



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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

In the Matter of:)	PDH-2016-005
)	
MAUI KUPONO BUILDERS, LLC,)	HEARINGS OFFICER'S FINDINGS
)	OF FACT, CONCLUSIONS OF LAW,
Petitioner,)	AND DECISION
vs.)	
)	
KATHRYN S. MATAYOSHI,)	
SUPERINTENDENT, DEPARTMENT)	
OF EDUCATION, STATE OF HAWAII,)	
)	
Respondent.)	
_____)	

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

I. INTRODUCTION

On November 1, 2016, Maui Kupono Builders, LLC, ("Petitioner") filed a request for administrative review in connection with Respondent Department of Education, State of Hawaii's ("Respondent") October 25, 2016 denial of Petitioner's September 21, 2016 protest. The matter was thereafter set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On November 14, 2016, Petitioner filed a motion for summary judgment and Respondent filed a motion to dismiss or, in the alternative, for summary judgment. On November 16, 2016, both parties filed their responses to the respective motions.

On November 17, 2016, the motions came on for hearing before the undersigned Hearings Officer in accordance with the provisions of HRS Chapter 103D. Anna H. Oshiro, Esq. and Loren A. Seehase, Esq. appeared for Petitioner; Gary S. Suganuma, Esq. appeared for Respondent.

Having heard the argument of counsel and having considered the motions, memoranda, exhibits and declarations attached thereto along with the records and files herein; the Hearings Officer hereby renders the following findings of fact, conclusions of law and decision.

II. FINDINGS OF FACT

1. In or about April 2016, Respondent issued an invitation for bids for a construction project designated as “King Kekaulike High – Track and Field Facility Improvements (DOE Job No. Q53000-15)” (“IFB”).

2. The IFB solicited competitive sealed bids, via the SICOMM bid system, to perform work which generally consisted of “the installation of synthetic track and field to replace the existing track and grass field including electrical work improvement and other incidental repairs to match existing” (“Project”).

3. The IFB established the bid closing date of May 18, 2016.

4. Section 2.12 of the Interim General Conditions, 1999 Edition, of the IFB provided in pertinent part:

2.12 DISQUALIFICATION OF BIDDERS—Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of its proposal or proposals:

* * * *

2.12.7 More than one proposal for the same work from an individual, firm, partnership, corporation or joint venture under the same of different name.

5. Five bids were submitted in response to the IFB through the SICOMM bid system. Bids were received from: (1) “Hellas Construction Incorporated”, vendor number

P00000094171; (2) "Hellas Construction, Inc.", vendor number P000000104696; (3) Petitioner, vendor number P000000104314; (4) "Close Construction, Incorporated", vendor number P00000068946; and (5) "F & H Construction", vendor number P00000102649. "Hellas Construction Incorporated" submitted its bid at 2:28:52 PM HST while "Hellas Construction, Inc." submitted its bid at 2:30:57 PM HST

6. According to the vendor numbers, "Hellas Construction Incorporated" was located at 12710 Research Blvd., Austin, Texas, and "Hellas Construction, Inc." was located in Oceanside, California.

7. The bids submitted by "Hellas Construction Incorporated" and "Hellas Construction, Inc." were accompanied by additional documents including, but not limited to, a bid bond. The bid bonds submitted by Hellas Construction Incorporated and Hellas Construction, Inc. were identical and were issued to "Hellas Construction, Inc." at 12701 Research Blvd., Ste 240, Austin, Texas 78759 by Liberty Mutual Insurance Company, as Surety.

8. On or about May 19, 2016, Petitioner called Respondent to inquire as to what Respondent would be doing about the two bids that had been submitted under two different vendor numbers from entities with similar names. Petitioner followed up its phone call with an email to Respondent asking the same question. By email sent on or about June 22, 2016, Respondent informed Petitioner that Respondent would "reject Hellas bid, but I'm just waiting for the AGs letter for formal rejection." On the same date, Nestor Butac, Project Coordinator for Respondent sent an email to Christian Butt, a Procurement and Distribution Specialist for Respondent. The email stated in part:

Chris,

We have received multiple bid proposals for the subject project, but the lowest bidder has the same company name and bid price. I assume Hellas has 2 accounts with Sicomm and that prompted them to submit for both accounts. However, IGC 1999 edition under 2.12.7 Disqualification of Bidders state the following:

“2.12.7 More than one proposal for the same work from an individual, firm partnership, corporation or joint venture under the same or different name.” (emphasis in original).

