

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

In the Matter of

MIRA IMAGE CONSTRUCTION, LLC,

Petitioner,

vs.

STATE OF HAWAII, DEPARTMENT OF
TRANSPORTATION,

Respondent,

and

KIEWIT INFRASTRUCTURE WEST CO.,

Intervenor.

PDH-2021-014 and PDH-2021-015
[CONSOLIDATED]

HEARINGS OFFICER'S FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
FINAL ORDER GRANTING
RESPONDENT STATE OF HAWAII,
DEPARTMENT OF
TRANSPORTATION'S MOTION TO
DISMISS, OR IN THE ALTERNATIVE
FOR SUMMARY JUDGMENT AND
GRANTING INTERVENOR KIEWIT
INFRASTRUCTURE WEST CO.'S
MOTION TO DISMISS OR, IN THE
ALTERNATIVE, MOTION FOR
SUMMARY JUDGMENT

Administrative Hearings Officer:
Denise P. Balanay

HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW
AND FINAL ORDER GRANTING RESPONDENT STATE OF HAWAII,
DEPARTMENT OF TRANSPORTATION'S MOTION TO DISMISS, OR IN THE
ALTERNATIVE FOR SUMMARY JUDGMENT AND GRANTING
INTERVENOR KIEWIT INFRASTRUCTURE WEST CO.'S MOTION TO DISMISS
OR, IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On December 10, 2021, Petitioner MIRA IMAGE CONSTRUCTION LLC ("Petitioner"), filed two requests for administrative review to contest Respondent State of Hawaii, Department of Transportation's, ("Respondent") December 3, 2021 denials of its protests in connection with two projects for lighting improvements on Moanalua Freeway, designated Job No. NH-H201(005) and

Job No. NH-H201(006) (collectively referred to as “Solicitations”). Petitioner’s requests were made pursuant to Hawaii Revised Statutes (“HRS”) § 103D-709 and Hawaii Administrative Rules (“HAR”) §§ 3-126-42 and 3-126-59.

On December 13, 2021, the Office of Administrative Hearings issued a Notice of Hearing and Prehearing Conference which was duly served upon the parties. A prehearing conference was scheduled for December 17, 2021 and the hearing was scheduled for December 27, 2021. Respondent filed Respondent’s Responses to Petitioner’s Requests for Hearing on December 16, 2021. PDH-2021-014 and PDH-2021-015 were consolidated by Stipulation on December 15, 2021. Intervenor KIEWIT INFRASTRUCTURE WEST CO. (“Intervenor”) was allowed to intervene in the consolidated matter by Stipulation filed and approved on December 15, 2021. Intervenor filed Intervenor’s Response to Petitioner’s Requests for Hearing on December 17, 2021.

A prehearing conference was conducted by telephone in this matter on December 17, 2021 before the undersigned Hearings Officer. Michael L. Lam, Esquire, appeared on behalf of Petitioner. Yvonne R. Shinmura, Esquire, appeared on behalf of Respondent. Anna H. Oshiro, Esquire, appeared on behalf of Intervenor.

At the prehearing conference, Respondent and Intervenor raised jurisdictional challenges to the timeliness of the protest as well as Petitioner’s compliance with the protest bond requirement. The parties were ordered to file any jurisdictional motions regarding Petitioner’s satisfaction of the procurement bond requirement by December 20, 2021. The hearing for said motion(s) was scheduled for December 22, 2021. All other motions were to be filed by December 27, 2021, with a hearing on said motion(s) scheduled for December 30, 2021. The evidentiary hearing was rescheduled to January 5 and 6, 2021.

On December 20, 2021, Respondent filed Respondent State of Hawaii, Department of Transportation’s Motion to Dismiss, or in the Alternative for Summary Judgment (“Respondent’s Motion to Dismiss”). On December 20, 2021, Intervenor filed Intervenor Kiewit Infrastructure West Co.’s Motion to Dismiss or, in the Alternative, Motion for Summary Judgment (“Intervenor’s Motion to Dismiss”). Petitioner filed Petitioner’s Memorandum in Opposition to Respondent’s Motion to Dismiss and Intervenor’s Motion to Dismiss on December 21, 2021. Intervenor filed Intervenor’s Reply in Support of its Motion to Dismiss on December 22, 2021. The hearing regarding Respondent and Intervenor’s Motions to Dismiss was conducted by telephone by the undersigned Hearings officer on December 22, 2021. Mr. Lam appeared at the hearing on behalf

of Petitioner, Ms. Shinmura appeared on behalf of Respondent, and Ms. Oshiro appeared on behalf of Intervenor.

