

**GENERAL INSTRUCTIONS TO BIDDERS  
(CONSTRUCTION SERVICES)**

**TABLE OF CONTENTS**

GENERAL INSTRUCTIONS TO BIDDERS ..... 1

CHAPTER 1 - BID REQUIREMENTS AND CONDITIONS ..... 1

    1.1 QUALIFICATION OF BIDDERS ..... 1

    1.2 CLARIFICATION; ADDENDUM ..... 2

    1.3 PRE-BID CONFERENCE ..... 3

    1.4 EXAMINATION OF INVITATION FOR BIDS AND SITE OF PROJECT ..... 3

    1.5 BIDDER’S WARRANTY ..... 4

    1.6 NO COLLUSION ..... 4

    1.7 ESTIMATED QUANTITIES ..... 4

    1.8 WAGES ..... 5

    1.9 ALLOWANCE ..... 6

    1.10 MOBILIZATION ..... 6

    1.11 MULTIPLE OR ALTERNATE BIDS ..... 7

    1.12 BRAND NAMES, MODELS; SUBSTITUTIONS ..... 7

    1.13 PREFERENCES ..... 9

    1.14 BID SECURITY, CONTRACT PERFORMANCE, AND PAYMENT BONDS ..... 14

    1.15 INSURANCE; INDEMNIFICATION ..... 15

    1.16 RESPONSIBILITY OF BIDDERS ..... 15

    1.17 TIMELY SUBMISSION OF ALL CERTIFICATES ..... 16

    1.18 PREPARATION OF BIDS ..... 16

    1.19 JOINT CONTRACTOR; SUBCONTRACTOR ..... 17

    1.20 SAFETY AND HEALTH; CERTIFICATION ..... 17

    1.21 PRE-OPENING MODIFICATION OR WITHDRAWAL OF BIDS ..... 17

    1.22 APPARENT LOW BIDDER SUBMISSION OF ORIGINAL SIGNATURE BID DOCUMENTS ..... 18

    1.23 DEVELOPMENT OF SPECIFICATIONS ..... 18

    1.24 CERTIFICATE OF COST OR PRICING DATA ..... 18

    1.25 DETERMINATION OF CONTRACTUAL TERMS AND CONDITIONS ..... 18

CHAPTER 2 - BID OPENING; AWARD AND EXECUTION OF CONTRACT ..... 18

    2.1 RECEIPT OF BIDS ..... 18

    2.2 TIME FOR ACCEPTANCE OF BID RECEIVED IN RESPONSE TO A SOLICITATION ..... 18

    2.3 EXTENSION OF TIME FOR ACCEPTANCE OF BID ..... 18

    2.4 MISTAKES IN BID; CORRECTIONS OR WITHDRAWALS AFTER BID OPENING ..... 19

    2.5 LOW TIE BIDS ..... 19

    2.6 CANCELLATION OF SOLICITATION ..... 20

    2.7 REJECTION OF BIDS ..... 21

    2.8 AWARD ..... 21

    2.9 CONTRACT NOT BINDING UNLESS FUNDS AVAILABLE ..... 22

    2.10 EXECUTION OF CONTRACT ..... 23

CHAPTER 3 - PROTESTS; SUSPENSION AND DEBARMENT ..... 24

    3.1 AUTHORITY TO RESOLVE PROTESTED SOLICITATIONS AND AWARDS ..... 24

    3.2 AUTHORITY TO DEBAR OR SUSPEND ..... 24

    3.3 SOLICITATION OR AWARD IN VIOLATION OF LAW ..... 24

## GENERAL INSTRUCTIONS TO BIDDERS

These General Instructions to Bidders (General Instructions) describe the Board of Water Supply of the City and County of Honolulu's (BWS) policy relating to bidding for construction projects as authorized by the Hawaii Revised Statutes (HRS) Chapter 103D and Hawaii Administrative Rules (HAR), Title 3, Department of Accounting and General Services. Should any provision herein be inconsistent with the HAR, the HAR shall govern. Where there is a discrepancy between the bid proposal and other parts of the invitation for bids, the bid proposal shall govern.

The defined terms described in Section 1.1 of the General Terms and Conditions of Construction Contracts of the Honolulu Board of Water Supply (the General Conditions) shall have the same meaning for purposes of these General Instructions.

The General Conditions are incorporated by reference and are included in the Header files of each Solicitation and are also available to be downloaded from the BWS Procurement website found at:

<https://www.boardofwatersupply.com/procurement>

### CHAPTER 1 - BID REQUIREMENTS AND CONDITIONS

#### 1.1 Qualification of Bidders

- A. Prospective bidders must be properly licensed and capable of performing the work for which bids are being called. Unless specifically prohibited by law, the Contracting Officer or, for Informal Bids (as this term is defined below), the Officer-in-Charge shall determine the licensing requirement for the work for which bids are being solicited.
- B. Partnership; Joint Venture. In accordance with Section 16-77-13, Hawaii Administrative Rule, Title 16, Chapter 77, Contractors of the State Department of Commerce and Consumer Affairs, contractors shall notify the Contractors' Licensing Board of their intent to form a joint venture or partnership to bid on a project. A copy of this notification to the Contractors' Licensing Board shall be submitted with the bid.
- C. Qualification Questionnaire. The Contracting Officer shall determine whether the bidder or prospective bidder has the financial ability, resources, skills, capability, and business integrity to perform the work intended. For this purpose, the Contracting Officer may require any bidder or prospective bidder to submit answers, under oath, to questions contained in a questionnaire prepared by the Contracting Officer. If upon review of the questionnaire or otherwise, the bidder or prospective bidder appears not to be fully qualified or able to perform the intended work, the Contracting Officer 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 questionnaire will be sufficient cause for the Contracting Officer to disqualify a bidder.
- D. Disqualification of Prospective Bidders. Any one or more of the following causes will be considered as sufficient for the disqualification of a prospective bidder:
  - (1) Is currently suspended or debarred under the provisions of HRS 103, HRS 103D, HRS 104, or HRS 444.

(2) Noncompliance with subsection (C).

(3) Has uncompleted work on contracts in force, or a record of unsatisfactory work performance or delays on completed contracts or on contracts in force which, in the judgment of the Contracting Officer and the Officer-in-Charge, might hinder or prevent the prompt completion of additional work if awarded.

(4) Has complaints filed against the bidder for abusive or threatening language or behavior during previous contracts toward any officer-in-charge or his/her representative.

(5) Has failed to pay or satisfactorily settle taxes due the State or Internal Revenue Service, bills due for labor and materials on contracts in force, or has a history of failure to pay or satisfactorily settle bills due for labor and materials on contracts in force.

(6) Has defaulted under a previous contract.

(7) Has failed to comply or is delaying compliance with the requirements of sections 4.21, Final inspection, or 6.5, Final payment, of the General Conditions for any contract in force.

- E. The disqualified bidder shall be immediately notified of the determination of its non-responsibility. The Contracting Officer's decision shall be final unless the prospective bidder applies for administrative relief pursuant to Chapter 3-126, HAR.
- F. Out-of-state contractors shall comply with Hawaii Administrative Rules §16-77-89 requiring Contractors to have a place of business in the State.

## 1.2 **Clarification: Addendum**

- A. Prospective bidders should examine and review the Invitation for Bids with care. If it should appear to a prospective bidder that the performance of the work under the contract or any of the matters relative thereto is not sufficiently described or explained in the Invitation for Bids, or that any discrepancy exists between different parts of the Invitation for Bids, or that the full intent of the Invitation for Bids is not clear, then the bidder shall submit a written email request for clarification not later than ten (10) calendar days before the date fixed for opening of bids, as evidenced by the time that the email is received by the Procurement office, or within such time as the Officer-in-Charge may allow. All questions, comments, and requests for clarification regarding this Solicitation must be submitted in writing via email to: FN\_procurement@hbws.org in order to generate an official answer. All written questions will receive an official written response from the BWS and become addenda to the Solicitation. The only official position of the BWS is that which is stated in writing and issued in the Solicitation as addenda thereto. All other means of communication, whether oral or written, shall not be formal or official responses/statements and may not be relied upon.
- B. Distribution. All addenda will be posted to the Solicitation on the BWS HePS page at <https://basec.sicomm.net/BWS/>

Each bidder has an ongoing responsibility to check the Solicitation for addenda. The BWS has no obligation to provide prospective bidders with any other notice of addenda being issued. However, if prospective bidders have questions about addenda, they may contact the BWS's Office of Procurement at (808) 748-5071.

- C. Informal Bids. For bids involving construction estimated to be under \$25,000 ("Informal Bids"), addenda may be issued by the Officer-in-Charge.

### **1.3 Pre-Bid Conference**

Pre-bid conference, if held, shall be announced in the HePS Solicitation, or in an addendum. Nothing stated at the pre-bid conference shall change the Solicitation unless a change is made by written addendum.

### **1.4 Examination of Invitation for Bids and Site of Project**

- A. The bidder shall carefully examine the site of the proposed work and the Invitation for Bids before submitting a bid.
- B. Surface and Subsurface Conditions. Where subsurface conditions are known to the BWS in respect to foundation or other design, bidders may inspect the records of the BWS as to such information and examine any sample that may be available. Where such information is shown in the plans, said information represents only the statement by the BWS as to the character of material that has been actually encountered by the BWS and is included only for the convenience of bidders. The BWS makes no representations as to the conditions that will actually be encountered by bidders. Any subsurface information or hydrographic survey data furnished are for the bidder's convenience only. The information and data furnished are the product of the Officer-in-Charge's interpretation of the facts gathered in investigations made at the specific locations indicated to aid in the design of the project, and the BWS assumes no responsibility whatsoever in respect to the sufficiency or accuracy of borings or of the log of test borings or other preliminary investigations, or of the interpretation thereof, and there is no guaranty, either express or implied, that the conditions indicated are representative of those existing throughout the work. In addition, no assurance is given that conditions found at the time of the subsurface explorations, such as the presence or absence of water, will be the conditions that prevail at the time of construction. The bidder shall be solely responsible for all assumptions, deductions, or conclusions the bidder may make or derive from the subsurface information or data furnished. Making information concerning subsurface conditions available to bidders is not to be construed in any way as a waiver of the bidder's responsibility to examine the Invitation for Bids and site. Bidders must satisfy themselves through their own investigations as to conditions to be encountered.
- C. Utilities, Underground. All underground water, gas, oil, telephone, electric, storm drain, sewer, and other pipes or conduits shown on the plans are only approximate in their locations. The Contractor shall make a personal investigation and inspection of the records and drawings possessed by owners of the utilities. The Contractor shall make satisfactory arrangements with the owners of the utilities for the relocation, maintenance and protection of existing utilities.

- D. Materials and Equipment. The BWS does not assume any responsibility for the availability of any materials or equipment required under this contract. Unless otherwise specified in the Invitation for Bids, the bidder shall be considered as having taken into account when submitting a bid the availability of materials or equipment required under the contract, except as provided for in Section 5.3 of the General Conditions.

### **1.5 Bidder's Warranty**

By the act of submitting a bid for the proposed contract, the bidder warrants that:

- A. The bidder will perform, with its own organization, work amounting to not less than twenty percent (20%) of the total contract cost, exclusive of costs for materials and equipment the bidder purchases for installation by its subcontractors, except that any items designated by the Board of Water Supply in the contract as "specialty work" may be performed by a subcontract and the cost of such specialty work so performed by the subcontract may be deducted from the total contract before computing the amount of work required to be performed by the bidder with its own organization.
- B. The bidder and all subcontractors intended to be used by the bidder have carefully and thoroughly reviewed the Invitation for Bids and have found it complete and free from ambiguities and sufficient for the purpose intended;
- C. The bidder has investigated and, if necessary, examined the site and understands the conditions to be encountered in performing the work;
- D. The bidder and all workers, employees and subcontractors intended to be used are skilled and experienced in the type of construction represented by the construction contract documents bid upon;
- E. Neither the bidder nor any of the bidder's employees, agents, suppliers or subcontractors have relied upon any verbal representations from the BWS, its employees or agents, including architects, engineers or consultants, in assembling the bid figure; and that
- F. The bid price is based solely upon the Invitation for Bids and properly issued written addenda and not upon any other written or verbal representation, and upon the bidder's own examination and investigation of surface and subsurface conditions and availability of materials and equipment.

### **1.6 No Collusion**

By submitting a bid, the bidder certifies that the price submitted was independently arrived at without collusion.

### **1.7 Estimated Quantities**

- A. All quantities appearing in the Invitation for Bids are approximate, and those indicated in the proposal are prepared for the comparison of bids only. The BWS does not, expressly or by implication, warrant that the actual quantities will correspond therewith. Bidders shall include in their bid prices the entire cost of the performance of the contract, and it is understood and agreed that there is included in each lump sum or unit priced bid item, the entire cost of any and all items incidental to the performance of the work covered by such lump sum or unit priced bid item. When a bidder is in doubt as to the proper bid item to which the anticipated cost of any item is to be allocated, the bidder shall request clarification

from the Contracting Officer or Officer-in-Charge, or shall include such cost in the lump sum or unit price bid for the bid item deemed most appropriate. Failure of the bidder to request clarification shall bind the bidder to complete such work at the bid prices submitted.

- B. Unit Priced Items. For unit priced items, payment to the Contractor will be made only for the actual quantities of work performed and accepted or of materials furnished and accepted in accordance with the Invitation for Bids and subject to Section 3.3(G) of the General Conditions.
- C. Lump Sum Items. The quantities in any item for a lump sum bid item are approximate only and payment will be made only for the item in place complete, regardless of the amount of material, equipment, and labor necessary to complete the same in a proper and professional manner and in accordance with the contract documents. The bidder shall verify these quantities in any manner deemed necessary or expedient.

## 1.8 Wages

- A. The Contractor and all subcontractors shall pay all employees on any project for the BWS the minimum basic wage rate in conformance with applicable Federal and State laws. Bidders should incorporate such compliance with all the provisions of Chapter 104, HRS, relating to wages and hours of employees on public works, into their bid analysis.
- B. Minimum Wages. The minimum wages shall be periodically increased during the performance of a contract in an amount equal to the increase in the prevailing wages for those kinds of work as periodically determined by the State Director of Labor and Industrial Relations. Notwithstanding the provisions of the original contract entered into, if the Director of Labor and Industrial Relations determines that the prevailing wage has increased, the rate of pay of laborers and mechanics on the contract shall be raised accordingly. Bidders shall take into consideration increases that may occur during the period of the contract in computing their bid prices. No additional compensation shall be made for failure to do so.
- C. Schedule of Wages. The schedule of wages issued by the State Director of Labor and Industrial Relations is incorporated in the Invitation for Bids by reference only.
- D. Payrolls and Payroll Records. In accordance with the provisions Section 104 -- 3, HRS, two (2) certified copies of all payrolls and fringe benefits shall be submitted weekly to the Officer-in-Charge for review. The general contractor shall be responsible for the submission of certified copies of payrolls and fringe benefits of all subcontractors.
- E. Should the Officer-in-Charge determine that any laborer or mechanic employed on the job site by the contractor or subcontractor has been or is being paid wages at a rate that is less than what is required by the contract or the specifications, or has not received the laborer's or mechanic's full overtime compensation, the Officer-in-Charge may, by written notice to the contractor, terminate the contractor's right, or the right of any subcontractor, to proceed with the part of the work in which the required wages or overtime compensation have not been paid and may complete such work or part by contract or otherwise, and the contractor and the contractor's sureties shall be liable to the BWS for any excess cost occasioned thereby.

- F. Federally Funded or Federally Assisted Projects. On federally funded or federally assisted projects, the current federal wage rate determination in effect at the time of advertising for bids is incorporated as part of the Invitation for Bids, and both Federal and State wage rates shall apply. Where rates for any class of laborers and mechanics differ, the higher rates shall prevail. The minimum federal wage rates shall be those in the U.S. Department of Labor Wage Determination Decision and Modifications in effect ten (10) days prior to the bid opening date.
- G. Inclusion in Subcontract. The Contractor shall include this section in every subcontract for work under this Contract.

## **1.9 Allowance**

- A. Any allowance amount specified in the bid is to be considered an estimate of the amount required for the purpose specified and shall be included in the bidder's total sum bid.
- B. Utility Allowance. The Invitation for Bids shall provide instructions for the treatment of payment of all utility charges. Where the bid proposal provides an allowance for utility charges, the bidder shall include the allowance in the total sum bid.
- C. Reimbursement. Unless otherwise specified in the Invitation for Bids, the Contractor shall be reimbursed for allowance items upon submittal of proof of payment as follows:
  - 1. For utility allowance - The actual cost shown on the utility company's invoice. No markup of any kind will be allowed.
  - 2. For off-duty police officers - The reimbursement shall also include the administrative fees charged by the Honolulu Police Department, plus twenty percent (20%) inclusive of all of the Contractor's administrative costs, overhead/profit, bond fee, and all applicable taxes.
- D. Increase or Decrease. The Officer-in-Charge shall have the right to increase or decrease the allowance amount as necessary. Any amount remaining at the completion of the contract will revert back to the BWS. The Contractor shall make no claim in the event the allowance amount is increased, decreased, or deleted.

## **1.10 Mobilization**

- A. Mobilization shall consist of preparation work and operations, including but not limited to those necessary for the movement of personnel, equipment, supplies and incidentals to the project site; for the acquisition of all work materials; for the establishment of all offices; buildings, and other facilities, excluding field office and project site laboratories, necessary for work on the project; and for all other work and operations which must be performed, or costs incurred, prior to beginning work on the various items on the project site.
- B. Maximum Bid Amount. Where there is an item in the proposal for mobilization, unless otherwise specified, the maximum bid allowed for this item is an amount not to exceed six percent (6%) of the total sum of all items within the group of items in which the mobilization item is included, excluding the bid price of the mobilization item. If the proposal submitted by the bidder indicates an amount in

excess of the allowable maximum, the amount or amounts submitted by the bidder shall be reduced to the allowable maximum, and the total sum bid shall be adjusted to reflect any such reduction. For the purpose of comparing bids and determining the contract price to be inserted in the contract awarded to the bidder, if any is so awarded, the sum of all items adjusted in accordance with the foregoing shall be used and the bidder's proposal shall be deemed to have been submitted for the amounts as reduced and adjusted in accordance herewith.

- C. Payment. Mobilization will be paid for on a lump sum basis. Partial payments will be made as follows:
1. When five percent (5%) of the total sum bid is earned, fifty percent (50%) of the amount bid for mobilization will be paid;
  2. When ten percent (10%) of the total sum bid is earned, seventy-five percent (75%) of the amount bid for mobilization will be paid; and
  3. When twenty percent (20%) of the total sum bid is earned, one hundred percent (100%) of the amount bid for mobilization will be paid.

Nothing herein shall be construed to limit or preclude partial payments otherwise provided for by the contract.

#### **1.11 Multiple or Alternate Bids**

- A. Unless multiple or alternate bids are specifically provided for in the Solicitation, such bids shall be rejected; provided, however, that if a bidder clearly indicates a primary bid, it shall be considered for award as though it were the only bid submitted by the bidder.
- B. Method of Award. In the event additive or deductive alternates are included in the proposal, the lowest bid will be determined after adding to or deducting from the total basic bid, the alternate or alternates considered for award. Alternates, if any are awarded, shall be awarded in the order listed in the proposal. Award of alternates shall be dependent upon the availability of funds.
- C. Bid Price. When alternate bids are provided for in the Invitation for Bids, bidders should enter a bid for each and every item listed setting forth the amount to be added to or deducted from the bidder's total basic bid price should such alternate be incorporated into the contract. Failure to enter a bid price for each and every item may result in the bidder's bid not being considered for award unless award is by line item or group of items.
- D. Informal Bids. For Informal Bids, the Officer-in-Charge may determine the award of alternates in the manner above.

#### **1.12 Brand Names, Models: Substitutions**

- A. Where the Invitation for Bids specifies one or more manufacturer's brand names or makes of materials, devices, equipment or system as indicating a quality, style, appearance, or performance, or method of construction, the bidder's bid shall be based on either one of the specified brands, makes, or method, or on an alternate brand, make, or method, that has expressly been found to be equal or better by the Officer-in-Charge. Alternate brands, makes, or methods may be qualified through the submittal of a written request for substitution to the Officer-in-Charge for review and approval. An alternate brand, make, or method approved for one project is not to be considered as approved for any other



project. Unless otherwise specified in the Invitation for Bids, the request for substitution shall comply with the provisions of this section. Because substitutions are being reviewed close to the time of bid opening, it may be impossible to inform prospective bidders of all substitutions that may be approved prior to bid opening. Bidders are responsible for confirming with their subcontractors or suppliers that alternate brands, makes, or methods offered by the subcontractors or suppliers have been approved by the Officer-in-Charge.

- B. Before Bid Opening. The written request to the Officer-in-Charge must be submitted via e-mail to [FN\\_Procurement@hbws.org](mailto:FN_Procurement@hbws.org) for review and approval at the earliest date possible, but **not later than the time or date specified in the Invitation for Bids, or in the absence of a specific time or date, not later than ten (10) days prior to the day fixed for the opening of bids**, as evidenced by the time that the email is received by the Procurement office. If the tenth day falls on a State holiday or on Saturday or Sunday, the deadline shall be the first working day prior to the State holiday, Saturday, or Sunday.

The written request must be clearly marked SUBSTITUTION REQUEST on the e-mail subject line and addressed to the Officer-in-Charge. Digital copy of the request must be submitted together with PDF copies of technical brochures that shall either be marked or be accompanied by a digital copy of a 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 substitute has no other variant features. The brochures must include sufficient evidence to enable the Officer-in-Charge to evaluate each feature listed as a variance. Should an unlisted variance be discovered after installation or delivery of the item, the Contractor shall immediately replace the item with the specified item at no cost to the BWS and without any extension to the contract completion time.

The written substitution request shall be submitted in the following format:

<u>SECTION</u>	<u>ITEM</u>	<u>SPECIFIED</u>	<u>SUBSTITUTE</u>
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If sufficient evidence to make a determination of acceptability of the proposed substitute does not accompany a request for substitution, the request shall be denied unless the Officer-in-Charge allows further evidence to be submitted to qualify the same model and provided that such evidence is submitted prior to the specified deadline unless such period is extended by the Officer-in-Charge.

Substitution requests not complying with the above requirements will be denied. Substitution requests sent to other agencies and received by the Officer-in-Charge after the deadline above will also be denied.

Any bidder whose bid is based on a substitute item that has been approved by the Officer-in-Charge shall include in its bid price, the additional cost required for all modifications in the contract and the cost of all additional diagrams and drawings required to accommodate the substitute item. The modifications referred to include the changes in design that may be required for such work as, but not limited to, architectural, structural, electrical, and plumbing.

- C. After Bid Opening. Substitution requests after bid opening shall comply with the same format and requirements as in subsection (B), provided that substitutions may not be made without the prior written approval of the Officer-in-Charge and only for the following reasons:
1. The specified or prequalified item is delayed by a lengthy

strike in the factory or other unforeseeable contingency beyond the control of the Contractor that would cause an abnormal delay in the project completion; All specified or prequalified items are found to be unusable or unavailable due to a change in circumstances;

2. The Contractor is willing to provide a more recently developed or manufactured model or item of the same name manufacturer that the Officer-in-Charge determines to be equal or better than the one specified or prequalified; or for
3. Any other reason which the Officer-in-Charge may determine to be acceptable in the best interest of the BWS.

Any savings in cost will be credited to the BWS and the Contractor will pay for any additional cost for the substituted items.

- D. Informal Bids. For Informal Bids, the Officer-in-Charge shall be the sole judge as to whether to consider any substitution request. The bidder shall submit a PDF copy of brochures and technical data sheets for review and approval by the Officer-in-Charge. The Officer-in-Charge's decision shall be final.
- E. Burden of Proof. The burden of proof as to the comparative quality and suitability of substitute equipment, materials, devices, systems, or methods of construction, shall be upon the bidder or, if after bid opening, the Contractor. The bidder or Contractor shall furnish, at the bidders or Contractor's own expense, such information relating thereto as may be required by the Officer-in-Charge.
- F. Officer-in-Charge's Decision. Nothing herein shall be construed to mean that the Officer-in-Charge must accept or approve any substitution request submitted under this section. Bidders should not base their bids on substitute brands, makes, or methods without first obtaining approval from the Officer-in-Charge. The Officer-in-Charge reserves the right to reject any request that the Officer-in-Charge deems irregular or not in the best interest of the BWS. The Officer-in-Charge shall also have the right to terminate the process of evaluation of any request for substitution if continuation of the evaluation will result in a lengthy delay. The Officer-in-Charge shall be the sole judge as to what constitutes acceptability of the substitution with the cost factor to be considered. The Officer-in-Charge's approval of a substitute brand, make, or method shall not release the Contractor from the responsibility of ensuring that the substitute brand, make, or method will provide the same or superior result expected. A request for substitution shall not in any way constitute a justification for an extension of contract time.
- G. The decision made by the Officer-in-Charge shall be final and conclusive.

### **1.13 Preferences**

#### **A. Hawaii Products**

When specified in this Solicitation, the Hawaii products preference is applicable to this project. In accordance with ACT 175, SLH 2009, the Hawaii products preference is applicable to this Solicitation. Hawaii Products [are/may be] available for those items noted in the Bid Proposal Form included in the Solicitation documents.

The Hawaii products list is available on the State Procurement Office (SPO) webpage at <http://hawaii.gov/spo/goods-services-construction/preferences-103d-pt-x/hi-products/hawaii-product-preferences>.

A bidder offering a Hawaii Product (HP) shall identify the HP on the HP Proposal page(s). Any person desiring a Hawaii product preference shall have the product(s) certified and qualified if not currently on the Hawaii products list, prior to the deadline for receipt of bids specified in the Solicitation. The responsibility for certification and qualification shall rest upon the person requesting the preference.

Persons desiring to qualify their product(s) not currently on the Hawaii product list shall complete form SPO-38, Certification for Hawaii Product Preference and submit to the Procurement Officer, and provide all additional information required by the Procurement Officer. For each product, one form shall be completed and submitted (i.e. 3 products should have 3 separate forms completed). Form SPO-38 is available on the SPO webpage at <http://hawaii.gov/spo/spo-forms/forms-for-vendors-contractors-and-service-providers#VendorFormsGoodsSvcsConstruct>.

All Hawaii products in any bid shall be made available for inspection, or additional information may be requested to verify that the Hawaii product meets the minimum specifications.

When a solicitation contains both HP and non-HP, then for the purpose of selecting the lowest bid or purchase price only, the price offered for a HP item shall be decreased by subtracting ten percent (10%) for the class I or fifteen percent (15%) for the class II HP items offered, respectively. The lowest total offer, taking the preference into consideration, shall be awarded the contract unless the offer provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the price offered, exclusive of the preferences.

Should the bid comparison, after taking into consideration the above preferences, result in identical total prices, award shall be made to the bidder offering registered Hawaii products in preference to non-Hawaii products. For evaluation purposes, no preference shall be considered between registered Hawaii products.

Change in Availability of Hawaii product. In the event of any change that materially alters the awarded Contractor's ability to supply Hawaii products, the Contractor shall immediately notify the Contracting Officer in writing and the parties shall enter into discussions for the purposes of revising the contract or terminating the contract for convenience.

Any contract awarded or executed in violation of this section shall be void and no payment shall be made by the BWS on account of the contract

B. Reciprocal

1. Applicability. The Contracting Officer may, at the Contracting Officer's option, impose a reciprocal preference against bidders from states that apply preferences. When applied, a resident bidder of the State of Hawaii may be given a reciprocal preference equal to the preference the out-of-state bidder would be given in the out-of-state bidder's own state. If the out-of-state bidder's state has a preference comparable to a Hawaii preference, the reciprocal preference shall be equal to the amount by which the out-of-state preference exceeds the Hawaii preference. Whenever the Contracting Officer determines that the reciprocal preference is to be imposed, the bid form shall indicate such imposition.

2. Procedures. When applied, the amount of the reciprocal preference as specified above shall be added to the out-of-state bidder's bid price for evaluation purpose only. The responsible and responsive bidder submitting the lowest evaluated bid, taking into consideration all applicable preferences, shall be awarded the contract, provided the contract amount shall be the amount of the bid price offered, exclusive of the preference.

C. Recycled Products

1. Applicability. The recycled product preference shall not apply unless: (1) the proposal identifies the items allowed for consideration and use as recycled products; (2) the proposal identifies the percent of recycled content required to qualify for a preference; and (3) the Certification of Recycled Content form is included as part of the bid form.
2. Procedures. Bidders desiring the preference shall indicate on the certification form included as part of the Invitation for Bid, the recycled content of the products offered. Recycled content shall be expressed as a percentage of total product weight. Bidders shall submit with the certification form sufficient information to support the stated recycled content of the products offered and shall comply with all applicable provisions of the HAR. Price preference will be given to recycled products that shall be at least five percent (5%) of the price of the item and will be used for price evaluation.

D. Apprenticeship Program

A bidder may claim a five percent (5%) apprenticeship preference for public works construction projects with an estimated value of \$250,000 or more.

1. Definitions.

"Apprenticeable trade" shall have the same meaning as 'apprenticeable occupation' pursuant to Hawaii Administrative Rules (HAR) §12-30-5.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Employ" means the employment of a person in an employer-employee relationship, or the contracting of a subcontractor.

"Governmental body" means as defined in HRS section 103D-104.

"Party to an apprenticeship agreement" means party to a registered apprenticeship program with the department of labor and industrial relations.

"Preference" means the 5% by which the qualified bidder's bid amount would be decreased for evaluation purposes.

"Public work" shall be as defined in HRS §104-2 and HAR 12-22-1.

"Registered apprenticeship program" means a construction trade program approved by the department pursuant to HAR §12-30-1 and §12-30-4.

"Sponsor" means an operator of an apprenticeship program and in whose name the program is approved and registered with the department of labor and industrial relations pursuant to HAR §12-30-1.

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 bid is made for each apprenticeable trade the bidder will employ to construct the public works project for which the bid is being made.
  - b. The apprenticeship agreement shall be registered and conform to the requirements of HRS chapter 372.
  - c. Subcontractors do not have to be a party to an apprenticeship agreement for the bidder to obtain the preference.
  - d. Bidders are not required to have apprentices in its employ at the time of submittal of a bid to qualify for the preference. However, for the duration of the Contract, the Contractor shall employ apprentices in each apprenticeable trade on the project listed in FORM 1: Certification of Bidder's Participation in Approved Apprenticeship Program under Hawaii Revised Statutes (HRS) §103-55.6.
3. Bidders are responsible to comply with all submission requirements for registration of its apprenticeship program before requesting a preference.
4. Bidders shall provide a certification by the sponsor of the respective registered apprenticeship programs covering the relevant trade(s) for the public works project. Certificate Form-1 may be downloaded from the State of Hawaii, Department of Labor and Industrial Relations website: <http://hawaii.gov/labor/wdd>
  - a. For each trade to be employed to perform the work, the bidder shall submit a completed Certification Form 1 verifying participation in an apprenticeship program registered with the department;
  - b. The Certification Form 1 shall be authorized by an apprenticeship sponsor of the department list of registered apprenticeship programs; and
  - c. The completed Certification Form 1 for each trade must be submitted by the bidder with the offer. Previous certifications shall not apply unless allowed by the Solicitation.
5. Bid Evaluation
  - a. If the bidder certifies participation in an apprenticeship program for each trade that will be employed by the bidder for the project, the preference will be applied to decrease the bidder's total bid amount by five per cent (5%) for evaluation purposes.
  - b. Should the bidder qualify for other statutory preferences (for example, Hawaii products), all applicable preferences shall be applied to the bidder's price.

- c. The contract amount shall be the original bid amount, exclusive of any preference; the preference is only for evaluation purposes.
  - d. Any claims challenging a bidder's representation that the bidder is a participant in an apprenticeship program(s) as claimed, shall be submitted to the BWS. The BWS will refer the challenge to the Department of Labor and Industrial Relations who shall investigate any such claims and shall make a determination.
6. Contract Administration/Enforcement
- a. For the duration of the Contract, the Contractor shall employ apprentices in each apprenticeable trade listed in FORM 1: Certification of Bidder's Participation in Approved Apprenticeship Program under Hawaii Revised Statutes (HRS) §103-55.6, that the Contractor submitted with its bid.
    - i. Contractor shall certify each month that work is being conducted on the project, that it continues to be a participant in the relevant apprenticeship program for each trade it employs on the project, pursuant to subsection b, below;
    - ii. If no apprentice is available for the prescribed work and schedules for the project, Contractor shall provide an official letter from the approved apprenticeable trade program verifying that no apprentice was available for the prescribed work and schedules for the project. A copy of the letter shall be provided to the State of Hawaii Department of Labor and Industrial Relations. If it is validated that an apprentice was not available for the prescribed work and schedules, no penalty pursuant to subsection c below, will be applied to the Contractor.
  - b. Monthly certification shall be made on Monthly Certification Form 2 prepared and made available by the Department, signed by the respective apprenticeship program sponsors, and submitted by the contractor with its monthly payment requests. Certificate Form-2 may be downloaded from the State of Hawaii, Department of Labor and Industrial Relations website:  
<http://hawaii.gov/labor/wdd>
  - 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 party to a registered apprenticeship agreement for each apprenticeable trades the contractor employs, or will employ, the Contractor will be subject to the following sanctions:
    - i. Withholding of the requested payment until the required form(s) are submitted;
    - ii. Temporary or permanent cessation of work on the project, without recourse to breach of contract claims by the contractor; provided the BWS shall be entitled to restitution for nonperformance or liquidated damages claims; or

iii. Proceed to debar or suspend pursuant to HRS §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.

E. Evaluation Procedure and Contract Award. Bids allowing more than one (1) preference shall be evaluated and awarded in accordance with HAR 3-124-25.

Federal Funds. Any or all of the preferences of this section shall not apply whenever such application will disqualify the BWS from receiving federal funds or aid.

#### **1.14 Bid Security, Contract Performance, and Payment Bonds**

##### **A. Bid Security Required**

1. Bid security shall be required when the price bid is \$25,000 or more and shall be in an amount equal to at least five percent (5%) of the total amount of the sum bid as stated in the proposal.
2. If a bidder fails to accompany its bid with the bid security, the bid shall be deemed nonresponsive, except as provided by Section 1.14(C) of these General Instructions.
3. If a bid does not comply with the security requirements of this section, the bid shall be rejected as nonresponsive, unless the failure to comply is determined by the Contracting Officer to be nonsubstantial where:
  - a. Only one (1) bid is received, and there is not sufficient time to resolicit the project;
  - b. The amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next highest acceptable bid plus an amount to cover reasonable administrative costs and expenses including the cost of resoliciting the project, resulting from the failure of the bonded bidder to enter into a contract for the work bid; or
  - c. The bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Section 1.21 or Section 2.4 of these General Instructions, if the bidder increases the amount of security to required limits within the time specified by the Contracting Officer.
4. Bid deposits, under Sections 1.14(C)(2) and 1.14(C)(3) of these General Instructions, of the three apparent lowest bidders shall be retained until execution of a contract and deposit of the proper performance and payment bonds by the successful Contractor, after which time the bid deposits of the three lowest bidders shall be returned. All other bid deposits, other than surety bonds, which have not been forfeited, shall

be returned to the bidders who furnished them after determining the three apparent lowest bidders.

- B. Contract Performance and Payment Bonds. Performance and payment bonds shall be required when the price of the contract is \$25,000 or more and each shall be in an amount equal to one hundred percent of the amount of the contract price. The Contractor shall deliver the performance and payment bonds to the BWS at the same time the contract is executed. If the Contractor fails to deliver the required performance and payment bonds, the Contractor's award shall be canceled, the Contractor shall be subject to a claim for all resulting damages, its bid security enforced, and the Contracting Officer may award the contract to the next lowest bidder.
  
- C. Acceptable Bid Security, Contract Performance and Payment Bonds. Bidders and contractors shall be required to provide, at no cost to the BWS, bid security, contract performance, and payment bonds. Acceptable bid security, contract performance and payment bonds shall be limited to:
  - 1. Surety bond in the form attached to the Invitation for Bids 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 BWS. These instruments may be utilized only to a maximum of \$100,000. If the required security amount totals over \$100,000, more than one (1) instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted.
  
- D. Bid surety bonds shall be notarized.
  
- E. Contract performance and payment bond forms shall be those specified in the General Conditions.
  
- F. Contracts with Federal Funds. In addition to the requirements of this section, whenever a contract is partially or fully funded with federal funds, the amount of the bonds shall be the amount required by the federal agency, and the surety companies shall be those listed in the latest issue of the U. S. Treasury Circular 570.

**1.15 Insurance; Indemnification**

Bidders shall include in their bids any and all costs to provide insurance and comply with the indemnity provisions specified in Article 7 of the General Conditions.

**1.16 Responsibility of Bidders**

- A. Offeror shall, upon award of the contract, furnish proof of compliance with the requirements of §103D-310(c), HRS:

HRS Chapter 237, tax clearance;  
HRS Chapter 383, unemployment insurance;



HRS Chapter 386, workers' compensation;  
HRS Chapter 392, temporary disability insurance;  
HRS Chapter 393, prepaid health care;

Additionally, all bidders must be in compliance with one of the following:

Be registered and incorporated or organized under the laws of the State (Hereinafter referred to as a "Hawaii business"); or

Be registered to do business in the State (hereinafter referred to as a "compliant non-Hawaii business").

**B. HAWAII COMPLIANCE EXPRESS (HCE)**

All bidders shall be required to register online at <http://vendors.ehawaii.gov> to acquire a "Certificate of Vendor Compliance." The HCE provides current compliance status as of the issuance date. The "Certificate of Vendor Compliance" indicating that vendor's status is compliant with the requirements of Section 103D-310(c), HRS, shall be accepted for both contracting purposes and final payment. Vendors will be required to pay an annual fee of \$12.00 to the Hawaii Information consortium, LLC (HIC).

**1.17 Timely Submission Of All Certificates**

The "Certificate of Vendor Compliance" should be applied for and submitted to the purchasing agency as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

**1.18 Preparation of Bids**

All documents indicated in the HePS IFB Checklist contained in the Bid Supporting Documents PDF included in the Solicitation shall be completed and uploaded for submission onto the HePS system. Hardcopies of the mandatory attachments will not be accepted. It is the responsibility of the responding bidder to check each of its uploaded files to confirm the file integrity and that it can successfully be opened and is displayed correctly.

Submission of an electronic response to the Board of Water Supply constitutes and shall be deemed an offer to sell the specified goods and/or services to the Board of Water Supply at the price shown in the response and under the Board of Water Supply's Terms and Conditions.

The electronic response submitter certifies that he/she is authorized to sign the response for the submitting vendor and that the response is made without connection with any person, firm, or corporation making a response for the same goods and/or services and is in all respects fair and without collusion or fraud.

Only responses submitted through HePS shall be considered for award.

- A. Bids must be prepared using the Proposal document contained in the Bid Supporting Document PDF included in the Solicitation and shall be uploaded through HePS.
- B. Bids shall be prepared in ink or typewritten.
- C. Errors may be erased or crossed out and corrections initialed in ink by the person signing the bid.

- D. Bids shall be signed in ink by the individual, by one or more members of a partnership, by one or more members or officers of each firm representing a joint venture, by one or more officers of a corporation, or by an agent of the bidder legally qualified and acceptable to the Contracting Officer.
- E. A power of attorney or a corporate resolution should accompany the bid except where the bidder is a sole proprietor and the bid is signed by the sole proprietor. Out-of-state bidders must list their State of Hawaii address and telephone number in their bids.
- F. Unless otherwise specified in the Invitation for Bids, bidders must bid on all items listed in the Invitation for Bids.
- G. In case of discrepancy between prices written in words and those written in figures, the prices written in words shall govern.
- H. Proprietary data shall be designated as confidential and shall be readily separable from the bid to facilitate public inspection of the part that is not confidential.

**1.19 Joint Contractor: Subcontractor**

- A. Bidders shall comply with HRS 103D-302, relating to the listing of joint contractors or subcontractors. Bids which are not in compliance may be accepted if the Contracting Officer or, for informal bids, the Officer-in-Charge concludes that acceptance is in the best interest of the public and the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent (1%) of the total bid amount.
- B. Changes. The Contracting Officer shall have the right to require a bidder to replace any joint contractor or subcontractor that is not in compliance with HRS 444. Bidders are cautioned that changes to the subcontractor listing requested by the bidder may be considered only if the Contracting Officer determines that there are justifiable reasons as specified in section 4.23 of the General Conditions.
- C. Specialty Work. Joint contractors and subcontractors may perform only the specialty work for which they are listed. When alternates are made a part of the bid, bidders shall indicate, if applicable, the alternate and the basic work to be performed by each joint contractor or subcontractor.
- D. The completed subcontractor list shall be submitted as a separate upload on HePS when submitting bids.

**1.20 Safety and Health: Certification**

Where the bid is in excess of \$100,000, the bidder shall certify that, if awarded the contract, the bidder will comply with section 396-18, HRS, relating to safety and health programs for contractors bidding on BWS construction projects. The certificate of compliance included in the bid proposal shall be submitted as an upload through HePS with the bid. Failure to submit the required certification may be grounds for disqualification of the bidder's offer.

**1.21 Pre-Opening Modification or Withdrawal of Bids**

- A. Bids may be modified or withdrawn prior to the time and date set for receipt and opening of bids.

- B. Mistakes in Bids; Correction or Withdrawal Prior to Bid Opening. Correction or withdrawal of a bid because of an obvious mistake in the bid is permissible to the extent it is not contrary to the best interest of the BWS or to the fair treatment of other bidders. A bidder may remedy a mistake in a bid discovered before the time and date set for bid opening by withdrawing or correcting the bid through HePS.