* * * *

9. By letter dated June 27, 2016 to James Towsley, Vice President, West Coast, Hellas Construction, Inc., care of The Corporation Co., Inc., 900 Fort Street Mall, Suite 1800, Honolulu, Hawaii, Respondent notified Hellas Construction, Inc. that its bid had been rejected because “Hellas Construction Inc. submitted two bid proposals using two vendor accounts.”

10. On or about June 28, 2016, Respondent transmitted to its Project Control Section, a Recommendation for Award for the Project to Petitioner. The Recommendation for Award noted that “[t]he low bidder, Hellas Construction Inc., submitted two bid proposals using two vendor accounts. However, this is considered as sufficient for the disqualification of bidder and rejection of proposal. As a result, the 2nd lowest bidder will become the lowest responsible bidder.”

11. On July 1, 2016, Hellas Construction, Inc. filed a protest regarding Respondent’s rejection of its bid. The protest said in part:

* * * *

As evidenced by the sworn Declaration of Amanda M. Willman (the “Willman Declaration”), which is attached hereto as Exhibit “B,” Hellas timely submitted a bid for DOE Job No. Q53000-15 on May 18, 2016 using the link provided to Hellas in an email containing the invitation to bid on the job. This submission was made under vendor account number P00000094171. However, immediately after Ms. Willman, Hellas’ bid coordinator, hit the “submit” button, the system froze and **no confirmation that the bid had been uploaded was received**. When Ms. Willman hit the “back” button in attempt to re-submit the same bid, the system required Ms. Willman to log in again. Ms. Willman logged in with **the only log-in information**

available to her, which was under the vendor account number P00000104696. When Ms. Willman pressed “submit” again for the exact same bid proposal she had attempted to upload the first time, she received a confirmation that the bid had been received.

At the time Ms. Willman submitted the second identical bid, Ms. Willman did not know that the vendor account number she had used to manually log in and submit the bid the second time was different from the account number associated with the web link provided in the email containing Hellas’ invitation to bid. Further, as Ms. Willman states in her declaration, the **only reason** the bid was submitted a second time was because in her past experience, the SICOMM bid system provides a confirmation of receipt immediately after pressing “submit,” so Ms. Willman was concerned that the lack of a confirmation after submitting the bid the first time meant that the bid had not been received. (emphasis in original).

* * * *

12. By email sent on September 15, 2016, Respondent informed Petitioner that it was “revers[ing] course for awarding the subject project to your firm.” The email stated in part:

* * * *

Initially, we rejected Hellas’ bid for submitting 2 identical bids. However, Hellas Construction, Inc. protested the DOE decision to reject the bid on the basis of submitting two bids. However, after further examination of the facts including SICOMM system procedure in receiving bids, the DOE agrees that the event leading to the multiple submission of bids is waivable as a mistake. Therefore, the protest from Hellas Construction Inc. is upheld and the bids in question will not be rejected.

13. On September 21, 2016, Petitioner protested the award of the contract to Hellas Construction, Inc. or Hellas Construction Incorporated.

14. Notwithstanding Petitioner's outstanding protest, Respondent posted a Notice of Award of the contract for the Project to Hellas Construction, Inc. on September 27, 2016.

15. By letter dated October 3, 2016, Petitioner submitted another protest to Respondent, this time protesting the awarding of the contract for the Project to Hellas Construction, Inc. during the pendency of its September 21, 2016 protest.

16. By letter dated October 25, 2016, Respondent denied Petitioner's September 21, 2016 protest. Respondent's denial was based, in part, on information it received from Hellas Construction, Inc. and obtained after the bids were opened:

* * * *

More importantly, all bidders have the same opportunity to delay their submissions until the deadline-the electronic system provides them with confirmation that the bid has been received. *It was the failure to receive this confirmation that caused Hellas to re-submit the bid resulting in a duplicate submission.* The DOE maintains that a duplicate submission (made in error) is not the same as submitting multiple bids with differing terms which is what the procurement code prohibits.

