



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

In the Matter of

HAWAII WORKS, INC.,

Petitioner,

vs.

DEPARTMENT OF HAWAIIAN HOME
LANDS, STATE OF HAWAII,

Respondent,

and

PROMETHEUS CONSTRUCTION,

Intervenor.

PDH-2021-013

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

Administrative Hearings Officer:
Rodney K.F. Ching

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

I. INTRODUCTION

On November 22, 2021, Hawaii Works Inc., ("Petitioner" or "HWI"), filed a request for administrative hearing to contest the Department of Hawaiian Home Lands, State of Hawaii's ("Respondent" or "DHHL") letter dated November 9, 2021 which: 1) upheld Prometheus Construction's ("Intervenor" or "PC") protest of the award of the contract to Petitioner; 2) rescinded the intent to award the contract to Petitioner; and 3) awarded the

contract to Intervenor. The matter was set for hearing on December 13, 2021 and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On December 3, 2021, a telephonic pre-hearing conference was held in this matter. By agreement of the parties the pre-hearing conference was furthered to December 9, 2021 in order to allow Petitioner's potential counsel more time to resolve a potential conflict of interest issue.

On December 8, 2021, Respondent filed its Response to Petitioner's request for administrative hearing.

On December 9, 2021, a further telephonic pre-hearing conference was held in this matter. D. Kaena Horowitz, Esq. made a special appearance on behalf of Petitioner. Atunaisa Tongotea, Petitioner's representative, was also present. Deputy Attorney General ("DAG") Katie Lambert, Esq. appeared on behalf of Respondent. Stuart Matsunaga and Darrell Ing, Respondent's representatives, were also present. Neal K. Aoki, Esq. appeared on behalf of Intervenor. Peter Gooding and Cliff Tillotson, Intervenor's representatives were also present. There being no objection, Intervenor's Motion to Intervene was GRANTED. The ZOOM hearing set for December 13, 2021 at 9:00 a.m. was confirmed.

On December 13, 2021, this matter came on for hearing before the undersigned Hearings Officer in accordance with the provisions of Hawaii Revised Statutes ("HRS") Chapters 91, 92 and 103D and Hawaii Administrative Rules ("HAR") Title 16 Chapter 201, Title 3 Chapter 126 and Title 6 Chapter 22. William Meheula, Esq. and D. Kaena Horowitz, Esq. appeared on behalf of Petitioner (potential conflict of interest issue was resolved). Atunaisa Tongotea, Petitioner's representative, was also present. DAG Craig Iha, Esq. appeared on behalf of Respondent. Stuart Matsunaga and Darrell Ing, Respondent's representatives, were also present. Neal K. Aoki, Esq. appeared on behalf of Intervenor. Cliff Tillotson and Govi Tillotson, Intervenor's representatives were also present.

The parties stipulated that each parties' exhibits would be admitted into evidence except for Petitioner's Exhibit 8. During the hearing, Petitioner withdrew Exhibit 8. At the conclusion of Petitioner's case, Intervenor made an oral motion to dismiss which was joined by Respondent. The Hearings Officer took Intervenor's Motion to Dismiss under advisement and the hearing continued with Respondent's and Intervenor's cases. The parties agreed to file, and exchange written closing arguments by December 20, 2021, 4:30 p.m.

On December 20, 2021, the parties filed their written closing arguments.

Having heard the evidence and arguments of counsel, and having considered the motion and exhibits, together with the evidence, records and files herein, the Hearings Officer hereby renders the following findings of fact, conclusions of law and decision, *denying* Intervenor's Motion to Dismiss; *denying and dismissing* Petitioner's request for administrative appeal hearing; and *affirming* Respondent's determination as stated in its letter dated November 9, 2021 which: 1) upheld Prometheus Construction's ("Intervenor" or "PC") protest of the award of the contract to Petitioner; 2) rescinded the intent to award the contract to Petitioner; and 3) awarded the contract to Intervenor.

II. FINDINGS OF FACT

1. In August 2021, Respondent issued an Invitation for Bids ("IFB") for the subject Papakolea Kapahu St. Slope Improvements Project ("Project") which "consists of furnishing all labor, equipment, materials and supervision to prepare lot for subdivision and provide all grading and infrastructure as indicated in the plans and specifications to satisfactorily complete the Papakolea Kapahu St. Slope Improvement, Honolulu, Oahu, Hawaii." See Exhibits 1 and A.

