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GOVERNOR OF HAWAII

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CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
DEPUTY DIRECTOR - LAND

DEAN NAKANO
ACTING DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 17, 2005

Hawaii, Kauai, Maui, Mobile Food IFB – Revision

The Notice of Intent and Qualification Questionaire are to be sent by August 18, 2005 to:

Division of State Parks
1151 Punchbowl St. Room 310
Honolulu, HI. 96813

All the other terms and conditions of the IFB remain unchanged.

STATE OF HAWAII

DIVISION OF STATE PARKS
Board of Land and Natural Resources
SEALED BID PROPOSALS
TO
PROVIDE
MOBILE FOOD CONCESSION
(ISLAND OF KAUAI)

Bidders may bid on one, some or all concession locations

Mobile Food Concession Locations

Kokee/Waimea State Park (Waimea Canyon Lookout)
Polihale State Park
Wailua River State Park (Opaekaa Falls Lookout)

The tentative schedule of related activities for this Invitation For Bid (IFB) are as follows:

Publication	July 22, 24, 26, 2005
Notice of Intention to Bid & Qualification Questionnaire	August 18, 2005 - 1151 Kalanimoku St. Room 310, Hono. HI. 96813
Bid Proposal Due	August 31, 2005 – 3060 Eiwa St. Room 306, Lihue, HI. 96766
Start of Concession Lease	October 1, 2005

KAUAI MOBILE FOOD CONCESSION BID

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NOTICE TO OFFERORS

SEALED TENDERS will be received and publicly opened at **2:00 P.M., WEDNESDAY, August 31, 2005,** Department of Land and Natural Resources, Kauai District Office, 3060 Eiwa Street, #306, Lihue, HI 96766 for the following:

INVITATION FOR BID NO. PKMF-1

TO PROVIDE A MOBILE FOOD CONCESSION AT:

- KOKEE/WAIMEA STATE PARK (WAIMEA CANYON LOOKOUT)
- POLIHALE STATE PARK
- WAILUA RIVER STATE PARK (OPAEKAA FALLS LOOKOUT)

(BIDDERS MAY BID ON ONE, SOME OR ALL LOCATIONS)

Before any prospective bidder shall be entitled to submit a bid for the occupancy of any such space, he/she must meet the minimum qualifications set forth in the specifications and shall submit the Qualifications Questionnaire and give written notice of intent to bid on the Notice of Intention to Bid form by Thursday, August 18, 2005, to the Department of Land and Natural Resources, Room 310, 1151 Punchbowl Street, Kalanimoku Building, Honolulu, Hawaii 96813. Prior to permitting any interested party to bid, the Department of Land and Natural Resources shall satisfy itself of the prospective bidder's financial ability, experience and competence to carry out the terms and conditions of the agreement that may be awarded.

Upon request, the required forms for bidding, including specifications and agreement, may be obtained from the above-named office.

_____
Chairperson, Board of Land and Natural Resources

THE GARDEN ISLAND
HONOLULU STAR BULLETIN
Publication Dates: July, 22, 24, 26, 2005

DEPARTMENT OF LAND AND NATURAL RESOURCES
Posting Date: July 22, 2005

NOTICE OF INTENTION TO BID
TO PROVIDE A MOBILE FOOD CONCESSION

PKMF-1

Date _____

Department of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

The undersigned intends to bid for the Mobile Food Concession at:

(Check name of location(s) being bid – Bidders may bid on one, some or all concession locations)

☐ **Kokee/Waimea State Park (Waimea Canyon Lookout)**

☐ **Polihale State Park** ☐ **Wailua River State Park (Opaekaa Falls Lookout)**

Attached is the fully completed Qualification Questionnaire as required.

Respectfully submitted,

_____
Name of Bidder

_____
Authorized Signature

_____
Print Name

Title_____

Address of Bidder:_____

_____

_____
Telephone

_____
E-mail Address (optional)

QUALIFICATIONS

1. QUALIFICATION OF BIDDERS:

1.1. Prospective Bidders must be capable of carrying out the terms and conditions of the Agreement, that may be awarded, for which bids are being called.

1.2. Each prospective Bidder must file a written Notice of Intention to Bid and the completed Qualification Questionnaire at the Department of Land and Natural Resources, Room 310, 1151 Punchbowl Street, Kalanimoku Building, Honolulu, Hawaii 96813, no later than 2:00 P.M. (Hawaii Standard Time) August 18, 2005.

1.3. The Qualification Questionnaire, properly executed and notarized, shall be reviewed by the Department of Land and Natural Resources to determine whether the prospective Bidder's experience, competence and financial standing meet the following minimum qualifications:

1.3.1. Two (2) years full-time experience in Hawaii owning and/or operating a mobile food concession, restaurant, food concession, food catering business, or related business;

1.3.2. Sufficient annual gross income indicating a successful business during the two immediately preceding fiscal years, for each park location bid on;

1.3.3. Sufficient liquid working capital or a firm commitment from a financial institution for a sufficient loan, for each park location bid on;

1.3.4. Has in its possession or is able to acquire, prior to concession agreement commencement, the number of mobile food concessions required to service each park location bid on.

1.4. If upon review of the Qualification Questionnaire, the prospective Bidder appears not fully qualified and able to carry out the terms and conditions of the Agreement that may be awarded, the Department of Land and Natural Resources shall afford the prospective Bidder an opportunity to be heard.

1.5. Failure to complete the Qualification Questionnaire, or submit the Qualification Questionnaire and the written Notice of Intention to Bid, within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.

1.6. All information contained in the Qualification Questionnaire shall remain confidential, and Qualification Questionnaires of all Bidders shall be returned after having served this purpose.

The tentative schedule of related activities for this Invitation For Bid (IFB) are as follows:

Publication	July 22, 24, 26, 2005
Notice of Intention to Bid & Qualification Questionnaire	August 18, 2005 - 1151 Kalanimoku St. Room 310, Hono. HI. 96813
Bid Proposal Due	August 31, 2005 – 3060 Eiwa St. Room 306, Lihue, HI. 96766
Start of Concession Lease	October 1, 2005

QUALIFICATION QUESTIONNAIRE

2. QUALIFICATIONS:

Only qualified applicants, as determined by the Department of Land and Natural Resources pursuant to §102-3, HRS, may bid on the concession(s).
In order to be considered entire Qualification Questionnaire must be completed.

Having been first duly sworn and deposed, the undersigned states that it has the minimum qualifications required in the Specifications and that it is furnishing the attached information as proof of its qualifications. All Bidders shall submit this Qualification Questionnaire and all the required evidence. Bidders that do not submit a Qualification Questionnaire and the required evidence shall be disqualified from bidding. The NAMED BIDDER has submitted the Notice of Intention to Bid for the Mobile Food Concession(s):

2.1. Name of Bidder:_____

2.2. Business Organization: [ ]Individual [ ]Partnership [ ]Corporation

2.3. Principal Office Address:_____

2.4. State General Excise Tax Number:_____

2.5. Federal Employer I.D. Number:_____

2.6. Social Security Number: _____

2.7. If a Corporation, please answer the following:
[ ] Profit [ ] Non-Profit

When incorporated and where:_____

When authorized to do business in the State of Hawaii:_____

Name of Officers:
President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Others: _____

Principal Stockholders:

Name and Address % of Stock

(1) _____

(2) _____

(3) _____

(4) _____

2.8. If a Partnership, please answer the following:
When and where organized:_____

General or Limited Partnership:_____

When registered in the State of Hawaii:_____

Partners:

Name and Address Share

(1) _____

(2) _____

(3) _____

(4) _____

2.9. Attach a description and evidence of a minimum of two years experience of the Bidder in the ownership and/or operation of a mobile food concession, restaurant, food concession, food catering business, or related business including the number of years of experience, business name, business address, and dates of operation.

2.10. Has the applicant ever defaulted or been terminated on a State contract/agreement or defaulted on real property taxes? If yes, give details on a separate sheet.

[ ] Yes [ ] No

2.11. Have any leases, contracts or agreements for the operation of any restaurants, food concessions or similar businesses owned and operated by the Bidder ever been cancelled? If yes, give details on a separate sheet.

[ ] Yes [ ] No

2.12. Has the Bidder ever been fined for any violation of City, County, and/or State Health Department or Board of Health regulations governing the preparation and sale of food or beverages during the previous 2-year period? If yes give details on a separate sheet.

[ ] Yes [ ] No

2.13. Provide satisfactory evidence to support the financial ability of the bidder to operate and maintain a mobile food concession. Minimum requirements must include income and expense statements, Federal tax returns and balance sheets, from the past 2 years.

2.14. Attach evidence of sufficient annual gross income indicating a successful business during the two immediately preceding fiscal years, for each park location bid on.

2.15. Attach evidence of sufficient liquid working capital or a firm commitment from a financial institution for a sufficient loan, for each park location bid on.

2.16. Provide references whom the Department of Land and Natural Resources may contact to confirm the Bidder's qualifications to operate a mobile food concession. Provide names, contact information, and the relationship or experience with each reference.

2.17. Bidder certifies that it has or will have a State permit to serve food, and a certified kitchen according to the State Department of Health.

[ ] Bidder has the State permit and the certified kitchen (attach copy).

[ ] Bidder will obtain the State permit and certified kitchen as a prerequisite of the final issuance of the concession agreement.

2.18. Bidder must obtain all insurance policies required in the specifications section of this bid as a prerequisite of the final issuance of the concession agreement.

2.19. Attach copy of State and Federal tax clearance.

2.20. Attach a list of principal items to be on proposed menu, including cost of each item to be approved by the State Parks Administrator.

2.21. Attach a list of days and hours of intended operations each week.

2.22. Does the Bidder have in its possession a fully equipped mobile vending concession?

[ ] Yes, License plate number(s) of mobile food concession(s):

_____

_____

[ ] No, Bidder affirms it is able to obtain in Hawaii the number of fully equipped mobile food concessions necessary to perform the required food and beverage services for timely commencement of a mobile food concession operation.

2.23. The Bidder hereby consents to and authorizes the Department of Land and Natural Resources to confirm all or any of the foregoing information with any financial institution or any other source the Department of Land and Natural resources deems necessary.

2.24. Insurance Coverage:

Bidder's Business Address: _____

Telephone No.:_____

Contact Person: _____

Insurance coverage is carried by:

	Carrier	Policy No.	Agent
Commercial General Liability:	_____	_____	_____
Automobile Liability:	_____	_____	_____
Workers' Compensation:	_____	_____	_____
Temporary Disability Insurance:	_____	_____	_____
Prepaid Health Care:	_____	_____	_____
Unemployment Insurance:	_____	_____	_____

Bidder _____
(Name of Company)

(Bidders may attach any other information they wish to further describe their qualifications.)

