

eFiled 7/26/2022 7:45 am

HEARINGS OFFICE



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

In the Matter of

ALPHA, INC.,

Petitioner,

vs.

BOARD OF WATER SUPPLY,  
CITY AND COUNTY OF HONOLULU,

Respondent,

and

BEYLIK/ENERGETIC A JV,

Intervenor.

PDH-2022-003

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 June 14, 2022, Alpha, Inc., ("Petitioner" or "Alpha"), filed a *Request for Hearing* ("Petition") to contest the Board of Water Supply, City & County of Honolulu's ("Respondent" or "BWS") Protest Denial Letter dated June 7, 2022, which denied Petitioner's Protest Letter dated May 18, 2022. The Office of Administrative Hearings ("OAH") designated the matter as Docket No. PDH-2022-003 and issued a Notice of Hearing and Pre-Hearing Conference.

On June 21, 2022, Respondent filed its *Response to Petitioner's Request for Administrative Review* ("Response") and a *Motion to Dismiss Petitioner's Request for*

*Administrative Review, or in the alternative, for Summary Judgment* (“Respondent’s Motion to Dismiss or for SJ”). On June 21, 2022, Beylik/Energetic A JV, (“Intervenor” or “BEJV”) filed its *Motion to Intervene*.

On June 22, 2022, a telephonic pre-hearing conference was held in this matter. Jeffrey M. Osterkamp, Esq. appeared on behalf of Petitioner. Joseph A. Stewart, Esq. and Stephen G.K. Kaneshiro, Esq. appeared on behalf of Respondent. Lyle S. Hosoda, Esq., Daniel T. Kim Esq. and Spencer J. Lau, Esq. appeared on behalf of Intervenor. There being no objection by Petitioner or Respondent, and good cause appearing therefore, Intervenor’s Motion to Intervene was GRANTED.

On June 24, 2022, Petitioner filed its *Motion for Summary Judgment* (“Petitioner’s MSJ”). Also on June 24, 2022, Intervenor filed its *Substantive Joinder to BWS’ Motion to Dismiss Petitioner’s Request for Hearing, or in the alternative, for Summary Judgment*. (“Intervenor’s Joinder BWS’ Motion to Dismiss or for SJ”).

On June 29, 2022, Intervenor filed its *Memorandum in Opposition to Petitioner Alpha’s Motion for Summary Judgment*. On June 29, 2022, Petitioner filed its *Omnibus Opposition to Board of Water Supply, City and County of Honolulu’s Motion to Dismiss Petitioner’s Request for Administrative Review, or in the alternative, for Summary Judgment and Beylik/Energetic A JV’s Substantive Joinder to BWS’ Motion to Dismiss Petitioner’s Request for Hearing, or in the alternative, for Summary Judgment*. On June 29, 2022, Respondent filed its *Memorandum in Opposition to Petitioner’s Motion for Summary Judgment*.

On July 5, 2022<sup>1</sup>, 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 6 Chapter 22, and Title 16 Chapter 77. Jeffrey M. Osterkamp, Esq. appeared on behalf of Petitioner. Joseph A. Stewart, Esq., Stephen G.K. Kaneshiro, Esq. and Moana Yost, Esq. appeared on behalf of Respondent. Daniel T. Kim Esq. and Spencer J. Lau, Esq. appeared on behalf of Intervenor. Petitioner’s MSJ and Respondent’s Motion to Dismiss or for SJ were heard and DENIED. The Hearings Officer took jurisdiction in this matter without prejudice as to the parties’ causes of action and/or defenses. The parties made their opening statements. The matter was furthered to July 14 and 15, 2022.

---

<sup>1</sup> The hearing started on July 5, 2022, and was furthered to July 14 and 15, 2022.

On July 14 and 15, 2022, this matter came on for further hearing. Petitioner’s Exhibits 1 to 36 were admitted into evidence *except Exhibits 29 to 32*, which were denied for lack of relevancy. Respondent’s Exhibits A to BB were admitted into evidence. Intervenor’s Exhibits I-1 to I-17 were admitted into evidence *except Exhibits I-10 and I-16*, which were withdrawn. The Hearings Officer took administrative notice of the records and files in this matter. Greg Sado, Alex Kwon, Jadine Urasaki and Fred Camero testified.

Having heard the evidence and arguments of counsel, and having considered the motions and memoranda, along with the declarations and exhibits attached thereto and memoranda in opposition thereto and 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. On April 2022, BWS posted its Invitation for Bids (“IFB” or “Solicitation”) soliciting sealed bids for Job 22-001; Kunia Wells IV Exploratory Wells, which involved the installation of three (3) exploratory wells and appurtenances (the “Project”). See Exhibits A and B.

2. The Solicitation *required* a line-item lump sum price for *Tree removal and trimming*. See Exhibit B at page BWS000803.

3. The General Instructions to Bidders, paragraph 1.1 B, Qualification of Bidders *required that a joint venture bidder submit a copy of their notification* - to the Contractor’s License Board of their intent to form a joint venture to bid on a project - *with its bid*:

Partnership; Joint Venture. In accordance with Section 16-77-13, Hawaii Administrative Rule, Title 16, Chapter 77, Contractors of the Department of Commerce and Consumer Affairs, contractors shall notify the Contractors’ Licensing Board of their intent to form a joint venture or partnership to bid on a project. **A copy of this notification** to the Contractors’ Licensing Board **shall** be submitted with the bid.

See Exhibit F at page BWS000205 (emphasis added) (“Joint Venture Notice”).

4. The Solicitation states in relevant part:

29.8 CLEARING

B. Prior to removal or trimming of trees **by a contractor with a valid C-27/27B license**, a bird nest survey will be

conducted by a biologist provided by the BWS. If any nests are found, the biologist will be responsible for monitoring the active nests during construction. **The Contractor shall coordinate work as necessary with the biologist** to ensure that any active nests remain undisturbed.

See Exhibit A at page BWS000898 (emphasis added.)