2. On or about August 21, 2021, **Addendum No. 2**, the Bid Offer Form, was issued which included, among other things, a **180-day** time of performance. See Exhibit 2 at page 7.

3. On or about September 5, 2021 **Addendum No. 5**, a Revised Bid Offer Form, was issued which included a **270-day** time of performance. See Exhibit I-2 at page 7.

4. On September 22, 2021, the bids were opened. Petitioner submitted a bid of **\$6,041,643.00** (\$5,739,560 with application of 5% Apprenticeship Preference) using the **Addendum No. 2** Bid Offer Form. See Exhibit 2 at page 7. Petitioner listed "Carpenter" as its apprenticeable trade. See Exhibit 2 at page 10. Petitioner also acknowledged the receipt of Addendum 5 (on 09/09/2021). See Exhibit 2 at page 15.

Intervenor submitted a bid of **\$6,243,000** (\$5,930,850 with application of 5% Apprenticeship Preference) using the **Addendum No. 5** Revised Bid Offer Form. See Exhibit I-2 at page 7. Intervenor listed "Construction Craft Laborer" as its apprenticeable trade. See Exhibit I-2 at page 10.

5. By letter dated October 18, 2021, Respondent informed Petitioner that Respondent intended to award the contract to Petitioner and that although HWI's bid was submitted on the wrong form, *it was a mistake of minor informality and DHHL will waive the obvious mistake but will require that HWI resubmit its bid on the correct form.*

HWI's bid was submitted on the form issued under addendum no. 2 to the IFB rather than the bid form issued under addendum no. 5. The only difference between the two bid forms was an enlargement to the time of performance. Therefore, the use of the bid form issued under addendum no. 2 **was a mistake of minor informality** that does not otherwise affect price, quantity, quality, or contractual conditions. **DHHL will waive the obvious mistake but will require that HWI resubmit its bid on the attached correct form.**

See Exhibit 5 (emphasis added.)

6. On or about October 27, 2021, Petitioner resubmitted its bid on Addendum No. 5, the correct form. See Exhibit 4.

7. Petitioner's total bid amount on Addendum Nos. 2 and 5 are *identical*, to wit: **\$6,041,643.00**. See Exhibits 2 and 4. All other thirty-two (32) line item entries are also *identical*. The only difference between Petitioner's bids on Addendum No. 2 and Addendum No. 5 was an enlargement to the time of performance from 180-days to **270-days**. Compare page 7 of the two bids on Exhibit 2 and Exhibit 4.

8. On or about October 26, 2021, Respondent received a letter from Intervenor, the only other bidder, protesting the award to Petitioner on two (2) allegations:

- (1) HWI's bid was not submitted on the correct bid form, thus HWI should be considered a non-responsive bidder; and
- (2) HWI does not qualify for the Apprentice Agreement Preference (AAP), therefore the bid tabulations should be recalculated.

See Exhibits G and 6.

9. On November 9, 2021, Respondent informed Petitioner that it was upholding Intervenor's protest, rescinded its award to Petitioner and stated its intent to award the contract to Intervenor. Respondent's determination was based on the following:

- (1) HWI used the bid form issued under addendum no. 2 to the IFB rather than the bid form issued under addendum no. 5. The difference between the two bid forms was an enlargement of the time of performance, from 180 days to 270 days. Contrary to our

previous letter to you, use of the bid form issued under addendum no. 2 was not a mistake of minor informality. Per Hawaii Administrative Rules, §§ 3-122-31(a), (c)(1)(B): a mistake may be corrected or waived “If the mistake is a minor informality which shall not affect price, quantity, quality, delivery, or contractual conditions...”. The change in time of performance would affect delivery, and is a material term.

(2) The Form 1 (Certification of Bidder’s Participation in approved Apprenticeship Program Under Act 17) submitted by HWI with its bid only listed Carpenter as an apprenticeable trade to be employed. The U.S Department of Labor defines carpenters’ work as “Construct, erect, install, or repair structures and fixtures made of wood and comparable materials”. With the exception of preparing concrete forms, those skills are not applicable to the subject project. HWI is thus not eligible for the apprenticeship preference in calculating the bid results. The attached revised bid tabulations show PC as the low bidder.

See Exhibit 6 (emphasis added.)

10. On November 22, 2021, Petitioner filed the instant request for administrative hearing:

We are requesting an appeal action for administrative review by DCCA pursuant to Section 103D-709, HRS for the subject project.

See Exhibit 9.

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. JURISDICTION AND BURDEN OF PROOF

HRS §103D-709(a) extends jurisdiction to the Hearings Officer to review and determine *de novo* any request from any bidder, offeror, 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, and shall order such relief as may be appropriate. See §HRS 103D-709(h).

Petitioner has the burden of proof, including the burden of producing evidence and the burden of persuasion. The degree of proof shall be a preponderance of the evidence. See §HRS 103D-709(c).

At the outset of the hearing, the parties agreed that the request for hearing was timely filed and there were no other procedural or jurisdictional issues.

B. MOTION

1. Intervenor's Motion to Dismiss

At the conclusion of Petitioner's case, Intervenor made an oral motion to dismiss which was joined by Petitioner. The Hearings Officer took Intervenor's Motion to Dismiss under advisement and the hearing continued with Respondent's and Intervenor's cases. After reviewing the evidence and law in this matter, the Hearings Officer concludes that there are issues of law and fact, as more fully stated below, that preclude granting Intervenor's Motion to Dismiss. Accordingly, it is DENIED.

C. ISSUE

The issue for determination by this Hearings Officer is whether Respondent's determination(s) to uphold Intervenor's protest, rescind its award to Petitioner and state its intent to award the contract to Intervenor was improper. The more specific issues are:

- 1) Whether Petitioner's Bid was nonresponsive; and
- 2) Whether Petitioner was eligible to claim the Apprenticeship Agreement Program preference in its Bid.

D. DISCUSSION

1) Petitioner's bid was responsive

Petitioner asserts that Respondent *explicitly waived* the *minor error* of Petitioner's accidental use of the Addendum No. 2 Bid form which was an *obvious mistake*. See Petitioner's Pre-Hearing Statement ("PHS"). Respondent asserts that Petitioner's Bid was *properly rejected* because it did not "promise in the precise manner requested by the government with respect to price, quality, quantity and delivery." (citation omitted.) See Respondent's PHS. Intervenor asserts that Petitioner's Bid was *nonresponsive* because it did not conform to the express

instructions and requirements of DHHL, and contained a *material error* relating to the completion or *delivery* of all work on the Project. See Intervenor’s PHS.

The Hearings Officer is persuaded by Petitioner’s position on this issue.

The law allows a procuring officer to reject nonresponsive bids. A bid is nonresponsive if it “does not conform in all **material** respects to the invitation for bids.” See HRS §103D-302(h) and HAR § 3-122-97 (emphasis added.)

However, the rules also allow the procuring officer to waive a *minor informality* and/or an *obvious mistake* after the deadline for receipt of bids, but *prior to award*, if it is in the *best interest of the purchasing agency and fair to other bidders*.

§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:

- (B) If the mistake is a **minor informality** which shall not affect price, quantity, quality, delivery, or contractual conditions, **the procurement officer may waive the informalities** or allow the bidder to request correction by submitting documentation that demonstrates a mistake was made. * * *
- (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**;

See HAR § 3-122-31.

Thus, the issue for determination by this Hearings Officer is whether Respondent’s determination that Petitioner’s Bid was nonresponsive was proper. The more specific issue is whether the submission of Respondent’s Bid using Addendum No. 2 instead of Addendum No. 5 was an *obvious mistake* and/or *minor informality* that can be corrected and/or waived.

Notwithstanding Respondent had issued Addendum No. 5, the **Revised** Bid Form¹, Petitioner submitted its Bid on Addendum No. 2, which provided for a **180-day** time of completion, instead of on Addendum No. 5, which provided for a **270-day** time of completion. It should be noted that the **180-day** time of completion on Addendum No. 2 and the **270-day** time of completion on Addendum No. 5 are stated in **bold** on the *pre-printed* form. **Petitioner did NOT fill in the number of days for completion.** In all other *material* respects, the two bid forms are identical.² Petitioner's total bid amount on Addendum Nos. 2 and 5 are *identical*, to wit: **\$6,041,643.00**. See Exhibits 2 and 4 at page 7. *All other line-item prices, quality and quantity are identical.* Compare pages 3-7 of the two bids on Exhibit 2 and Exhibit 4.

The mistake was obvious enough for Respondent to catch it and having caught the mistake, Respondent informed Petitioner that Respondent intended to award the contract to Petitioner, that the mistake was of *minor informality*, and that although HWI's bid was submitted on the *wrong form*, DHHL will waive the obvious mistake but will require that HWI resubmit its bid on the correct form.

HWI's bid was submitted on the form issued under addendum no. 2 to the IFB rather than the bid form issued under addendum no. 5. The only difference between the two bid forms was an enlargement to the time of performance. Therefore, the use of the bid form issued under addendum no. 2 was mistake of **minor informality** that does not otherwise affect price, quantity, quality, or contractual conditions. **DHHL will waive the obvious mistake but will require that HWI resubmit its bid on the attached correct form.**

See Exhibit 5 (emphasis added.)

On or about October 27, 2021³, Petitioner resubmitted its bid on the correct form. See Exhibit 4. As noted above, the material terms/substance of the Bid *are identical*.

Neither Respondent nor Intervenor have cited any authority, nor is the Hearings Officer aware of any, that stands for the proposition that a government agency can *rescind* its prior written *waiver* of a minor informality or obvious mistake. The waiver was *perfected* if you will,

¹ Apparently, this was in response to a pre-bid meeting wherein potential bidders, including Petitioner, expressed their concern(s) that the Project would require more than 180-days to complete.

² In addition to the enlargement of time from 180 to **270** days, the only other changes to the bid forms are the identification of the form itself: "Bid Offer Form" was changed to "**Revised** Bid Offer Form"; "Addendum 2" was changed to "Addendum **5**"; and "August 2021" was changed to "**September** 2021." (changes in **bold**) Compare Exhibits 2 and 4.

³ after the deadline for receipt of bids, but prior to award.

by inviting Petitioner to resubmit its Bid on the *correct* form, **which Petitioner did**, prior to award. The Hearings Officer concludes that any *minor informality* (use of the wrong form) was cured at that point.

Assuming *arguendo* that Respondent has the authority to rescind a prior written determination of *minor informality* and *waive an obvious mistake*, the Hearings Officer concludes that the *minor informality* and/or *obvious mistake* should be allowed to be corrected and/or waived because Petitioner was the low bidder (best interest of agency) and its Bid on both forms was *identical* (fair to other bidders). Respondent was bound to perform the work promised in 270-days, instead of 180-days. The price, quality, quantity and contractual obligation remained the same.

Typically, a bid rejected as nonresponsive is for *missing information*. For example, failure to list a subcontractor, or listing a subcontractor who did not have the requisite experience, omission of 10-foot shoulders on both sides of road, failure to include a forward wheelchair door, failure to list a specialty contractor and General did not possess the required specialty license, and omission of a required subsection of the Bid, even inadvertently. See generally, Hawaii Procurement Code Desk Reference, pages 47-51, 2020 version.

There was no missing information here. *All* of the information/substance stated on the *wrong form* is **identical** to the information stated on the *correct form*. This is literally a matter of *form over substance*. The Hearings Officer concludes that the use of the wrong form was an *obvious mistake* and a *minor informality*. The Hearings Officer concludes that Respondent was *initially correct* when it determined, in writing, that use of the wrong form was a *minor informality* and *waived* the *obvious mistake*. Respondent was also correct to request that Petitioner resubmit its Bid on the correct form, which it did. The Hearings Officer also concludes, however, that Respondent's *subsequent determination* to rescind its previous written waiver of the obvious mistake/minor informality based on the *use of the wrong form* was placing *form over substance* and improper.

Accordingly, the Hearings Officer concludes that Petitioner has established that Respondent's determination that Petitioner's Bid was nonresponsive for using the wrong form was improper.

2) **Petitioner is NOT eligible to apply the Apprenticeship Agreement Preference (“AAP”) in calculating the bid results**

Petitioner asserts that it is eligible to apply the AAP to its Bid because its apprentice program complies with Comptrollers Memorandum No. 2011-25 at § 3(A)(4). More specifically, Petitioner asserts that its employees are “multi-skilled” carpenters and laborers and Petitioner need only be a party to the *carpenter’s* apprenticeship agreement in order to qualify for the preference. See Petitioner’s PHS. Respondent asserts that Petitioner is *not* entitled to an apprenticeship credit for *carpenters* because none of the work requires *carpentry* skills. See Respondent’s PHS. Similarly, Intervenor asserts that Petitioner’s Bid improperly applied the apprenticeship preference because Petitioner did not certify that it was a party to an apprenticeship agreement for *laborers*, who would be *required* to perform all major work items in the Project. See Intervenor’s PHS.