On December 22, 2021, after the hearing on the subject motions, the Hearings Officer notified the parties that Respondent's Motion to Dismiss and Intervenor's Motion to Dismiss were granted. The hearing scheduled for January 5 and 6, 2022 and all remaining deadlines were removed from the calendar.

Having reviewed and considered the evidence and arguments presented by the respective parties at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following Findings of Fact, Conclusions of Law and Final Order Granting Respondent's Motion to Dismiss and Granting Intervenor's Motion to Dismiss.

II. FINDINGS OF FACT

If any of the following findings of fact shall be deemed to be conclusions of law, the Hearings Officer intends that every such finding of fact shall be construed as a conclusion of law.

1. The Solicitation in PDH-2021-014 for Job No. NH-H201(005) was for highway lighting improvements on Moanalua Freeway, from the Halawa heights off-ramp to the Middle Street overpass.
2. The Solicitation in PDH-2021-015 for Job No. NH-H201(006) was for highway lighting improvements on Moanalua Freeway, from Halawa to the H-3 overpass.
3. Bids for both Solicitations were opened on June 14, 2021. Intervenor was the low bidder for both Solicitations. Petitioner was the second lowest bidder for both Solicitations.
4. Petitioner submitted protests to Respondent in connection with both Solicitations on September 24, 2021.
5. By letter dated December 3, 2021, Respondent denied the protests. The denial letters stated, in pertinent part,

Pursuant to Hawaii Revised Statutes (HRS) Sec. 103D-709, as amended by Act 224, Session Laws of Hawaii (SLH) 2021, and Hawaii Administrative Rules (HAR) Sec. 3-126-42, you have the right to appeal this decision by filing a request for administrative review to the State of Hawaii, Office of Administrative Hearings of the Department of commerce and Consumer Affairs (DCCA). If

you would like to request an administrative hearing, pursuant to HRS Sec. 103D-712(a) and HAR Sec. 3-126-7, you must:

- a) notify the HDOT within seven calendar days of the issuance of the final decision if an administrative hearing will be requested;
- b) file a request for administrative hearing within seven calendar days of the issuance of the final decision in accordance with HAR Sec. 3-126-42; **and**
- c) pay to the DCCA a cash or protest bond in the amount outlined in HRS Sec. 103D-709, as amended by Act 224 (SLH 2021). Bond forms are available at <http://hawaii.gov/spo>.

6. The State of Hawaii Procurement Office website provides forms for cash or protest bonds to be used in compliance with procurement appeals.

7. The form for Procurement Protest Bond Cash or Cashier's Check includes two options for payment of the bond – "Legal Tender" or "Cashier's Check".

8. Petitioner filed its requests for administrative review in PDH-2021-014 and PDH-2021-2021-015 on December 10, 2021. The requests (or appeals) were each accompanied by copies of checks from Petitioner's "Reserve Account", made payable to "Department of Commerce & Consumer Affairs", in the amounts of \$204,092.43 for the protest of NH-H201(005) and \$99,552.12 for the protest of NH-H201(006).

9. At all times relevant herein, due to partial office closures caused by the COVID-19 pandemic, the Office of Administrative Hearings' website stated,

"On July 6, 2021, Governor Ige signed into law SB 1329, SD2, HD3, CD1, which, among other things, requires that any party initiating a proceeding under Hawaii Revised Statutes 103D-709(d) shall pay to the DCCA a cash or protest bond in the amount of one percent of the estimated value of the contract. Any appeal filed with the Office of Administrative Hearings without the required bond may be subject to dismissal. During the temporary closure of OAH to walk-in traffic, payment may be made by mail postmarked within 2 business days after the filing of the appeal. You may file your appeal electronically by emailing to oah@dcca.hawaii.gov."

10. Petitioner filed a Procurement Protest Bond Cash or Cashier's Check form in each matter on December 17, 2021. Instead of selecting either "Legal Tender" or "Cashier's Check" as the form of payment of the bond, Petitioner inserted the following language to the bond forms:

- For NH-H201(005): “MIRA Image Construction LLC Check No. 1048 (First Hawaiian Bank), payable to Department of Commerce and Consumer Affairs, in the amount of \$204,092.43, dated December 9, 2021. MIRA Image Construction LLC Check No. 1051 (First Hawaiian Bank), payable to Department of Commerce and Consumer Affairs, in the amount of \$1,000.00, dated December 9, 2021. ...”.
- For NH-H201(006): “MIRA Image Construction LLC Check No. 1050 (First Hawaiian Bank), payable to Department of Commerce and Consumer Affairs, in the amount of \$99,552.12, dated December 9, 2021. MIRA Image Construction LLC Check No. 1052 (First Hawaiian Bank) payable to Department of Commerce and Consumer Affairs, in the amount of \$1,000.00, dated December 9, 2021. ...”

