

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of State Parks  
Honolulu, Hawaii 96813

June 22, 2012

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

SP1104001

Kaua'i

SUBJECT:

Request for Delegation to the Chairperson of Authority to issue Notices to Proceed to selected bidder regarding the sale of two (2) concession leases for Bays 1 and 2, respectively, in Marina Complex Building "A," both to Smith's Motor Boat Service, Inc., awarded after sealed bid auctions for business and/or commercial purposes; and

Rejection of all bids for the Bay 3 concession lease to Marina Complex Building "A" upon the sealed bid auction for business and/or commercial purposes; and Request for Approval to issue an Invitation for Bids for the sale of the Bay 3 concession lease by means of a sealed bid auction for business and/or commercial purposes, Wailua River State Park, Wailua, Kauai, Tax Map Key: (4) 3-9-004:010

REQUEST:

Delegating to the Chairperson the authority to issue the Notices to Proceed to selected bidder Smith's Motor Boat Services, Inc., regarding the sale of two (2) concession leases for Bays 1 and 2 by means of sealed bid auctions for business and/or commercial purposes; and rejection of all bids for the Bay 3 sealed bid auction for a lease for business and/or commercial purposes; and consequently, request for approval to issue an Invitation for Bids (IFB) for the sale of the Bay 3 concession lease by means of a sealed bid auction for business and/or commercial purposes, Wailua River State Park, Wailua, Kauai, Tax Map Key: (4) 3-9-004:010

LEGAL REFERENCE:

Sections 171-14,16,17, 26, 41, and other applicable sections of Chapter 171 and Chapter 102, Hawaii Revised Statutes, as amended.

Regarding Cancellation of Concession Lease Auction and Request for Approval to Issue new IFB

LOCATION:

Portion of Government lands at the Wailua Marina, Wailua River State Park situated at Wailua, Lihue (Puna), Kauai, identified by Tax Map Key: (4) 3-9-004 Parcel 10, as shown on the attached tax map key labeled Exhibit A.

**ITEM E-2**

AREA OF BAY 3 LEASE:

.139 acres, more or less, subject to confirmation by the Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Conservation  
The property is zoned CN, Neighborhood Commercial.

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act  
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO   x  

CURRENT USE STATUS:

Vacant and encumbered by Governor's Executive Order No. 2023 to the Division of State Parks for addition to the Wailua River State Park.

CHARACTER OF USE:

Business and/or commercial uses are allowed except restaurant concessions. Authorized uses are subject to all applicable governmental regulation.

LEASE TERM:

Five (5) years beginning on the Commencement Date.

COMMENCEMENT DATE:

Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

MINIMUM UPSET ANNUAL RENT:

To be determined by staff or independent appraisal establishing fair market rent, subject to review and approval by the Chairperson.

MINIMUM PERCENTAGE ANNUAL RENT:

Percentage of gross revenue from all sources within the leased premises, excluding State excise tax. Percentage to be determined by staff or independent appraisal establishing fair market rent, subject to approval by the Chairperson.

EFFECTIVE RENTAL:

The amount of the successful bid at public auction or a percentage of the gross revenue (as determined by staff or independent appraisal), whichever is higher.

METHOD OF PAYMENT:

Monthly payments, in advance. Percentage rent payments shall be due by the 25<sup>th</sup> day of the following month.

RENTAL REOPENINGS:

None.

PERFORMANCE BOND:

The bond shall be equal to two times the annual rent.

MINIMUM IMPROVEMENTS:

If needed, Lessee will construct and maintain its own interior improvements at its own cost and expense, subject to the approval of the Division of State Parks. The premises are leased in their "As Is" condition. The Division of State Parks will maintain the building.

IMPROVEMENT BOND:

Equal to the amount of improvements, if any.

RENT WAIVER:

None.

PROPERTY CHARACTERISTICS:

- |                            |   |
|----------------------------|---|
| Utilities –                | Lessee shall pay its fair share of all utilities for the premises including water, electricity, trash removal and other utilities, regardless of whether or not they are separately metered, as determined by the Chairperson.  |
| Existing Improvements –    | The premises are leased in their "As Is" condition. The Lessee shall make all improvements within their space subject to the review and approval of the Division of State Parks. The square footage amounts are subject to verification and/or adjustment as necessary. |
| Legal access to property – | Staff has verified that there is legal access to the property off of Kuhio Highway.   |

Encumbrances – Staff has verified that the following encumbrances exist on the property: EO No. 2023.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

State Parks believes that this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2 and 6 of the State Parks Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976].

REMARKS:

On June 23, 2011, the Board approved the sale of the three (3) concession leases by means of sealed bid auctions, each lease for a term of five (5) years. Following the Board's approval, appraisals were obtained, an IFB was issued and the auction was conducted, closing on June 4, 2012, resulting in a bid or bids for each of the three spaces. State Parks received two bids on Bay 1 and one bid on Bay 2, each from qualified bidders. In accordance with the bidding procedures contained in the IFB, Smith's Motor Boat Services, Inc., had the highest responsible bid for Bays 1 and 2 and therefore was awarded each of those concession leases. The terms of the IFB require the Board to issue a notice to proceed for each lease, so the Board is requested to delegate that authority to the Chairperson.

On Bay 3, State Parks received two bids from two separate bidders, each for identical amounts resulting in a tie. The tied bidders bid the same amounts for both the minimum annual guarantee rent and also the same amounts for percentage rent. The language in the IFB states, "**In the event of a tie in the minimum annual guarantee rental bid, the bidder proposing to pay the highest percentage rental shall be awarded the concession lease. If there is also a tie in the tied bidders' monthly percentage offered, DLNR may reject all bids or may award the lease to the tied bidder who is best qualified by experience and financial means, as determined by the Chairperson.**" Staff recommended to the Chairperson that the bids be rejected and requests a new IFB be issued to determine a new selected bidder for Bay 3.

The terms and conditions of the new IFB will be identical to the previous IFB except that there will only be a single space offered – i.e., Bay 3 – and by this submittal, we also seek the Board's approval to authorize the Chairperson to select the winning bidder and to issue the Notice to Proceed.

RECOMMENDATION: That the Board:

1. Declare that after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

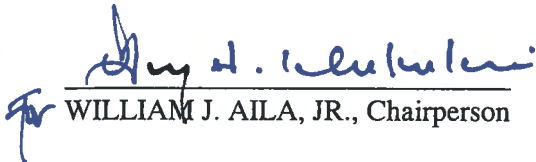
2. Authorize the sale of a single concession lease for Bay 3 via a sealed bid auction covering the subject areas for business and/or commercial purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - a. That the Board delegate to the Chairperson the authority to select a bidder and issue the Notice to Proceed.
  - b. The standard terms and conditions of the most current business or commercial general lease form, as may be amended from time to time;
  - b. Review and approval by the Department of the Attorney General; and
  - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. That the Board delegate to the Chairperson the authority to issue to a Notice to Proceed to Smith's Motor Boat Services, Inc. each for Bays 1 and 2 concession leases pursuant to the IFB for Sealed Bid Proposals for Retail Concession Spaces Bays 1-3, in Building "A", Marina Complex at Wailua River State Park, Wailua, Kaua'i, Hawai'i.

Respectfully Submitted,



DANIEL S. QUINN  
State Parks Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR., Chairperson

Attachments



### Exhibit B – Building A Wailua Marina State Park Retail Concession Bays 1-3