HRS § 103-55.6 provides for the application of a five-percent (5%) decrease⁴ to a bid amount for evaluation purposes if the bidder participates in a registered apprenticeship agreement program for *each apprenticeable trade the bidder will employ* to construct he public works.

[§103-55.6] Public works construction; apprenticeship agreement. (a) **A governmental body**, as defined in section 103D-104, that enters into a public works contract under this chapter having an estimated value of not less than \$250,000, **shall decrease the bid amount of a bidder by five per cent if the bidder is a party to an apprenticeship agreement** registered with the department of labor and industrial relations **for each apprenticeable trade the bidder will employ to construct the public works,**

* * *

(b) For purposes of subsection (a), in determining whether there is conformance with chapter 372, **the procurement officer shall consider the actual number of apprentices enrolled in** and the annual number of graduates of **the apprenticeship program.**

(c) At the time of submission of a competitive sealed bid or a competitive sealed proposal by a bidder, **the bidder shall furnish written proof of being a party to a registered apprenticeship agreement for each apprenticeable trade the bidder will employ to construct the public works** and, if

* * *

See HRS § 103-55.6 (emphasis added.)

⁴ The terms “decrease” “preference” and “credit” are used interchangeably herein.

The purpose of the Apprenticeship Agreement Program is to provide incentives to contractors who participate in the program that develops and trains a skilled workforce in the various construction trades. See Conference Committee Report 80, April 30, 2009.

Comptrollers Memorandum No. 2011-25 at § 3(A)(4) (“Comptroller’s Memo”) provides as follows:

If an offeror’s employee is multiskilled and able to perform work in more than one trade (for example, a project **requires a carpenter** and a laborer, and the employee is a carpenter, but is also able to perform the work of a laborer), the offeror need only be a party to the carpenter’s apprenticeship agreement and does not need to be a party to the laborer’s apprenticeship agreement in order to qualify for the preference. The employee is not employing a laborer, only a carpenter, and so only needs to be a party to the carpenter’s apprenticeship agreement.

However, if an offeror employs both a carpenter and a laborer to perform the work, the offeror must be a party to both the carpenter’s and laborer’s apprenticeship agreements in order to qualify for the preference.

See Exhibit 3 at page 3 (Emphasis added.)⁵

Petitioner asserts, using the Comptroller’s Memo as authority, that because its employees are multi-skilled and able to perform the work of a carpenter and laborer, Petitioner need only be a party to the *carpenter’s* apprenticeship agreement and does not need to be a party to the *laborer’s* apprenticeship agreement in order to qualify for the preference.

Respondent asserts that HWI is *not eligible for the apprenticeship preference in calculating the bid results*:

The U.S Department of Labor defines **carpenters’ work as “Construct, erect, install, or repair structures and fixtures made of wood and comparable materials”**. **With the exception of preparing concrete forms, those skills are not applicable to the subject project. HWI is thus not eligible for the apprenticeship preference in calculating the bid results.** The attached revised bid tabulations show PC as the low bidder.

See Exhibit 6 (emphasis added.)

⁵ The provisions of Comptrollers Memo are also stated on page 8 of both Addendum No. 2, the Bid Form and Addendum No. 5, the Revised Bid Form. See Exhibits 2 and 4.

Intervenor asserts that HRS § 103-55.6 expressly requires participation in an apprenticeship program for **each** apprenticeable trade **required** for the Project and that Petitioner does *not* qualify because it only participates in an apprenticeship program for *carpenters* whose skills are *not required* for this Project.

The Hearings Officer is persuaded by Respondent's and Intervenor's positions on this issue.

