OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of PAUL'S ELECTRICAL CONTRACTING, LLC, Petitioner, vs. CITY AND COUNTY OF HONOLULU, DEPARTMENT OF BUDGET AND FISCAL SERVICES, Respondent. C & C ELECTRICAL CONTRACTOR, INC., Intervenor	PCY-2012-018 (Project: Ala Wai Community Park) HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION Senior Hearings Officer: David H. Karlen

HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

By petition submitted June 1, 2012, Petitioner Paul's Electrical Contracting, Inc. (hereinafter "Petitioner" or "Paul's") filed its Request for Administrative Hearing ("RFAH") in this matter, which Request was assigned case number PCY-2012-018. Respondent was the City and County of Honolulu, Department of Budget and Fiscal Services (hereinafter "Respondent" or "City").

A Notice of Hearing and Pre-Hearing Conference; Order for Service of Request for Hearing was filed on June 4, 2012. A pre-hearing conference was set for June 14, 2012 and a hearing was set for June 22, 2012.

A pre-hearing conference was held in this matter on June 14, 2012. Nathan H. Yoshimoto, Esq. represented Petitioner. Ryan H. Ota, Esq., Amy R. Kondo, Esq. and Geoffrey Kam, Esq. represented the Respondent. Sean Kim, Esq., represented a potential intervening party, C & C Electrical Contractor, Inc. By an order filed June 15, 2012, C & C Electrical Contractor, Inc. (hereinafter "Intervenor" or "C & C") was granted leave to intervene in this matter.

The following motions were filed on June 15, 2012:

a. C & C's Motion to Dismiss or in the Alternative for Summary Judgment ("C & C's Motion"); and

b. The City's Motion for Summary Judgment ("City's Motion").

On June 21, 2012, the parties filed the following memoranda:

a. C & C's Joinder in the City's Motion;

b. The City's Memorandum in Response to C & C's Motion;

c. Paul's Memorandum in Opposition to the City's Motion; and

d. Paul's Memorandum in Opposition to C & C's Motion.

In addition, Paul's submitted a Declaration of Paul M. Adachi in opposition to C & C's Motion.

All motions came on for hearing on June 22, 2012. Nathan H. Yoshimoto, Esq., and Thomas Moriarty, Esq., represented Paul's, Ryan H. Ota, Esq., Geoffrey Kam, Esq., Amy R. Kondo, Esq., and Lynn Y. Wakatsuki, Esq., appeared on behalf of the City, and Sean Kim, Esq., represented C & C. At the conclusion of the hearing, all motions were taken under advisement.

II. FINDINGS OF FACT

To the extent that any Findings of Fact are more properly construed as Conclusions of Law, they shall be so construed.

1. On or about March 7, 2012, the City issued a request for bids, RFB-DDC-44691 ("RFB"), to solicit bid proposals to the City for the replacement of the baseball field lighting system at the Ala Wai Community Park, Honolulu, Hawaii, Job No. 12-P-4 ("Project"),

2. The bid opening for this RFB was held on March 30, 2012.

3. The City received timely bid proposals from C & C, Paul's, and Circuit Builders, Inc.

4. C & C had a bid proposal of $2,817,103.00, Paul's had a bid proposal of $2,922,700.00, and Circuit Builders, Inc., had a bid proposal of $3,023,500.00.

5. At bid opening, C & C was the apparent low bidder.

6. C & C holds A, B, C-13, C-05, and C-62 licenses. C & C does not hold C-31 or C-41 licenses.

7. Paul's holds A, B, C-13, C-62, C-68HD, C-31, and C-27 licenses. Paul's does not hold a C-41 license.

8. Both C & C and Paul's listed Hawaiian Dredging as one of their subcontractors. Hawaiian Dredging does hold a C-41 license.

9. Hawaiian Dredging's subcontractor proposal to Paul's Electric, however, excluded the furnishing of steel reinforcing cages.

10. Hawaiian Dredging's subcontractor proposal, dated March 30, 2012, is attached as Exhibit "A" to Exhibit "G" (Paul's Bid Protest) to Paul's RFAH. This subcontractor proposal is not specifically directed to Paul's. Instead, it is directed to

"GENERAL CONTRACTORS." Based on this direction to general contractors, Paul's has asserted that C & C received the same subcontractor proposal from Hawaiian Dredging that Paul's received, and, therefore, as a subcontractor to C & C, Hawaiian Dredging would not be furnishing any steel reinforcing cages. C & C has not contradicted this assertion.

11. The Project includes work that cannot be contracted to and performed solely by a general engineering contractor or general building contractor that does not have a C-41 specialty license for steel rebar work. Not having a C-41 license, C & C needed to have a subcontractor with a C-41 license. Because, however, C & C's listed subcontractor, Hawaiian Dredging, was not providing the steel reinforcing cages, C & C needed another C-41 licensed subcontractor to provide those cages. C & C did not list any such additional subcontractor in its bid.

12. In addition to listing Hawaiian Dredging as a subcontractor, Paul's listed Associated Steel Workers as a subcontractor. Associated Steel Workers has a C-41 license and proposed to Paul's that it would fabricate the steel reinforcing cages and deliver them to the jobsite.

13. Part of the Project involves concrete masonry work (Exhibit "B" to Paul's RFAH), and this work may be performed only by a contractor with a C-31 license. C & C does not have a C-31 license, and its bid did not list a subcontractor with a C-31 license.

14. The RFB provided that it is the bidder's responsibility to review the requirements of the Project and to determine the required licenses for the completion of the project.

15. No award of contract letter for this Project has been issued by the City.

16. On April 4, 2012, the City received Paul's Protest Letter, dated April 4, 2012, of the award of the Project to C & C ("Bid Protest"). Paul's Bid Protest alleged that C & C's

bid was nonresponsive because C & C did not possess the required C-41 and C-31 licenses and did not list subcontractors for this work with these required licenses.

17. The Bid Protest alleged that Paul's had listed a properly licensed subcontractor, Associated Steel Workers, Ltd., to do the steel rebar work and that the "price" for Associated Steel Workers' fabrication and furnishing of reinforcing steel was $56,800.00 (with an additional $525.00 for miscellaneous rebar work). Attached as Exhibit "B" to the Bid Protest was a proposal from Associated Steel Workers, dated March 30, 2012, to fabricate and furnish the reinforcing steel, including delivery to the job site, for $56,800.00. Paul's then alleged that the "reinforcing steel is not equal to or less than one percent of the total bid amount."

18. Upon receipt of the Bid Protest, the City sent a letter dated April 12, 2012 to C & C requesting a response to Paul's Bid Protest.

19. By letter to the City dated April 17, 2012, C & C stated that it had licensed subcontractors to do the work in question and that the price for each subcontractor's work was less than one percent of C & C's Project bid price.

20. Paradise Reinforcing, Inc., a C-41 licensee, submitted a proposal to C & C dated March 29, 2012 to fabricate and furnish reinforcing steel on the Project for $24,000.00. Delivery to the job site was not included in this proposal. A copy of this proposal was sent to the City as attachment #1 to C & C's letter of April 17, 2012. C & C did not deny that this was the reinforcing steel that was excluded from Hawaiian Dredging's subcontract proposal.

21. By a proposal dated March 30, 2012, Ono Construction, LLC, a C-31 licensee, submitted a proposal to C & C to do the masonry work for $2,480.00. A copy of this proposal was sent to the City as attachment #3 to C & C's letter of April 17, 2012.

22. In its letter of April 17, 2012, C & C also asserted the following:

a. The rebar fabricator was not a subcontractor since it was not installing the rebar but was instead a supplier of fabricated materials that did not have to be listed as a subcontractor on C & C's bid; and

b. The concrete masonry work consisted of 48 square feet and C & C considered this "incidental" to the Project (with the implication that C & C did not need a C-31 license to perform this "incidental" work).

23. One percent of C & C's bid of $2,817,103.00 is $28,171.03.

24. The proposed price to C & C of subcontractor Paradise Reinforcing, Inc., of $24,000.00 is less than one percent of C & C's bid price.

25. The proposed price to C & C of subcontractor Ono Construction, LLC, of $2,480.00 is less than one percent of C & C's bid price.

26. The total of the proposed prices of Paradise Reinforcing, Inc., and Ono Construction, LLC, to C & C is $22,480.00, which total was less than one percent of C & C's bid price.

27. By letter dated May 26, 2012, the City denied Paul's protest.

28. With respect to Paul's claim regarding the lack of a C-41 license, the City asserted that Paradise Reinforcing, Inc., was a supplier, and not a subcontractor, and it was therefore not necessary for Paradise to be listed as a subcontractor. Neither the City nor C & C assert this claim as a basis for relief in the present Motions.

29. Alternatively, the City's letter asserted that Paradise was a licensed C-41 contractor and that its price of $24,000.00 was less than one percent of C & C's bid amount. The City's letter further asserted that Ono Construction, Inc, which possessed a C-31

masonry license, would furnish the masonry work for $2,480.00, which is less than one percent of C & C's bid price.

30. The City's letter than asserted that since the value of the work to be performed by the unlisted subcontractors was less than or equal to one percent of C & C's bid price and that it was in the best interest of the City to accept C & C's bid, which was the lowest bid, the City would accept C & C's bid pursuant to the provisions of HRS §103D-302(b).

31. The City's letter of May 25, 2012 further stated that C & C's bid was the lowest bid, that the value of the work to be performed by C & C's two unlisted subcontractors was each lower than one percent of the total bid amount, and that the City was accepting C & C's bid in the best interest of the City

III. CONCLUSIONS OF LAW

A. General Considerations

If any of the following Conclusions of Law shall be deemed Findings of Fact, the Hearings Officer intends that every such Conclusion of Law shall be construed as a Finding of Fact.

Summary judgment is appropriate if the record herein shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence, and all reasonable inferences from the evidence, must be viewed in the light most favorable to the non-moving party. Koga Engineering & Construction, Inc., v. State, 122 Haw. 60, 78, 222 P.3d 979, 997 (2010).

Bare allegations or factually unsupported conclusions are insufficient to raise a genuine issue of material fact. Reed v. City & County of Honolulu, 76 Haw. 219, 225, 873 P.2d 98, 104 (1994).

Under HRS §103D-302(b), C & C's bid was required to list a subcontractor possessing a C-41 license to perform the rebar work and to list a subcontractor possessing a C-31 license to perform the masonry work

The statute provides, in relevant part:

> If the invitation for bids is for construction, it shall specify that all bids include the name of each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each

A responsive bidder is one who has submitted a bid which conforms in all material respects to the invitation for bids. HRS §103D-104.

For purposes of these motions, C & C and the City are not asserting that Paradise Reinforcing is a supplier that need not be listed on C & C's bid. Further, neither C & C nor the City are asserting, for purposes of these motions, that the 48 square feet of concrete work is incidental to the performance of the work for which C & C has a license.

Accordingly, for purposes of deciding these motions, the failure to list a subcontractor with a C-41 license and the failure to list a subcontractor with a C-31 license renders C & C's bid non-responsive. Cf. Okada Trucking Co., Ltd. v. Board of Water Supply, 101 Haw. 68, 75, 62 P.3d 631, 638 (Haw. App. 2003)

However, HRS §103D-302(b) also allows the City the discretion to waive C & C's failure to list the two subcontractors and to accept a bid that is otherwise non-responsive under this statute if two conditions are met:

a. Acceptance is in the best interest of the City; and

b. "the value of the work to be performed by the joint contractor or subcontractor is equal to or less than one percent of the total bid amount."

B. Waiver of the Failure to List a Masonry Subcontractor

The proposal by Ono Construction, holder of a C-31 license, to C & C to provide the masonry work on the Project was for less than one percent of C & C's bid price. Paul's does not contend that the value of this masonry work exceeded one percent of C & C's bid price. Further, at the hearing on June 22, 2012, Paul's conceded that it was not opposing the motions with respect to the City's waiver of the failure to list a masonry subcontractor.

With the amount of C & C's bid price being $2,817,103.00, some $105,597.00 less than the price of the next lowest bidder, and the proposal from Ono Construction being much less than one percent of C & C's bid price, acceptance of C & C's bid despite its failure to list the masonry subcontractor was in the best interest of the City.

Summary judgment should be granted in favor of the City and C & C with respect to Paul's claim regarding the failure to list a C-31 licensed subcontractor on C & C's bid.

C. Waiver of the Failure to List a Rebar Subcontractor

With respect to the subcontractor proposal from Paradise Reinforcing for $24,000.00, Paul's asserts that this amount, while below one percent of C& C's bid price, is not the true value of the work on the project. Paul's asserts that the term "value of the work" in HRS §103D-302(b) is not the same as the subcontractor's price. In the present case, Paul's asserts that the "value of the work" exceeds one percent of C & C's bid. According to Paul's, this means the City cannot waive the failure to list a rebar subcontractor because the statutory prerequisites of HRS §103D-302(b) have not been met.

Paul's asserts that the term "value of the work" in HRS §103D-302(b) is not automatically measured by the subcontractor's bid price but is more akin to a *quantum meruit* type of definition of the "reasonable" value of the work. The word "reasonable" is not used in the statute, but Paul's asserts that the statute uses the word "value" rather than "price." While conceding that in most cases the subcontractor's price may be the best indicator of

value, Paul's further asserts that such is not always the case and that its evidence demonstrates that this matter is one where the subcontractor's price and the value of the work are substantially different.

The City and C & C assert, on the other hand, that the term "value of the work" refers to the subcontractor's price, as the words of the statute compare this "value" to "one percent of the total bid amount," and the "total bid amount" is the low bidder's bid "price" and not the theoretical reasonable value of the project.

Okada Trucking Co., Ltd. v. Board of Water Supply, supra, has a lengthy exposition of the standards used in interpreting statutes. First:

> [w]hen construing a statute, our foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. And we must read statutory language in the context of the entire statute and construe it in a manner consistent with its purpose.

101 Haw. at 71-72, 62 P. 3d at 634-635 (citations omitted).

Second, where there is "doubt, doubleness of meaning, or indistinctiveness or uncertainty" of a statutory expression, there is an ambiguity where meaning may be sought by examining the context and extrinsic aids such as legislative history. 101 Haw. at 72, 62 P.3d at 635.

Finally, we may also consider:

> the reason and sprit of the law and the cause which induced the legislature to enact it to discovery its true meaning, HRS 1-15(2) (1993). Laws in pari materia, or upon the same subject matter, shall be construed with reference to each other. What is clear in one statute may be called upon in aid to explain what is doubtful in another.

101 Haw. at 72, 62 P.3d at 635 (citations omitted)..

The present version of the statute is the culmination of a lengthy legislative process. Prior to 1993, the subcontractor listing requirement was stated in absolute terms so that failure to list a necessary subcontractor rendered the bid nonresponsive. When the

procurement code was enacted in 1993, the law was changed to give the procurement officer broad discretion to accept bids which did not comply with the subcontractor listing requirement. The purpose of this change was to allow for flexibility, common sense, and economical and efficient purchasing decisions. The next year, however, this broad discretion was "substantially limited" by a change to the statutory language that remains today. See Okada Trucking Co., Ltd. v. Board of Water Supply, supra.

The parties have not identified any legislative history that sheds light on the purpose behind this last statutory change as it relates to the meaning of "value of the work," but it is obvious that the legislation as a whole was intended to limit the exercise of the discretion of the procurement officer to instances where the amount involved was minimal (one percent) of the total bid price. In those instances, however, there appears to be no intent to eliminate the other benefits of the earlier statutory change in 1993, namely to allow flexibility, common sense, and economical and efficient purchasing decisions.

Given that goal, it makes better sense to interpret the term "value of the work" to relate to the subcontractor's price. Otherwise, the procuring agency would be obliged to make a full and detailed investigation of the unlisted subcontractor's proposal. Furthermore, the procuring agency would have to determine how it would establish the "reasonable value" of the subcontractor's scope of work. Would that be measured against the engineer's cost estimate (which would not necessarily be itemized in a way that allows for direct comparison)? Would it have to obtain from other bidders copies of their subcontractor's proposals (which are normally not submitted with the general contractor's bid)? Would the procuring agency have to commission its own estimate? Making these determinations would create the very opposite situation to what was intended by of the Procurement Code—it would definitely not be economical, efficient, or flexible. On the contrary, it would make the procurement more cumbersome even though it only applied to one percent or less of the bid

price. It would be ironic if the 1994 statute's intent to limit the procurement officers discretion instead served as a roadblock to prompt and efficient procurements. The Hearings Officer does not perceive this to be the intent of the Legislature in enacting the 1994 version of the statute.

The Hearings Officer therefore concludes that the most reasonable interpretation of the statute under these circumstances is that it refers to the subcontractor's proposal or bid price. This interpretation is in keeping with the admonition in Okada Trucking Co., Ltd. v. Board of Water Supply, supra, to read the statute in the "context of the entire statute" and is most "consistent with its purpose." Since Paradise Reinforcing's price was less than one percent of C & C's bid, Respondent had the ability under HRS §103D-302(b) to waive the subcontractor listing requirement.

The statute has been interpreted to apply the one percent limitation to each undisclosed subcontractor even if the total work of all undisclosed subcontractors exceeds one percent of the bid. See LTM Corp. dba Civil Mechanical Contractor v. City and County of Honolulu, Director of Budget and Fiscal Services, PCH-2009-17, Order Denying Petitioner's Motion for Summary Determination of Appeal as a Matter of Law (August 10, 2009). Here, the total work of the two undisclosed subcontractors is actually less than one percent of C & C's bid.

Summary judgment should therefore be granted in favor of the City and C & C with respect to Paul's claim regarding the failure to list a C-41 licensed subcontractor on C & C's bid.

For the following reasons, the Hearings Officer further concludes that summary judgment should be granted in favor of the City and C & C even if the term "value of the work in HRS §103D-302(b) is interpreted to be the "reasonable value" of the work.

When Paul's submitted its Bid Protest, it asserted that the proposal from its C-41 licensed rebar subcontractor was $56,800.00 and provided the City with a copy of that subcontractor's proposal in that amount. Assuming that the term "value of the work" does not mean the subcontractor's proposed price, did Paul's Bid Protest adequately put the City on notice that Paradise Reinforcing's bid did not represent the reasonable value of the work and that the reasonable value of the work exceeded one percent of C & C's bid price.

The Hearings Officer concludes that Paul's Bid Protest did not adequately raise the issue such that there is now a disputed issue of material fact precluding summary judgment for C & C and the City. Merely stating that its subcontractor's price was greater than one percent of the bid does not state a claim that the reasonable value of the work was greater than one percent of C & C's bid. It should be noted, for example, that the scope of work in Paradise Reinforcing's proposal was not the same as the scope of work in Associated Steel's proposal, and both of them had different scopes of work from the other two higher-priced proposals referred to in the Declaration of Paul Adachi.

At most, Paul's Bid Protest states that Paul's subcontractor was charging more than C & C's subcontractor was charging. This cannot be stretched to say that C & C's subcontractor's price is greater than one percent of C & C's bid. It says nothing about the "reasonable value of the work" which would cause the City to investigate whether the Paradise Reinforcing price was less than that "reasonable value." The waiver portion of HRS §103D-302(b) was not intended to allow disappointed bidders an opportunity to subpoena their competitors' records in order to find out how their competitors can come up with lower bid prices. Under Paul's theory of the interpretation of the statute, there has to be something more than differing subcontract prices before the procuring agency is required to undertake a potentially expensive and time consuming process evaluating the reasonable value of a subcontractor's scope of work.

Paul's asserts that it does have more evidence in this case than just a comparison of subcontractor prices. The Declaration of Steven T. Togami, an estimator at Associated Steel Workers, dated June 21, 2012 and attached to Paul's Memorandum in Opposition to the City's Motion, asserts that the estimated cost for the steel rebar alone for the work involved is $38,875.00. If that is the case, the reasonable value of the work would automatically exceed one percent of C & C's bid price. As counsel for Paul's put it at the hearing on June 22, 2012, this evidence would be the "telltale sign" that the value of the work was in excess of one percent of C & C's bid.

At the hearing on Friday afternoon, June 22, 2012, the Hearings Officer questioned the parties as to whether there was jurisdiction to consider this portion of Paul's argument because the assertion and/or evidence that the rebar's material cost alone exceeded the one percent limitation had not been submitted to the City until June 21, 2012, well after the submission of Paul's Bid Protest. Since this jurisdictional issue had not been brought up or briefed by the parties prior to that point, on Monday morning, June 25, 2012, the Hearings Officer issued a Supplemental Briefing Order allowing the parties to submit supplemental memoranda on this issue by noon on June 27, 2012.[1] Paul's and the City timely submitted supplemental memoranda.

HAR §3-126-4 governs the content of a protest of an award and provides in section (b)(1) that the protest be filed "in accordance with section 3-126-3(c) and (d) as well as with supporting exhibits, evidence, or documents to substantiate the protest." Section 3-126-3(c), in turn, requires a "statement of reasons" and supporting documentation.

The evidence as to the cost of the rebar to Associated Steel Workers exceeding one per cent of C & C's bid was available to Paul's prior to Paul's submission of its bid protest.

[1] This Order was sent to the parties by fax or e-mail prior to noon on June 25, 2012.

Under Paul's theory of statutory interpretation, this would be critically important evidence because it would automatically make the reasonable value of the work exceed one percent of C & C's bid. Under this theory, it would make no difference what C & C's subcontractor's price was (information Paul's did not have when it submitted its protest) because that price would be irrelevant. This evidence would have turned Paul's protest from one of "we have a subcontractor price greater than one per cent and this is evidence that the value of the work to be performed by C & C's unlisted subcontractor is greater than one percent of C & C's bid" to one of "we have evidence that the value of the work to be performed by C & C's unlisted subcontractor must be greater than one percent of C & C's bid."

The procurement protest process under HRS Chapter 103D is designed to provide a prompt resolution of protests. As Paul's is well aware, the process is decidedly not the same as standard civil litigation in Circuit Court with notice pleading and extensive provisions for discovery to determine the basis of a complaint's allegations. There is, for example, no pre-hearing discovery in a procurement protest. Paul's has complained that it is unable to subpoena documents or witnesses before the evidentiary hearing, but the City is likewise precluded. This only emphasizes the importance of a bid protest containing all the significant evidence known at the time of the protest.

Submission for the first time of information, arguments, and/or documentation in a request for an administrative hearing does not correct a failure to comply with HAR §3-126-4 and amounts to a failure to exhaust administrative remedies. Alii Security Systems v. Department of Transportation, State of Hawaii, PCY-2012-002 (February 24, 2012). Paul's submission of the evidence of the cost of rebar to Associated Steel at an even later time, when it submitted its brief in opposition to the City's motion, is also a violation of HAR §3-126-4

The Hearings Officer's jurisdiction is limited by HRS §103D-709(h), which provides:

> The hearings officer shall decide whether the determinations of the chief procurement officer or the chief procurement officer's designee were in accordance with the Constitution, statutes, rules, and the terms and conditions of the solicitation or contract, and shall order such relief as may be appropriate in accordance with this chapter.

In other words, the hearings officer can only make a decision about the "determinations" of the chief procurement officer, and the chief procurement officer can only make "determinations" about complaints brought before that officer. The statute literally leaves no room for the hearings officer to make decisions about matters that were not previously the subject of a determination by the chief procurement officer.

In its Supplemental Memorandum, Paul's points out that the *de novo* review contemplated by the Procurement Code could lead to the discovery of new and additional facts during the course of the hearing process itself. Whether or not the discovery of such facts would require that a second bid protest be filed is ultimately not an issue in this proceeding because the cost of rebar to Associated Steel Workers is not a new fact discovered in the course of this matter. It is a fact within the knowledge of Paul's own subcontractor prior to the protest and a fact Paul's could have discerned on its own without having to approach the City. That it was a fact new only to the City only underscores the need to submit it to the City at the time of the bid protest.

Since this fact, crucial in Paul's theory of the case, was not made known to the City until one day prior to the hearing on the motions, the City had no opportunity to file any written objections prior to that hearing. The question of lack of jurisdiction, however, can be raised at any time in these proceedings. If not raised by the parties, it can be raised by the hearings officer *sua sponte*, as jurisdiction cannot be conferred by the stipulation, agreement, or waiver of the parties. Captain Andy's Sailing, Inc. v. Department of Natural Resources,

113 Haw. 184, 193-194, 150 P.3d 833, 842-843 (2006); Koga Engineering & Construction, Inc., v. State of Hawaii, supra, 122 Haw. at 84, 222 P.3d at 1003.

The Hearings Officer therefore concludes that the evidence of the cost of the rebar material to Associated Steel cannot be considered in this matter even assuming that the term "value of the work" in HRS §103D-302(b) is interpreted to be the "reasonable value" of the work.[2]

IV. DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds, concludes, and decides as follows:

a. The City's Motion is granted.

b. C & C's Motion is granted.

c. The City's denial of Paul's procurement protest is affirmed for the reasons stated herein. Paul's Request for Administrative Hearing herein is dismissed.

d. The parties will bear their own attorney's fees and costs incurred in pursuing this matter.

DATED: Honolulu, Hawai`i, June 27, 2012

DAVID H. KARLEN
Senior Hearings Officer
Department of Commerce
and Consumer Affairs

[2] The same conclusion is reached with respect to the subcontractor proposals from South Pacific Steel and Simmons Steel attached as Exhibits "B" and "C" to the Declaration of Paul M. Adachi.