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. Standard for Motion to Dismiss and/or for Summary Judgment

A motion for dismissal or other summary disposition may be granted as a matter of law where the non-moving party cannot establish a material factual controversy when the motion is viewed in the light most favorable to the non-moving party. *See Brewer Environmental Industries v. County of Kauai*, PDH 96-9 (November 20, 1996), *A’s Mechanical & Builders v. Department of Accounting and General Services, State of Hawaii*, PDH 2013-004 (May 7, 2013).

Under Rule 56 of the Hawaii Rules of Civil Procedure, summary judgment is available when the record 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. *See Gum v. Nakamura*, 57 Hawaii 39, 549 P.2d 471 (Hawaii 1976), *Amfac, Inc. v. Waikiki Beachcomber, Inv. Co.*, 74 Hawaii 85, 839 P.2d 10 (Hawaii 1992). “Where the defendant is the moving party, the defendant is entitled to judgment as a matter of law if (1) viewing the record in the light most favorable to plaintiff, no genuine issue of material fact exists with respect to one or more essential elements of the claim which the motion questions or of the defense which the motion seeks to establish; and (2) it is clear that Plaintiff is not entitled to recover under any discernable theory.” *Atahan v. Muramoto*, 91 Hawaii 345, 347, 984 P.2d 104, 106 (Haw. App. 1999).

b. Discussion

The issue for determination is whether Petitioner failed to perfect a timely appeal of the

denial of its two protests by submitting corporate checks to secure the procurement protest bonds, as opposed to cash or cashier's checks.

An untimely appeal is jurisdictional in nature. It cannot be waived. *Environmental Recycling of Hawaii, Ltd. v. County of Hawaii*, PCH 95-4 (March 20, 1996). "The jurisdiction of a hearings officer to consider and decide procurement protests under HRS §103D-709(a) is not unlimited but is instead constrained by other provisions in HRS §103D-709 such as the bond provision that is the focus of this proceeding." *Derrick's Well Drilling, and Pump Services, LLC, vs. County of Maui, Department of Finance*, PDH 2012-001 (July 26, 2012), at p. 10, citing *Captain Andy's Sailing, Inc. v. Department of Natural Resources*, 113 Haw. 184, 193-194, 150 P.3d 833, 842-843 (Haw. 2006); *Koga Engineering & Construction, Inc., v. State of Hawaii*, 122 Haw.60, 84,222 P.3d 979, 1003 (Haw. 2010); *Kiewit Infrastructure West Co., v. Department of Transportation, State of Hawaii*, PCX-2011-2 and PCX-2011-3 (June 6, 2011).

HRS § 103D-709 provides in relevant part:

(d) Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under 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 or more, the protest concerns a matter that is equal to no less than ten per cent 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 one per cent of the estimated value of the contract.¹

This office has repeatedly rejected bid protest appeals that fail to satisfy the procurement bond requirement within the time period for filing an appeal. "Until such bond is posted, the request for hearing is incomplete and the time limitation for filing a valid request for hearing is not tolled by an initial incomplete filing." *Friends of He'eia State Park v. Department of Land and Natural Resources, State of Hawaii*, PCX-2009-4 (November 19, 2009). *See also, Derrick's Well*

¹ Amended by Act 224, Session Laws of Hawaii (2021) (emphasis added).

Drilling, supra, (protest bond not submitted with request for hearing and dismissed as untimely); *A's Mechanical & Builders, supra*; (petitioner did not submit its cash bond within the requisite time to request administrative review); *Whale Environmental Services, LLC., v. State of Hawaii, Department of Land and Natural Resources*, PDH-2017-006 (October 6, 2017) (protest bond untimely filed and proceeding was dismissed).