The undersigned swears that the foregoing information and attached supporting documentation are true and correct to the best of his/her/its knowledge and belief.

Dated this _____ day of _____, 2005, at_____

_____.

Respectfully submitted,

_____
Name of Bidder

_____
Authorized Signature

_____
Print Name

_____
Title

ACKNOWLEDGMENT:

State of Hawaii)
) SS.
_____County of _____)

On this _____ day of _____, 2005, before me appeared _____ and _____ to me personally known, who on oath deposed and said that (it is/they are/he is/she is) the _____ and _____, respectively, of_____, that (it has) (they have) (he has) (she has) executed the foregoing in (its) (their) (his) (her) authorized capacity (capacities) as such and that (it has) (they have) (he has) (she has) read the foregoing, know(s) the content thereof and that the same is true to the best of (its) (their) (his) (her) knowledge and belief.

_____
Notary Public, State of Hawaii

_____

My Commission Expires:_____

BID PROPOSAL
TO PROVIDE
MOBILE FOOD CONCESSION
(ISLAND OF KAUAI)

(Bidders may bid on one, some or all concession locations)

Kokee/Waimea State Park (Waimea Canyon Lookout)

Polihale State Park **Wailua River State Park (Opaekaa Falls Lookout)**

The undersigned bidder declares that it has carefully examined the attached General Instructions to Bidders, Specifications, Concession Agreement, Appendix, and any addenda to the Specifications issued by the Department of Land and Natural Resources, to provide a mobile food concession at one or more of the above locations, and hereby makes application for the concession as described herein.

The undersigned understands that this concession is a public facility; therefore, the rates established for the sale of goods and services shall be within the range charged for the same quality of goods and services at comparable facilities or types of business. It is, therefore, understood that the bidder has taken this into consideration in calculating its bid.

The undersigned bidder agrees that, if awarded the Agreement for the concession, it will enter into an Agreement with the Department of Land and Natural Resources in accordance with the terms and conditions set forth in the General Instructions to Bidders, Specifications, Concession Agreement, Appendix, and any addenda to the Specifications issued by the Department of Land and Natural Resources, appended to this Bid Proposal.

In accordance with §102-6, HRS, all bids must be accompanied by a deposit of legal tender or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, payable at sight to "Department of Land and Natural Resources," or by a surety bond issued in accordance with §102-6(b), HRS. Where a bidder bids on more than one location, there shall be a separate bid deposit for each location bid upon. The bid deposit for each location bid upon shall be in a sum not less than five percent (5%) of the amount bid; provided that when the amount bid exceeds $50,000, the bid deposit shall be in a sum not less than $2,500 plus two percent (2%) of the amount in excess of $50,000. The bid deposit for bids of $50,000 or less is determined by multiplying the monthly concession fee bid x 12 (months) x 3 (years) x 5%.

The undersigned bidder submits for each location bid upon a:

[ ] Surety Bond [ ] Cashier's Check [ ] Certificate
[ ] Certified Check [ ] Legal Tender

in the required amount for the location(s) bid upon:

1.) Kokee/Waimea State Park _____ Dollars ($_____)
2.) Polihale State Park _____ Dollars ($_____)
3.) Wailua River State Park _____ Dollars ($_____)

as required and made payable to the "Department of Land and Natural Resources."

- **Bidders may bid on one, some or all concession locations**
- **Bids shall be no less than $300 per month per concession**
- **Payment to be made in advance monthly**
- **The period of each concession shall be for thirty-six (36) months beginning October 1, 2005 and ending September 31, 2008 .**

The undersigned bidder bids a monthly concession fee of:

N/A	**CONCESSION NO. 1:** **MOBILE FOOD CONCESSION AT KOKEE/WAIMEA STATE PARK (WAIMEA CANYON LOOKOUT)** **_____Dollars/month ($_____.____);**payment to be made in advance monthly
CONCESSION NO. 2: **MOBILE FOOD CONCESSION AT POLIHALE STATE PARK** **_____Dollars/month ($_____.____);**payment to be made in advance monthly.	**CONCESSION NO. 3:** **MOBILE FOOD CONCESSION AT WAILUA RIVER STATE PARK (OPAEKAA FALLS LOOKOUT)** **_____Dollars/month ($_____.____);**payment to be made in advance monthly.

It is understood and agreed that the Department of Land and Natural Resources has the right to accept or reject any or all bids, and to waive any defects, if such acceptance, rejection or waiver is deemed to be in the best interest of the State.

Respectfully submitted,

_____
Name of Bidder

By_____
Authorized Signature

_____
Print Name

Title_____

Person to Contact if Awarded:_____

Address of Bidder:_____

Telephone:_____e-mail (optional)_____

State of Hawaii General Excise Tax License Number:_____

Federal Employer Identification Number: _____

Social Security Number:_____

Type of Organization: _____ Individual; _____ Partnership; _____ Corporation

State of Incorporation: Hawaii _____ Other _____(Please specify)

NOTE: If "Other", is corporation registered to do business in the state of Hawaii? _____ Yes _____ No

Accepted:_____
Department of Land and Natural Resources

Date:_____

GENERAL INSTRUCTIONS TO BIDDERS

1. NOTICE OF INTENTION TO BID AND QUALIFICATION QUESTIONNAIRE:

1.1. Each prospective Bidder must file a written Notice of Intention to Bid and the completed Qualification Questionnaire at the Department of Land and Natural Resources, Division of State Parks, Room 310, 1151 Punchbowl Street, Kalanimoku Building, Honolulu, Hawaii 96813, no later than 2:00 P.M. (Hawaii Standard Time) August 18, 2005. Faxed documents will not be accepted.

1.2. The Qualification Questionnaire, properly executed and notarized, shall be reviewed by the Department of Land and Natural Resources to determine whether the prospective Bidder's experience, competence and financial standing meet the minimum qualifications set forth in the Qualification Questionnaire.

1.3. Failure to complete the Qualification Questionnaire, or submit the Qualification Questionnaire and the written Notice of Intention to Bid, within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.

1.4 Prospective bidders who qualify to submit an offer will be so informed. Prospective bidders who do not qualify to submit an offer will be so informed and given an opportunity to be heard by the Department of Land and Natural Resources.

2. BID PROPOSALS

2.1. Bids will be received and publicly opened at 2:00 P.M., WEDNESDAY August 31, 2005, Department of Land and Natural Resources, Kauai District Office, 3060 Eiwa Street, #306, Lihue, HI 96766.

2.2. All bids received will be time-marked and held at the Department of Land and Natural Resources until the hour of bid opening. Bids that are mailed in must arrive at the Department of Land and Natural Resources before the time of opening; bids received after the hour of opening will be returned unopened to the sender. Faxed bids will not be accepted.

2.3. Bid Deposit Accompanying Bid. In accordance with §102-6, HRS, all bids must be accompanied by a deposit of legal tender or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, payable at sight to "Department of Land and Natural Resources," or by a surety bond issued in accordance with §102-6(b), HRS. Where a bidder bids on more than one location, there shall be a separate bid deposit for each location bid upon. The bid deposit for each location bid upon shall be in a sum not less than five percent (5%) of the amount bid; provided that when the amount bid exceeds $50,000, the bid deposit shall be in a sum not less than $2,500 plus two percent (2%) of the amount in excess of $50,000. The bid deposit for bids of $50,000 or less is determined by multiplying the monthly concession fee bid x 12 (months) x 3 (years) x 5%. The return of deposits shall be handled in accordance with §102-7, HRS.

2.4. Award of a concession agreement shall be made by location to the highest qualified bidder based on the fixed monthly rentals bid for that location. No consideration will be given to "percentage of gross receipts" or any other amount based on sales or income. In case of tie (identical) highest bids, the Department of Land and Natural Resources shall conduct a lottery limited to the bidders submitting the tie bids to determine award based on drawing of a high card.

2.5. Bidder is responsible for acquainting themselves with all bid and agreement documents and to make all necessary investigations and examinations of the park facility, especially the concession area. Bidder shall be responsible for acquainting himself with the physical location and characteristics of the concession premises, and shall judge for himself all of the circumstances affecting his offer. Failure to do so will not be grounds for any claim that the Bidder did not understand the conditions of the proposal and will not act to relieve any condition of the agreement or proposal documents. The submission of a bid shall be considered conclusive evidence that the Bidder has made such investigations and examinations.

3. BIDDERS QUESTIONS

3.1. For the purpose of this agreement, the State Parks Property Manager, Department of Land & Natural Resources, is the Agreement Administrator: 1151 Punchbowl Street, Room 310, Honolulu, HI 96813; Tel: (808) 587-0296. Should a Bidder find discrepancies or ambiguities in, or omissions from the bidding documents, or be in doubt as to their meaning, the Bidder shall submit a written request for interpretation or correction to the Department of Land and Natural Resources in a timely manner. Any interpretation or correction of the bidding documents will be made only by written addendum to all Bidders receiving a set of bid documents. The State will not be responsible for any oral statements or representations.

SPECIFICATIONS FOR
MOBILE FOOD CONCESSIONS AT ALL LOCATIONS

1. DEFINITIONS AND INTERPRETATION: As used herein, the term:

1.1. "Concession" means the grant to a person or entity of the privilege to operate a mobile food concession at a state park for the Division of State Parks, Department of Land and Natural Resources, State of Hawaii.

1.2. "Concessionaire" means the successful bidder or party entering into the Agreement with the Department of Land and Natural Resources for the privilege to operate the mobile food concession. The term shall also include the Concessionaire's successors, assigns or legal representatives, and its agents, managers and employees where the context so admits or requires.

1.3. "Agreement" means the written contract between the Department of Land and Natural Resources and the Concessionaire to operate the mobile food concession.

1.4. "HRS" means Hawaii Revised Statutes

1.5. "HAR" means Hawaii Administrative Rules

2. MINIMUM QUALIFICATIONS:

2.1 Prospective Bidders must be capable of carrying out the terms and conditions of the Agreement, that may be awarded, for which bids are being called.

2.2 Each prospective Bidder must file a written Notice of Intention to Bid and the completed Qualification Questionnaire at the Department of Land and Natural Resources, Division of State Parks, Room 310, 1151 Punchbowl Street, Kalanimoku Building, Honolulu, Hawaii 96813, no later than 2:00 P.M. (Hawaii Standard Time) on THURSDAY August 18, 2005. Faxed documents will not be accepted.

2.3 The Qualification Questionnaire, properly executed and notarized, shall be reviewed by the Department of Land and Natural Resources to determine whether the prospective Bidder's experience, competence and financial standing meet the following minimum qualifications:

2.3.1 Two (2) years full-time experience in Hawaii owning and/or operating a mobile food concession, restaurant, food concession, food catering business, or related business;

2.3.2 Sufficient annual gross income indicating a successful business during the two immediately preceding fiscal years, for each park location bid on;

2.3.3 Sufficient liquid working capital or a firm commitment from a financial institution for a sufficient loan, for each park location bid on;

2.3.4 Has in its possession or is able to acquire, prior to agreement commencement, the number of mobile food concessions required to service each park location bid on.

2.4 If upon review of the Qualification Questionnaire, the prospective Bidder appears not fully qualified and able to carry out the terms and conditions of the Agreement that may be awarded, the State shall afford the prospective Bidder an opportunity to be heard.

2.5 Failure to complete the Qualification Questionnaire, or submit the Qualification Questionnaire and the written Notice of Intention to Bid, within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.

2.6 All information contained in the Qualification Questionnaire shall remain confidential, and Qualification Questionnaires of all Bidders shall be returned after having served this purpose.

3. SCOPE OF CONCESSION:

3.1. The Agreement shall be for a period of three (3) years commencing October 1, 2005 through September 31, 2008. In addition to any provisions for early termination, the Department of Land and Natural Resources may terminate the Agreement without cause by providing sixty (60) days prior written notice to the Concessionaire.

3.2. The Department of Land and Natural Resources reserves the right in its sole discretion to interrupt or cancel operation of any park. The Concessionaire shall bear all expenses or losses in full and shall not take or allow to be taken any action for damages against the Department of Land and Natural Resources.

3.3. The Concessionaire's sale of food and non-alcoholic beverages shall be restricted to the hours between 6:00 a.m. and 6:00 p.m. Concessionaire must at a minimum operate five (5) days per week, four (4) hours per day from 10:00 a.m. to 2:00 p.m., which shall include weekends (Saturdays and Sundays) and all State of Hawaii holidays so that the needs of park patrons will be adequately served.

3.4. The Concessionaire shall keep on file with the Division of State Parks a schedule of business hours and days open, a menu of the items available for sale and the prices charged subject to approval by the State Parks Administrator.

3.5. The designated area shall be limited to the Proposed Concession Area as outlined on the maps included herein labeled Exhibit A – Concession Area Maps for each respective mobile food concession. The Department of Land and Natural Resources reserves the right to relocate the concession area at a park during the term of the Agreement at its discretion; provided, that such relocation shall not be unreasonable.

3.6. All concessions must provide either completely self-contained mobile food concession or provide for and pay for the cost of outside utilities. No temporary utility lines may be installed without the written permission, in advance, of the State Parks Administrator.

4. BIDDING PROCESS:

4.1. All bids shall be made on this form and shall be signed by the bidder with his business address and telephone number.

4.2. No bidder may withdraw his bid after the hour set for the opening thereof or before award of the Agreement unless said award is delayed for a period exceeding thirty (30) days from the bid opening.

4.3. The Department of Land and Natural Resources reserves the right to reject any and all bids and to accept any bid in whole or in part as best suited in the interest of the State, giving due consideration to price, quality of product or service and proven dependability and ability of bidder.

4.4. The Department of Land and Natural Resources reserves the right to waive and/or accept any minor deviations from specifications if, in its opinion, such waiver will be in the best interest of the State and that such waiver shall not affect in any way the standards of performance, operations, capacities or quality of the service offered.

4.5. All bids received will be time-marked and held at the Department of Land and Natural Resources until the hour of bid opening. Bids that are mailed in must arrive at the Department of Land and Natural Resources before the time of opening; bids received after the hour of opening will be returned unopened to the sender. Faxed bids will not be accepted.

4.6. Award of a concession agreement shall be made by location to the highest qualified bidder based on the fixed monthly rentals bid for that location. No consideration will be given to "percentage of gross receipts" or any other amount based on sales or income. In case of tie (identical) highest bids, the Department of Land and Natural Resources shall conduct a lottery limited to the bidders submitting the tie bids to determine award based on drawing of high cards.

4.7. All potential bidders are cautioned to thoroughly investigate all aspects and risks involved with the operation of concession being bid upon. All potential bidders are further cautioned to investigate availability and cost of liability insurance prior to submitting bid.

4.8. No action or proceeding involving this Agreement shall be commenced by either party except in the Circuit or District Courts, State of Hawaii; nor shall any action commenced in such court be removed or transferred to any other State or Federal Court.

4.9. Any Agreement entered into as a result of this bid proposal shall be signed by a person authorized to sign and be duly notarized. Additionally, if the Contractor is a partnership or corporation, a copy of the appropriate partnership or corporation resolution authorizing that individual to enter into contracts/agreements on behalf of the partnership or corporation shall be provided by the contractor with its executed Agreement and performance bond.

4.10. All bidders are requested to review §102-6, HRS, Deposits of legal tender, etc., to accompany bid and §102-7, HRS, Forfeiture of deposits, return thereof. Bids not accompanied by a proper bid bond, deposit, certificate, or check will be rejected and successful bidders who fail to complete the Agreement, including procuring certificates of insurance prior to entering into the Agreement, and fail to provide performance bonds will forfeit the bid bond. NO EXCEPTIONS.

5. <u>CONCESSION FEES AND SERVICES:</u>

5.1. The concession fee shall be the bid amount offered by the successful bidder.

5.2. The minimum monthly concession fee considered shall be Three Hundred Dollars ($300.00) per month for each location.

5.3. **In addition to rent, concessionaire is responsible for cleaning restrooms in the vicinity of the concession at least once per day (when concession is in operation). Concessionaire will work with the Division of State Parks to determine at what time during the day the cleaning will occur.**

At a minimum the cleaning should include,

- Removing trash from the trash receptacles and replacing trash receptacle liners
- Refilling dispensers (toilet paper, towel, etc.)
- Cleaning toilets and urinals
- Cleaning walls, ceilings partitions and doors
- Cleaning sinks and all fixtures
- Removing trash from bathroom floors and stalls
- Wet mopping/hose down the floor with cleaner/disinfectant
- Ensure that the restroom is in a clean and sanitary manner
- Report any malfunctions, broken fixtures etc. to State Park personnel

(Maps showing the location of restrooms covered in this agreement are included in the Appendix)

5.4. If a restroom is not located within the immediate vicinity of the concession, the concessionaire is responsible for obtaining, installing and maintaining a portable toilet for use by concession and park patrons. Portable toilet shall be maintained and cleaned, by the concessionaire, in the same manner as stated above. The State Parks Administrator must approve the location of the portable toilet.

5.5. Department of Land and Natural resources shall provide all consumables (toilet paper etc.) and a reasonable amount of cleaning supplies for use in cleaning and maintaining restroom facilities.

5.6. The Concessionaire agrees to pay all taxes of whatsoever nature or accruing upon and assessed against the operation of the concession herein granted.

5.7. The Concessionaire shall pay before they become delinquent any and all taxes of the concession as required by the tax laws, rules and regulations of the State of Hawaii and all other charges incurred or assessed against the operation of the concession.

5.8. The Concessionaire shall furnish the Department of Land and Natural Resources with a copy of its Tax Return, Tax Clearance and GET License at the commencement and anniversary of the Agreement every year.

5.9. For the entire term of the Agreement, the Concessionaire shall compensate the Department of Land and Natural Resources on the first day of every month. On or before the anniversary of the execution of the concession agreement each agreement year, the Concessionaire shall submit to the State Parks Administrator a report of the gross receipts for the previous period through the end of the year during the twelve-month reporting period.

5.10. Payment: All checks shall be made payable to the "State Parks Special Fund" and mailed to DLNR – Fiscal, P.O. Box 621, Honolulu, HI. 96809. Failure to pay any part of the concession fee shall constitute a breach of the agreement and interest at the rate of one percent (1%) simple interest per month shall be assessed against the Concessionaire on any overdue fee.

5.11. In the case of non-payment of the concession fees when due as provided herein, or violation of any other of the foregoing or following provisions by the Concessionaire, the Department of Land and Natural Resources shall have the right to terminate the concession agreement with written notice of the termination and the basis of the termination and shall have the right to remove the concessionaire, with or without proceedings, 48 hours after the receipt of the notice by the concessionaire, without any liability to the Department of Land and Natural Resources or its officials, employees, or agents for damage to or loss of any property belonging to the Concessionaire or to the business of the Concessionaire. The Department of Land and Natural Resources shall have the right to award the concession to another individual or entity for such time remaining in the term of the agreement or after the end of the term of the agreement and to receive the rent therefore, holding the Concessionaire liable for any deficiency in the rent owing under the agreement. Any act of receipt of money by the Department of Land and Natural Resources shall not operate as a waiver of the right to terminate the agreement.

6. OPERATING CONDITIONS:

6.1. The Concessionaire shall provide at its own expense, all equipment, dishes, utensils and supplies necessary for the proper operation of the business for which the concession is granted.

6.2. The Concessionaire shall keep and maintain the mobile food concession and the adjoining areas within a radius of thirty (30) feet in a clean and sanitary manner and shall be responsible for providing a minimum of four (4) garbage and refuse containers within such thirty (30) foot area. The Concessionaire will police the area and remove all rubbish at the end of each workday. No equipment, structures or stands, mobile or otherwise will remain at the concession site overnight or during non-working days, except for the Concessionaire's portable toilet under specification no. 5.4.

6.3. All employees handling food and beverage must have a valid current food handler's certificate issued by the Department of Health.

6.4. The Concessionaire shall, at its own cost and expense, engage and supervise competent exterminators to control vermin and pests as often as is necessary. Such extermination services shall be supplied in all areas where food is stored, prepared or dispensed.

6.5. All signs posted must conform to the State and County Sign Ordinances. Signs will be displayed only during the hours that the concession is open for business.

6.6. Menu signs listing all items for sale and the prices at which they are to be sold must be plainly displayed at the mobile food concession.

6.7. The prices charged by the Concessionaire for services, food and drinks shall not be in excess of the prices prevailing elsewhere for the same kind and quality of services, food and drinks. Prior to the commencement of the agreement, the successful bidder must submit menu prices to the State Parks Administrator for approval. All future changes, of any kind, must have approval, in writing from the State Parks Administrator.

7. NOTICES TO PARTIES:

7.1. Wherever required, notices to the Department of Land and Natural Resource shall be sufficient if sent by certified mail, postage prepaid, addressed to the State Parks Administrator, P.O. Box 621, Honolulu, HI 96809 and notices to the Concessionaire shall likewise be sufficient if sent by certified mail, postage prepaid, to the Concessionaire at its address as provided on the bid proposal. Any change in address must be submitted in writing to the other party.