5. On May 6, 2022, Alpha submitted its Bid Proposal<sup>2</sup> in the amount of \$5,969,235.00. See Exhibit H. Alpha listed a lump sum price of \$95,000.20 for *Tree removal and trimming* work. Id. at BWS000070. Alpha did *not* list a subcontractor for *Tree removal and tree trimming* work. Id. at BWS00081.

6. Alpha does not hold a C-27 *Landscaping* Contractor or a C-27b *Tree Trimming and Removal* Contractor license. Alpha does hold licenses in the “A” General Engineering, “B” General Engineering, and specialty licenses C-17 *Excavating, Grading, and Trenching* Contractor and C-57 *Well* Contractor classifications, among others. See Exhibit S at BWS000354.

7. On May 6, 2022, BEJV submitted its Bid Proposal in the amount of \$5,977,000.00. BEJV did *not* include a copy of their Joint Venture Notice. See Exhibit G. BEJV listed a lump sum price of \$84,000.00 for *Tree removal and trimming* work. Id. at BWS000020. BEJV listed subcontractor Imua Landscaping, license type C-27, C-27B, for *Tree removal and tree trimming* work. Id. at BWS00031.

8. On May 13, 2022, BWS informed BEJV that BWS was awarding the subject contract to BEJV and posted notice of its *intent* to award the contract to BEJV.<sup>3</sup> See Exhibits K and L, respectively.

9. By letter dated May 17, 2022 (“Bid Rejection Letter”), BWS rejected Alpha’s Bid as being *nonresponsive* pursuant to HRS §103D-302 and HAR §3-122-33 for failure to list a C-27 *Landscaping* Contractor and/or C-27b *Tree Trimming and Removal* Contractor. BWS’ letter also stated that “[a] joint contractor or subcontractor performing less than or equal to one percent of the total bid amount is not required to be listed in the proposal.” BWS asserted that Alpha’s lump sum price of \$95,000.20 for the Project’s Line-Item No. 1 – *Tree Removal and Tree Trimming* – is *more than* 1% of Alpha’s total bid

---

<sup>2</sup> The terms “Bid Proposal” and “Bid” are used interchangeably herein.

<sup>3</sup> Alpha and BEJV were the only two bidders for this Solicitation.

amount of \$5,969,235.00, and therefore, requires a specialty contractor to be listed. See Exhibit M.

10. By letter dated May 18, 2022 (“Protest Letter”), Alpha submitted its Protest to BWS specifically protesting the following:

(1) The premature electronic notification by the City and County of Honolulu (the “**City**”) posted on May 13, 2022, that the City intends to award the contract arising out of the IFB (the “**Award**” and the “**Contract**”) to Beylik/Energetic A JV (“**Beylik JV**”) rather than Alpha, the lowest responsive and responsible bidder, without first providing written notification to Alpha that the City deemed Alpha’s bid for the Project to be nonresponsive;

(2) The City’s incorrect determination in its letter of May 17, 2022 (the “**May 17 letter**,” Exh 1) that Alpha was required to list a specialty contractor in its bid for the Projects “[t]ree removal and trimming” scope of work, and its resulting incorrect determination that Alpha’s bid was nonresponsive; and

(3) The City’s failure to reject Beylik JV’s bid as nonresponsive since the entity did not, as required by the IFB, attach a notice to the State of Hawaii Contractor License Board (the “**CLB**”) of its intent to form a joint venture to bid on a project.

See Exhibit N at BWS000160.

11. In its Protest Letter, Alpha also indicated, among other things, that *in reality it intended* to subcontract the “tree trimming” portion of the *Tree trimming and removal* line item to Cohen Landscaping and Design, Inc. (“Cohen”) which was less than 1% of the Contract value, and that Alpha intended to self-perform the “tree removal” portion of the work.

In reality, . . . Alpha intends to subcontract only the small-dollar “tree trimming” portion of that line item – which is well less than 1% of the Contract value. The “tree removal” portion of the work is to be self-performed by Alpha.

\* \* \*

...the “tree trimming” scope of work constituted just \$6,806.28 of the \$95,000.20 listed for the “Tree removal and trimming” line item, ...

See Exhibit N at BWS000162.

12. On May 18, 2022, BWS emailed the Executive Officer of the Contractors License Board regarding the subject Solicitation and Protest Letter and *requested guidance to clarify the required license to perform tree stump and root ball removal work*:

The BWS believes that a C-27 or C-27b license is required to perform tree stump and root ball removal work and that a contractor who holds a General A license and deemed to hold a C-17 excavating, grading, and trenching specialty license **may not** legally perform the work. Would you be able to provide any CLB minutes or guidance that can help clarify the required license to perform tree stump and root ball removal?

We have a solicitation that requires the removal and disposal of 2 trees. Both are pictured below. The trunks are approximately 2 feet in diameter and 50 feet tall. The apparent low bidder holds a General “A” license that is deemed to hold a C-17 excavating, grading, and trenching specialty license and a C-57 well drilling specialty license and **did not** list a C-27 landscaping or C-27b tree removal contractor. The bidder says that they intend to self-perform most of the work and have a subcontractor that holds a C-27 license to do less than 1% of the total bid amount. The Subcontractor work is listed as “Trees to be trimmed and Fallen.” The work that the bidder will perform is, to provide heavy equipment, haul, all disposal, and stump and root ball removal. The bidder is citing to and interpreting the CLB August 16, 2018 minutes (copy is attached) to indicate that a contractor who holds a General “A” license that is deemed to hold a C-17 Excavating, grading, and trenching specialty license and may perform the listed work, including stump and root ball removal.

See Exhibit 1 at BWS000946 (emphasis in original.)

13. On May 20, 2022, at the request of BWS and in response to Alpha’s Protest Letter, BEJV acknowledged to BWS that it did not submit a copy of its Joint Venture Notice with its Bid. BEJV provided information to BWS that it had received approval for its joint venture from the CLB on November 19, 2021, *prior* to Bid opening, which was a matter of public record. BEJV requested that its inadvertent mistake be *waived* because it was technical/clerical in nature and is not material because it does not affect price, quality, or quantity.

**BEJV had properly** registered with the Business registration Division of the DCCA and **notified the Contractors License Board of the formation of joint venture** and the assignment of

Robert S. Beylik as RME well in advance of submitting a responsive bid for the subject project.

\* \* \*

**I hope that you view my mistake as being inadvertent.**

\* \* \*

**I hope that you will make a written determination** that it would be unreasonable not to allow the mistake that I made to be corrected.

The joint venture's compliance with the Hawaii contractor licensing requirements prior to submission of bids is and was easily and independently verifiable on the DCCA website. **The mistake is technical/clerical in nature and is not material because it does not affect price, quality, or quantity.**

See Exhibit 24 at BWS000233. See also Exhibits O, P and Q (emphasis added.)

14. On June 7, 2022, the Executive Officer of the Contractor's License Board replied to BWS' May 18, 2022 email with an *unofficial opinion* that an "A" General engineering or C-17 Excavating, grading, and trenching specialty license could also do the work, as clearing and grubbing is included with these licenses:

I could not find a similar prior determination in the Contractors License Board ("Board") meeting minutes regarding **tree stump and root ball removal work**. I consulted with a Board member, and it appears that an "A" **General engineering or C-17 Excavating, grading, and trenching specialty license could also do the work, as clearing and grubbing is included with these licenses.**

The above interpretation is for informational and explanatory purposes only, it is **not an official opinion** or decision and is thus, not binding on the Contractors License Board.

See Exhibit 1 at BWS000944 (emphasis added.)

15. By letter dated June 7, 2022 ("Protest Denial Letter"), BWS *denied* Alpha's Protest determining that:

A. **Alpha' bid is nonresponsive because it failed to list a licensed subcontractor for the tree removal work, and Alpha cannot self-perform this work as it does not possess a C-27 or C-27b license as required.**

B. **Alpha lacks standing to protest BEJV's bid, but even if it did, BEJV's bid was acceptable.**

**C. There is no requirement to issue a nonresponsive determination before a notice of intent to award.**

See Exhibit R (bold in original.)

16. On June 14, 2022, Alpha filed the instant Petition. See Exhibit S.

**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).

**B. BWS' DETERMINATIONS**

There are three (3) BWS *determinations* for *de novo* review by this Hearings Officer as stated in the Protest Denial Letter, whether:

1. **Alpha' bid is nonresponsive because it failed to list a licensed subcontractor for the tree removal work, and Alpha cannot self-perform this work as it does not possess a C-27 or C-27b license as required.**
2. **Alpha lacks standing to protest BEJV's bid, but even if it did, BEJV's bid was acceptable.**
3. **There is no requirement to issue a nonresponsive determination before a notice of intent to award.**



### **C. BWS' MOTION TO DISMISS**

On June 21, 2022, BWS filed its Motion to Dismiss for lack of jurisdiction, or in the alternative, for Summary Judgment, in which Intervenor joined. For organizational purposes, BWS' Motion is divided into two parts: BWS' Motion to *Dismiss* and BWS' Motion for *Summary Judgment* (see section D below.)

In its Motion to *Dismiss*, BWS asserts that under HRS § 103D-709(d)(2), OAH lacks jurisdiction over the Petition because it does not concern a matter that is “equal to no less than 10% of the estimated value of the contract.” In support of its position, BWS asserts that no matter what metric is used – intended subcontractor Cohen's quote of \$6,806.28 for tree *trimming* work, or Alpha's line-item entry of \$95,000.20 for tree *trimming and removal* work - both are less than 10% of Alpha's Bid of \$5,969,235.00. Thus, BWS contends that Alpha does *not* meet the minimum 10% amount in controversy for *jurisdictional* purposes.

Alpha asserts that its Petition contests: 1) the complete rejection of its Bid (for failure to list a C-27 or C-27b subcontractor) and that Alpha is properly licensed to self-perform the tree removal work; 2) the acceptance of BEJV's Bid (which was allegedly nonresponsive for failure to include a copy of their Joint Venture Notice); and 3) BWS' alleged violation of the Code for issuing its notice of intent to award *before* making its nonresponsive determination of Alpha's Bid. In support of its position, Alpha cites to *Greenpath v. Dept. of Finance*, PDH -2014-002 (March 20, 2014) for the proposition that Alpha's challenge to the responsiveness of BEJV's Bid is a *direct challenge to the entire proposal*, and that is an “all or nothing” issue which exceeds the ten percent jurisdictional minimum. See also, *Nan, Inc v. HART*, PDH-2015-004 (May 28, 2015) (holding that a petitioner can “aggregate” its claims, even if factually unrelated, in order to meet the minimum jurisdictional amount.)

The Hearings Officer is persuaded by Alpha's position on the issue of *jurisdiction* to hear the *Petition* and DENIES BWS' Motion to Dismiss for failure to meet the minimum 10% amount in controversy. This *matter* does not merely/only concern the failure to list a less-than-1% tree trimming subcontractor, but also alleges: 1) that BWS wrongfully rejected Alpha's Bid - for failure to list a C-27 or C-27b subcontractor - because Alpha, as a C-17 Contractor, *could* legally *self-perform* the work; 2) that BEJV's Bid was nonresponsive for failure to submit a required Joint Venture Notice; and 3) that BWS violated the Code by

issuing its notice of intent to award *before* making its nonresponsive determination of Alpha's Bid.

Furthermore, BWS' Protest Denial Letter informs Alpha that BWS' Decision is final, and that Alpha has the *right* to an Administrative Proceeding as provided in HRS Chapter 103D, the Hawaii Public Procurement Code ("Code").

As noted above, Section 103D-709(a) of the Code specifically confers *jurisdiction* on the *DCCA hearings officers* to determine *de novo*, *any request from any bidder, offeror, contractor . . . aggrieved by a determination of the chief procurement officer*.

Alpha was certainly "aggrieved" by the *determinations* of BWS' chief procurement officer in that Alpha's low Bid was rejected as nonresponsive, whereas BEJV's Bid was accepted notwithstanding it failed to submit a copy of its Joint Venture Notice. Additionally, Alpha alleges that BWS violated the Code by issuing its intent to award the contract to Intervenor BEFORE rejecting Alpha's Bid as nonresponsive. These claims, *in the aggregate* confer jurisdiction on the OAH. All Parties have cited to the Code and *Decisions by OAH* in support of their respective positions. OAH most certainly has *jurisdiction* in this matter.

To be clear, however, having determined that OAH has *jurisdiction* to hear the Petition *does not* mean that this Hearings Officer cannot dismiss a cause or causes of action, for failure to meet the Section 103D-709(d) 10% minimum amount in controversy. Or determine that Alpha lacks *standing* to challenge BWS' intent to award the contract to BEJV. However, those are matters subject for hearing on the *merits*.

Accordingly, the Hearings Officer concludes that OAH has *jurisdiction* to hear the *Petition*. BWS's *Motion to Dismiss* for lack of jurisdiction for failing to meet the minimum 10% amount in controversy is DENIED, *without prejudice*.

With regard to Intervenor's claim - that Alpha's Bid was nonresponsive for failure *to provide the requisite five (5) years of experience with deepwell pumping units and related DLNR Well Completion Reports to verify same* - that claim was not a *determination* made by BWS in its Protest Denial Letter and, therefore, is not a *determination* that is subject to this *de novo* review. Accordingly, *BEJV's claim* that Alpha's Bid was nonresponsive for failure to meet the experience requirement is DISMISSED for lack of jurisdiction.

#### **D. BWS' MOTION FOR SUMMARY JUDGMENT**

On June 21, 2022, BWS filed its *Motion* to dismiss for lack of jurisdiction, or in the alternative, *for Summary Judgment*, which Intervenor joined, on three (3) bases:

A. The Request for Hearing should be dismissed because the hearings officer lacks jurisdiction for failure to meet the ten percent amount in controversy.

B. Summary judgment is appropriate because it is undisputed that Petitioner's bid failed to list all subcontractors as required and no exceptions were made.

C. The Request for Hearing should also be dismissed as to the award to BEJV.

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. See, *Nan, Inc. vs. DOT, SOH and Hawaiian Dredging Construction Company, Inc.*, PDH 2015-006 (Sept. 4, 2015), citing *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, 25, 873 P.2d 98, 104 (1994).

As noted above, BWS' Motion to *Dismiss* for lack of *jurisdiction* for failure to meet the ten percent amount in controversy was DENIED, *without prejudice*. Viewing the *same* facts in the light most favorable to Alpha, BWS Motion for *Summary Judgment* – on the basis that the Request for Hearing should be dismissed for lack of jurisdiction for failure to meet the ten percent amount in controversy - is also DENIED.

With regard to the second basis, while it is uncontroverted that Alpha's Bid failed to list a C-27/27B subcontractor and no exceptions were made, Alpha does hold an "A" General engineering and C-17 license which, according to 2018 CLB meeting minutes and a 2022 email regarding *this Solicitation*, the CLB's albeit unofficial opinion was that Alpha could *legally perform the tree stump and root ball work* inasmuch as clearing and grubbing is included with these licenses.

Furthermore, in its Bid Rejection Letter, BWS acknowledged that “[a] joint contractor or subcontractor performing less than or equal to one percent of the total bid amount **is not required** to be listed in the proposal.” (Emphasis added). The intended subcontractor, Cohen, for tree *trimming* work possesses the requisite C-27 license and its proposal (\$6,806.28) was less than 1% of the Contract price (\$5,969,235.00). The BWS has in the past awarded similar contracts to contractors – like Alpha - who only possessed a C-17 license and not a C-27/27B license. See Exhibits 9 to 23. These facts viewed in the light most favorable to Alpha warrant DENIAL of BWS’ Motion for *Summary Judgment* on this basis.

With regard to BEJV’s Bid, it is uncontroverted that said Bid did NOT include a copy of the Joint Venture Notice as *required* by the General Instructions to Bidders. BEJV acknowledged this mistake. These facts viewed in the light most favorable to Alpha warrant DENIAL of BWS’ Motion for Summary Judgment on this basis.

#### **E. ALPHA’S MOTION FOR SUMMARY JUDGMENT**

On June 24, 2022, Petitioner filed its Motion for Summary Judgment on four (4) bases:

1. The Hawaii Public Procurement Code (the “**Procurement Code**”) did not permit BWS to reject BWS’s<sup>4</sup> bid on the basis that BWS<sup>5</sup>, as a C-17 licensee, lacked the necessary license to perform the Project’s tree removal work.
2. The Hearings Officer lacks jurisdiction over BWS’s contention that it can, and/or properly did, reject Alpha’s bid on the basis that it has the discretion to disqualify a bidder for failing to list a subcontractor whose scope of work is less than 1% of the bid price. Alternatively, BWS is estopped from pursuing that argument.
3. The bid submitted by Intervenor Beylik/Energetic A JV (“**BEJV**”) was nonresponsive to the Project solicitation, known as the Invitation for Bids Job 22-001; Kunia Wells IV Exploratory Wells; Ewa, Oahu, Hawaii Board of Water Supply; City and County of Honolulu (the “IFB”).
4. The Hearings Officer has jurisdiction to consider Alpha’s Request for Hearing.

---

<sup>4</sup> Alpha meant to say *Alpha’s*

<sup>5</sup> Alpha meant to say *Alpha*

As noted above, 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. See, *Nan, Inc. vs. DOT, SOH and Hawaiian Dredging Construction Company, Inc.*, PDH 2015-006 (Sept. 4, 2015), citing *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, 25, 873 P.2d 98, 104 (1994).

It should be noted at the outset that Alpha did NOT request summary judgment on BWS’ *third determination* as stated in BWS’ Protest Denial Letter, to wit: **There is no requirement to issue a nonresponsive determination before a notice of intent to award.** Accordingly, *that determination* will not be addressed as part of Alpha’s Motion for Summary Judgment.

Contrary to Alpha’s first basis, the Code does allow an agency to reject a bid as nonresponsive for failure to list a subcontractor. See HRS 103D-302(b). The Solicitation requires a line-item lump sum price for *tree removal and trimming*. Alpha did *not* list a C-27/27B *tree removal and trimming* subcontractor in its Bid. The IFB and Addendum 2 puts Alpha on notice that a C-27/27B license is required for the tree removal and trimming work. Alpha only possesses a C-17 Excavating, grading, and trenching license. The Code also allows the procuring agency to *waive* the bidder’s failure to list a subcontractor *IF*: 1) it is in the best interest of the government; and 2) if the value of the work is less than 1% of the total bid amount. In its Protest Letter, Alpha indicated, among other things, that it *intended* to subcontract the “tree trimming” portion of the *Tree trimming and removal* line item to Cohen Landscaping and Design, Inc (“Cohen”) which was less than 1% of the Contract value, and that Alpha intended to self-perform the “tree removal” portion of the work. *However, Alpha did not request such a waiver, nor did BWS grant one.* These facts viewed in the light most favorable to BWS warrant DENIAL of Alpha’s Motion for Summary Judgment on this basis.

As to Alpha’s second basis for requesting summary judgment - *that the Hearings Officer lacks jurisdiction over BWS’s contention that it can, and/or properly did,*

*reject Alpha's bid on the basis that it has the discretion to disqualify a bidder for failing to list a subcontractor whose scope of work is less than 1% of the bid price. Alternatively, BWS is estopped from pursuing that argument – as noted above, the Hearings Officer finds that the Code allows the procuring agency to waive a bidder's failure to list a subcontractor IF: 1) it is in the best interest of the government; and 2) if the value of the work is less than 1% of the total bid amount. In its Protest Letter, Alpha indicated, among other things, that it intended to subcontract the "tree trimming" portion of the Tree trimming and removal line item to Cohen Landscaping and Design, Inc ("Cohen") which was less than 1% of the Contract value, and that Alpha intended to self-perform the "tree removal" portion of the work. However, Alpha did not request such a waiver, nor did BWS grant one. These facts viewed in the light most favorable to BWS warrant DENIAL of Alpha's Motion for Summary Judgment on this basis.*

As to Alpha's third basis for requesting summary judgment – *that BEJV's Bid was nonresponsive* – the Hearings Officer concludes that BEJV requested *waiver* of the mistake and *BWS approved*. These facts viewed in the light most favorable to BWS warrant DENIAL of Alpha's Motion for Summary Judgment on this basis.

As to Alpha's fourth basis for requesting summary judgment – *that the Hearings Officer has jurisdiction to consider Alpha's Request for Hearing* – jurisdiction to hear the Petition has already been established as noted above. Accordingly, Alpha's Motion for Summary Judgment on this basis is moot.

#### **F. MERITS**

**PETITIONER HAS NOT MET ITS BURDEN OF PROOF THAT BWS' DETERMINATION - THAT ALPHA' BID IS NONRESPONSIVE BECAUSE IT FAILED TO LIST A LICENSED SUBCONTRACTOR FOR THE TREE REMOVAL WORK, AND ALPHA CANNOT SELF-PERFORM THIS WORK AS IT DOES NOT POSSESS A C-27 OR C-27B LICENSE AS REQUIRED - WAS IMPROPER.**

HRS §103D-302(b) *requires* that for construction bids, the names of *all subcontractors* shall be included as well as the nature and scope of their work.

#### **§103D-302 Competitive sealed bidding.**

(b) An invitation for bids shall be issued, and shall include a purchase description and all contractual terms and conditions applicable to the procurement. **If the invitation for bids is for construction, it shall specify that all bids include the name of**

**each person or firm to be engaged by the bidder as a joint contractor or subcontractor in the performance of the contract and the nature and scope of the work to be performed by each.**

See HRS §103D-302(b) (emphasis added.)

There are two (2) *exceptions* to the subcontractor listing requirement:

1) a *general* engineering contractor or *general* building contractor, can *self-perform* the work in the *specialty* license classifications it holds that are deemed included in its *general* contractor's license. See HAR §16-77-33(a); and/or

2) if the subcontractor's work is less than 1% of the Contract amount and the procuring agency determines that it is in the best interest of the public/State, the bid can be accepted. See HRS §103D-302(b)

The General Instructions to Bidders (Construction Services) affirms that *bidders shall comply with HRS 103D-302 and* that bids which are not in compliance *may* be accepted if: 1) it is in the *best interest* of the public; and 2) the value of the work to be performed by the subcontractor is equal to or *less than one percent (1%) of the total bid amount*:

### **1.19 Joint Contractor; Subcontractor**

**A. Bidders shall comply with HRS 103D-302**, relating to the listing of joint contractors or subcontractors. **Bids which are not in compliance may be accepted if the Contracting Officer**

**. . . concludes that it is in the best interest of the public and the value of the work to be performed by the . . . subcontractor is equal to or less than one percent (1%) of the total bid amount.**

See Exhibit F at BWS000221 (emphasis added.)

**Alpha can self-perform a portion of the tree removal and trimming work.**

This is a *construction* Project for the drilling of three (3) exploratory wells near the Kunia reservoir. According to Ms. Jadine Urasaki, Assistant Program Administrator for BWS, the plans call for minimal disturbance to the existing vegetation. See Exhibit C-4, Erosion and Sediment Control Plan. The bulk of the excavation was for the well drilling. It was the Contractor's responsibility to restore the Site to its original condition or better. See

Exhibit C-1, Construction Notes 8. The Project also required the removal and disposal of two (2) trees and minimal grading. See Exhibit C-5, Site and Grading Plan. Accordingly, the Solicitation required a line-item lump sum price for *tree removal and trimming* for which Alpha listed a price of \$95,000.<sup>20</sup> The sub-issue is whether Alpha has the requisite specialty license to *self-perform* the *tree removal and trimming* work and thereby fall within exception no. 1.

It is undisputed that Alpha does not possess a C-27/27B specialty contractor license. According to Ms. Urasaki, the Solicitation was put together with the *expectation* that a C-27/27B specialty license would do the *tree removal and trimming work* for which a lump sum price was required by Line-Item No. 1. BWS determined that a C-17 Excavating, grading, and trenching contractor could *not* perform the *tree removal and trimming work* based on a comparison of the descriptions/scope of work for the specialty license classifications as determined by laws and rules of the Contractors License Board, which state in relevant part:

**C-17 Excavating, grading, and trenching contractor.** To dig, move, and place earthen material for a cut, fill grade, or trench, including use of explosives in connection therewith.

**C-27 Landscaping contractor.** To prepare plots of land for architectural horticulture and to provide tree trimming, . . .

**C-27b Tree trimming and removal contractor.** To prune, trim, and remove trees, including stumps, and restore ground to condition similar to adjacent areas; provided this does not include the relocation and planting of field grown trees.<sup>6</sup>

See Exhibit X at pages BWS000966 and BWS000968.

Special Provision 29.8B of the Solicitation *specifically mentions* the removal or trimming of trees *by a contractor with a valid C-27/C-27B license* in the context of conducting a bird nest survey by a biologist provided by the BWS to be coordinated by the Contractor:

29.8 CLEARING

**B. Prior to removal or trimming of trees by a contractor with a valid C-27/27B license,** a bird nest survey will be conducted by a biologist provided by the BWS. If any nests are found, the biologist will be responsible for monitoring

---

<sup>6</sup> Based on information adduced at hearing, a C-27 license includes C-27b.



the active nests during construction. **The Contractor shall coordinate work as necessary with the biologist** to ensure that any active nests remain undisturbed.

See Exhibit E at page BWS000114 (emphasis added.)

According to Ms. Urasaki, Special Provision 29.8B is not a “boiler plate” provision and was included to comply with environmental concerns (minimal impact/disturbance to the area). Accordingly, the BWS determined that Alpha as a C-17 specialty contractor could *not* self-perform the tree removal and trimming work which required a C-27/27B specialty contractor.

Alpha asserts that as the holder of an “A” General engineering and C-17 Excavating, grading, and trenching specialty license, it can *self-perform* the *tree removal* work. In support of its position, Alpha has introduced an email obtained through discovery between a BWS employee and the Executive Officer of the CLB wherein the BWS employee asked for guidance on this specific issue:

We have a solicitation that requires the removal and disposal of 2 trees. Both are pictured below. The trunks are approximately 2 feet in diameter and 50 feet tall. The apparent low bidder [Alpha] holds a General “A” license that is deemed to hold a C-17 Excavating, grading, and trenching specialty license and a C-57 well drilling specialty license and **did not** list a C-27 landscaping or C-27b tree removal contractor. The bidder says that they intend to self-perform most of the work and have a subcontractor that holds a C-27 license to do less than 1% of the total bid amount. The Subcontractor work is listed as “Trees to be trimmed and Fallen.” The work that the bidder will perform is, to provide heavy equipment, haul, all disposal, and stump and root ball removal. The bidder is citing to and interpreting the CLB August 16, 2018 minutes (copy is attached) to indicate that a contractor who holds a General “A” license that is deemed to hold a C-17 Excavating, grading, and trenching specialty license and may perform the listed work, including stump and root ball removal.

See Exhibit 1 at page BWS 000946 (emphasis in original.)

In response to the query, the Executive Officer of the CLB explained (unofficial opinion), after consulting with a Board member, that *an “A” General engineering or C-17 Excavating, grading, and trenching specialty license could also do the work, as clearing and grubbing is included with these licenses*. See Exhibit 1 at BWS 000944.

In addition, Alpha introduced the CLB minutes from an August 16, 2018 meeting *corroborating* that for a project involving “Grading, grubbing and tree removal (approximately 2 acres)”, an “A’ General engineering, C-17 Excavating, grading, and trenching contractors license; **or** C-27 Landscaping or C-27b Tree trimming and removal contractor’s license for tree removal only” could do the work. See Exhibit 1 at BWS000951. In further support of its position, Alpha has introduced numerous examples of *similar projects* that involved *tree removal* work that were awarded to contractors that held **C-17** licenses and not C-27 licenses. See Exhibits 9 – 23.

According to Alpha’s Chief Operating Officer, Greg Sado, landscapers can trim and remove trees, but call on them (Alpha) to remove *large* trees because they (Alpha) have bigger equipment. Alpha’s C-17 Excavating, grading, and trenching license, allows Alpha to remove trees as part of its excavation and grubbing work. Mr. Sado also pointed out that Special Provision 29.8 F provides that: “For trees to be demolished and removed, the **Contractor shall remove trees**, roots, and stumps to a minimum of three (3) feet below ground level.” See Exhibit A page BWS000899. (Emphasis added.)

In further support of its position, Alpha called Alex Kwon, President and Responsible Managing Employee (“RME”) of Paradigm Construction as a witness. In Mr. Kwon’s opinion, a C-27 license is required for trimming or transplanting trees (trees remain), whereas a C-17 licensee can *remove* trees. It is “common industry practice” for a C-17 contractor to *remove trees* as part of its excavation and grubbing of the area.

The Hearings Officer finds all witnesses credible. The Hearings Officer concludes that there is some *overlap* in the scope of work that a C-17 Excavation and a C-27/27B Landscaping contractor can legally perform *depending on the project*. The Hearings Officer concludes that *both* an “A” General engineering (which includes a C-17 Excavating, grading, and trenching specialty license) contractor **and/or** a C-27 Landscaping/C-27b Tree trimming and removal contractor can perform *tree removal* work. However, the Hearings Officer does *not* conclude that Alpha can self-perform *all* of the *tree removal and trimming* work *for this Project* for which the listing of a C-27/27B contractor was *required*. This is consistent with the “reality” of Alpha’s position and CLB’s interpretation of *scope of work*.

In its Protest Letter, Alpha explained that *in reality* it *intended* to subcontract the “tree trimming” portion of the *Tree trimming and removal* line item to Cohen

Landscaping and Design, Inc (“Cohen”) which arguably was less than 1% of the Contract value, and that Alpha intended to self-perform the “tree removal” portion of the work.

**In reality, . . .Alpha intends to subcontract only the small-dollar “tree trimming” portion of that line item – which is well less than 1% of the Contract value. The “tree removal” portion of the work is to be self-performed by Alpha.**

\* \* \*

...the “tree trimming” scope of work constituted just \$6,806.28 of the \$95,000.20 listed for the “Tree removal and trimming” line item, ...

See Exhibit N at BWS000162 (emphasis added.)

According to Mr. Sado, he prepared Alpha’s Bid on this Project and was aware of Special Provision 29.8B that mentioned removal or trimming of trees “by a contractor with a valid C27/27B license” in the context of conducting a bird nest survey. Alpha engaged Cohen, to do the “intricate” tree trimming requiring “finesse”. Regardless of whether bird nests were found, Alpha would have used Cohen to *trim* the two (2) 50 feet tall trees to 4 to 6 feet and then Alpha would *remove* the trees. Alpha was not price shopping. Mr. Sado testified that Alpha did not list Cohen as a subcontractor because the dollar amount of Cohen’s work (\$6,806.28) was less than 1% of the line-item amount (\$95,000.20) for *tree trimming and removal*. Furthermore, the letter from Ernest Lau (Bid Rejection Letter) said that they don’t have to list a less than 1% subcontractor.

**Alpha did not obtain a waiver of its failure to list its tree trimming subcontractor.**

Alpha did not list Cohen or any other subcontractor for *tree trimming and removal work*. Alpha’s Bid was nonresponsive *at the time of bid opening*. On May 17, 2022, BWS rejected Alpha’s Bid as nonresponsive for failure to list a specialty contractor with a C-27 or C-27b license. In its Bid Rejection Letter, BWS stated that a less than 1% contractor need not be listed. According to Ms. Urasaki, that sentence was a mistake.

As noted above, in its Protest Letter, Alpha explained that *in reality* it *intended* to subcontract the “tree trimming” portion of the *Tree trimming and removal* line item to Cohen which was less than 1% of the Contract value, and that Alpha intended to self-perform the “tree removal” portion of the work.

At hearing, Mr. Sado acknowledged that he was aware of Special Provision 29.8B. In compliance therewith, Alpha engaged Cohen, a C-27/27B specialty licensee, to do

the tree *trimming* work in the context of conducting a bird nest survey. The plan was for Cohen to reduce the trees to 4 to 6 feet high. Thereafter, Alpha would come in with heavier equipment to do the tree *removal* including root and root ball. Based on Alpha's experience, he thought that Alpha did not have to list its less than 1% subcontractor. When Alpha got rejected, Alpha explained that BWS' calculation - that the Line-Item No. 1 Tree removal and trimming amount divided by the total Bid amount is *over* 1% - was not correct. Alpha explained that *Cohen's price* was less than 1% of both the Line-Item No. 1 amount and/or the total Bid amount. Mr. Sado thought that Alpha's Protest Letter *implicitly* requested a waiver and thought it would be *automatic*. Mr. Kwon testified that it is "common industry practice" for bidders to not list a less than 1% subcontractor and obtain a waiver.

Alpha, relying on the language contained in the Bid Rejection Letter, also argues that BWS is *estopped* from arguing that Alpha was required to list Cohen, a less than 1% subcontractor. BWS argues that the Hearings Officer must follow the law. The Hearings Officer agrees with BWS' position on this issue. The *law*, HRS § 103D-302(b) *controls*, not a letter which incorrectly states the law. The *law* requires the listing of *all* subcontractors regardless of percentage of work. Alpha did not list Cohen, its intended subcontractor for tree trimming. Alpha's Bid was nonresponsive at the time of bid opening.

BWS determined that Alpha's Line-Item No. 1 Bid amount \$95,000.20 divided by Alpha's total Bid amount of \$5,969,235.00 was *more* than 1%. Alpha contends that the dollar amount of Cohen's work (\$6,806.28) for tree *trimming* was *less* than 1% of the line-item amount (\$95,000.20) for tree *trimming and removal*. The Hearings Officer need not determine which method is correct. Regardless of whether the less than 1% element is met, Alpha did *not* request a *waiver* of their failure list a subcontractor for tree removal and trimming work pursuant to HRS §103D-302(b). BWS had the discretion to, but did *not* waive Alpha's failure list a subcontractor for tree removal and trimming work. As noted above, the General Instructions to Bidders (Construction Services) states that *bidders shall comply with HRS 103D-302 and* that it is within the *discretion ("may") of the Contracting Officer to accept a nonconforming bid*:

#### **1.19 Joint Contractor; Subcontractor**

**A. Bidders shall comply with HRS 103D-302, relating to the listing of joint contractors or subcontractors. Bids which are not in compliance may be accepted if the Contracting Officer**

. . . **concludes** that it is in the best interest of the public and the value of the work to be performed by the . . . subcontractor is equal to or less than one percent (1%) of the total bid amount.

See Exhibit F at BWS000221.

Thus, notwithstanding the Hearings Officer's conclusion that Alpha could legally do *some of the tree removal and trimming* work within the scope of their C-17 license, here, BWS alerted bidders that a C-27/27B contractor license was required. The Hearings Officer concludes that it is within the discretion of BWS to specify what type of specialty license is required for specific work on this Project. BEJV's Bid listed a C-27/27B specialty subcontractor for tree removal and trimming work, Alpha's Bid did not. Alpha did not obtain a waiver of its failure to list subcontractor Cohen. Accordingly, the Hearings Officer concludes that Alpha has *not* established by a preponderance of the evidence that BWS's determination - that Alpha's bid is nonresponsive because it failed to list a licensed subcontractor for the tree removal work, and Alpha cannot self-perform this work as it does not possess a C-27 or C-27b license as required -was improper.

**PETITIONER HAS NOT MET ITS BURDEN OF PROOF THAT BWS' DETERMINATION – THAT ALPHA LACKS STANDING TO PROTEST BEJV'S BID, BUT EVEN IF IT DID, BEJV'S BID WAS ACCEPTABLE – WAS IMPROPER.**

Alpha, as an aggrieved bidder *has standing* to protest BEJV's Bid (the intended awardee) on the grounds of responsiveness. The Hearings Officer agrees with Alpha's position on this *part*.

BEJV did *not* include a copy of their Joint Venture Notice with its Bid. See Exhibit G. On May 20, 2022 (after award to BEJV), at the request of BWS and in response to Alpha's Protest Letter, BEJV acknowledged that it did not submit a copy of its Joint Venture Notice with its Bid. BEJV provided information to BWS including copies of its DCCA registration, the Joint Venture Notice and CLB meeting minutes approving the joint venture. BEJV informed BWS that it received approval for its joint venture from the CLB on November 19, 2021, *prior* to Bid opening, which was a matter of public record. BEJV requested that its *inadvertent mistake* be *waived* because it was technical/clerical in nature and is not material because it does not affect price, quality, or quantity. See Exhibits P and Q.

Pursuant to HAR §3-122-31, mistakes in bids may be corrected or waived prior to and *after* award:

\* \* \*

(d) A mistake in a bid discovered **after** award of contract **may be corrected** or withdrawn if the chief procurement officer or head of the purchasing agency makes a written determination that it would be unreasonable not to allow the mistake to be remedied or withdrawn.

e) The determination required by this section shall be final and conclusive unless clearly erroneous, arbitrary, capricious, or contrary to law.

HAR §3-122-31(d) and (e) (emphasis added.)

The BWS made a *written determination* pursuant to HAR §3-122-31(d) that under the facts of this Solicitation BEJV's Bid could be remedied:

[I]t would be unreasonable not to allow BEJV's inadvertent omission to be remedied because (1) BEJV was formed and registered before the Project solicitation; (2) BEJV submitted the required notice to the CLB, who approved the joint venture; (3) the BWS verified that BEJV was properly registered and licensed; and (4) the omission was not material.

See Exhibit R at BWS000300.

The Hearings Officer is persuaded by BWS' position on this issue. The Hearings Officer concludes that BWS' written determination - that it would be unreasonable not to allow BEJV's inadvertent omission to be remedied - was not clearly erroneous, arbitrary, capricious, or contrary to law. Accordingly, the Hearings Officer concludes that Alpha has not established by a preponderance of the evidence that BWS' determination – that BEJV's Bid was acceptable – was in error.

**BWS' DETERMINATION – THAT THERE IS NO REQUIREMENT TO ISSUE A NONRESPONSIVE DETERMINATION BEFORE A NOTICE OF INTENT TO AWARD - IS MOOT.**

On May 13, 2022, BWS posted notice of its *intent* to award the contract to BEJV. Four (4) days *later*, on May 17, 2022, BWS rejected Alpha's Bid as being *nonresponsive* pursuant to HRS §103D-302 and HAR §3-122-33 for failure to list a C-27 Landscaping Contractor and/or C-27b Tree Trimming and Removal Contractor. Alpha

argues that by doing this, the BWS violated the Code because it *skipped* the “protest” stage of the Code. On the contrary, the “protest” stage was not skipped.

On May 18, 2022, Alpha *timely submitted* its Protest Letter to BWS protesting both the intent to award the contract to BEJV alleging that BEJV’s Bid was nonresponsive for failure to submit a copy of its Joint Venture Notice and the rejection of Alpha’s Bid as non-responsive for failure to list a tree removal and trimming specialty subcontractor:

\* \* \*

(2) The City’s incorrect determination in its letter of May 17, 2022 (the “*May 17 letter*,” Exh 1) that Alpha was required to list a specialty contractor in its bid for the Projects “[t]ree removal and trimming” scope of work, and its resulting incorrect determination that Alpha’s bid was nonresponsive; and

(3) The City’s failure to reject Beylik JV’s bid as nonresponsive since the entity did not, as required by the IFB, attach a notice to the State of Hawaii Contractor License Board (the “*CLB*”) of its intent to form a joint venture to bid on a project.

See Exhibit N at BWS000160.

In its Protest Letter, Alpha asserted as it does here, that its Bid was responsive and that it was *not* obligated to list a *tree removal and trimming* subcontractor because as a C-17 licensee it can *self-perform* most of the work. Alpha also asserted that in reality, it *intended* to use Cohen for the small dollar amount (less than 1%) of the tree *trimming* work. Alpha’s Protest was *denied* – the “protest” stage was not skipped - and the ensuing administrative appeal was filed. There is no prejudice to Alpha by BWS’ determination to issue its intent to award *before* its rejection of Alpha’s Bid as nonresponsive. This *procedural* determination is *moot*. Notwithstanding the mootness of this issue, the Hearings Officer concludes that Petitioner has not established by a preponderance of the evidence that BWS’ determination – that there is no requirement to issue a nonresponsive determination before a notice of intent to award - was improper.

## V. DECISION

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

1. BWS' Motion to Dismiss or in the alternative for Summary Judgment, joined by Intervenor, is DENIED.
2. Petitioner's Motion for Summary Judgment is DENIED.
3. BEJV's claim that Alpha's Bid was nonresponsive for failure to meet the experience requirement is DISMISSED for lack of jurisdiction.
4. Petitioner's Request for Hearing is DENIED and DISMISSED with prejudice; and
5. Respondent's determinations as stated in its Protest Denial Letter are AFFIRMED.
6. Each party shall bear its own attorneys' fees and costs; and
7. The protest bond of Petitioner shall be deposited into the general fund.

Dated: Honolulu, Hawaii, July 26, 2022.



---

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

---

Hearings Officer's Findings of Fact, Conclusions of Law, and Decision.  
*In Re Alpha, Inc. v. BWS C & C Honolulu and BEJV, PDH-2022-003.*