* * * *

Your protest goes on to assert that because of the alleged unfairness to other bidders discussed above, the submission of two identical protests may not be waived under the provisions of H.A.R. §3-122-33(c) which allows harmless mistakes to be waived. *This reasoning is not consistent with the facts as presented by Hellas in their protest. Hellas indicated when they submitted their bid, they did not get the standard electronic confirmation from the system and was logged out when the user attempted to address the malfunction. They could not access the system using their log-in, so they used another account under the same vendor. The DOE took the position that having multiple accounts by the same user and insuring multiple offers are not submitted is the responsibility of the company and*

initially disagreed with Hellas' position. However, upon inquiry with the third party vendor that operates the electronic procurement system, and despite representations that there was no system error¹, the DOE could not conclusively refute Hellas' assertion that the multiple submissions were related to a failure of the electronic system. Given the factual ambiguity, the DOE concluded that system error could not be ruled out as contributing to Hellas' error, and upheld the protest in Hellas' favor.

* * * *

(Emphasis added).

17. Even though Respondent “took the position that having multiple accounts by the same user and insuring multiple offers are not submitted is the responsibility of the company”, and “despite representations that there was no system error”, Respondent decided to uphold Hellas Construction, Inc.’s protest.

18. By letter dated October 25, 2016, Respondent informed Hellas Construction, Inc. that the award of the contract for the Project was cancelled, and the “award of the project will be reevaluated pending resolution of all open bid protests.”

19. On November 1, 2016, Petitioner filed the instant petition for administrative review and hearing relief.

20. By letter dated November 7, 2016 to Petitioner, Respondent acknowledged that “a procedural error was made in awarding the contract prior to responding to all bid protests” and informed Petitioner that it was rescinding the award of the contract to Hellas Construction, Inc.

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.

Hawaii Revised Statutes (“HRS”) §103D-709(a) extends jurisdiction to the Hearings Officer to review and determine *de novo* any request from any bidder, offeror,

¹ Respondent neither alleges nor presented any evidence that a system error actually occurred with respect to Respondent’s SICOMM bid system.

contractor or governmental body aggrieved by a determination of the chief procurement officer, head of a purchasing agency, or a designee of either officer made pursuant to HRS §§103D-310, 103D-701 or 103D-702. The Hearings Officer is charged with the task of deciding whether those determinations were in accordance with the Constitution, statutes, regulations, and the terms and conditions of the solicitation or contract. HRS §103D-709(f).

The gravamen of Petitioner's complaint is based on the contention that Hellas Construction, Inc., having submitted two bids in response to the IFB and contrary to Section 2.12.7 of the Interim General Conditions of the IFB, is not a responsive bidder and must therefore be disqualified. Under Hawaii Revised Statutes ("HRS") §103D-104, a "[r]esponsive bidder means a person who has submitted a bid which conforms in all material respects to the invitation for bids." Accordingly, a bid that does not conform in all material respects to the IFB is nonresponsive. *Southern Food Groups, L.P. v. Dept. of Educ., et. al*, 89 Haw. 443 (1999). In that regard, material terms and conditions of a solicitation involve price, quality, quantity, and delivery. *Hawaiian Dredging Construction Co. v. City & County of Honolulu*, PCH-99-6 (August 9, 1999); *Environmental Recycling v. County of Hawaii*, PCH 98-1 (July 2, 1998).; *Browning-Ferris Industries of Hawaii, Inc. v. State Dept. of Transportation*, PCH 2000-4 (June 8, 2000). And in determining whether a bid is responsive, this Office has repeatedly and consistently held that the bid must be evaluated solely on the material requirements set forth in the solicitation and must meet all of those requirements unconditionally at the time of bid opening. *Environmental Recycling v. County of Hawaii*, PCH 98-1 (July 2, 19 98). *Kiewit Pacific Co. v. Dept. of Land and Natural Resources, et al.*, PCH-2008-20 (February 20, 2009); *Nan, Inc. v. DOT*, PCH-2008-9 (October 3, 2008); *MAT Hawaii, Inc. v. Michael R. Hansen, Acting Director of Budget and Fiscal Services, and City and County of Honolulu*, PCX-2010-7 (Nov. 9, 2010). See also, *Browning-Ferris Industries of Hawaii, Inc. v. State Dept. of Transportation*, PCH 2000-4 (June 8, 2000)(matters of responsiveness must be discerned solely by reference to materials submitted with the bid and facts available to the government at the time of the bid opening),

and *Southern Foods* (questions of responsiveness are generally not curable after bid opening).

