

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2014 DEC 15 A 11: 13

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

HEARINGS OFFICE

In the Matter of)	PDH-2014-016
)	
GMP INTERNATIONAL, LLC,)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW, AND DECISION
Petitioner,)	
)	Senior Hearings Officer:
vs.)	David H. Karlen
)	
DEPARTMENT OF BUDGET AND FISCAL)	
SERVICES, CITY AND COUNTY OF)	
HONOLULU)	
)	
Respondent.)	
)	
R.M. TOWILL CORPORATION,)	
)	
Intervenor)	
_____)	

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

I. INTRODUCTION

Petitioner GMP International, LLC ("GMP"), filed a Request for Administrative Hearing ("RFAH") in this matter on November 10, 2014. At the same time, Certified filed a procurement protest bond in the amount of \$1,000.00.

By Notice of Hearing and Pre-Hearing Conference filed November 13, 2014, a pre-hearing conference was set for November 20, 2014, and a hearing was set for December 1 2014.

Respondent Department of Budget and Fiscal Services, City and County of Honolulu ("City"), filed its Response on November 19, 2014.

The pre-hearing conference was held on November 20, 2014. GMP was represented by Christopher J. Muzzi, Esq., and Tatyana Cerullo, Esq. The City was represented by Derek T. Mayeshiro, Esq., and Geoffrey M. Kam, Esq.

Pursuant to the stipulation of the parties, R.M. Towill Corporation (“Towill”) was allowed to intervene in this matter. Towill was represented at the prehearing conference by its Vice President, Mr. David K. Tanoue.

A Prehearing Order was filed November 20, 2014, which provided, pursuant to the agreement of the parties, that all motions for dismissal and/or for summary judgment by any party would be heard on December 8, 2014, and that an evidentiary hearing, if necessary, would be held on December 11, 2014.

The following motions were filed on December 1, 2014

- a. Intervenor R.M. Towill Corporation’s Motion to Dismiss Request for Hearing;
- b. Respondent City’s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment; and
- c. Petitioner GMP International, LLC’s Motion for Summary Judgment.

The City filed a joinder to Towill’s Motion on December 1, 2014.

The following memoranda in opposition to the above-listed motions were filed on December 5, 2014:

- a. GMP’s Memorandum in Opposition to Towill’s Motion;
- b. GMP’s Memorandum in Opposition to the City’s Motion;
- c. Towill’s Memorandum in Opposition to GMP’s Motion; and
- d. The City’s Memorandum in Opposition to GMP’s Motion.

On December 5, 2014, GMP also filed a Motion to Continue Hearing.

A hearing before the undersigned Hearings Officer on all motions was held on December 8, 2014. GMP was represented by Christopher J. Muzzi, Esq., and Tedson H. Koja, Esq. The City was represented by Derek T. Mayeshiro, Esq., along with Amy R. Kondo, Esq., and Geoffrey M. Kam, Esq. Towill was represented by Michael D. Tom, Esq., and Lyle M. Ishida, Esq.

At the conclusion of argument on the Motions, the Hearings Officer made oral rulings denying Towill's motion, sua sponte granting a motion for summary judgment for GMP on the subject matter of Towill's motion, ordering the return of GMP's protest bond, granting in part and denying in part the City's motion, holding that GMP's two motions were moot, and dismissing the RFAH.

This Decision, based on the record as of the conclusion of oral argument on December 8, 2014, is the formal order with respect to the aforesaid Motions.

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 July 9, 2013, the City issued Solicitation No. 138 for the Honouliuli Wastewater Treatment Plant ("WWTP") Secondary Treatment. The solicitation was for professional services with respect to planning the upgrading of the WWTP to include full secondary treatment of wastewater.

2. Five entities submitted statements of qualification in response to this solicitation. They were AECOM, Arcadis-GMP Joint Venture, Brown and Caldwell, Kennedy/Jenks, and Towill.

3. Arcadis-GMP Joint Venture is a joint venture of two separate entities, Arcadis, U.S., Inc., and GMP International, LLC.

4. The Arcadis-GMP Joint Venture clearly recognized that the joint venture was the entity submitting the proposal to the City, as the cover letter of October 1, 2013, submitted its proposal has “A Joint Venture” on its letterhead and states: “The ARCADIS-GMP Joint Venture is pleased to submit its proposal for the [Honouliuli Wastewater Treatment Plant Secondary Treatment] in response to the CCH Notice to Providers for Professional Services. ...ARCADIS and GMP have collaborated on successful projects throughout the country for more than 35 years. Our unique combination of strengths make this team the best choice for the City & County and people of Honolulu.” The letter is signed by the “ARCADIS-GMP Joint Venture.”

5. The City’s Evaluation Committee ranked each offeror in the following descending order: (1) AECOM; (2) Towill; (3) Kennedy/Jenks; and (4) a tie between Arcadis-GMP Joint Venture and Brown and Caldwell.

6. Subsequently, the City decided that AECOM had a conflict of interest and should be disqualified from consideration on this solicitation. AECOM was informed of this disqualification by means of a letter from the City dated June 26, 2014.

7. With the disqualification of AECOM, Towill then became the highest ranked offeror. By letter dated June 27, 2014, Towill was informed that the City had awarded it a contract in the amount of \$3,002,000.00 for the services set forth in the solicitation.

8. On July 2, 2014, the Arcadis-GMP Joint Venture requested a debriefing session with the City and was granted such a session. Representatives from both members of the Arcadis-GMP Joint Venture attended the debriefing session.

9. Thereafter, by letter dated July 17, 2014, GMP, alone, file a protest of the City’s award of the contract to Towill.

10. The protest letter is on GMP letterhead and is signed by the “General Counsel” of GMP. In its opening section, the letter states the protest is submitted by GMP:

Arcadis U.S., Inc. and GMP International, LLC (“GMP”), Joint Venture (“Arcadis/GMP JV”) submitted a Statement of Qualifications to the above-mentioned solicitation (“SOQ” or “proposal”). GMP hereby submits this Protest of Award (“Protest”) pursuant to Hawaii Revised Statutes (“HRS”) §§ 103D-304, 103D-701, and Hawaii Administrative Rules (“HAR”) 3-122-70, and all other relevant or appropriate statutory provisions and rules.

11. On September 5, 2014, the City received a letter from Arcadis U.S., Inc., stating:

ARCADIS US, Inc. and GMP International, LLC (GMP), Joint Venture (the JV) submitted a Statement of Qualifications in response to the Request for Proposals for the Honouliuli Wastewater Treatment Plant Secondary Treatment Plant solicitation number 138. The JV was not selected.

GMP International independently filed a protest on their own behalf, not on behalf of ARCADIS nor [sic] the JV. We wanted to formally communicate that ARCADIS is not protesting the decision made by the selection committee.

12. On November 3, 2014, the City denied GMP’s protest for the following reasons:

a. GMP is not aggrieved and it lacks standing to protest. In connection with this section of the protest denial letter, the City included the quotation from the September 5, 2014 Arcadis letter that is set forth above. In addition, the City enclosed a copy of the Arcadis September 5, 2014 letter with its protest denial letter.

b. Without waiving the above position, the City asserted in some detail that GMP’s argument were meritless.

13. On November 10, 2014, GMP submitted its RFAH in this matter along with a protest bond in the amount of \$1,000.00.

Further Findings of Fact of relevance to a particular Motion may be found below in the discussion of that Motion.

III. CONCLUSIONS OF LAW

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

A. General Considerations

1. Standards for Summary Judgment Motion

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).

2. Scope of Review

Under the State Procurement Code, the Hearings Officer engages in a *de novo* review of the claims in the RFAH. HRS §103D-709(a) states:

The several hearings officers appointed by the director of the department of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review and determine *de novo*, any request from any bidder, offeror, contractor, or person aggrieved under section 103D-106, or governmental body aggrieved by a determination of the chief procurement officer, head of a purchasing agency, or a designee of either officer under section 103D-310, 103D-701, or 103D-702.

B. Towill's Motion Regarding the Adequacy of GMP's Protest Bond

Towill's Motion for Summary Judgment, filed December 1, 2014, asserted that the estimated value of the Towill contract was in excess of \$3 million. According to Towill, for a contract with an estimated value in excess of \$3 million, HRS §103D-709(e) required GMP to file a protest bond in the amount of \$10,000. Since GMP's protest bond was only \$1,000, Towill argued that this bond was insufficient, and, therefore, GMP's protest should be dismissed.

HRS §103D-709 provides, in relevant part, as follows:

(c) Only parties to the protest made and decided pursuant to sections 103D-701, 103D-709(a), 103D-310(b), and 103D-702(g) may initiate a proceeding under this section....

(d) Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under section 103D-302 or 103D-303 that is decided pursuant to section 103D-701 may initiate a proceeding under this section; provided that:

(1) For contracts with an estimated value of less than \$1,000,000, the protest concerns a matter that is greater than \$10,000; or

(2) For contracts with an estimated value of \$1,000,000, the protest concerns a matter that is equal to no less than ten percent of the estimated value of the contract...

(e) The party initiating a proceeding falling within subsection (d) shall pay to the department of commerce and consumer affairs a cash or protest bond in the amount of:

(1) \$1,000 for a contract with an estimated value of less than \$500,000;

(2) \$2,000 for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000; or

(3) One-half per cent of the estimated value of the contract if the estimated value of the contract is \$1,000,000 or more; provided that in no event shall the required amount of the cash or protest bond be more than \$10,000...

(j) As used in this section, "estimated value of the contract" or "estimated value", with respect to a contract means the lowest responsible and responsive bid under section 103D-102, or the bid amount of the responsible offeror whose proposal is

determined in writing to be the most advantageous under section 103D-303, as applicable.

In subsection (e) of the statute, therefore, the requirement to post a bond is specifically made applicable only to “a proceeding falling with subsection (d).”

Subsection (d), in turn, refers only to a solicitation or award of a contract under HRS §103D-302 or HRS §103D-303.

In this case, however, the solicitation and award of a contract for professional services was made under the authority of HRS §103D-304. By its terms, the bonding requirement in HRS §103D-709(e) does not apply to protests involving the procurement of professional services under HRS §103D-304.

The parties themselves recognized HRS §103D-304 as the relevant statute. GMP’s protest letter to the City dated July 17, 2014, states that it was proceeding under that statute. In response, the City’s letter of November 3, 2014, denying the protest stated at page 4 that the City had complied with the provisions of HRS §103D-304.

During oral argument on this motion, counsel for Towill conceded that GMP had correctly argued that an analysis of the statute demonstrated that GMP was not required to file a protest bond. Instead, Towill argued, without any citation of authority, that it was unconstitutional for the statute to require a bond in the case of protests regarding procurements under HRS §103D-302 and HRS §103D-303 but not under HRS §103D-304. The Hearings Officer has no power to declare any statutory provision unconstitutional much less impose new impediments on procurement protests that have not been mandated by the Legislature. HOH Corp. v. Motor Vehicle Licensing Board, 69 Haw. 135, 736 P.2d 1271 (1987). Towill’s constitutional argument, belatedly made only at oral argument on its Motion, is noted but not considered by the Hearings Officer.

Accordingly, Towill’s Motion for Summary Judgment should be denied.

C. Sua Sponte Granting of Summary Judgment for GMP on the Bond Issue

A party's opposition to a motion for summary judgment can demonstrate that it is itself entitled to summary judgment on the issue under contention. In that situation, the hearings officer can, *sua sponte*, grant summary judgment to the non-moving party as long as the moving party has had adequate notice and an opportunity to respond to the possibility that its motion will instead result in a ruling against it. Robert's Hawaii School Bus, Inc. v. Kathryn S. Matayoshi, et al., PDH 2013-009 (October 29, 2013), Exhibit "C" at pages 6-7; GreenPath Technologies v. Department of Finance, County of Maui, PDH 2014-002 (March 20, 2014), at page 24. Cf. Querubin v. Thronas, 107 Haw. 48, 109 P.3d 689 (2006).

At the conclusion of oral argument on Towill's Motion, the Hearings Officer raised the possibility of granting summary judgment on the bond issue to GMP. In response to an inquiry from the Hearings Officer, Towill's counsel did not see any possibility that there might be any further evidence relevant to the issue. Towill had already agreed with GMP's analysis of the relevant statute, and Towill did not request a continuance in order to prepare an opposition to such a motion.

Accordingly, the Hearings Officer grants summary judgment to GMP on the bond issue—GMP was not required to post a protest bond in connection with its RFAH. In view of that ruling, the Hearings Officer further orders that GMP's cash bond be returned to it irrespective of the outcome of the proceeding.

D. GMP Has No Standing to Protest Because It Was Not an Offeror

1. GMP Did Not Submit an Offer and Is Not an "Actual Offeror"

The first argument in the City's Motion is that GMP is not an "offeror" with respect to the solicitation in question and therefore does not have standing to file a procurement protest. As discussed below, the Hearings Officer concludes that the City's argument is correct.

HRS §103D-701(a) provides, in relevant part, that:

Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation.

Similarly, HAR §3-126-1 defines a “protestor” as “any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or the award of a contract and who files a protest.”

The “prospective” situation is not involved here because the protest was filed after all of the responses to the solicitation were submitted and then opened by the City.

Accordingly, in order to have standing, GMP must be an “actual ... bidder, offeror, or contractor.”

An “offeror” is defined as “any individual, partnership, firm, corporation, joint venture, or other legal entity submitting, directly or through a duly authorized representative or agent, an offer for the good, service, or construction contemplated.” HAR §3-120-2. A joint venture is defined as “a mutual undertaking by two or more persons to carry out a single business enterprise for profit...A joint venture is closely akin to a partnership.” In the Matter of the Tax Appeal of O.W. Limited Partnership, 4 Haw. App. 487, 494, 668 P.2d 56, 62 (1983). As the definition of “offeror” in HAR §3-120-2 confirms, a “firm” or a “corporation” is not the same as a “joint venture.”

It is undisputed that GMP, a limited liability company, did not submit any response to the solicitation. The party submitting the response was the Arcadis-GMP Joint Venture, a joint venture composed of two separate companies, and not GMP. Accordingly, GMP was not an “actual ...bidder, offeror, or contractor.”

GMP conceded on page 1 of its RFAH filed November 10, 2014, that GMP, and not the Joint Venture, submitted the protest to the City, stating:

Arcadis U.S., Inc. and GMP International, LLC (“GMP”), Joint Venture, (“Arcadis/GMP JV”) submitted a Statement of Qualifications to the above-mentioned

solicitation (SOQ”) or “proposal”). On July 17, 2014, GMP submitted its Protest pursuant to Hawaii revised Statutes ...

In denying GMP’s protest, the City specifically stated that the first basis for the denial was that GMP lacked standing to protest. The City’s denial letter of November 3, 2014 devoted almost two pages to stating this position, concluding:

Consequently, as GMP by itself did not submit an offer for the subject solicitation, GMP is not an actual offeror. Therefore, GMP is not aggrieved under HRS §103D-701(a) and it lacks standing to protest.

In its RFAH of November 10, 2014, GMP devoted the second and third page to an argument that it believed demonstrated that it did in fact have standing to file the protest. In essence, it claimed that it was “an aggrieved offeror” because “GMP “participated in ...submitting an offer in response to the RFP,” that “GMP most certainly was “involved in the bidding and procurement process,” and that “GMP undeniably was “directly involved” in the procurement process.” GMP repeats this argument at pages 10-12 of its Memorandum in Opposition to the City’s Motion.

The problem with GMP’s argument here, however, is that it focusses solely on the issue of whether it was generally “aggrieved” by the City’s actions. The argument does not meet the statutory requirement for standing because that is limited in HRS §103D-701(a) to “[a]ny actual ...offeror ...who is aggrieved.” (Emphasis supplied). Thus, in order to demonstrate standing, GMP must do more than demonstrate it is “aggrieved.” First, it must show that it was an “actual offeror,” but it cannot do so here.

The primary federal authorities relied upon by GMP only reinforce this conclusion. At the outset, GMP must be cautioned that federal authorities are not automatically applicable in Hawaii procurement protests. Bombardier Transportation (Holdings USA, Inc. v. Director, Department of Budget and Fiscal Services, City and County of Honolulu, 128 Haw. 413, 418-419 289 P.3d 1049, 1054-1055 (2012). But even assuming for purposes of argument that the federal requirement for standing is defined identically to the Hawaii

requirement, GMP's argument still fails. The federal cases also require a two step analysis: first, a protestor has to be an actual offeror, and then, second, the actual offeror must be aggrieved by the procurement decision being challenged.

A good example of that standard is the opinion in Weeks Marine, Inc. v. United States, 575 F.3d 1352, 1359 (Fed. Cir. 2009), a case cited by GMP, where the court stated:

We have held that standing under § 1491(b)(1) “is limited to actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by the failure to award the contract.” Thus, to come within the Court of Federal Claims's § 1491(b)(1) bid protest jurisdiction, Weeks is required to establish that it “(1) is an actual or prospective bidder and (2) possess[es] the requisite direct economic interest.”

(Citations omitted; emphasis supplied)

GMP has totally focused on the second requirement, showing a direct economic interest, but it has ignored the first, and separate, requirement. Under federal law, as well as Hawaii law, GMP must be an “actual” bidder or offeror, but such was not the case here.

Finally, GMP's reliance on a few federal cases involving protests against government outsourcing of work the protestor was performing at the time does not help GMP. These cases involve a form of protest allowed under federal that has no parallel under the Hawaii Procurement Code, namely protest of a decision to outsource made before any procurement is conducted. This is a prime example of why literally applying all federal precedents is not appropriate, as the court in Bombardier cautioned. In addition, the protestors in those cases were “prospective” bidders for the work being outsourced. However, as noted above, we have no “prospective” offeror situation here, so, again, these federal cases provide no assistance to GMP's argument.

2. GMP Cannot Belatedly Argue that it Submitted a Protest on Behalf of the Joint Venture

Despite unequivocally submitting the protest of July 17, 2014, in its own name, GMP now argues that the protest was submitted on behalf of the Arcadis/GMP Joint Venture because “GMP, as managing member of the Joint Venture, was authorized to file the Protest

on behalf of the Joint Venture.” GMP Memorandum in Opposition to the City’s Motion at page 4. Leaving aside the vexing question of how the City was supposed to understand the protest was submitted on behalf of the Joint Venture when the Protest does not say that such is the case, GMP’s argument still does not save its protest.

Preliminarily, it must be noted that it is far from clear that GMP made a prima facie case that it actually had authority to submit a protest on behalf of the Joint Venture when Arcadis asserted that GMP did not have that authority. The Declaration of GMP’s president that is supposed to establish the factual predicate for this argument is weak on that point.¹ GMP argued at the hearing that the declaration of its president created a genuine issue of material fact on the issue of GMP’s authority such that summary judgment would not be appropriate. Solely for the purposes of deciding the City’s Motion, the Hearings Officer will assume that there is such a factual issue.

Despite this assumption, GMP still has a problem with this argument that prevents it from prevailing against the City’s Motion. It is a new argument not raised until GMP filed its Memorandum in Opposition to the City’s Motion on December 5, 2014, some 25 days after it filed its RFAH.

In citing the Arcadis letter of September 5, 2014, in its denial letter of November 3, 2014, the City put GMP on notice that it did not believe the protest was filed on behalf of the joint venture. In filing its subsequent RFAH, GMP was bound to demonstrate otherwise. Somehow, it had to show it filed the protest on behalf of the Joint Venture and had authority to do so.

GMP’s RFAH, however, failed to meet that challenge. Its discussion of the standing issue relates only to the argument that GMP has standing to file a protest all by itself. Nothing whatsoever in that RFAH sets forth facts, or an argument based on facts,

demonstrating that the Joint Venture filed the protest and that GMP had authority to file that protest on behalf of the Joint Venture despite Arcadis' objection to that filing.

Under the terms of HRS §103D-709(a), the Hearings Officer has jurisdiction only to consider a "request" from GMP. Here, however, no such "request" was made in GMP's RFAH. It was too late to make such a "request" in the opposition to the City's motion, and it therefore cannot be considered as a basis for providing relief to GMP. See Certified Construction, Inc. v. Department of Finance, County of Hawaii; PDH-2014-006 (July 30, 2014).²

Accordingly, summary judgment is granted to the City because GMP has no standing to protest the procurement in question.

E. The City's Argument that GMP is Not Aggrieved Because It Was Ranked Lower than Another Offeror is Moot

A second argument for summary judgment by the City was that GMP was not aggrieved because the Arcadis/GMP Venture was ranked last in the competition and would not be next in line even if its objections to the Towill proposal were upheld. At oral argument on the Motion, the Hearings Officer stated that there appeared to be disputed issues of material fact with respect to this particular argument by the City, and that, therefore, summary judgment on this argument was not warranted.

Because of the ruling that GMP lacks standing to protest, there is no further need to go into detail on this alternative argument by the City. Accordingly, that part of the City's Motion is denied as moot.

F. There is No Jurisdiction Over Claims Under HRS Chapter 92F

GMP's protest could arguably be read in part, at pages 12-13, as asserting objections to an improper delay or denial of access to requested documents in violation of

¹ The declaration of GMP's president that "I understand" Arcadis was pressured by the City into submitting the letter of September 5, 2014, is unsupported by any facts and is not accorded any weight whatsoever.

² This decision was affirmed by the Third Circuit Court in November 2014 in case number 14-1-000303.

HRS Chapter 92F. To the extent it makes such an assertion, the City argues that there is no jurisdiction in this matter to consider such claims. At the hearing on the Motion, GMP agreed with the City's position on this issue. Accordingly, this part of the City's Motion is granted.

G. The City's Motion Regarding an Alleged Lack of Authority to Grant the Relief Requested is Moot

At the hearing on the Motion, the Hearings Officer stated that it was premature to make a decision on this last argument by the City. In any event, granting the City's Motion with respect to the standing issue makes this last part of the City's Motion moot and it is denied on that basis.

H. GMP's Motions are Moot

In view of the granting of the City's Motion as aforesaid, GMP's Motion for Summary Judgment is denied as moot. Because the result of the ruling on the City's Motion eliminated any need for an evidentiary hearing, GMP's Motion to continue the evidentiary hearing is also denied as moot.

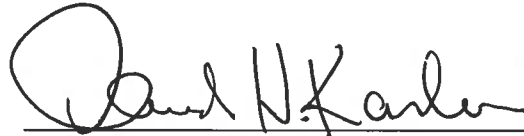
IV. ORDER

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

- a. Towill's Motion for Summary Judgment is denied.
- b. A Cross-Motion for Summary Judgment is *sua sponte* granted to GMP with respect to Towill's Motion for Summary Judgment. GMP's protest bond of \$1,000.00 shall be returned to GMP.
- c. The City's Motion for Summary Judgment is granted in part and denied in part as follows:.

- i. The Motion is granted insofar as it claims GMP has no standing to protest because it was not an offeror.
- ii. The Motion is granted insofar as it claims that there is no jurisdiction over claims under HRS Chapter 92F.
- iii. The remaining portions of the Motion are denied as moot.
- d. GMP International, LLC's Request for Administrative Hearing in this matter is dismissed with prejudice.
- e. GMP's Motion for Summary Judgment is denied as moot.
- f. GMP's Motion to Continue Hearing is denied as moot.
- g. The parties shall bear their own attorney's fees and costs incurred in this matter.

DATED: Honolulu, Hawaii, DEC 15 2014.



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