The importance of the procurement bond requirement is evident from the legislative history of the Procurement Code. In 2009, the Hawaii legislature amended HRS Sec. 103D-709 to require a cash or protest bond for appeals/or requests for administrative review of protest denials. This office has acknowledged the purpose of the amendment to the Code, stating:

“[a]ttention should [. . .] be directed to the terms of HRS Section 103D-709 as amended by Act 173 where the bond requirement is found. Read together as they must, subpart (d) limits requests for hearings that may be ‘initiated’ to those of a certain minimum monetary value, and subpart (e) states that those ‘initiating such a protest meeting the minimum monetary threshold a bond . . .

Such a reading is consistent with the legislative intent to impose restrictions limiting the number of bid protests. In the usual case, a procurement process stops the procurement process in its tracks and stays all procurement actions, including the aware of the contract until the OAH hearing has concluded. HRS Sections 103D-701(f) and 103D-709(g). It would make no sense to pass a law ostensibly limiting protests, and thus limiting the imposition of automatic procurement stays, but at the same time allow the necessary protest bond to be filed any time before a final hearings officer decision is issued. Such an interpretation would allow a protestor to file with OAH for purposes of delay or harassment and avoid filing a bond throughout the course of the entire OAH proceeding. Dismissal at the end of the proceeding (either on the merits or for lack of a bond) would impose no monetary consequence on such a protestor. This is hardly consistent with the legislative intent of requiring a protestor to ‘put their money where their mouth is.’”

See Derrick's Well Drilling, supra, at p. 8.

In 2021, the legislature amended HRS Sec. 103D-709 to increase the amount of the bond to 1% of the estimated value of the contract. All other aspects of the bond requirement were unchanged.

Thus, the purpose of the bond requirement was to discourage frivolous appeals and unwarranted delays in awarding government contracts by imposing a “monetary consequence” to filing an appeal. To allow another form of payment, such as a corporate or personal check that

can be unilaterally cancelled or is not otherwise guaranteed, would fly in the face of the statute and its underlying intent².

The pertinent facts in this matter are not in dispute. Petitioner filed its requests for administrative review (appeals) in PDH-2021-014 and PDH-2021-015 on December 10, 2021 by email to oah@dcca.hawaii.gov. The requests were accompanied by copies of checks written on Petitioner's reserve account in the following amounts: \$204,092.43 for PDH-2021-014; and \$99,552.12 for PDH-2021-015. The physical checks were received by the Office of Administrative Hearings on December 15, 2021. On December 17, 2021, Petitioner filed the Procurement Protest Bond Cash or Cashier's Check form. On the form, Petitioner did not select one of the two provided options for payment of the bond, which were "Legal tender" or "Cashier's Check". Instead, Petitioner inserted the following language to the forms³:

- For NH-H201(005): "MIRA Image Construction LLC Check No. 1048 (First Hawaiian Bank), payable to Department of Commerce and Consumer Affairs, in the amount of \$204,092.43, dated December 9, 2021. MIRA Image Construction LLC Check No. 1051 (First Hawaiian Bank), payable to Department of Commerce and Consumer Affairs, in the amount of \$1,000.00, dated December 9, 2021. . ."
- For NH-H201(006): "MIRA Image Construction LLC Check No. 1050 (First Hawaiian Bank), payable to Department of Commerce and Consumer Affairs, in the amount of \$99,552.12, dated December 9, 2021. MIRA Image Construction LLC Check No. 1052 (First Hawaiian Bank) payable to Department of Commerce and Consumer Affairs, in the amount of \$1,000.00, dated December 9, 2021. . ."

Respondent and Intervenor argue that Petitioner has failed to perfect a timely appeal of the denials of its protests because it submitted corporate checks, as opposed to cash or cashier's checks, as payment of the procurement cash bond.

Petitioner argues that HRS § 103D-709 is unclear and does not define what a "cash or protest bond" is. The Hearings Officer rejects this argument. Intervenor argued in its Reply Memorandum that, "[w]here the statutory language is plain and unambiguous, [the] court's sole duty is to give effect to its plain and obvious meaning.", Intervenor's Reply Memorandum at 3,

² A bond is generally defined as a written instrument "guaranteeing faithful performance of acts or duties contemplated". Blacks Law Dictionary, 3rd Ed.

³ The form does not provide an option to fill in another form of payment.

citing Lales v. Wholesale Motors, Co., 133 Haw. 332, 344, 328 P.3d 341, 353 (2014). The language of HRS § 103D-709(e) is plain and obvious. There can be no ambiguity about the words “cash” or “cashier’s check”.

Further, Petitioner was given clear instructions on where to find the procurement protest bond forms in Respondent’s denial letter dated December 3, 2021. The procurement protest bond forms are easily found on the Procurement Office’s website. There are two procurement protest bond forms – one entitled “Procurement Protest Bond”⁴ and the other entitled “Procurement Protest Bond Cash or Cashier’s Check”. The Procurement Protest Bond Cash or Cashier’s Check form gives two options for payment of the bond – “Legal Tender” or “Cashier’s Check”. There is no option for any other method of payment. Petitioner must have been aware of this when it chose to alter the form by inserting its payment information referencing its corporate check.

The Hearings Officer finds that the language of HRS § 103D-709, along with the forms provided by the Procurement Office make clear that there are two acceptable types of procurement protest bonds – a bond secured by a surety company and a bond secured by legal tender or cashier’s check.

Petitioner next argues that the requirement of cash or a cashier’s check to secure a bond is a “ministerial” issue. Petitioner represented that the funds to secure the corporate checks were held in its reserve account and argued that this assurance was sufficient to satisfy the cash bond requirement. This argument is without merit.

The security of a bond, whether by cash or an independent surety company, is an essential part of the bond requirement and is not merely ministerial. As discussed above, a protest in a procurement matter stops the procurement process from proceeding, and effectively stops the agency from moving forward with important government contracts. Thus, any protest and resulting appeal must be limited to those where the protesting party has a serious interest in the matter. The bond requirement was instituted to prevent parties from filing appeals as a “knee-jerk” reaction to losing a government contract. The increase in the bond amount instituted in 2021 is even further evidence of the legislature’s intent to limit procurement appeals. Allowing a party to submit a corporate or personal check contravenes the purpose of the bond requirement. Where there is no true monetary commitment, a party can file an appeal, delay the awarding of the

⁴ The Procurement Protest Bond form clearly indicates that the bond is secured by a surety company to be named by the principal (the petitioner in a procurement appeal).

contract, and back out when it appears they will be unsuccessful. A party can stop payment on a corporate or personal check or withdraw the funds from its account at any time.⁵

Petitioner also argues that it “followed in good faith the protest bond submittal process from *Nan, Inc. v. State of Hawaii Department of Transportation*, PDH-2021-012 (December 6, 2021) , in which Nan, Inc. the petitioner, submitted corporate checks ...”⁶ The Hearings Officer finds this argument unpersuasive. This office has previously stated that, “jurisdiction cannot be conferred by the stipulation, agreement, or waiver of the parties.” *Derrick’s Well Drilling, supra*, at p. 10 (citations omitted). Further, the appeal in PDH-2021-012 was withdrawn without any ruling on the petitioner’s compliance with the procurement bond requirement.

Additionally, the Hearings Officer advised the parties by email dated December 17, 2021 that,

“the Office of Administrative Hearings does not reject corporate checks issued for procurement bonds. This does not preclude the parties from filing motions based on jurisdictional challenges related to issuance or payment of procurement bonds.”

This reflects this office’s practice of accepting all filings, including payment of filing fees and procurement protest bonds, regardless of subsequent jurisdictional challenges or dismissals and does not obviate the need to comply with the applicable laws. The Office of Administrative Hearings’ acceptance of said filings does not confer jurisdiction upon a party.

Similarly, the Office of Administrative Hearings’ current practice of allowing parties to file copies of the procurement protest bond electronically and thereafter mail the physical bond and payment within two business days of filing does not affect compliance with the bond requirement set forth in HRS § 103D-709. This practice accommodates filings given the limited office hours in place due to the COVID-19 pandemic and does not alter any statutory requirement, including the procurement protest bond requirement.

For the reasons stated herein, the Hearings Officer finds that Petitioner did not comply with the procurement protest bond requirement set forth in HRS § 103D-709 and therefore failed to perfect a timely appeal of the denial of its protests. Consequently, the Hearings Officer does not

⁵ On December 23, 2021, after the parties were notified of the Hearings Officer’s decision to grant Respondent and Intervenor’s motions to dismiss, the Office of Administrative Hearings was notified by the Department of Commerce and Consumer Affairs Cashier’s Office that Petitioner’s checks in the amounts of \$99,552.12 and \$204,092.43 were returned from First Hawaiian Bank as “UNPAID” as Petitioner apparently stopped payment on the checks.

⁶ See Declaration of Brian Hall, at ¶ 6.


have jurisdiction to hear Petitioner's appeals.