In support of its protest, Petitioner cites to and relies on the Hawaii Supreme Court's opinion in *Southern Foods*. There, Meadow Gold appealed the decision of the Hearings Officer affirming the DOE's rejection of Meadow Gold's bid because it had submitted a bid with multiple or alternate price offers. The court noted that the solicitation expressly provided that, "[u]nless otherwise stated, bidder shall offer only one (1) bid item/number. If more than one bid is offered, all bids shall be rejected for that item/number." The court also looked to HAR §3-122-4. That rule provided, in relevant part, that "[w]hen prohibited, multiple or alternate offers shall be rejected . . ." ² In affirming the Hearings Officer's decision and the DOE's rejection of Meadow Gold's bid as nonresponsive, the court reasoned that the "discussion of the relevant statutory provisions and attending rules demonstrates that submission of a multiple bid is prohibited", and held that a material deviation occurs when a bidder submits two bids in a solicitation that expressly prohibits the submission of more than one bid.

Respondent nevertheless argues that unlike the bid sheets in *Southern Foods*, this case involves virtually identical bids with the same bid price. Therefore, the bids here were duplicates rather than multiple or alternate bids. Although the bids were similar, there is no serious debate that the bids were *not* identical: one bid identified the bidder as Hellas Construction Incorporated, vendor number P00000094171, with an address in Austin, Texas, while the other bid identified the bidder as Hellas Construction, Inc., vendor number P000000104696, with an address in Oceanside, California. These differences lead the Hearings Officer to conclude that the bids submitted by Hellas Construction, Inc. constituted

² HAR §3-122-4 provides in relevant part:

*§3-122-4 Multiple or alternate offers. (a)
Unless specifically provided for in the solicitation,
multiple or alternate offers shall not be accepted
and all such offers shall be rejected.*

* * * *

multiple bids³ rather than mere duplicates. As the *Southern Foods* court held, it is “elementary” that the “submission of two bids in a sealed competitive bidding process that permits submission of only one bid is a material deviation from the Bid Solicitation special conditions and is nonresponsive.” Based on these considerations, the Hearings Officer finds and concludes that the submission of the 2 bids in the face of the express prohibition in the IFB and HAR §3-122-4, against the submission of multiple bids was a material deviation and rendered those bids nonresponsive.

In addition, the *Southern Foods* court held that a material deviation also arises when the deviation affects a material term such as price, *or* when the deviation renders the bid ambiguous:

* * * *

Moreover, Meadow Gold’s deviation directly involved the price, a term that is typically and traditionally material. Furthermore, Meadow Gold’s double bid was ambiguous. As noted above, the DOE is not required to engage in telepathy to discern what Meadow Gold intended by submitting two apparently different bids (footnote omitted). Meadow Gold’s multiple or double bid was nonresponsive to the instant Bid Solicitation and was properly rejected (emphasis in original).

In *Maui Kuponono Builders, LLC v. City & County of Honolulu, PDH-2016-001 (2/26/2016)*, the Hearings Officer determined that the bid submitted by Maui Kuponono, LLC, after it had formally changed its name to Manu Builders, LLC, was ambiguous and therefore nonresponsive. In arriving at this conclusion, the Hearings Officer looked to the *Southern Foods* opinion and this Office’s decision in *Greenpath Technologies v. Department of Finance, County of Maui, PDH-2014-002 (March 20, 2014)*, and concluded:

The Hawaii Supreme Court has held that an ambiguous bid is a nonresponsive bid. See, *Southern Foods Group, L.P. v. State Department of Education, 89 Haw. 443, 974 P.2d 1033 (1999)*. In *Greenpath Technologies v. Department of Finance, County of Maui, PDH-2014-002 (March 20, 2014)*, the Hearings Officer found that the “identity of the

³ This decision does not address whether 2 *identical* bids constitute separate or multiple bids.

offeror is just as material as the statement of the price in the *Southern Foods* case”, *Id. at 34*, and concluded that the proposal is nonresponsive if the identity of the offeror is ambiguous. Applying *Greenpath* to the case at bar, the Hearings Officer concludes that a bid is nonresponsive if the identity of the bidder is ambiguous.