8. ADDITIONAL CONCESSION TERMS:

8.1. The Concessionaire is deemed to be an Independent Contractor and not the agent, employee, partner or joint venture of the State of Hawaii, Department of Land and Natural Resources. Services performed under the Agreement shall not constitute nor be construed as employment with the State of Hawaii, Department of Land and Natural Resources. Furthermore, the Concessionaire intentionally, voluntarily and knowingly assumes the sole and entire liability (if any such liability is determined to exist) to its employees and agents or other persons for all loss, damage or injury caused by the Concessionaire, or Concessionaire's employees or agents in the course of their employment.

8.2. The Agreement shall not be varied in its terms or conditions except by an instrument in writing executed subsequently hereto by both parties.

8.3. In the event any term, covenant or condition of the agreement is held to be invalid by any court of competent jurisdiction, the invalidity shall not affect any other term, covenant or condition of the agreement; provided, that the invalidity does not materially prejudice the rights and obligations of either the Department of Land and Natural Resources or the Concessionaire contained in the valid terms, covenants or conditions of the agreement.

8.4. The Concessionaire shall observe, perform and comply or require compliance with all laws, codes, ordinances, rules and regulations of the United States, the State of Hawaii, the County jurisdiction, or any department or agency thereof, which in any manner affect the installation of the mobile food concession concessions, or the operation and maintenance of the concession.

8.5. In case of any doubt as to the interpretation of the terms of this agreement, the interpretation given and made by the Department of Land and Natural Resources of the State of Hawaii shall govern and control.

8.6. Any agreement arising out of this concession process is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.

8.7. In the event the Department of Land and Natural Resources shall, without any fault, be made a party to any litigation, other than condemnation or like proceedings, commenced by or against the Concessionaire arising out of the Concessionaire's use or occupancy of the premises or attributable to any structure or objects placed thereupon or therein by the Concessionaire, then the Concessionaire shall pay all costs and reasonable attorneys' fees incurred by or imposed upon the Department of Land and Natural Resources in connection with such litigation. The Concessionaire shall also pay all costs and reasonable attorneys' fees, which may be incurred or paid by the Department of Land and Natural Resources in enforcing the covenants and provisions of the Agreement, including the cost of collection of delinquent rentals, taxes and other charges.

9. INSURANCE AND INDEMNIFICATION:

9.1. The Concessionaire shall procure a policy or policies of Motor Vehicle Insurance (if the mobile stand is in fact a licensed vehicle) and Commercial General Liability Insurance, carrying a minimum amount of coverage of One Million Dollars ($1,000,000.00) per occurrence, with a company or companies authorized to do business in the State of Hawaii. Such insurance shall be procured to cover all claims arising out of the operations, premises, products and completed operations of the Concessionaire. The State of Hawaii shall be named as additional insured on all policies and a certificate or certificates of insurance shall be filed with the State Parks Administrator prior to entering into an agreement. All expenses connected with the procuring of such insurance shall be borne by the Concessionaire. The Concessionaire must carry Workers Compensation insurance for all employees and provide a certificate to that effect. All policies must remain in effect for the duration of the agreement.

9.2. Each insurance policy required by this Agreement shall contain the following clauses:

"This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after THIRTY (30) days' written notice has been given to the State of Hawaii, Department of Land and Natural Resources, Division of State Parks."

"It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

"The State of Hawaii is added as an insured as respects operations performed for the State of Hawaii."

9.3. The Concessionaire shall reimburse, save, defend and hold harmless the State of Hawaii, and all of its officers, agents, employees, guests or business visitors from and against all costs, expenses, damages and attorney's fees resulting from any and all claims, demands, suits, actions, or proceedings for property damage or personal injury, including death, arising out of, resulting from, or in connection with the operation of the concession by the Concessionaire, irrespective or notwithstanding that the negligence of the State, its officers, agents, or employees are alleged to have caused or contributed to such property damage or personal injury.

10. BUSINESS RECORDS:

10.1. The Concessionaire shall be responsible for establishing and maintaining strict internal accounting controls, policies, procedures, and preparing and maintaining true, accurate and complete books and records to support and verify all sales and gross receipts. These accounting controls, policies, procedures and records shall be subject to Department of Land and Natural Resources review and approval.

10.2. The Concessionaire shall maintain the books and records that relate to the concession agreement and any cost or pricing data for three (3) years from the date of final payment under the concession agreement.

10.3. There must be a log of daily cash sales available for inspection when requested by the Department of Land and Natural Resources. The Department of Land and Natural Resources has the right to review and examine all financial records of the concession.

11. PROHIBITED USES:

11.1. Under no circumstances will the Concessionaire or it's employees be allowed to reside or camp in the designated area(s).

11.2. The Concessionaire shall not alter, modify or change the designated concession area or any improvements located thereon without first obtaining prior written approval from the State Parks Administrator. Any improvements made shall become the property of the Department of Land and Natural Resources and shall remain at the site at the conclusion of the term of the agreement. Improvements made without the written approval of the State Parks Administrator shall be either left in place or removed at Concessionaire's expense, solely at the option of the Department of Land and Natural Resources.

11.3. Concessionaire shall at no time promote the feeding of wildlife on land or in the sea, nor sell any products of any kind for such a purpose. Concessionaire shall not, at any time, allow personal pets or other animals belonging to Concessionaire or any employee to be within the concession area or surrounding park.

11.4. Concessionaire shall not interfere with free access and passage within the premises or the adjacent public areas within the park, nor shall the Concessionaire limit or prohibit, in any way, ingress or egress to the park.

11.5. The Concessionaire shall not permit disorderly persons employed by or under the control of the Concessionaire to remain or loiter about the premises.

11.6. The Concessionaire shall not park more than one vehicle (including mobile food concession) on the park premises.

11.7. The Concessionaire shall not, without written consent of the Department of Land and Natural Resources, sublet, assign, hypothecate or mortgage this concession agreement or any rights there under; any consent given by the Department of Land and Natural Resources shall not operate as a waiver of this condition for future subletting, assignment, hypothecating or mortgaging.

12. ASSUMPTION OF RISK:

12.1. The Concessionaire assumes the risk of any loss or damage to its property left on the premises. The Department of Land and Natural Resources shall not be responsible or liable for any loss of, or damage to, the property while on the premises, regardless of how or the manner in which any such loss or damage is sustained.

12.2. If the Concessionaire's mobile food concession stand is destroyed by fire or other catastrophe such that it cannot be repaired with reasonable diligence within one (1) month after such fire or other catastrophe, the Concessionaire shall have the option within thirty (30) days from said casualty to terminate the concession agreement. Termination shall be from the date of such damage or destruction and the Concessionaire shall pay concession fees only up to the time of destruction or damage. The amount of such concession fee shall be prorated on a thirty (30) day per month basis. The casualty claim by the Concessionaire shall be supported by a report from an independent source such as County Police or Fire Departments, or insurance company claims adjuster.

12.3. This is a non-exclusive agreement between the State of Hawaii Department of Land and Natural Resources and the Concessionaire.

13. STATE EMPLOYEES:

13.1. No person employed by the State shall be admitted to any share or part of the agreement or to any benefit that may arise from the agreement; but this restriction shall not be constructed to extend to the agreement if made with a corporation or company for its general benefit; and provided that no person employed by the State Parks Division or involved in awarding or administering the agreement shall be allowed to benefit.

14. COVENANT AGAINST DISCRIMINATION:

14.1. Concessionaire shall comply with all applicable Federal and State of Hawaii laws prohibiting discrimination as to race, color, religion, creed, sex, age or disability in rendering the services required and in employment practices. Any discriminatory practices by the Concessionaire shall be deemed a breach of the Agreement and may be cause for termination of the agreement.

15. INSPECTIONS:

15.1. The Department of Land and Natural Resources reserves the right to enter the concession area at all reasonable times, for the purpose of inspecting the area, including the mobile food concession and examine the state of repair and its condition; for observing the performance by the Concessionaire of its obligations under the Agreement; to serve, post or keep posted, notices required by any statute, rules or regulations of the Federal, State or county government.

15.2. No abatement of rental shall be claimed by or allowed to the Concessionaire by reason of the exercise by the Department of Land and Natural Resources of any or all of the rights contained in this Section; provided, that nothing contained in this Section shall be construed to permit the Department of Land and Natural Resources to exercise any right to access or entry for any of the purposes denoted herein above except in such manner as will not unreasonably interfere with or hinder the use, occupancy and enjoyment of the premises by the Concessionaire.

16. UNSAFE, UNSANITARY OR UNSATISFACTORY CONDITIONS:

16.1. In the event an inspection by the Department of Land and Natural Resources reveals that the area designated for the Concessionaire's use is not in a safe, sanitary and otherwise satisfactory operating condition, the Concessionaire, upon being so informed by written notice from the Department of Land and Natural Resources to correct the condition, shall promptly proceed to correct the condition to the satisfaction of the Department of Land and Natural Resources. If within two (2) calendar days following the date of the notice, or within additional time as the Department of Land and Natural Resources may allow, the Concessionaire has not substantially complied with the provisions of such notice, the Department of Land and Natural Resources shall then have the right to remedy the condition at the expense of the Concessionaire, and the Concessionaire shall promptly reimburse the Department of Land and Natural Resources for any and all costs incurred thereof.

17. FILING OF BIDS, OPENING AND RECORDING OF BIDS:

17.1. Bids submitted on other than the official bid proposal documents or which modifies, adds or deletes any term, consideration or condition other than those contemplated by the bid documents shall be rejected. Scaled bids or bids showing graduated concession fee payments shall also be rejected. Bids shall be time-marked and stored in a secure place until the time and date set for bid opening. Copies of bids transmitted via facsimile machines shall not be accepted.

17.2. Correction of errors written shall be properly initialed prior to submission.

17.3. A bidder may not submit more than one bid per location. If a bidder submits more than one bid, per location all bids submitted by it shall be rejected. For the purposes herein, bidders considered to be submitting more than one bid shall include but not be limited to:

17.3.1. An individual submitting more than one bid whether in its own name or through an agent;

17.3.2. An individual or legal entity submitting a bid who also owns directly or indirectly more than a 25% interest in a partnership or corporation which has also submitted a bid;

17.3.3. A joint venture, partnership or corporation submitting a bid where a person owning directly or indirectly more than a 25% interest in such joint venture, partnership or corporation has also submitted a bid; and,

17.3.4. A joint venture, partnership or corporation submitting a bid where a person owning directly or indirectly more than a 25% interest in such joint venture, partnership or corporation also owns more than a 25% interest in another joint venture, partnership or corporation which has submitted a bid.

18. DISQUALIFICATION OF BIDDERS:

18.1. Any one or more of the following causes will be considered as sufficient for the disqualification of a Bidder and the rejection of bidder's offer, subject, however, to specifications no. 4.3 and no. 4.4.

18.1.1. Lack of proper financial ability, equipment and/or sufficient experience to perform the work as revealed by the Qualification Questionnaire;

18.1.2. Evidence of collusion among Bidders;

18.1.3. Being in arrears in the payment of taxes, rent or other obligations owing to the United States Government or the State of Hawaii, or having defaulted on a previous contract and/or agreement;

18.1.4. Receipt of more than one bid from an individual, firm, partnership, corporation, or other legal entity under the same or different names;

18.1.5. Delivery of bids after the deadline specified for bid opening;

18.1.6. If the bid shows any erasures without initials, or additions to, or modifications of, or deletions of, any term, consideration or conditions provided in any of the documents;

18.1.7. If the bid shows irregularities or defects of any kind;

18.1.8. If the bid is conditional or incomplete;

18.1.9. If any of the required forms are unsigned by the Bidder;

18.1.10. If the Bidder or surety fails to sign the surety bond submitted as bid guaranty;

18.1.11. If the bid guaranty is received separately from the bid and is not identifiable as guaranty for a specific offer or is received after the date and time set of the opening; or,

18.1.12. If Bidder fails to use the Surety Bid Bond form furnished by the Department of Land and Natural Resources or identical wording contained in the said form when submitting a surety bond as bid guaranty.

19. FAILURE TO EXECUTE AGREEMENT:

19.1. If the Bidder to whom an agreement is awarded fails or neglects to enter into the agreement and to furnish satisfactory security as required by Chapter 102, HRS, within ten days after award or within such further time as the Department of Land and Natural Resources may allow, the Department of Land and Natural Resources shall pay the amount of bidder's bid guaranty to the State of Hawaii as a realization of the State. The Department of Land and Natural Resources may then award the agreement to the next highest bidder.

20. CONTACT INFORMATION:

20.1. For the purpose of this agreement, the State Parks Property Manager, Department of Land & Natural Resources is the Agreement Administrator: 1151 Punchbowl Street, Room 310, Honolulu, HI 96813 Tel: (808) 587-0296 or e-mail; jim.b.springer@hawaii.gov.

21. REQUIRED REVIEW:

21.1. Bidder is responsible for acquainting themselves with all bid and agreement documents and to make all necessary investigations and examinations of the park facility, especially the concession area. Bidder shall be responsible for acquainting himself with the physical location and characteristics of the concession premises, and shall judge for himself all of the circumstances affecting his offer. Failure to do so will not be grounds for any claim that the Bidder did not understand the conditions of the proposal and will not act to relieve any condition of the agreement or proposal documents. The submission of a bid shall be considered conclusive evidence that the Bidder has made such investigations and examinations.

21.2. Should a Bidder find discrepancies or ambiguities in, or omissions from the bidding documents, or be in doubt as to their meaning, the Bidder shall submit a written request for interpretation or correction to the Department of Land and Natural Resources in a timely manner. Any interpretation or correction of the bidding documents will be made only by written addendum to all Bidders receiving a set of bid documents. The State will not be responsible for any oral statements or representations. No allowance for oversight, error or mistake by the Bidder will be made after bids are received. Any addenda issued by the Department of Land and Natural Resources shall be incorporated into the Specifications.

22. AGREEMENT AWARD:

22.1. Bid Deposit Accompanying Bid. In accordance with §102-6, HRS, all bids must be accompanied by a deposit of legal tender or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, payable at sight to "Department of Land and Natural Resources," or by a surety bond issued in accordance with §102-6(b), HRS. The bid deposit shall be in a sum not less than five percent (5%) of the amount bid; provided that when the amount bid exceeds $50,000, the bid deposit shall be in a sum not less than $2,500 plus two percent (2%) of the amount in excess of $50,000. The bid deposit for bids of $50,000 or less is determined by multiplying the monthly concession fee bid x 12 (months) x 3 (years) x 5%. The return of deposits shall be handled in accordance with §102-7, HRS.

22.2. Work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS, and vendors are advised that they are liable for the Hawaii General Excise tax (GET). If, however, Bidder is a person exempt by the HRS from paying the GET and, therefore, not liable for the taxes on this solicitation, Bidder shall state its tax exempt status and cite the HRS chapter or section allowing the exemption. Any addenda issued by the Department of Land and Natural Resources shall be incorporated into the Specifications.

22.3. Award of agreement, if any, shall be made to the responsible Bidder submitting the highest monthly concession fee for each park area.

22.4. In case of tie (identical) highest bids, the Department of Land and Natural Resources shall conduct a lottery limited to the bidders submitting the tie bids to determine award based on drawing of high card.

22.5. The award, if any, will be made within thirty (30) calendar days after the bid opening date. The State reserves the right to reject any and all bids and to waive any defects when, in its opinion, such rejection or waiver will be in the best interest of the State or the public.

22.6. Prior to awarding the agreement, the State will require verification of the following insurance coverage (as applicable in the opinion of the State):

- Workers' Compensation
- Temporary Disability Insurance
- Unemployment Insurance
- Prepaid Health Care
- Hazard Insurance
- Liability Insurance

22.7. The Concessionaire shall maintain in full force and effect during the life of this agreement, liability and property damage insurance to protect the State of Hawaii, the Concessionaire and the Concessionaire's subcontractors, if any, from claims for damages for personal injury, accidental death and property damage which may arise from operations under the agreement, whether such operations be by himself or by any subcontractor or anyone directly or indirectly employed by either of them. The policy or policies of insurance shall name the State of Hawaii as an additional insured. If any subcontractor is involved in the performance of the agreement, the insurance policy or policies shall name the subcontractor as additional insured.

23. <u>REQUIREMENT OF AGREEMENT PERFORMANCE BOND:</u>

23.1. At the time of Agreement execution, the successful Bidder shall file a good and sufficient surety bond on the form furnished by the Department of Land and Natural Resources conditioned on the full and faithful performance of the agreement, in the manner and form required by the HRS regarding procurement, which bond shall be in an amount equivalent to two (2) months of the monthly concession fee. Such bond shall by its terms inure to the benefit of the State.

23.2. Pursuant to §102-11, HRS, Bond; conditions and §102-12, HRS, Surety on bond; justification, if the surety or sureties on any bond is other than a surety company authorized to do business under the laws of the State of Hawaii, there shall be not more than four (4) such sureties who shall severally justify in such amounts as, taken together, will aggregate the full amount of the bond, and severally deposit with the State certified checks or certificates of deposit, bonds, stocks or other negotiable securities, or execute and deliver to the State a deed or deeds of trust, all of such character as shall be satisfactory to the State, and each surety shall furnish such security to the full cash value of one hundred percent (100%) of the amount for which he shall have justified.

24. AGREEMENT EXECUTION:

24.1. After the Department of Land and Natural Resources accepts the winning bid, the Chairperson of the Board of Land and Natural Resources and the concessionaire will sign the concession agreement. When the agreement is executed by the Department of Land and Natural Resources the Concessionaire is authorized to proceed. The agreement shall be executed by the Concessionaire first and returned along with proper insurance documentation, bond and first month's rent within ten (10) days of award. After the Department of Land and Natural Resources receives the executed agreement, proper insurance documentation, bond and first month's rent, the Concessionaire will be given notice to proceed.

24.2. The Department of Land and Natural Resources is not liable for any work, contract, costs, expenses, loss of profits or any damages whatsoever incurred by the Concessionaire prior to the official Commencement Date of the agreement.

SURETY BID BOND

Bond No. _____

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(Full name or legal title of Bidder)

as Bidder, hereinafter called Principal, and _____,
(Name of bonding company)

as Surety, hereinafter called Surety, a corporation authorized to transact business as a

Surety in the State of Hawaii, are held and firmly bound unto_____
(State/county entity)

as Owner, hereinafter called Owner, in the penal sum of _____

Dollars ($ _____), lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for_____
(Project by number and brief description)

NOW, THEREFORE:

The condition of this obligation is such that if the Owner shall reject said offer, or in the alternate, accept the offer of the Principal and the Principal shall enter into an Agreement with the Owner in accordance with the terms of such offer, and give such bond or bonds as may be specified in the solicitation or Agreement Documents with good and sufficient surety for the faithful performance of such Agreement in the prosecution thereof as specified in the solicitation, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this _____ day of _____, _____.

(Seal) _____
Name of Principal (Bidder)

_____
Signature

_____
Title

(Seal) _____
Name of Surety

_____
Signature

_____
Title

ACKNOWLEDGEMENT (Principal):

STATE OF HAWAII)
) SS.
_____COUNTY OF_____)

On this_____ day of _____, 2005, before me appeared _____ to me known to be the person described in and, who, being by me duly sworn, did say that he/she is _____ and _____ of _____ , the Principal named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the Principal, and acknowledges that he/she executed said instrument as the free act and deed of the Principal.

_____
Notary Public, State of Hawaii
_____

My commission expires:_____

ACKNOWLEDGEMENT (SURETY):

STATE OF HAWAII)
) SS.
_____COUNTY OF_____)

On this_____ day of _____, 2005, before me appeared _____ to me known to be the person described in and, who, being by me duly sworn, did say that he/she is _____ and _____ of _____, the Surety named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the Surety, and acknowledges that he/she executed said instrument as the free act and deed of the Surety.

_____
Notary Public, State of Hawaii
_____

My commission expires:_____

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENTS:

That we, _____,
(full legal name and street address of Concessionaire)

as Concessionaire, hereinafter called Contractor, are held and firmly bound unto the

_____,its successors and assigns, as Obligee, hereinafter called
State/County entity)

Obligee, in the amount of:
_____
(Dollar amount of Agreement)

DOLLARS ($_____), lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

Legal tender;

1. Share Certificate unconditionally assigned to or made payable at sight to
_____
Description _____
_____;

2. Certificate of Deposit, No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

3. Cashier's Check No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

4. Teller's Check No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

5. Treasurer's Check No. _____, dated _____, issued by
_____,
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

6. Official Check No. _____, dated _____, issued by
drawn on _____,
a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to:
_____;

7. Certified Check No. _____, dated _____, accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned_____
_____;

WHEREAS:

The Contractor has by written agreement dated _____ entered into an Agreement with Obligee for the following Project:_____
_____
_____
hereinafter called Agreement, which Agreement is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Agreement in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Agreement as it now exists or may be modified according to its terms, without any cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the Agreement thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Agreement by the Contractor or its agents or servants or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Agreement as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Agreement or in this bond in accordance with the terms thereof.

Signed this_____ day of _____, _____.

(Seal) _____
Name of Contractor

* _____
Signature

*ALL SIGNATURES MUST BE
ACKNOWLEDGED BY A NOTARY PUBLIC

_____
Title

ACKNOWLEDGEMENT (CONTRACTOR):

STATE OF HAWAII)
) SS.
_____COUNTY OF_____)

On this_____ day of _____, 2005, before me appeared _____ to me known to be the person described in and, who, being by me duly sworn, did say that he/she is _____ and _____ of _____ , the Contractor named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the Contractor, and acknowledges that he/she executed said instrument as the free act and deed of the Contractor.

_____
Notary Public, State of Hawaii
_____

My commission expires:_____

PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(full legal name and street address of Concessionaire)

as Concessionaire, hereinafter called Principal, and_____

_____,
(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) authorized to transact business as a

surety in the State of Hawaii, are held and firmly bound unto the _____,
(State/County entity)

its successors and assigns, hereinafter called Obligee, in the amount of _____

DOLLARS ($_____), to which payment Principal and Surety bind themselves,

their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by

these presents.

WHEREAS, the above-bound Principal will enter into an Agreement with Obligee executed by Principal on_____, for_____
_____
_____
_____
_____,

hereinafter called Agreement, which Agreement is incorporated herein by reference and made a part

hereof.

NOW THEREFORE, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Agreement in strict accordance with the terms of the Agreement as said Agreement may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

Surety to this Bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Agreement, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions, and agrees that they shall become part of the Agreement.

In the event of Default by the Principal, of the obligations under the Agreement, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall pay moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

(Seal) _____
Name of Principal (Concessionaire)

* _____
Signature

_____
Title

(Seal) _____
Name of Surety

* _____
Signature

_____
Title

*ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

ACKNOWLEDGEMENT (Principal):

STATE OF HAWAII)
) SS.
_____COUNTY OF _____)

On this_____ day of _____, 2005, before me appeared _____ to me known to be the person described in and, who, being by me duly sworn, did say that he/she is _____ and _____ of _____ , the Principal named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the Principal, and acknowledges that he/she executed said instrument as the free act and deed of the Principal.

_____
Notary Public, State of Hawaii
_____

My commission expires:_____

ACKNOWLEDGEMENT (SURETY):

STATE OF HAWAII)
) SS.
_____COUNTY OF _____)

On this_____ day of _____, 2005, before me appeared _____ to me known to be the person described in and, who, being by me duly sworn, did say that he/she is _____ and _____ of _____ , the Surety named in the foregoing instrument, and that he/she is authorized to sign said instrument in behalf of the Surety, and acknowledges that he/she executed said instrument as the free act and deed of the Surety.

_____
Notary Public, State of Hawaii
_____

My commission expires:_____

PKMF-1 MOBILE FOOD CONCESSION AGREEMENT
AGREEMENT

THIS AGREEMENT IS MADE AND ENTERED INTO AS OF THE _____ DAY OF _____, 2005, BY AND BETWEEN THE STATE OF HAWAII, HEREINAFTER CALLED THE "STATE," THROUGH THE CHAIRPERSON, BOARD OF LAND AND NATURAL RESOURCES, AND _____ OF _____ _____, HEREINAFTER CALLED THE "CONCESSIONAIRE," for the operation of a mobile food concession by the Concessionaire at _____ _____for the period of October 1, 2005 to September 31, 2008.

WHEREAS, the written Bid Proposal to Provide Mobile Food Concession(s) (Island of Kauai) for _____ submitted by the Concessionaire on August 31, 2005, has been accepted by the State as the highest responsible offer submitted pursuant to a call for offers made on July 22, 24, 26, 2005, in accordance with Chapter 102, Hawaii Revised Statutes has/have been accepted by the State as the highest responsible offer(s) for said location(s);

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

A. Scope of Work. The Concessionaire agrees to perform the work in strict accordance with the terms and conditions of this Agreement, which includes all terms and conditions set forth in the Notice to Offerors, Notice of Intention to Bid submitted by Concessionaire, Qualifications Questionnaire submitted by Concessionaire, Bid Proposal submitted by Concessionaire, General Instructions to Bidders, Specifications, Appendix; and any addenda to Specifications issued by the Department of Land and Natural Resources, which are attached to this Agreement and incorporated by reference herein.

B. Compensation. As compensation (minimum bid $300.00 per month per location) to the State of Hawaii for the right of the Concessionaire to operate a mobile food concession(s) in accordance with

the Scope of Work described in paragraph A above, at one, some or all locations agrees to pay the Department of Land and Natural Resources the following amount(s) each and every month:

1.) Kokee/Waimea State Park: ($) $ _____ Dollars per month,

2.) Polihale State Park: ($) $_____Dollars per month,

3.) Wailua River State Park: ($) $_____ Dollars per month.

from June 1, 2005 to May 31, 2008, in strict accordance with the Bid Proposal submitted by Concessionaire, Specifications, Appendix, and any addenda to the Specifications, which are attached to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement, effective the day and year first above written.

STATE OF HAWAII

By: _____
PETER T. YOUNG, Chairperson
Board of Land and Natural Resources

CONCESSIONAIRE

_____(name)

Approved by the Board of
Land and Natural Resources
at its meeting held on:
October 24, 2003

By: _____

Its: _____

By: _____

Its: _____

APPROVED AS TO FORM:

_____
Deputy Attorney General

Dated:_____

ACKNOWLEDGEMENT (CONCESSIONAIRE):

STATE OF HAWAII)
) SS.
_____COUNTY OF _____)

On this _____ day of _____, 2005, before me personally appeared _____and_____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

_____
Notary Public, State of Hawaii
_____

My commission expires:_____

EXHIBIT A

CONCESSION AREA MAPS

Kokee/Waimea State Park - Concessionaire to provide portable toilet
(Waimea Canyon Lookout)

Polihale State Park - Concessionaire to clean comfort station

Wailua River State Park - Concessionaire to provide portable toilet
(Opaekaa Falls Lookout)

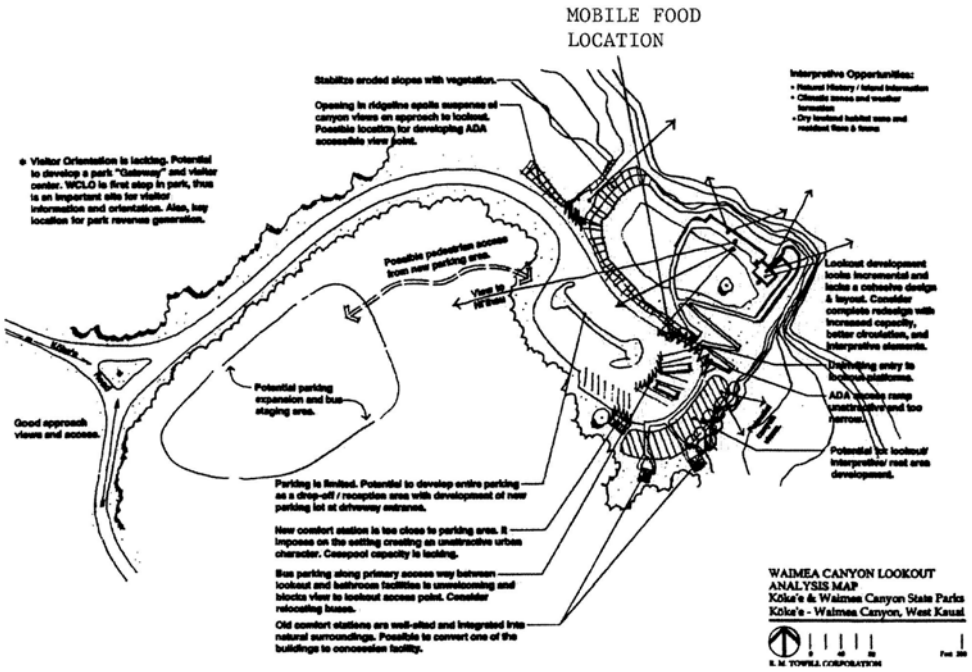
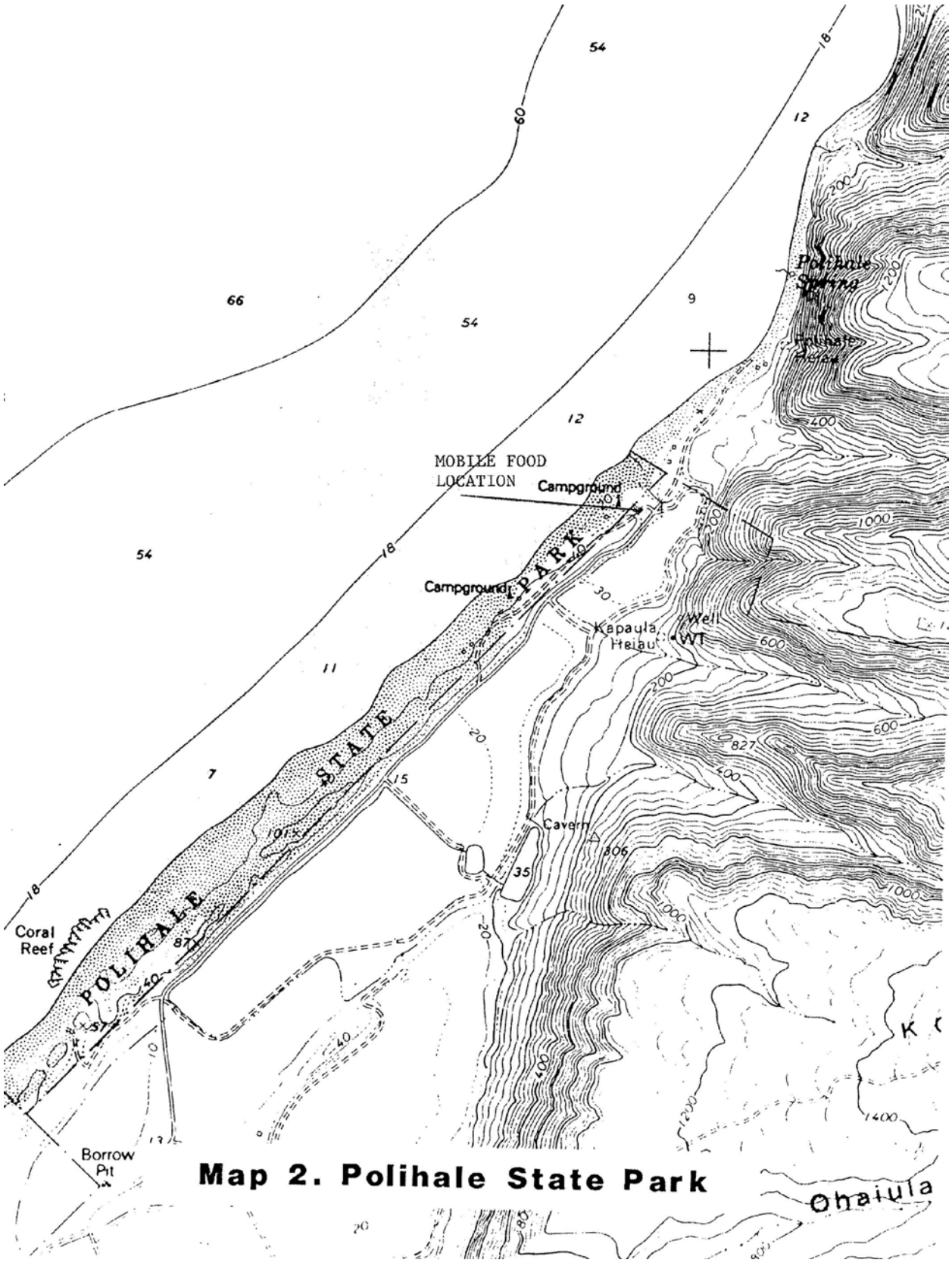


Figure 4-2 - Waimea Canyon Lookout Analysis Map



Map 2. Polihale State Park

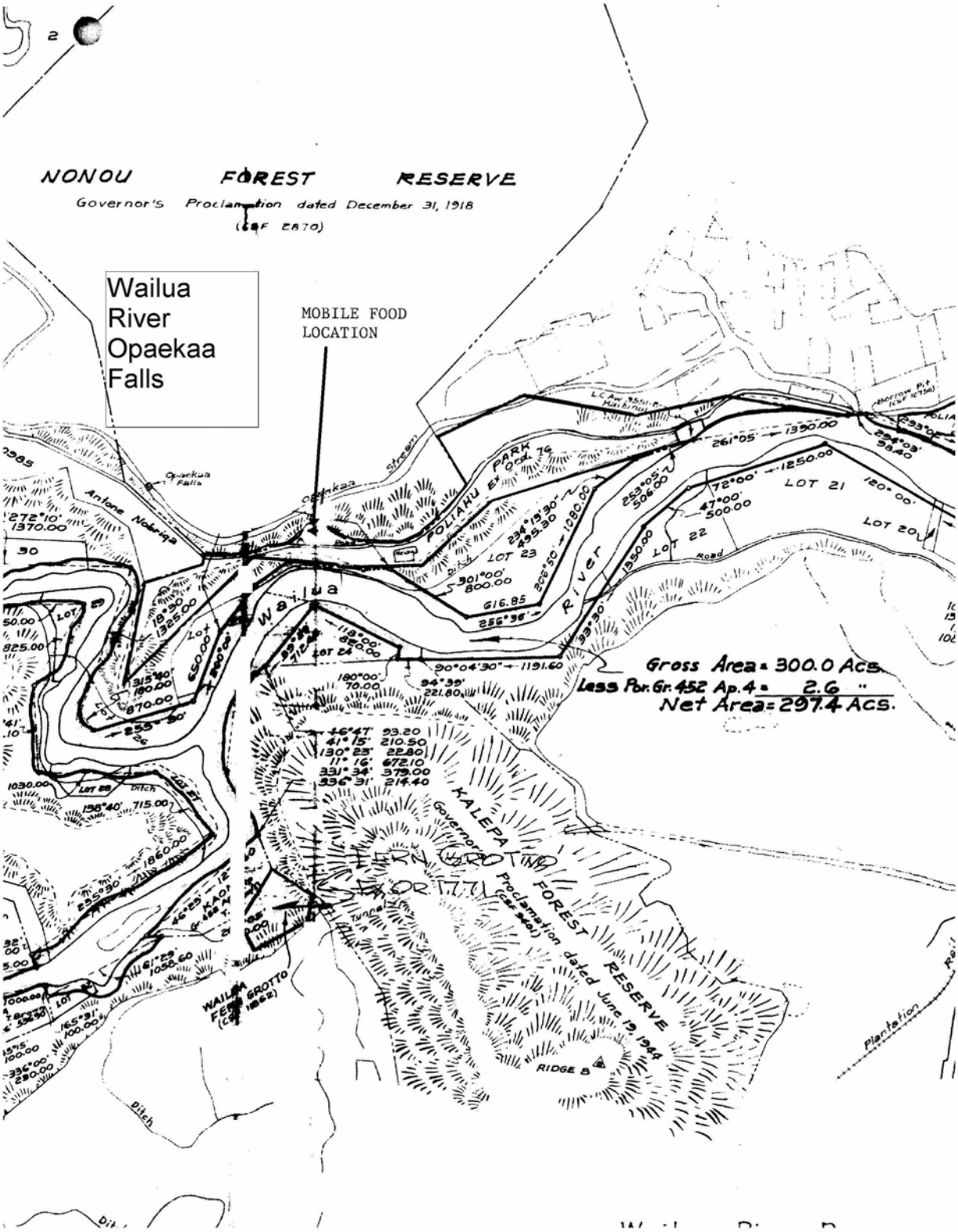

NONOU FOREST RESERVE
Governor's Proclamation dated December 31, 1918
Wailua River Opaekaa Falls
MOBILE FOOD LOCATION
Opaekaa Falls
Antone Nobriga
POLIAHU PARK
LOT 23
LOT 22
LOT 21
LOT 20
Wailua River
Gross Area = 300.0 Acs.
Less Por. Gr. 452 Ap. 4 = 2.6 "
Net Area = 297.4 Acs.
KALEPA
Governor's Proclamation dated June 19, 1944
FOREST RESERVE
RIDGE B
Plantation
Ditch

EXHIBIT B

Chapter 102, Hawaii Revised Statues
Concessions on Public Property

Section

102-1 Definition

102-2 Contracts for concessions; bid required, exception

102-3 Qualification of bidders

102-4 Advertisement for bids

102-5 Bids; opening; rejection

102-6 Deposits of legal tender, etc., to accompany bid

102-7 Forfeiture of deposits, return thereof

102-8 Bond may be substituted for deposits

102-9 Contracts to be in writing; highest responsible bidder

102-10 Modification of contract terms

102-11 Bond; conditions

102-12 Surety on bond; justification

102-13 Amendment of contracts, when authorized

102-14 Use of public buildings by blind or visually handicapped persons

102-15 Violation voids contract

102-16 Penalty

HRS 0102- ANNOTATIONS

Cross References

Hawaii public procurement code, see chapter 103D.

§102-1 Definition. The word "concession" as used in this chapter means the grant to a person of the privilege to:

(1) Conduct operations involving the sale of goods, wares, merchandise, or services to the general public including but not limited to food and beverage establishments, retail stores, motor vehicle rental operations under chapter 437D, advertising, and communications and telecommunication services, in or on buildings or land under the jurisdiction of any government agency;

(2) Operate a parking lot on property owned or controlled by the State with the exception of buildings, facilities, and grounds operated by or otherwise under the jurisdiction of the department of education; and

(3) Use, for compensation, space on public property to display advertising, or to conduct operations for communications or telecommunications purposes. [L 1963, c 93, §1; Supp, §7B-1.5; am L 1967, c 189, §3; HRS §102-1; am L 1997, c 208, §2; am L 2001, c 303, §1]

§102-2 Contracts for concessions; bid required, exception. (a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of either by contract, lease, license, permit or any other arrangement, except under contract let after public notice for sealed bids in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed fifteen years.

(b) *{Repeal and reenactment on July 1, 2005. L 2004, c 201, §6]* The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

(1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;

(2) For lei vendors;

(3) For airline and aircraft operations;

(4) For automatic teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;

(5) For operation of concessions set aside without any charge;

(6) For operation of concessions by handicapped or blind persons; except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;

(7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one year period;

(8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beachboy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;

(9) For operation of concessions at county zoos, botanic gardens, or other county parks which are environmentally, culturally, historically, or operationally unique and are supported, by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or other county park, and operating under agreement with the appropriate agency solely for such purposes, aims, and goals;

(10) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head

of the awarding government agency in writing that shall be included in the contract file;

(11) For operation of concession or concession spaces at the convention center under chapter 201B; and

(12) For airport florist services, lei greeting services, or florist and lei greeting services.

(c) The bidding requirements of subsection (a) shall not apply to any nonrenewable dispositions granting rights for a period not in excess of fourteen days. [L 1959, c 245, §1; am L 1960, c 14, §2; am L 1962, c 5, §2; am L 1963, c 93, §§2, 3; Supp, §7B-1; am L 1967, c 189, §§1, 2; HRS §102-2; am L 1986, c 185, §2; am L 1987, c 101, §1; am L 1991, c 232, §1; am L 1996, c 44, §1 and c 89, §9; am L 2001, c 303, §2; am L 2002, c 253, §6; am L 2004, c 201, §2]

HRS 0102-0002 ANNOTATIONS

Note

Grant of relief by governor (repealed July 1, 2005). L 2004, c 201, §§3, 4.

Attorney General Opinions

Chapter's bidding requirements not applicable to sale of broadcasting right to University of Hawaii athletic events. Att. Gen. Op. 84-5.

Case Notes

Noninclusion of foreign exchange concessions under section emphasizes legislature's contemplation that foreign exchange concession at airport could be exclusive. 745 F.2d 1281.

Hawaii Legal Reporter Citations

Antitrust. 80-1 HLR 800049.

§102-3 Qualification of bidders. Before any prospective bidder is entitled to submit any bid for the occupancy of any such space, the prospective bidder shall, not less than six calendar days prior to the day designated for opening bids, give written

notice to the officer charged with letting the contract of the prospective bidder's intention to bid, and the officer shall satisfy oneself of the prospective bidder's financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the officer may, in the officer's discretion, require prospective bidders to submit answers, under oath, to questions contained in a form of questionnaire setting forth a complete statement of the experience, competence and financial standing of the prospective bidders. Whenever it appears to the officer, from answers to the questionnaire or otherwise, that any prospective bidder is not fully qualified and able to carry out the terms and conditions of the contract that may be awarded, the officer shall, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to carry out the terms and conditions of the contract that may be awarded, refuse to receive or consider any bid offered by the prospective bidder. The officer charged with letting the contract shall not divulge or permit to be divulged the names and the number of persons who have submitted their notice of intention to bid until after the opening of bids. All information contained in the answers to questionnaires shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be fined not more than $250. Questionnaires so submitted shall be returned to the bidders after having served their purpose. [L 1959, c 245, §2; am L 1962, c 5, §3; Supp, §7B-2; HRS §102-3; gen ch 1985]

HRS 0102-0003 ANNOTATIONS

Case Notes

Bidders qualifications may be considered after bids have been received and considered as well as before. 47 H. 499, 393 P.2d 60; 5 H. App. 13, 674 P.2d 1019.

§102-4 Advertisement for bids. Public notice of a call for bids shall be made not less than three different days statewide, with respect to any state agency, or county-wide within the particular county with respect to any county or county agency. [L 1959, c 245, §3; Supp, §7B-3; HRS §102-4; am L 2001, c 303, §3]

§102-5 Bids; opening; rejection. The time of opening of such tenders shall be not less than five days after the last publication. All bids shall be sealed and delivered to the officer advertising therefor and shall be opened by the officer at the hour and place to be stated in the call for tenders in the presence of all bidders who attend, and may be inspected by any bidder. All bids which do not comply with the requirements of the call for tenders shall be rejected. The officer calling for bids may reject any or all bids and waive any defects when in the officer's opinion such rejection or waiver will be for the best interest of the public. [L 1959, c 245, §4; Supp, §7B-4; HRS §102-5; gen ch 1985]

HRS 0102-0005 ANNOTATIONS

Case Notes

Mandamus compelling acceptance of bid is inapplicable when officer has discretion to reject any and all bids. 47 H. 499, 393 P.2d 60.

§102-6 Deposits of legal tender, etc., to accompany bid. (a) All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum not less than five per cent of the amount bid, payable at sight or unconditionally assigned to the officer advertising for tenders; provided that when the amount bid exceeds $50,000, the deposit shall be in a sum not less than $2,500 plus two per cent of the amount in excess of $50,000.

If the bid deposit is in the form of a surety bond, it shall be issued in accordance with subsection (b).

(b) A bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal and by any bonding company listed in the United States Treasury List; provided that the bond furnished by any surety listed shall not exceed the bonding capacity rating of that surety on the Treasury List; in a sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further

time as the officer may allow, if the bidder is awarded the contract. [L 1959, c 245, §5; am L 1962, c 5, §4; Supp, §7B-5; am L 1967, c 142, §1; HRS §102-6; am L 1975, c 167, §2; am L 1976, c 88, §2; am L 1983, c 108, §1; am L 1990, c 345, §2; am L 1992, c 274, §2; am L Sp 1993, c 8, §3; am L 1994, c 186, §3]

§102-7 Forfeiture of deposits, return thereof. If the bidder to whom the contract is awarded fails or neglects to enter into the contract and furnish satisfactory security, as required by sections 102-11 and 102-12, within ten days after the award or within such further time as the officer awarding the contract may allow, the officer shall pay the amount of the deposit into the treasury as a realization of the State, county or other governmental agency, as the case may be. If the contract is entered into and the security furnished within the required time, the deposit, certificate, or check shall be returned to the successful bidder. The deposits made by the unsuccessful bidders shall be returned to them after the contract is entered into or, if the contract is not awarded or entered into, after the officer's determination to publish another call for tenders. [L 1959, c 245, §6; Supp, §7B-6; HRS §102-7]

§102-8 Bond may be substituted for deposits. In lieu of the deposits prescribed by section 102-6, a bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal and by any corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State to act as surety and doing business in the State under the laws of the United States or of the State, if a foreign corporation, and under the laws of the State, if a Hawaii corporation, as surety, in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further time as the officer may allow, if the bidder is awarded the contract. [L 1959, c 245, §7; Supp, §7B-7; HRS §102-8; am L 1990, c 345, §3; am L 1992, c 274, §3]

§102-9 Contracts to be in writing; highest responsible bidder. All such contracts shall be in writing, shall be executed by the officer letting the contract in the name of the State, county, or the board, bureau, or commission thereof authorized to let contracts in its own name, as the case may be, and shall be made with the highest responsible bidder, if such bidder qualifies by providing the security required by sections 102-11 and 102-12. If the highest and best bid or any other bid is rejected, or if the bidder to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, the officer may,

in the officer's discretion, award the contract to the next highest and best remaining responsible bidder. [L 1959, c 245, §8; Supp, pt of §7B-8; HRS §102-9; gen ch 1985]

HRS 0102-0009 ANNOTATIONS

Case Notes

Mandamus will not be granted unsuccessful bidder where contract has been executed and there has been part performance by awardee; taxpayer's suit contesting award of contract under invalid specifications. 47 H. 499, 393 P.2d 60.

§102-10 Modification of contract terms. If during the term of the contract (including contracts which have been executed and are presently in force) there has been a reduction of fifteen per cent or more in the volume of business of the concessionaire for a period of sixty days or more, computed on the average monthly gross income for the eighteen months just prior to the period or as long as the concessionaire has been in the business, whichever period is shorter, and such reduction as determined by the officer letting the contract is caused by construction work conducted during the period of time on, or within or contiguous to, the public property upon which the concession is located by either the state or county governments, or both, the officer, with the approval of the governor in the case of a state officer and the chief executive of the respective county in the case of a county officer, may modify any of the terms of the contract, including the agreed upon rent, for a period which will allow the concessionaire to recoup the amount lost by such reduction; provided that if the contract includes provisions allowing modification for the above contingencies, this section shall not be applicable thereto; provided further that this provision shall not apply to any particular concession if the application thereto may impair any contractual obligations with bondholders of the State or counties or with any other parties. [L 1963, c 93, §5; Supp, pt of §7B-8; HRS §102-10]

§102-11 Bond; conditions. Before any contract is entered into, the party with whom the contract is proposed to be made shall give security for the performance thereof by a good and sufficient bond conditioned for the full and faithful performance of the contract in accordance with the terms and intent thereof, which bond shall be in an amount not less than

two months' rental and other charges, if any, required under the contract; provided that any contract for the sale and delivery of in bond merchandise at Honolulu International Airport shall require a bond in an amount not less than four months of the highest minimum annual rental guaranty required under the contract. The bond shall also by its terms inure to the benefit of the State or of the county, as the case may be. [L 1959, c 245, §9; Supp, §7B-9; HRS §102-11; am L 1982, c 141, §1]

§102-12 Surety on bond; justification. A surety company authorized to do business under the laws of the State may be accepted as surety on the bond, whenever, in the opinion of the officer letting the contract, the rights of all parties in interest will be fully protected. If the surety or sureties on the bond, whether individual or corporate, shall be other than a surety company authorized to do business under the laws of the State, there shall be not more than four sureties who shall severally justify in such amounts as, taken together, will aggregate the full amount of the bond; provided that in the case of the other sureties the officer letting the contract shall require that the surety shall also severally deposit with the officer certified checks, certificates of deposit, or share certificates (unconditionally assigned or on demand on or after such period as the officer may stipulate) or bonds, stocks, or other negotiable securities, or execute and deliver to the officer a deed of trust of real property, all of such character as shall be satisfactory to the officer, each surety to furnish the security to the full cash value of one hundred per cent of the amount for which the surety shall so have justified; provided further that the contracting officer, in the officer's discretion, may waive the necessity of furnishing the security, to any extent that the officer may deem warranted, in cases where, upon an actual examination, the officer is satisfied as to the financial responsibility of the proposed surety or sureties; provided that if there is but one personal surety the surety shall so justify for the full amount of the bond. [L 1959, c 245, §10; Supp, §7B-10; HRS §102-12; gen ch 1985; am L 1990, c 345, §4]

§102-13 Amendment of contracts, when authorized. Where there is an outstanding contract, lease, license, permit, or any other such arrangement for the operation of concessions or concession spaces on governmental property, the parties may amend the instrument to permit a related use with an increased rental adjustment where the lessee, licensee or permittee, as the case may be, can show financial hardship arising out of changes of circumstances or otherwise, if required to continue operation

under the original permitted use. [L 1962, c 5, §5; Supp, §7B-11.5; HRS §102-13]

§102-14 Use of public buildings by blind or visually handicapped persons. (a) For the purpose of providing blind or visually handicapped persons, as defined in sections 235-1, 347-1, and 347-2 with remunerative employment, enlarging their economic opportunities and stimulating them to greater efforts in striving to make themselves self-supporting, blind or visually handicapped persons registered by the department of human services under section 347-6 and issued permits under subsection (c) shall be authorized to operate vending facilities and machines in any state or county public building for the vending of newspapers, periodicals, confections, tobacco products, foods, beverages, and such other articles or services prepared on or off the premises in accordance with all applicable laws.

(b) The department of human services, after consultation with authorities responsible for management of state or county public buildings, shall adopt rules in accordance with chapter 91, necessary for the implementation of this section, including, but not limited to rules to assure that priority be given to registered blind or visually handicapped persons in the operation of vending facilities in state or county public buildings and to establish, whenever feasible, one or more vending facilities in all state and county public buildings.

(c) Assignment of vending facilities and space for vending machines shall be by permit issued by the department of human services.

(d) No person shall advertise or otherwise solicit the sale of food or beverages for human consumption in any public building which is in competition with a vending facility or machine operated or maintained by a duly authorized blind or visually handicapped person as prescribed by rules and regulations established under chapter 91. Any person who violates this subsection shall be subject to a fine of not more than $1,000.

(e) After July 1, 1981, or upon the expiration of vending machine contracts in existence on June 10, 1981, no vending machines shall be placed in any state or county public building in which there is a vending facility or machine assigned by permit to a blind or visually handicapped person except pursuant to a permit issued by the department of human services.

(f) Any permit granted pursuant hereto may be terminated by the department of human services if the department determines that

the vending facility or machine is not being operated in accordance with prescribed rules.

(g) This section shall not apply to the judiciary history center facilities in the Ali`iolani Hale building, University of Hawai`i system, public library system facilities, department of education facilities, department of transportation airport and harbor restaurant and lounge facilities and operations, public parks, and state and county facilities designed and intended for use as facilities for entertainment and other public events.

(h) After July 1, 1981, any department, agency, or instrumentality of the State or any of its political subdivisions planning the construction, substantial alteration, or renovations of any building shall consider including plans for a vending facility maintained or operated by a blind or visually handicapped person. The present vendor who is operating a vending facility shall not be displaced or dislocated from any state or county building because of renovations or substantial alterations, except for any temporary displacement or dislocation which may be necessary for the completion of the renovations or alterations. Any such vendor shall have the first option to operate the facility upon completion of the renovations or substantial alterations. [L 1937, c 208, §1; RL 1945, §465; RL 1955, §7-20; am L 1959, c 246, §14; am L 1964, c 30, §2; HRS §102-14; am L 1981, c 131, §1; am L 1987, c 339, §4; am L 1993, c 328, §2; am L 1994, c 57, §3; am L 1996, c 138, §2]

HRS 0102-0014 ANNOTATIONS

Revision Note

In subsection (e), "June 10, 1981" substituted for "the effective date of this Act."

Cross References

Adoption of rules, see chapter 91.

§102-15 Violation voids contract. After May 31, 1959, any contract awarded or executed in violation of sections 102-1 to 102-12 shall be void. [L 1959, c 245, §11; Supp, §7B-11; HRS §102-15]

§102-16 Penalty. Any officer of the State or of any municipal, county, or other political subdivision thereof, or any person

acting under or for such officer or any other person who violates any provisions of sections 102-1 to 102-12 shall be fined not more than $1,000 or imprisoned not more than one year, or both. [L 1959, c 245, §12; Supp, §7B-12; HRS §102-16]