IV. DECISION AND ORDER

Based on the foregoing considerations, Respondent's Motion to Dismiss and Intervenor's Motion to Dismiss are granted. Petitioner's requests for administrative review in PDH-2021-014 and PDH-2021-015 are hereby dismissed. Each party shall bear its own attorney's fees and costs incurred in this matter.

Pursuant to HRS § 103D-709(e), the Procurement Protest Bonds in the amounts of \$204,092.43 and \$99,552.12 shall be deposited into the general fund.

DATED: Honolulu, Hawai'i, January 20, 2022.



DENISE P. BALANAY
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs

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1CCV-22-0000130
25-FEB-2022
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Attorneys for Appellant
MIRA IMAGE CONSTRUCTION LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MIRA IMAGE CONSTRUCTION LLC,

Appellant,

vs.

DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS, OFFICE OF
ADMINISTRATIVE HEARINGS; DENISE P.
BALANAY, HEARINGS OFFICER; STATE
OF HAWAII, DEPARTMENT OF
TRANSPORTATION; and KIEWIT WEST
INFRASTRUCTURE WEST CO.

Appellees.

Civil No. 1CCV-22-0000130

Agency Docket/Case No. PDH-2021-014 and
PDH-2021-015
[CONSOLIDATED]

**ORDER VACATING IN PART HEARINGS
OFFICER'S DECISION, DATED
JANUARY 20, 2022**

Hearing:

Date: February 17, 2022

Time: 9:00 a.m.

Judge: The Hon. James Ashford

**ORDER VACATING IN PART HEARINGS OFFICER'S DECISION,
DATED JANUARY 20, 2022**

On February 17, 2022, this Court heard Appellant's MIRA CONSTRUCTION LLC ("Appellant") appeal with respect to the order of disposition of the bond amounts, in the Hearings Officer's Findings of Fact, Conclusions of Law and Final Order Granting Respondent State of Hawaii, Department of Transportation's Motion to Dismiss, or in the Alternative for Summary

Judgment and Granting Intervenor Kiewit Infrastructure West Co.'s Motion to Dismiss or, in the Alternative, Motion for Summary Judgment, entered on January 20, 2022 ("Decision") in the Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii matter PDH-2021-014 and PDH-2021-015 (consolidated). Michael L. Lam, Esq., appeared on behalf of Appellant. Yvonne Shinmura, Esq., appeared on behalf of Appellee State of Hawaii, Department of Transportation. Anna H. Oshiro, Esq., appeared on behalf Appellee Kiewit Infrastructure West Co. No other persons or parties made an appearance.

The Court, having considered the briefs and exhibits filed herein, and having considered the arguments presented at the hearing, good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

Appellant's appeal is hereby granted. Insofar as the Decision directs that the Procurement Protest Bonds in the amount of \$204,092.43 and \$99,552.12 shall be deposited into the general fund, the Decision is VACATED. The Hearings Officer lacked jurisdiction to retain the protest bond amounts once the Hearings Officer determined that she did not have jurisdiction to hear Appellant's appeal. In all other respects, the Decision is affirmed.

/s/ JHA

IT IS SO ORDERED.

DATED: Honolulu, Hawai'i, FEBRUARY 25, 2022.

/s/ James H. Ashford



JUDGE OF THE ABOVE-ENTITLED COURT

NOTICE OF ELECTRONIC FILING

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Case ID: 1CCV-22-0000130

Title: MIRA IMAGE CONSTRUCTION LLC v. DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, OFFICE OF ADMINISTRATIVE HEARINGS DENISE P. BALANAY, HEARINGS OFFICER STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION and KIEWIT WEST INFRASTRUCTURE WEST CO.

Filing Date / Time: FRIDAY, FEBRUARY 25, 2022 11:34:50 AM

Filing Parties: Michael Lam
Steven Tom
Jackie Ching

Case Type: Circuit Court Civil

Lead Document(s):

Supporting Document(s): 37-Order ____

Document Name: 37-Order Vacating in Part Hearings Officer's Decision, Dated January 20, 2022

If the filing noted above includes a document, this Notice of Electronic Filing is service of the document under the Hawai'i Electronic Filing and Service Rules.

This notification is being electronically mailed to:
Steven Edward Tom (*STom@caselombardi.com*)
First Circuit Court 10th Division (*10thdivision.lcc@courts.hawaii.gov*)
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The following parties need to be conventionally served:

Denise P. Balanay, Hearings Officer
Department of Commerce and Consumer Affairs, Office of Admin