The determination of responsiveness is made solely by reference to the bid submission and facts available to the government at the time of bid opening. *Okada Trucking Co. v. Board of Water Supply*, 101 Haw. 68, 75, 62 P.3d 631-638 (Haw. App. 2003). It is not disputed that Petitioner, who had formally changed its limited liability company name to “Manu Builders, LLC”, submitted a bid under its former limited liability company name “Maui Kuponu Builders, LLC” and that it was still “Manu Builders, LLC” at the time of bid opening. While Petitioner asserted that Respondent could have checked with the DCCA and quickly determined that “Maui Kuponu Builders, LLC” and “Manu Builders, LLC” were one and the same company, Petitioner did not present evidence to support this contention as the screen shots submitted by Petitioner with its Motion for Summary Judgment (Exhibits “F” and “G” as well as the screen shots attached to its Exhibit “J”) are not or cannot be determined to be evidence of what was available at the time of bid opening on October 30, 2015.

Petitioner also argued that Respondent could have asked “Maui Kuponu, LLC” about the name change. However, that inquiry would have been improper, as providing a bidder with an opportunity to clarify an ambiguous bid is not permitted. *See, Kiewit Pacific Co. v. Department of Land and Natural Resources, et al.*, PCH-2008-20 (February 20, 2009). Based on the evidence presented in this case, the Hearings Officer finds that the bid submitted by Petitioner under “Maui Kuponu, LLC” after it had formally changed its name to “Manu Builders, LLC” was ambiguous, and accordingly, concludes that Petitioner’s bid was nonresponsive to the solicitation.

* * * *

In this case, although Respondent may have correctly assumed that both bids had been submitted by the same bidder, no evidence was presented to establish with any certainty that based on the information available at bid opening, the bidder had been clearly identified. On the contrary, from the information available at bid opening, including the different names, addresses and vendor numbers, it would have been reasonable to conclude, for instance, that Hellas Construction Incorporated of Austin, Texas, could be a separate legal entity from Hellas Construction, Inc. of Oceanside, California. Without knowing more, that could reasonably raise questions as to the identity of the bidders, who the winning bidder should be, and which legal entity would be bound under the contemplated contract. *See for example, Southern Foods (any contract that the DOE might have entered into would likely have been void in light of Meadow Gold's material deviation from the special conditions of the bid solicitation)*. Moreover, if Hellas Construction, Inc. and Hellas Construction Incorporated turned out to be distinct, albeit related, legal entities, and Respondent awarded the contract to one entity that entity later proves to be a nonresponsible, would that enable Respondent to award the contract to the other entity? The Hearings Officer also notes that both bids apparently included the same surety bond naming Hellas Construction, Inc. as the Contractor. While that might support an assumption that Hellas Construction, Inc. was the bidder on both bids, it could also lead to a question as to whether the bid bond for Hellas Construction Incorporated was responsive to the IFB. As the Hearings Officer in *Greenpath Technologies* determined, the identity of a bidder is obviously just as material to the solicitation as price, quality, quantity and delivery⁴. Based on all of these considerations, the Hearings Officer finds and concludes that as a result of the submission of the 2 bids, the identity of the bidder was ambiguous and that ambiguity directly involved a material term of

⁴ In *Southern Foods*, the court cited the following quote with approval:

[c]ontracting is a sentient process. There must be objective proof of a meeting of the minds. The prospective contracting parties are not expected to engage in telepathy. There must be a confluence of assent around specific terms. For that reason . . . a bid which is ambiguous must be rejected as non-responsive. *Firth Constr. Co., Inc.*, 36 Fed. Cl. at 276.

the solicitation. Consequently, neither Hellas Construction, Inc. nor Hellas Construction Incorporated were responsive bidders⁵.

In reversing its rejection of Hellas Construction, Inc.'s bids, Respondent explained that even if the submission of the 2 bids was a material deviation, Respondent was authorized to waive the deviation as an obvious mistake. Relying on HAR §3-122-31(c)(1)(C), Respondent apparently contends that waiving the mistake would not provide Hellas Construction, Inc. with an unfair advantage or be unfair to the other bidders. HAR §3-122-31(c) provides in relevant part:

§3-122-31. Mistakes in Bids.

* * * *

(c) A mistake in a bid discovered after the deadline for receipt of bids but prior to award may be:

(1) Corrected or waived under the following conditions:

* * * *

(C) The procurement officer may correct or waive the mistake if it is not allowable under subparagraphs (A) and (B), but is an obvious mistake that if allowed to be corrected or waived is in the best interest of the purchasing agency and is fair to other bidders;

In construing the foregoing provision, *the Southern Foods* court noted, among other things, that questions of the responsiveness of a bid relate to conformity with the invitation and are therefore generally not curable after bid opening. Additionally, this Office has previously determined that where the intended bid cannot be determined from the bid documents alone, a mistake is not correctable as an obvious mistake. HAR §3-122-31(c)(3). *Jas. W. Glover, Ltd. v. Board of Water Supply PCH-2001-02 (August 7, 2001)*; *GP Roadway Solutions, Inc. v. Glenn Okimoto as Director of the Dep't of Transportation, PCH-2011-15/PCH-2011-16 (Jan. 27, 2012)*. There is no question here that Hellas Construction,

⁵ The undisputed evidence also established that after Respondent determined that the submission of the 2 bids rendered Hellas Construction a nonresponsive bidder, it reversed its position based on information it received from Hellas' subsequent protest and its own ensuing investigation. The after-the-fact information Respondent garnered from the protest and the investigation, both of which were initiated after the bids were opened, should not have been considered by Respondent in addressing Hellas' protest.

Inc.'s submission of the 2 bids was a material deviation that raised a question of its responsiveness. As such, the deviation was no longer curable following the opening of the bids under HAR §3-122-31(c). Moreover, the record does not support the conclusion that upon the opening of the bids, it was obvious that a clearly identified bidder had mistakenly submitted the same bid twice.⁶ Rather, for the reasons discussed earlier, the submission of the 2 bids rendered the bidder's identity and the bids ambiguous.

Finally, any waiver or correction pursuant to HAR §3-122-31(c) must ultimately be in the best interests of the agency. Respondent points out that because the bids were virtually identical, there was no unfair advantage to Hellas Construction, Inc. Notwithstanding that, even if the submission of the 2 bids did not provide Hellas Construction, Inc. with any direct advantage over the other bidders and the acceptance of its bid might result in savings to Respondent, those factors are outweighed by the public's interest in maintaining the integrity of the procurement system. *See, Southern Foods (rejection of a bid that does not materially conform to the special conditions of a bid solicitation maintains the competitive bidding system's integrity by insuring fairness to other bidders)*. Thus, for all of the reasons discussed herein, the Hearings Officer concludes that the bids submitted by "Hellas Construction, Inc." and "Hellas Construction Incorporated" were nonresponsive and must be rejected.

IV. DECISION

Based upon the foregoing, the Hearings Officer finds and concludes that there are no genuine issues of material fact that remain for hearing and that Petitioner is entitled to a ruling in its favor as a matter of law. Accordingly, Petitioner's motion for summary judgment is granted and the Hearings Officer orders as follows:

1. Respondent's denial of Petitioner's September 21, 2016 protest is reversed and this matter is remanded to Respondent for evaluation of the remaining bids consistent with this Decision;

2. Respondent's motion to dismiss or, in the alternative, for summary judgment is denied;

⁶ Nor was it obvious at the time of bid opening that the 2 bids had been submitted as a result of a failure of the electronic procurement system. Indeed, even after the bids were opened, Respondent recognized that there was a "factual ambiguity" "that [a] system error could not be ruled out as contributing to Hellas' error . . .".

3. Each party shall bear its own attorneys' fees and costs incurred in this matter; and

4. Petitioner's cash bond shall be returned upon the filing of a declaration by Petitioner attesting that the time to appeal to Circuit Court has lapsed and that no appeal has been timely filed. In the event of a timely application for judicial review of the decision herein, the disposition of the bond shall be subject to determination by the Circuit Court.

Dated at Honolulu, Hawaii: DEC 09 2016



CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs