

# GENERAL INSTRUCTION TO BIDDERS (GOODS & SERVICES)

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## GENERAL INSTRUCTIONS TO BIDDERS

### (GOODS & SERVICES)

The General Instruction to Bidders (General Instructions) describe the Board of Water Supply, City and County of Honolulu's (BWS) policy relating to bidding for goods & services 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 Contracts for Goods & Services for the Honolulu Board of Water Supply (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

[http://www.boardofwatersupply.com/cssweb/display\\_proc.cfm?procx=1](http://www.boardofwatersupply.com/cssweb/display_proc.cfm?procx=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 shall determine the licensing requirement for the work for which bids are being solicited.
- B. Whenever a questionnaire is attached to the bid form, bidders shall complete and submit such questionnaire with their bids, together with all specifications and brochures.

The Contracting Officer reserves the right to require bidders to provide, at their own expense, within ten (10) calendar days, unless otherwise specified in the Special Provisions or other section of this Solicitation, from the date of the BWS's request, all specifications and brochures on the item or items offered. Failure to comply with the BWS's request within the time specified may be sufficient cause for rejection of a bid.

Whenever the completion and submission of a questionnaire is required, all specifications and brochures submitted by the bidder shall be properly annotated identifying all applicable data on the item(s) being offered and shall fully substantiate the information requested in the questionnaire. In the event the manufacturer's specifications and brochures cannot substantiate the information requested in the questionnaire, the manufacturer shall certify in writing that the item(s) will be manufactured in accordance with the bid questionnaire and manufacturer's specifications.

Failure to comply with the requirements herein may be sufficient cause for rejection of a bid.

- C. Either before or after the deadline for bid submittal, the BWS may require a bidder to submit answers to questions regarding facilities, equipment, experience, personnel, financial status or any other factors relating to the bidder's ability to furnish satisfactorily the goods or services being solicited by the BWS. Any such inquiries shall be made and replied to in writing; replies shall be submitted over the signature of the person who signs the bid. Any bidder who refuses to answer such inquiries will be considered non-responsive. All answers to such questions will be handled by the BWS on a confidential basis.

The BWS also reserves the right to visit a bidder's place of business to inspect the bidder's facilities and equipment and to observe the methods of operation, including personnel, in order to facilitate evaluation of performance capabilities.

The Contracting Officer shall be the sole judge of the bidder's qualifications to perform the Contract.

## **2. Clarifications; 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 request for clarification not later than ten (10) calendar days before the date fixed for opening of bids, as evidenced by the time-stamp of the Officer-in-Charge, 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](mailto:fn_procurement@hbws.org) or received by post mail to the Procurement Officer not later than ten (10) calendar) days prior to the bid opening date, 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.

## **3. Pre-Bid Conference**

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

## **4. Bidder's Warranty**

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

- A. The bidder and all subcontractors intended to be used by the bidder have carefully and thoroughly reviewed the Solicitation and have found the Solicitation to be complete and free from ambiguities and sufficient for the purpose intended;
- B. The bidder and all workers, employees and subcontractors intended to be used are skilled and experienced in the type of work that is the subject of the Solicitation;
- C. 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
- D. The bid price is based solely upon the Solicitation and properly issued written addenda and not upon any other written or verbal representation.

- E. The bid price was independently arrived at without collusion.

**5. 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 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 5.5 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.

**6. 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 Solicitation, 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, provided that if award is based on the item or items on which bids have been submitted, the bidder's bid may be considered for award.

**7. Brand Names, Models; Substitutions**

Whenever one or more manufacturer's brand or trade name is specified, bidders shall base their bids on one of the specified brands. However, other manufacturers' brands may also qualify if found to be equal to or better than those specified. A bid based on an unspecified brand will be subject to evaluation as to its comparable quality, including quality or adequacy of manufacturer and dealer support.

- 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 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) calendar days prior to the day fixed for the opening of bids**, as evidenced by the time-stamp of the Officer-in-Charge. 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 envelope and addressed to the Officer-in-Charge. Six (6) copies of the request must be submitted together with three (3) sets of technical brochures that shall either be marked or be accompanied by three (3) copies 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;
2. All specified or prequalified items are found to be unusable or unavailable due to a change in circumstances;
3. 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
4. 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 three (3) copies 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 bidder's 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.

## 8. Taxes

Unless otherwise specified in the Solicitation, the bidder shall include and be responsible for paying all taxes, which shall be applicable to the goods or services or the furnishing or sale thereof.

## 9. 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#VendorFormsGoodsSvcConstruct>.

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

E. 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.

**10. Insurance; Indemnification**

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

**11. Responsibility Of Bidders**

A. All bidders shall be required to furnish proof of compliance with the requirements of the Hawaii Revised Statutes (HRS) Chapters as listed below with its bid proposal:

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 (1) 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).

**12. 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.

**13. Preparation of Bids**

All bid documents shall be completed and uploaded for submission onto the HePS system. Failure to provide all required documents shall be deemed non-responsive and rejection of a bid. 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 PDF document included in the Solicitation and shall upload the completed form in 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. Out-of-state bidders must list their State of Hawaii address and telephone number in their bids.
- F. Unless otherwise specified in the Solicitation, bidders may bid on any of the items listed on the bid form, leaving the others blank.
- 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.
- I. The bidder shall bear all costs of preparing and submitting its bid.
- J. Bid price(s) offered shall remain valid for a minimum of sixty (60) calendar days, unless otherwise specified in the Special Provisions or other section of the Solicitation.
- K. The general terms and conditions, specifications, special provisions, and other

documents referenced in or attached to the Solicitation shall be considered a part of the submittal of the bidder whether attached to the bid or not at the time of its submission. Such documents shall not be altered in any way when the bid is submitted, and any alterations so made by the bidder may be sufficient cause for rejection of the bid.

**14. 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.

**15. 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.

**16. Receipt Bids**

Submission of a bid shall be deemed verification that the bidder has read and examine the Solicitation.

**17. 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 shall 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 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 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 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 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 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 under this section shall be final and conclusive unless it is clearly erroneous, arbitrary, capricious, or contrary to law.

**18. 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 .
- B. Method of Award. At the discretion of the Contracting Officer, 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.

**19. 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.

**20. 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.

**21. Cancellation of Solicitation**

- A. The Solicitation may be canceled in whole or in part for reasons that are cogent and compelling and in the best interest of the BWS at any time before the contract is executed.
- B. Prior to Bid Opening. Reasons for which the Solicitation can be canceled prior to bid opening include, but are not limited to, the following:

1. The BWS no longer requires the goods and services being procured;
  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 the Solicitation can be canceled after bid opening include, but are not limited to, the following:
1. The goods and services being procured are 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
  7. The Contracting Officer determines that cancellation of the Solicitation is in the public interest.

## **22. Rejection of Bids**

In addition to any other basis identified herein or in the Contract, the Contracting Officer reserves the right to refuse to accept any bid, to reject any bid received from any bidder, or to disqualify a 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 Solicitation.
3. The bidder lacks proper equipment and/or sufficient experience to perform the work contemplated.
4. The bidder does not meet or comply with bid requirements.
5. The goods or services offered does not meet or comply with bid requirements or bid specifications.
6. The bid is conditioned upon receiving award of both the particular contract being solicited and another BWS contract.
7. The bid contains prices that are unbalanced, omissions, erasures, alterations, additions not called for, or other irregularities of any kind.

8. The bidder is not currently licensed, or has a license that does not cover the type of work required.
9. The bidder submitted more than one 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 bid if such bidder submits more than one 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 per cent (25%) interest in each of them, or through any combination thereof.
10. 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.
11. The bid includes a price that is illegible or otherwise unrecognizable.
12. The bidder is under suspension or debarred from consideration of contract award in accordance with Chapter 126, Subchapter 2, HAR.
13. The bidder fails to pay, or satisfactorily settle, all bills overdue for labor and material on former BWS contracts prior to the bid submittal due date.
14. A bid guaranty is required and is received separately from the bid.
15. A bid guaranty is required and is not identifiable as guaranty for a specific bid.
16. A bid guaranty is required and is received after the date and time set for the opening.
17. A bid guaranty is required and is not in accordance with acceptable bid security requirements of Chapter 122, Subchapter 24, HAR.
18. The bidder or surety fails to sign the surety bond submitted as bid guaranty.
19. The bidder fails to use the surety bond form furnished by the BWS or identical wording contained in the said form when submitting a surety bond as bid guaranty.
20. The bidder shows any non-compliance with applicable law or contains any unauthorized additions or deletions, or is in anyway making the bid incomplete, conditional, indefinite, or ambiguous as to its meaning.

**23. Waiver of Minor Deviations**

The Contracting Officer reserves the right to waive and/or accept any minor deviations from the specifications and/or terms and conditions, if in the Contracting Officer's opinion such waiver will be in the best interest of the BWS, and that such waiver shall not affect the standards or quality of the goods and services that are the subject of the Solicitation.

**24. 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.

**25. 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 State, the City, or the BWS, or who has not provided tax clearances from the State Department of Taxations and the Internal Revenue Service, Certificate of Compliance from the Department of Labor and Industrial Relations, and Certificate of Good Standing from the Department of Commerce and Consumer Affairs.

Vendors shall use the Hawaii Compliance Express (HCE), which allows businesses to register online through a simple wizard interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html>.

- 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.

A notice of award of the contract, if any, shall be posted on the BWS Procurement Office website, whose homepage is [http://www.boardofwatersupply.com/cssweb/display\\_proc.cfm?procx=1](http://www.boardofwatersupply.com/cssweb/display_proc.cfm?procx=1)

**26. 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 Officer-in-Charge 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.

**27. 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. In the case of a foreign corporation, if the corporate seal is not readily available, a copy of a resolution of the Board of Directors of such corporation, or other written evidence of authority signed by an officer of the corporation, authorizing the person or persons signing to execute bids, contracts and all other necessary documents in connection therewith shall be attached
  5. 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 coverages 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.

## 28. Protest

- A. Definitions. As used in this subsection:
1. **"Interested Party"** means any actual or prospective bidder or contractor that may be aggrieved by the solicitation or award of a contract, or by the protest.
  2. **"Protestor"** means any actual or prospective bidder or contractor who is aggrieved in connection with the solicitation or award of a contract and who files a protest.
- B. Complaint to Officer-in-Charge or Contracting Officer. Complainants should seek resolution of their complaints initially with the Officer-in-Charge or the Contracting Officer. Such complaints shall be made in writing.
- C. Filing of Protest
1. Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Contracting Officer or the Officer-in-Charge. Except as otherwise required or allowed by law, a protest shall be submitted in writing within five (5) business days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five (5) business days after the posting of award of the contract under HRS Section 103D-302 or HRS Section 103D-303, if no request for debriefing has been made, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers. Protests not timely filed shall not be considered.
  2. Protestors may file a protest on any phase of solicitation or award, including, but not limited to, specifications preparation, bid solicitation, award, or disclosure of information marked confidential in the bid.
  3. To expedite handling of protests, the envelope should be labeled "Protest" and either served personally or sent by registered or certified mail, return receipt requested, to the Contracting Officer. The written protest shall include as a minimum the following:
    - a. The name and address of the Protestor;



- b. Appropriate identification of the procurement and, if a contract has been awarded, the contract number;
  - c. A statement of reasons for the protest; and
  - d. Supporting exhibits, evidence, or documents, to substantiate any claims unless not available within the filing time, in which case the expected availability date shall be indicated.
4. The notice of protest shall be deemed communicated and filed within forty-eight hours from the time of mailing, if mailed as provided in paragraph (3), or communicated and filed when received personally by the Contracting Officer.
- D. Request for Information. Failure of any party to comply expeditiously with a request for information by the Contracting Officer may result in resolution of the protest without consideration of any information that is not filed within the established time period.
- E. Stay of Procurements During Protest. When a protest has been filed within five (5) working days pursuant to Section 2.8(C) of these General Instructions and before an award has been made, the Contracting Officer shall make no award of the contract until the protest has been settled, unless the Contracting Officer makes a written determination, after consulting with the Officer-in-Charge, that the award of the contract without delay is necessary to protect substantial interests of the BWS.
- F. Making Information on Protests Available. The Contracting Officer shall, upon written request, make available to any Interested Party information submitted that bears on the substance of the protest except where information is proprietary, confidential, or otherwise permitted or required to be withheld by law or rules. Persons who wish to keep such information submitted by them confidential should so request by specifically identifying such information within documents submitted and indicating on the front page of each document that it contains such information.
- F. Decision by the Contracting Officer. The Contracting Officer shall make a decision on a protest as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained and the Protestor or offeror should have been but was not awarded the contract under the solicitation, the available remedies include, but are not limited to, awarding the Protestor the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorneys' fees. Any appeal must be filed within seven (7) calendar days of the final decision under this subsection. The protesting bidder shall inform the Contracting Officer within seven (7) calendar days after the final decision if an administrative appeal will be filed.

## **29. Authority to Debar or Suspend**

The Contracting Officer may debar or suspend a person for cause from consideration for award of contracts. The period of debarment shall not be more than three (3) years. The period of suspension shall not be more than three (3) months. Any appeal must be filed within seven (7) calendar days of the final decision under this subsection.