Program for Bids in excess of \$100,000. In accordance with HRS Chapter 396-18, the bidder or offeror, by signing and submitting this proposal, 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 the State Department of Labor and Industrial Relations, Occupational Safety and Health Division (HIOSH).

102.17 Addenda. Addenda issued shall become part of the contract documents. Addenda to the bid documents will be provided to all prospective bidders via HlePRO. Each addendum shall be an addition to the contract documents. The terms and requirements of the bid documents (i.e., drawings, specifications and other bid and contract documents) cannot be changed prior to the bid opening except by a duly issued addendum.”

END OF SECTION 102