Petitioner's assertion completely ignores the parenthetical part of the Comptrollers Memo:

(for example, a project **requires a carpenter** and a laborer, and the employee is a carpenter, but is also able to perform the work of a laborer)

The Department of Commerce and Consumer Affairs ("DCCA") licensing laws/rules provide for two *carpentry* specialty licenses:

C-5: Cabinet, millwork, and carpentry remodeling and repairs contractor:

C-5a: Garage door and window shutters contractor and C-5b: Siding application contractor; and

C-6: Carpentry framing contractor.

See HRS Chapter 444 and HAR Title 16 Chapter 77 and Rules promulgated thereunder.

A detailed review of the thirty-two (32) line items describing in detail the work *required* for this Project does not match the U.S. Department of Labor's definition of *carpenter's work*, nor the description of work for which a *carpentry* specialty license is required. See Exhibit 4. According to Mr. Tongotea, Petitioner employs *multi-skilled* workers who can do the work of a carpenter, laborer, finish mason and heavy equipment operator. He pays them according to the type of work they do. The *carpentry* work for this Project, involves building forms for pouring the concrete swale. However, even the description of *that* specific work does not describe any *carpentry* work:

Installation of concrete swale, including all **demolition**, site **clearing, excavation, grading**, and all appurtenant and incidental items.

See Exhibit 4 at page 5, No. 16. (Emphasis added.)

Petitioner bid \$93,164.00 out of total bid of \$6,041,643 for the *installation of the concrete swale*, etc. The Hearings Officer makes a reasonable inference that the actual

“*carpentry*” work, in terms of dollar amount, of building the forms in relation to the *concrete* work and *all demolition, site clearing, excavation, grading, and all appurtenant and incidental items, is negligible at best.*

The Hearings Officer credits the testimony of Mr. Tillotson. According to Mr. Tillotson, the Project *only requires laborers*. The swale at the top of the hill involves excavation and pouring a V-shaped concrete swale. If the contractor uses forms, the forms would have to be removed which will result in erosion. Petitioner’s estimator, Mr. Kim, also conceded on cross-examination that employment of a carpenter for the Project was *not absolutely necessary*. Mr. Ing corroborated that laborers can do forms and the use of carpenters was unnecessary.

The Hearings Officer concludes that the skills of a carpenter are *not required* for this Project. Laborers can build a concrete form, if necessary. Petitioner employs *carpenters* who can also do laborers work. Petitioner only participates in the *carpenters apprenticeship program*. The Project *only requires* the *laborers* trade. The purpose of the *carpenters* apprenticeship program is not fulfilled by employing carpenters to do *laborers* work because they are not learning carpenter’s skills. Despite their label as “carpenters,” Petitioner’s employees would be doing *laborers* work for this Project. Petitioner does not participate in the *laborers* apprenticeship agreement.

The Hearings Officer concludes that Petitioner is *not* eligible for the apprenticeship preference because this Project *only requires* the *laborers* trade. Without the apprenticeship preference, Petitioner’s Bid of \$6,041,643.00 is higher than Intervenor’s bid of \$5,930,850.00 with the *laborer* apprenticeship program preference. See Exhibit 6.

Accordingly, the Hearings Officer *affirms* Respondent’s determination that: “HWI is thus not eligible for the apprenticeship preference in calculating the bid results. The attached revised bid tabulations show PC as the low bidder.” See Exhibit 6. Inasmuch as Petitioner did *not* prevail on *all determinations* appealed, the Hearings Officer also *affirms* Respondent’s determination as stated in its letter dated November 9, 2021 which: 1) upheld Intervenor’s protest of the award of the contract to Petitioner; 2) rescinded the intent to award the contract to Petitioner; and 3) stated its intention to award the contract to Intervenor.

V. DECISION

Based upon the foregoing findings and conclusions, the Hearings Officer orders as follows:

1. Intervenor's oral Motion to Dismiss, joined by Respondent, is DENIED.
2. Petitioner's Petition for administrative review is DENIED and DISMISSED with prejudice; and
3. Respondent's determination as stated in its letter dated November 9, 2021 which:
1) upheld Intervenor's protest of the award of the contract to Petitioner; 2) rescinded the intent to award the contract to Petitioner; and 3) stated its intent to award the contract to Intervenor, is AFFIRMED.
4. Each party shall bear its own attorneys' fees and costs; and
5. The protest bond of Petitioner shall be deposited into the general fund.

Dated: Honolulu, Hawaii, December 27, 2021.

Rodney K.F. Ching

RODNEY K.F. CHING
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs