

GENERAL INSTRUCTIONS TO BIDDERS

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GENERAL INSTRUCTIONS TO BIDDERS

The provisions herein describe the City's 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. Related provisions from the Hawaii Administrative Rules (HAR), Title 3, Department of Accounting and General Services, are presented for convenience only and may not be complete. Where provisions are taken in part or whole from the HAR, reference is made to the applicable chapter or section. Should any provision herein be inconsistent with the HAR, the HAR shall govern.

Bidders and contractors should familiarize themselves with the HAR.

Wherever "chief procurement officer" appears in the HAR, it shall mean the "Contracting Officer"; wherever "head of the purchasing agency" or "procurement officer" appears in the HAR, both shall mean the "officer-in-charge".

The defined terms described in section 1.1 of the General Conditions of Construction Contracts of the City and County of Honolulu, hereinafter referred to as the "General Conditions", shall have the same meaning for purposes of these General Instructions.

The General Conditions is incorporated by reference and is available upon request at the Division of Purchasing, City Hall, 530 South King Street, Room 115, Honolulu, Hawaii, 96813.

CHAPTER 1 - BID REQUIREMENTS AND CONDITIONS

1.1 Qualification of bidders; notice of intention to bid. (a) Prospective bidders must be properly licensed and capable of performing the work for which bids are being called. Each prospective bidder shall file a written notice of intention to bid, provided however, that when a bid is less than \$25,000, the notice of intention to bid will not be required. Submittal of a notice of intention to bid shall be certification that the bidder is properly licensed for the project. Unless specifically prohibited by law, the Contracting Officer or, for informal bids, the Officer-in-Charge shall determine the licensing requirement for the work for which bids are being solicited. The notice of intention to bid shall be in the form attached hereto as Exhibit "A". [HAR 3-122-108]

(b) Submittal. The notice of intention to bid shall be received in the office of the Director of The Department of Budget and Fiscal Services or the Division of Purchasing, 530 South King Street, Honolulu, Hawaii, 96813, no later than 4:30 p.m., ten days prior to the scheduled bid opening date. Should the tenth day fall on a holiday, or on a Saturday or Sunday, the notice shall be received by 4:30 p.m. on the first working day **preceding** the holiday, Saturday, or Sunday. The Notice should provide the following information:

- (1) Name of contractor;
- (2) Project number (if any), title, and description;
- (3) Bid opening date;
- (4) Contractor's license number; and
- (5) Contractor's address, telephone and facsimile numbers.

The time stamp machine in the Purchasing Division or the Director of the Department of Budget and Fiscal Services's office shall be the official time and date of receipt.

If submitted in an envelope, the words "INTENTION TO BID" should be printed on the face of the envelope. If hand carried, the notice of intention to bid should **not** be dropped in the Purchasing Division's bid box.

The notice of intention to bid may also be transmitted by facsimile machine, to (808) 523-4847. [HAR 3-122-9; 3-122-108]

(c) Waiver. The requirement for a written notice of intention to bid may be waived if there is only one bid and the Contracting Officer concludes that acceptance of the bid will be in the best interest of the public. [HAR 3-122-108]

(d) Partnership; joint venture. In accordance with Section 16-77-13, Hawaii Administrative Rules, Title 16, Chapter 77, Contractors, of the State Department of Commerce and Consumer Affairs, contractors intending to bid as a joint venture or partnership, who are not licensed as a joint venture or partnership, 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 should be submitted with the notice of intention to bid.

(e) Qualification questionnaire. Upon notification of the bidder's intent to bid on a project, the Contracting Officer shall determine whether the prospective bidder has the ability to perform the work intended. For this purpose, the Contracting Officer may require any prospective bidder to submit answers to questions contained in a questionnaire prepared by the Contracting Officer, no less than forty-eight hours prior to the date set for bid opening. If upon review of the questionnaire, the prospective bidder appears not 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. If specified, the Contracting Officer may require the answers to the questionnaire to be submitted with the bidder's bid. When the answers to the questionnaire are required to be submitted with the bidder's bid, the Contracting Officer shall determine the bidder's qualifications prior to award. [HAR 3-122-108; 3-122-109; 3-122-110]

(f) 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 (e).
- (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 4.24, Final inspection, or 6.5, Final payment, of the General Conditions for any contract in force.

(g) The prospective bidder shall be immediately notified of the determination of its nonresponsibility. The Contracting Officer's decision shall be final unless the prospective bidder applies for administrative relief pursuant to Chapter 3-126, HAR. Within five working days after receipt of the final decision by the Contracting Officer, the prospective bidder shall inform the Contracting Officer in writing, if an administrative appeal will be filed within seven calendar days after receipt of final decision. The determinations required by this section shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

(h) Out-of-state contractors shall comply with section 16-77-89, Hawaii Administrative Rules, Title 16, Chapter 77, Contractors, of the State Department of Commerce and Consumer Affairs, requiring a place of business in the State.

**GENERAL INSTRUCTIONS TO BIDDERS
(7/99)**

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 request for clarification to the Officer-in-Charge not later than ten 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. The Contracting Officer may, upon recommendation of the Officer-in-Charge, issue an addendum notifying all prospective bidders known to have received an invitation for bids, or if issued after the deadline for submission of the notice of intention to bid, to those persons who submitted such notice, of any changes to the invitation for bids. [HAR 3-122-27]

(b) Distribution. The City will make every reasonable attempt to notify all persons who have obtained the invitation for bids from the City by telephone to pick up the addendum or if the City chooses, the addendum may be mailed or delivered personally or by facsimile machine. If the bid proposal requires the acknowledgment of addenda, the bidder shall indicate the date of each addendum in the space provided. It shall be the bidder's responsibility to confirm the existence of any addendum by telephoning the Purchasing Division at (808) 523-4682.

(c) Informal bids. Addenda for informal bids may be issued by the Officer-in-Charge.

1.3 Pre-bid conference. Pre-bid conference, if held, shall be announced in the notice to contractors, or in an addendum. A summary of the conference shall be supplied to all those prospective bidders known to have received the invitation for bids from the City, in addition to any addendum issued as a result of the conference. Nothing stated at the pre-bid conference shall change the solicitation unless a change is made by written addendum. [HAR 3-122-26]

1.4 City's estimates in the invitation for bids. Any estimate for the project provided by the City is for convenience of the bidder only and the City does not represent or warrant its accuracy. A bidder should conduct its own review and analysis and not base its bid or rely on the City's estimate.

1.5 Examination of invitation for bids and site of project. (a) The bidder shall examine carefully 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 City in respect to foundation or other design, bidders may inspect the records of the City 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 City as to the character of material which has been actually encountered by the City and is included only for the convenience of bidders. The City makes no representations as to the conditions which 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 City 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 expressed 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 City 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, Delay; time extensions, of the General Conditions.

1.6 Bidder's warranty. By the act of submitting a bid for the proposed contract, the bidder warrants that:

- (1) The bidder and all subcontractors intended to be used by the bidder have carefully and thoroughly reviewed the invitation for bids and have found them complete and free from ambiguities and sufficient for the purpose intended;
- (2) The bidder has investigated and, if necessary, examined the site and understands the conditions to be encountered in performing the work;
- (3) 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;
- (4) Neither the bidder nor any of the bidder's employees, agents, suppliers or subcontractors have relied upon any verbal representations from the City, its employees or agents, including architects, engineers or consultants, in assembling the bid figure; and that
- (5) 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.

1.7 No collusion. By submitting a bid, the bidder certifies that the price submitted was independently arrived at without collusion. [HAR 3-122-192]

1.8 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 City 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 for a 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 for a 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 subsection 3.3(d), Variations in estimated quantities, 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.

1.9 Wages. (a) The Contractor and all subcontractors shall pay all employees on any project for the City 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 which 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. Copies of the minimum basic wage schedule are available in the Purchasing Division, City Hall, where invitation for bids are distributed.

(d) Payrolls and payroll records. Two (2) certified copies of all payrolls 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 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 of less than the required rate 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 City 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 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.

1.10 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 per cent 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 City. The Contractor shall make no claim in the event the allowance amount is increased, decreased, or deleted.

1.11 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 per cent 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 per cent of the total sum bid is earned, fifty per cent of the amount bid for mobilization will be paid;

(2) When ten per cent of the total sum bid is earned, seventy-five per cent of the amount bid for mobilization will be paid; and

(3) When twenty per cent of the total sum bid is earned, one hundred per cent 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.

1.12 Multiple or alternate bids. (a) Unless multiple or alternate bids are specifically provided for, such bids shall be rejected, provided that if a bidder clearly indicates a primary bid, it shall be considered for award as though it were the only offer submitted by the bidder. [HAR 3-122-4]

(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, 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.

(d) Informal bids. The Officer-in-Charge may determine the award of alternates in the manner above.

1.13 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, which 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 to confirm 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 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 copies of the request must be submitted together with three sets of technical brochures which shall either be marked or be accompanied by three copies of a statement of variances. The statement of variances must list all features of the proposed substitution which 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 City and without any extension to the contract completion time.

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

SECTION ITEM SPECIFIED SUBSTITUTE

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 which 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 which would cause an abnormal delay in the project completion;

- (2) All specified or prequalified items are found to be unusable or unavailable due to change or other circumstances;
- (3) The Contractor is willing to provide a more recently developed or manufactured model or item of the same name manufacturer which 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 City.

Any savings in cost will be credited to the City and any additional cost for the substituted items will be paid for by the Contractor.

(d) Informal bids. For informal bids, the Officer-in-Charge shall be the sole judge as to whether or not to consider any substitution request. The bidder shall submit three 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 City. 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 length 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.

1.14 Preferences

(1) Hawaii products

(A) The bidder's attention is directed to HRS 103D-1002 and HAR 3-124, Subchapter 1, which provide preference for Hawaii products. All bidders proposing to claim a Hawaii product preference shall designate in their bids which individual product and its price is to be supplied as a Hawaii product. The Hawaii Products list is available for examination in the Purchasing Division.

(B) Where a bid contains both Hawaii and non-Hawaii products, the proposal shall include the schedule of Hawaii products and their established classes. Bidders claiming the preference shall complete the schedule and, where there is more than one established class for a Hawaii product, indicate the class for the product being offered.

(C) For the purpose of selecting the lowest bid only, the price bid for a Hawaii product item shall be decreased by subtracting therefrom: three per cent, five per cent, or ten per cent for the class I, class II, or class III Hawaii product item bid, respectively. The lowest total bid, taking the preference into consideration, shall be awarded the contract unless the bid provides for additional award criteria. The contract amount of any contract awarded, however, shall be the amount of the bid offered, exclusive of the preferences.

(D) 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.

(E) Any contract awarded or executed in violation of this section shall be void and no payment shall be made by the City on account of the contract.

(2) Reciprocal

(A) Applicability. The Contracting Officer may, at the Contracting Officer's option, impose a reciprocal preference against bidders from states which 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 amount 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.

(B) 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.

(3) Recycled products

(A) Applicability. The recycled product preference shall not apply unless there is provided in the proposal, the items allowed for consideration and use as recycled products, the per cent of recycled content required to qualify for a preference, and provided further that the Certification of Recycled Content form is included as part of the bid form.

(B) 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 HAR 3-124-23.

Price preference will be given to recycled products which shall be at least five per cent of the price of the item, and will be used for price evaluation, as specified in HAR 3-124-25.

(4) Evaluation procedure and contract award. Bids allowing more than one preference shall be evaluated and awarded in accordance with HAR 3-124-25.

(5) Federal funds. Any or all of the preferences of this section shall not apply whenever such application will disqualify the City from receiving federal funds or aid. [Chapter 3-124, HAR]

1.15 Bid security, contract performance and payment bonds.

(1) Bid security required.

(A) In accordance with HAR 3-122-223, 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 per cent of the amount of the bid.

(B) If a bidder fails to accompany its bid with the bid security, the bid shall be deemed nonresponsive in accordance with the definition of "responsive bidder", except as provided by subparagraph (C). [HAR 3-122-223]

(C) 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:

(i) Only one bid is received, and there is not sufficient time to rebid the contract;

(ii) 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 higher acceptable bid plus an amount to cover reasonable administrative costs and expenses including the cost of rebidding the project, resulting from the failure of the bonded bidder to enter into a contract for the work bid; or

(iii) The bid security becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with section 1.19 or 2.5, if the bidder increases the amount of security to required limits within the time specified by the Contracting Officer. [HAR 3-122-223]

(D) Bid deposits, under paragraphs (3)(B) and (3)(C)), 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.

(2) 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 per cent of the amount of the contract price. The performance and payment bonds shall be delivered by the Contractor to the City 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. [HAR 3-122-224]

(3) Acceptable bid security, contract performance and payment bonds. Bidders and contractors shall be required to provide, at no cost to the City, bid security, contract performance and payment bonds. Acceptable bid security, contract performance and payment bonds shall be limited to:

(A) Surety bond in the form attached to the invitation for bids underwritten by a company licensed to issue bonds in this State;

(B) Legal tender; or

(C) 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 Director of The Department of Budget and Fiscal Services, City and County of Honolulu.

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

(ii) If the required security amount totals over \$100,000, more than one instrument not exceeding \$100,000 each and issued by different financial institutions shall be accepted. [HAR 3-122-222]

(4) Bond forms. Failure to utilize the City's surety bid bond form (Exhibit "A", General Conditions) shall not relieve the bidder or contractor from liability or responsibility if it is discovered that the form utilized is not in compliance with the HAR. The Contractor shall execute the surety performance and payment bond forms provided with award of the contract (Exhibits "B" and "C", General Conditions). If the bidder intends to submit other than surety bonds, the bidder may request of the agency issuing the invitation for bids, the bond form to be submitted with security other than surety bond, or the bidder may submit the bid security or performance and payment security along with its own bond form which shall be in conformance with Exhibits "D" and "E" of the General Conditions. [HAR 3-122-228]

(5) 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.

1.16 Insurance; indemnification. Bidders shall include in their bids, any and all costs to provide insurance and comply with the indemnity provisions specified in chapter 7 of the General Conditions.

1.17 Preparation of bids. Bids must be prepared using the form and delivered in the envelope provided for such purpose by the Purchasing Division or the agency calling for bids. Bidders should not prepare their bids on any form marked or stamped "Not for bidding purposes" or with other instructions indicating that such form is not to be used.

(1) Bids shall be prepared in ink or typewritten.

(2) Errors may be erased or crossed out and corrections initialed in ink by the person signing the bid. [HAR 3-122-21]

(3) 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.

(4) 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.

(5) Out-of-state bidders must list their State of Hawaii address and telephone number in their bids.

(6) Unless otherwise specified in the invitation for bids, bidders must bid on all items listed in the invitation for bids.

(7) In case of discrepancy between prices written in words and those written in figures, the price written in words shall govern.

(8) 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. [HAR 3-122-21]

1.18 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 per cent of the total bid amount. [HAR 3-122-21]

(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 4.26 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.

1.19 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 City construction projects. The certificate of compliance included in the bid proposal shall be submitted with the bidder's bid. Failure to submit the required certification may be grounds for disqualification of the bidder's bid.

1.20 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 City 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 as provided for withdrawals or modifications below. [HAR 3-122-28]

(c) Method for withdrawal of bids. For withdrawal of bids, by submittal of:

(1) A written notice received in the office designated in the notice to contractors; or

(2) A written notice transmitted by facsimile machine to the Purchasing Division at (808) 523-4847. [HAR 3-122-28]

(d) Method for modifications of bids. For modification of bids, by submittal of:

(1) A written notice accompanying the actual modification received in the office designated in the notice to contractors, stating that a modification to the bid is submitted; or

(2) A written notice accompanying the actual modification by facsimile machine to the office designated in the notice to contractors; provided bidder submits the actual written notice and modification within two working days of receipt of the facsimile. [HAR 3-122-28]

1.21 Development of specifications. A contractor paid for services to develop or prepare specifications or work statements shall be precluded from bidding or receiving a contract for that particular solicitation. [HAR 3-122-13]

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

1.23 Determination of contractual terms and conditions. The Contracting Officer is authorized to determine the contractual provisions, terms, and conditions of solicitations and contracts, provided the provisions, terms, and conditions are not contrary to statutory or chapter 91 administrative rule requirements government the procurement. [HAR-3-122-7]

CHAPTER 2 - BID OPENING, AWARD AND EXECUTION OF CONTRACT

2.1 Receipt, opening, and recording of bids. (a) Submission of a proposal shall be deemed verification of reading and examination of the invitation for bids, and the project site. Upon its receipt, each bid and modification shall be time-stamped but not opened and shall be stored in a secure place by the officer charged with opening of bids, until the time and date set for bid opening.

Bidders are advised to personally time-stamp and deposit the envelopes containing their bids at the Purchasing Division. All bid envelopes must bear the Purchasing Division time stamp mark. Envelopes which are not time stamped or which are time stamped after the specified bid opening time and date shall be rejected except as provided for in section 2.2, Late bids, late withdrawals, and late modifications. Mailed bids must be received and time-stamped on or before the specified time and date.

(b) Public opening and inspection. Bids will be publicly opened and shall be available for public inspection at the time of bid opening except to the extent that the bidder designates trade secrets or other proprietary data to be confidential as set forth in this subsection. [HAR 3-122-30]

Material so designated as confidential shall accompany the bid **and shall be readily separable from the bid** in order to facilitate public inspection of the nonconfidential portion of the bid. [HAR 3-122-21]

(c) Unconditional acceptance of bids. Bids shall be unconditionally accepted without alteration or correction, except as allowed in sections 2.2 and 2.5. [HAR 3-122-30]

(d) Informal bids. Construction estimated to be under \$25,000 are not required to be written bids, or to be opened and read aloud publicly. Such bids may be solicited by the Purchasing Division or by different agencies of the City that have been delegated authority to solicit bids for small purchase construction. In the event written bids are solicited, bidders should confirm the location designated for receiving those bids.

2.2 Late bids, late withdrawals, and late modifications. Any notice of withdrawal, notice of modification of a bid with the actual modification, or any bid received at the place designated for receipt and opening of a bid after the time and date set for receipt and opening of bids is late and will not be considered for award. A late bid, late modification, or late withdrawal shall not be considered late if received before contract award and would have been timely but for the action or inaction of personnel within the procurement activity. [HAR 3-122-29]

2.3 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 City fails to award the contract: (1) For City-funded projects or projects funded in whole or in part by the federal government, within sixty days of the date of opening;

(2) For projects funded in whole or in part by the State, within one hundred fifty days of the date of opening; and

(3) For improvement district projects, within three hundred days of the date of opening.

2.4 Extension of time for acceptance of bid. After opening of bids, the Contracting Officer or the Officer-in-Charge may request bidders to extend the time during which the City may accept their bids as stated in the terms and conditions of the solicitation. [HAR 3-122-2]

2.5 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 City or to the fair treatment of other bidders. [HAR 3-122-31]

(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 office-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 City 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 which shall affect price, quantity, quality, delivery, or contractual conditions. The bidder shall request withdrawal by submitting proof of evidentiary value which 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. [HAR 3-122-31]

(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. [HAR 3-122-31]

(e) The determination made by the Contractor or the Officer-in-Charge shall be final and conclusive unless it is clearly erroneous, arbitrary, capricious, or contrary to law. [HAR 3-122-31]

2.6 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) Award 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; and

(2) Award the contract to the bidder who received the previous award and continue to award succeeding contracts to the same bidder so long as all low bids are identical.

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. [HAR 3-122-34]

2.7 Cancellation of solicitation. (a) An invitation for bids may be canceled in whole or in part for reasons which are cogent and compelling and in the best interest of the City. [Chapter 3-122, subchapter 11, HAR]

(b) Prior to bid opening. If canceled prior to opening, the following reasons for cancellation shall apply but not be limited to:

- (1) The agency no longer requires the construction;
- (2) The agency 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. If canceled after opening but prior to award, the following reasons for cancellation shall apply but not be limited to:

- (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 agency;
- (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; or
- (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.
- (7) The Contracting Officer or, for informal bids, the Officer-in-Charge determines that cancellation of the solicitation is in the public interest. [HAR 3-122-96]

2.8 Rejection of bids. (a) In addition to the causes stated in subsection 1.1(f), Disqualification of prospective bidders, 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 but not limited to:

- (1) The bidder that submitted the bid is nonresponsive.
- (2) The bid is not responsive, that is, 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. [HAR 3-122-97]
- (4) Conditioning bids upon other awards. Any bid that is conditioned upon receiving award of both the particular contract being solicited and another City contract shall be deemed nonresponsive and not acceptable. [HAR 3-122-6]
- (5) Bids in which prices are unbalanced, which contain omissions, erasures, alterations, or additions not called for, or irregularities of any kind.
- (6) The bidder is not currently licensed, or has a license which does not cover the type of work required.
- (7) Incomplete, ambiguous, or erroneous listing of joint contractors or subcontractors in the proposal.
- (8) Bids submitted by any one person under the same or different names. Without limiting the generality of the foregoing provision, a person shall be considered to have submitted more than one bid if such person submits more than one bid under the same name, or through agents, or through joint ventures, partnerships or corporation in which such person has more than a twenty-five per cent interest in each of them, or through any combination thereof.
- (9) Evidence that two 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 City.

(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 that any selection of awards will be made by the Contracting Officer. [HAR 3-122-97]

GENERAL INSTRUCTIONS TO BIDDERS (7/99)

(c) Limiting acceptance to entire bid. Unless allowed by the solicitation, a bid may not limit acceptance to the entire bid or offering:

(1) If acceptance is so limited, such bids shall be deemed to be nonresponsive.

(2) If the bid is properly so limited, the Contracting Officer or, for informal bids, the Officer-in-Charge shall not reject part of such bid and award on the remainder. [HAR 3-122-97]

2.9 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. [HAR 3-122-33]

The Contracting Officer may, at any time prior to execution of a contract by the City, require the bidder or contractor to submit the required tax clearances from the State Department of Taxation and Internal Revenue Service.

No contract will be awarded to any person suspended or debarred by the State or City, or who has not provided tax clearances from the State Department of Taxation and the Internal Revenue Service.

(b) Under \$25,000. Award for any bid under \$25,000 (including any contingency amount) shall be made by purchase order and will not require performance and payment bonds, builder's risk insurance, or tax clearances.

(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. [HAR 3-122-33]

2.10 Contract not binding unless funds available. (a) No contract shall be binding or of any force and effect without an endorsement by the Director of the Department of Budget and Fiscal Services, 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. [HAR 3-122-102]

(b) Exceptions

(1) If a contract is a multi-term contract pursuant to HAR section 3-122-149, 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 which 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; and

(3) If there is no direct expenditure of public funds from the City to the contractor.

(c) Certification of a portion of funds.

Notwithstanding the requirement for certification above, certification of a portion of the total funds required for a contract may be permitted when an immediate solicitation will result in significantly more favorable contract terms and conditions to the City than a solicitation made at a later date; provided that certification for partial funding shall be permitted only if the Director of The Department of Budget and Fiscal Services 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 partially funded shall be enforceable only to the extent to which funds have been certified as available. [HAR 3-122-102]

(d) Contracts involving Federal funds

**GENERAL INSTRUCTIONS TO BIDDERS
(7/99)**

(1) In any contract involving not only State or City funds but supplemental funds from the Federal government, or involving one hundred per cent Federal funds, this section shall be applicable only to that portion of the contract amount obligated and payable out of State or City funds; however, this shall be liberally construed so as not to hinder or impede the City 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.

(3) The invitation for bids shall contain a statement that the project is in part or wholly funded with Federal funds, and that payment to the Contractor of the Federal government's share shall be made upon receipt of those funds from the Federal government. [HAR 3-122-103]

2.11 Execution of contract. (a) Upon notification of award of contract, the successful bidder shall obtain the contract from the Division of Purchasing, Department of Budget and Fiscal Services, for execution. The forms included in the contract document are to be completed and executed by the Contractor and surety in the following manner:

(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 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 section 7.1, of the General Conditions.

(b) Failure to enter into contract. Failure to enter into the contract and to furnish satisfactory security **within ten days** from notice of award shall 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.

3.1 Authority to resolve protested solicitations and awards. (a) Definitions. As used in this subsection:

(1) "**Interested party**" means an 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 of the award of a contract and who files a protest. [HAR 3-126-1]

(b) Complaint to officer-in-charge. Complainants should seek resolution of their complaints initially with the Officer-in-Charge or the Contracting Officer. Such complaints shall be made in writing. [HAR 3-126-2]

(c) Filing of protest.

(1) Protests shall be made in writing to the Contracting Officer, and shall be filed in duplicate **within five working days** after the protestor knows or should have known of the facts leading to the filing of a protest. A protest is considered filed when received by the Contracting Officer. Protests filed after the five-day period 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.

(5) The Contracting Officer shall submit a copy of the protest to the Corporation Counsel **within three working days** of receipt of the written protest. [HAR 3-126-3]

(d) Request for information. Any additional information requested by any of the parties should be submitted within the time periods established by the requesting source in order to expedite consideration of the protest. 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 which is not filed within the established time period.

(e) Stay of procurements during protest. When a protest has been filed within five working days pursuant to subsection (c) 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 City.

(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. [HAR 3-126-6]

(g) Decision by the Contracting Officer. A decision on a protest shall be made by the Contracting Officer as expeditiously as possible after receiving all relevant, requested information. If a protest is sustained and the protesting bidder 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 protesting bidder the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorneys' fees. [HAR 3-126-7]

(h) Request for reconsideration. Reconsideration of a decision of the Contracting Officer may be requested by the protestor, appellant, any interested party who submitted comments during consideration of the protest, or any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modifications is deemed warranted, specifying any errors of law made or information not previously considered and shall be filed **not later than ten working days** after receipt of the Contracting Officer's decision.

Requests for reconsideration of a decision of the Contracting Officer shall be acted upon as expeditiously as possible. The Contracting Officer may uphold the previous decision or reopen the case as the Contracting Officer deems appropriate. The decision shall be final and the protesting bidder shall be informed:

(1) Whether the protest is denied or sustained; and

(2) If the protest is denied, the protestor's right to an administrative proceeding pursuant to subchapter 5, chapter 3-126, HAR.

The protesting bidder shall inform the Contracting Officer **within five working days** after the final decision if an administrative appeal will be filed. An appeal shall be filed within seven calendar days of the determinations under subsections 1.1(e) and 1.1(f), this section, or section 3.2. [HAR 3-126-8]

GENERAL INSTRUCTIONS TO BIDDERS (7/99)

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 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.

EXHIBIT "A"

(Intent.frm, 1/99)

Contractor

Street/P. O. Box

City/State/Zip Code

Business Telephone

Director, Department of
 Budget and Fiscal Services
 c/o Division of Purchasing
 City and County of Honolulu
 530 South King Street, Room 115
 Honolulu, Hawaii 96813

SUBJECT: INTENT TO BID

This is to inform you that the undersigned bidder intends to bid on the following project:

PROJECT NAME AND DESCRIPTION: _____

PROJECT NUMBER (IF ANY): _____

BID OPENING TIME AND DATE: 2:00 P.M., _____

The undersigned certifies that the bidder is licensed to undertake this project pursuant to Chapter 444, Hawaii Revised Statutes, relating to licensing of contractors.

BIDDER'S CONTRACTOR'S LICENSE NO: _____
 (If a joint venture for this project only, list the license numbers of all partners to the joint venture. Joint venture must notify the Contractor's Licensing Board of this intended action.)

 Signature/Title