**1.22 Apparent Low Bidder Submission of Original Signature Bid Documents**

The apparent low bidder shall furnish all original hardcopy supporting bid documents, identical to the documents that were uploaded to HePS, with original signatures the Board of Water Supply within 10 calendar days from the close of bids. The failure to submit all valid documents on a timely basis for award of the contract may result in an otherwise responsive and responsible bidder not receiving the award. Bidder is responsible to submit all required documents by the stated deadlines.

**1.23 Development of Specifications**

A contractor paid for developing or preparing specifications or work statements shall be precluded from bidding or receiving a contract for that particular Solicitation.

**1.24 Certificate of Cost or Pricing Data**

Cost or pricing data and certification of that data shall be required in accordance with section 3.3(H) of the General Conditions.

**1.25 Determination of Contractual Terms and Conditions**

The Contracting Officer is authorized to determine the contractual provisions, terms, and conditions of Solicitations and contracts, provided that the provisions, terms, and conditions must be in compliance with all applicable laws.

**CHAPTER 2 - BID OPENING; AWARD AND EXECUTION OF CONTRACT**

**2.1 Receipt of Bids**

Submission of a bid shall be deemed verification that the bidder has read and examined the Invitation for Bids and the project site.

**2.2 Time for Acceptance of Bid Received in Response to a Solicitation**

Unless otherwise stated in the Solicitation, after opening of bids, a bid may be withdrawn only if the BWS fails to award the contract:

- A. For BWS-funded projects or projects funded in whole or in part by the federal government, within sixty (60) days of the date of opening; and
- B. For projects funded in whole or in part by the State, within one hundred fifty (150) days of the date of opening.

**2.3 Extension of Time for Acceptance of Bid**

After opening of bids, the Contracting Officer or the Officer-in-Charge may request that bidders extend the time during which the BWS may accept their bids as stated in the terms and conditions of the Solicitation.

## **2.4 Mistakes in Bid: Corrections or Withdrawals After Bid Opening**

- A. Correction or withdrawal of a bid because of an obvious mistake in the bid is permissible to the extent it is not contrary to the best interest of the BWS or to the fair treatment of other bidders.
- B. Corrections to Bid. Corrections to bids after bid opening but prior to award may be made under the following conditions:
  - 1. If the mistake is attributable to an arithmetical error, the Contracting Officer or, for informal bids, the Officer-in-Charge shall so correct the mistake. In case of error in extension of bid price, unit price shall govern.
  - 2. If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions, the Contracting Officer or, for informal bids, the Officer-in-Charge may waive the informalities or allow the bidder to request correction by submitting proof of evidentiary value which demonstrates that a mistake was made. The Contracting Officer or the Officer-in-Charge shall prepare a written approval or denial in response to this request. Examples of such mistakes include:
    - a. Typographical errors;
    - b. Transposition errors;
    - c. Failure of a bidder to sign the bid, but only if the unsigned bid is accompanied by other material indicating the bidder's intent to be bound.
  - 3. If the mistake is not allowable under paragraphs (1) and (2) but is an obvious mistake that if allowed to be corrected or waived is in the best interest of the BWS or for the fair treatment of other bidders, the Contracting Officer or, for informal bids, the Officer-in-Charge shall correct or waive the mistake.
- C. Withdrawal of Bid. Withdrawal of bids after bid opening but prior to award may be made if the mistake is attributable to an obvious error that shall affect price, quantity, quality, delivery, or contractual conditions. The bidder shall request withdrawal by submitting proof of evidentiary value that demonstrates that a mistake was made. The Contracting Officer or, for informal bids, the Officer-in-Charge shall prepare a written approval or denial in response to this request.
- D. Correction or Withdrawal After Award. Correction or withdrawal of bids after award is not permissible except when the Contracting Officer or, for informal bids, the Officer-in-Charge makes a written determination that it would be unreasonable not to allow the mistake to be remedied or withdrawn.
- E. Any determination made by the Contractor or the Officer-in-Charge under this Section 2.4 shall be final and conclusive unless it is clearly erroneous, arbitrary, capricious, or contrary to law.

## **2.5 Low Tie Bids**

- A. Low tie bids are bids from responsible and responsive bidders that are identical in price and which meet all the requirements and criteria set forth in the Invitation for Bids.

- B. Method of Award. At the discretion of the Contracting Officer or, for informal bids, the Officer-in-Charge, award shall be made in any permissible manner that will resolve tie bids, including but not limited to:
1. Awarding the contract to a business providing goods produced or manufactured in this State or to a business that otherwise maintains a place of business in this State;
  2. Awarding the contract to the bidder who received the previous award so long as all low bids are identical; or
  3. If no permissible method will be effective in resolving tie bids and a written determination is made so stating, award may be made by drawing lots.

## **2.6 Cancellation of Solicitation**

- A. An Invitation for Bids may be canceled in whole or in part for reasons that are cogent and compelling and in the best interest of the BWS.
- B. Prior to Bid Opening. Reasons for which an Invitation for Bids can be canceled prior to bid opening include, but are not limited to, the following:
1. The BWS no longer requires the construction;
  2. The BWS no longer can reasonably expect to fund the procurement;
  3. Proposed amendments to the solicitation would be of a magnitude that a new solicitation is desirable; or
  4. The Contracting Officer determines that cancellation of the solicitation is in the public interest.
- C. After Bid Opening. Reasons for which an Invitation for Bids can be canceled after bid opening include, but are not limited to, the following:
1. The construction being procured is no longer required;
  2. Ambiguous or otherwise inadequate specifications were part of the solicitation;
  3. The solicitation did not provide for consideration of all factors of significance to the BWS;
  4. Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
  5. All otherwise acceptable bids or proposals received are at clearly unreasonable prices;
  6. There is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or

The Contracting Officer or, for informal bids, the Officer-in-Charge, determines that cancellation of the solicitation is in the public interest

## 2.7 Rejection of Bids

- A. In addition to any other basis identified herein or in the Contract, the Contracting Officer reserves the right to refuse to accept any bid or to reject any bid received from any bidder for any of the following reasons:
1. The bidder that submitted the bid is non-responsible;
  2. The bid is not responsive, i.e. it does not conform in all material respects to the Invitation for Bids;
  3. The construction item offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids;
  4. Conditioning Bids Upon Other Awards. The bid is conditioned upon receiving award of both the particular contract being solicited and another BWS contract;
  5. The bid contains prices that are unbalanced, omissions, erasures, alterations, additions not called for, or other irregularities of any kind;
  6. The bidder is not currently licensed or has a license that does not cover the type of work required.
  7. The bid contains an incomplete, ambiguous, or erroneous listing of joint contractors or subcontractors.
  8. Bids Submitted by Any One Person Under the Same or Different Names. The bidder submitted more than one (1) bid in response to the solicitation. Without limiting the generality of the foregoing provision, a bidder shall be considered to have submitted more than one (1) bid if such bidder submits more than one (1) bid under the same name, or through agents, or through joint ventures, partnerships, or corporations in which such bidder has more than a twenty-five percent (25%) interest in each of them, or through any combination thereof.
  9. Evidence that two (2) or more bidders are in collusion to restrict competitive bidding. In such event, the bids of all such bidders shall be rejected and such evidence may be cause for the disqualification of the participants in any future proposal involving any contract with the BWS.
- B. Limiting the Number of Awards. The bidder may specify in the bid the maximum amount of awards acceptable at any one bid letting; provided, however, that the Contracting Officer will make any selection of awards.
- C. Limiting Acceptance to Entire Bid. Unless allowed by the solicitation, a bid may not limit acceptance to the entire bid or offering. If acceptance is so limited and is not allowed by the solicitation, such bid shall be deemed to be non-responsive. If acceptance is properly limited, the Contracting Officer or, for Informal Bids, the Officer-in-Charge shall not reject part of such bid and award on the remainder.

## 2.8 Award

- A. The Contract shall be awarded with reasonable promptness by written notice to

the lowest responsive, responsible bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids.

No contract will be awarded to any person suspended or debarred by the Federal government, the State, the City, or the BWS, or who has not provided the "Certificate of Vendor Compliance."

- B. Under \$25,000. On any individual award totaling less than \$25,000, the Officer-in-Charge reserves the right to award the contract by purchase order. Also, on any individual award on a price commitment agreement, where the estimated total purchase expenditure for the duration of the agreement is less than \$25,000, the Officer-in-Charge reserves the right to award the contract by letter. Award by purchase order or award by letter shall result in a binding contract between the parties without further action by either the Contractor or the BWS. The contract, whether awarded by purchase order or letter, shall be performed in accordance with the terms set forth in the Solicitation and the General Conditions. For awards made by purchase order or by letter the Officer-in-Charge may waive any requirement for security for faithful performance that may be required under the Solicitation
- C. Exceeding Available Funds. In the event all bids exceed available funds as certified by the appropriate fiscal officer, the Officer-in-Charge may, with the approval of the Contracting Officer, in situations where time or economic considerations preclude resolicitation of a reduced scope of work, negotiate an adjustment of the bid price, including changes in the bid requirements, with the low responsive, responsible bidder, in order to bring the bid within the amount of available funds.

## 2.9 **Contract Not Binding Unless Funds Available**

- A. No Contract or Change Order shall be binding or of any force and effect without an endorsement by the Contracting Officer that there is an appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the Contract or the Change Order.

- B. Exceptions

The endorsement that is the subject of Subsection (A) shall not be required in the following situations:

1. If a contract is a multi-term contract, the Contracting Officer shall only be required to certify that there is an appropriation or balance of an appropriation over and above all outstanding contracts that is sufficient to cover the amount required to be paid under the contract during the current fiscal year or remaining portion of the current fiscal year of the first term of the multi-term contract. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore from sources that are identified in writing;
2. If the contract is one under which the total amount to be paid to the contractor cannot be accurately estimated at the time the contract is to be awarded; or
3. If there is direct expenditure of public funds from the BWS to the Contractor.

- C. Certification of a Portion of Funds. Notwithstanding the requirement for endorsement above, certification of a portion of the total funds required for a Contract or Change Order may be permitted when an immediate solicitation or amendment to a Contract will result in significantly more favorable contract terms and conditions to the BWS than a solicitation or amendment made at a later date; provided that certification for partial funding shall be permitted only if the Chief Financial Officer states in the certificate that the availability of funds in excess of the amount certified as available shall be contingent upon future appropriations or special fund revenues. All Contracts and Change Orders partially funded shall be enforceable only to the extent to which funds have been certified as available.
- D. Contracts Involving Federal Funds
1. In any contract involving not only State, City, or BWS funds but also supplemental funds from the Federal government, or involving one hundred percent (100%) Federal funds, this section shall be applicable only to that portion of the contract amount obligated and payable out of State, City, or BWS funds; however, this provision shall be liberally construed so as not to hinder or impede the BWS in contracting for any project involving financial aid from the Federal government.
  2. Unless otherwise specified, the Contractor, by submittal of a bid and acceptance of an award, agrees that payment of that portion of the contract amount that is supplemented or funded entirely by Federal funds shall be payable upon receipt of those Federal funds.
- E. In the event that any contract modification, change order, or adjustment results in an increase in the total project budget or total contract budget, the Officer-in-Charge shall not execute or make any contract modification, change order, or adjustment in contract price unless sufficient funds are made available therefor, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the existing project budget or contract project; provided, however, that with respect to the validity, as to the Contractor, of any executed contract modification or adjustment in contract price which the Contractor has reasonably relied upon, it shall be presumed that there has been compliance with this section.

## 2.10 Execution of Contract

- A. Upon notification of award of contract, the successful bidder shall obtain the contract from the BWS for execution.
1. Each and every signature appearing on the contract form must be notarized by a notary public attesting to the persons signing, their titles, and if a corporation, the corporate seal affixed to the contract form.
  2. Each and every signature appearing on the bond forms must be notarized by a notary public attesting to the persons signing, their titles, and if a corporation, the corporate seal affixed to the bonds.
  3. If a corporation, the corporate resolution must be attached; if a joint venture or partnership, a power of attorney authorizing the person(s) signing on behalf of the joint venture or partnership. The surety shall also attach its power of attorney.
  4. The fully executed contract document shall be returned **within ten (10) calendar days** from the date of notification of the award, or within such



time as the Contracting Officer may allow, along with evidence of insurance coverage as specified in the General Conditions.

- B. Failure to Enter into Contract. Failure to enter into the Contract and to furnish satisfactory security **within ten (10) calendar days** from notice of award or within such time as the Contracting Officer may allow shall, in the sole and absolute discretion of the BWS, be cause for cancellation of the Contractor's award and forfeiture of the Contractor's bid security as liquidated damages and not as a penalty.

### **CHAPTER 3 - PROTESTS; SUSPENSION AND DEBARMENT**

#### **3.1 Authority to Resolve Protested Solicitations and Awards**

Complaints and protest of awards shall be subject to the requirements specified in chapter 3-126, subchapter 1, HAR and section 103D-701, HRS.

- A. Filing of complaint and protest prior to receipt of offers. Protestor initially should seek an informal resolution of the protestor's complaint with the Contracting Officer named in the solicitation. Protestor may file a protest pursuant to section 103D-701, HRS, prior to the receipt of offers on any phase of a solicitation.
- B. Protest of an award. A protest of an award shall be submitted in writing to the Contracting Officer within five working days after the posting of the notice of award. Protest filed after the five working day period shall not be considered.

#### **3.2 Authority to Debar or Suspend**

The Contracting Officer, in accordance with the provisions of section 103D-702, HRS, and chapter 3-126, subchapter 2, HAR, may debar or suspend a person for cause from consideration for award of all public contracts and from performance on any public contracts. The period of debarment shall not be more than three years and for suspension not more than three months.

#### **3.3 Solicitation or Award in Violation of Law**

If a solicitation or award is found to be in violation of law, it shall be dealt with in accordance with chapter 3-126, subchapter 4, HAR.