

## INSTRUCTIONS TO BIDDERS

### 1. PURPOSE

This Public Auction Bid Packet provides information, instructions, documents and forms related to the sale of State of Hawaii land leases scheduled for public auction on Tuesday, August 23, 2016 at 10:00 a.m. or as soon thereafter as practicable, at the Hamakua Lanai of the State Office Building, 75 Aupuni Street, Hilo, Hawaii 96720 for the items as listed in the Notice of Sale. This auction may be cancelled, postponed or continued by order of the Chairperson of the Board of Land and Natural Resources.

### 2. SIGNIFICANT DATES

Advertisement of Auction and Application Pick-up	Sunday, June 12, 2016
<b>Applications Due: 4:30 p.m. (HST)</b>	<b>Thursday, July 21, 2016</b>
Compliance Review of Applications*	Friday, July 29, 2016
Substantive Review and Qualification of Applications*	August 1 to 4, 2016
Notice of Auction Qualification/ Disqualification*	August 8, 2016
<b>Public Auction Held</b>	<b>Tuesday, August 23, 2016</b>
All Required Auction Documents Signed	Wednesday, August 24, 2016

*\*Estimated dates*

### 3. GENERAL QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS

Any person shall be entitled to bid and purchase a lease at this auction, except a person who:

- a. Is in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or to any of its political subdivisions;
- b. Is a minor;
- c. Has had during the five (5) years preceding the date of the public auction, a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof;

d. Fails to show upon demand of the Chairperson of the Board of Land and Natural Resources or his agent at the public auction, in cash, certified, or cashier's check, the following sum:

Item I.	\$7,140.00
Item II.	\$5,860.00
Item III	\$850.00
Item IV	\$4,150.00

e. Fails to meet the pre-qualifying criteria as outlined in section 4.

f. For applicants qualifying to bid on agricultural or pasture leases only:

Fails to meet any one of the bona fide farmer criteria pursuant to §171-14.5, HRS:

- (1) Has spent not less than two years, full-time, in farming operations;
- (2) Is an owner-operator of an established farm conducting a substantial farming operation;
- (3) For a substantial period of the individual's adult life resided on a farm and depended on farm income for a livelihood;
- (4) Is an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the auction obtained the major portion of their income from farming operations;
- (5) Is an individual with a college degree in agriculture;
- (6) Is an individual who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm;
- (7) Has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended, for the acquisition of a farm;
- (8) Is an individual who is displaced from employment in an agricultural production enterprise;
- (9) Is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects;

- (10) Possesses the qualifications under the new farmer program pursuant to §155-1(3), HRS:

"New farmer program" means a new farm enterprise for qualified new farmers, including persons who are displaced from employment in an agricultural production enterprise, college graduates in agriculture, community college graduates in agriculture, and members of the Hawaii Young Farmer Association and Future Farmer of America graduates with farming projects, persons who have not less than two years' experience as part-time farmers, persons who have been farm tenants or farm laborers, or other individuals who have for the two years last preceding their application obtained the major portion of their income from farming operations, and persons who by reason of ability, experience, and training as vocational trainees are likely to successfully operate a farm. . . ; or

- (11) Possesses such other qualifications as the Board of Land and Natural Resources may prescribe pursuant to §171-6, HRS.

4. **PRE-QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS FOR STATE OF HAWAII LAND LEASE**

In addition to meeting the general qualifying criteria in section 3, any person wishing to bid and purchase a State lease described in the Notice of Sale must first qualify to bid according to the following evaluation criteria:

- a. For applicants qualifying to bid on business, commercial, industrial or resort leases:

i. **QUALIFICATIONS AND EXPERIENCE**

- \* Type and duration of business experiences
- \* Expertise in particular field of business
- \* Expertise in management, financial and marketing matters

ii. **BUSINESS PLAN AND DEVELOPMENT PLAN**

- \* Soundness/feasibility of development components
- \* Soundness/feasibility of marketing components
- \* Soundness/feasibility of financial components

iii. **FINANCIAL CAPACITY TO FUND OPERATIONS**

- \* Ability to fund operations

- iv. CONVICTIONS FOR VIOLATION OF LAW
- b. For applicants qualifying to bid on agricultural or pasture leases:
- i. QUALIFICATIONS AND EXPERIENCE
    - \* Education in agriculture
    - \* Type and duration of agricultural experiences
    - \* Expertise in particular field of agriculture
    - \* Expertise in management, financial and marketing matters
  - ii. BUSINESS PLAN AND DEVELOPMENT PLAN
    - \* Soundness/feasibility of development components
    - \* Soundness/feasibility of marketing components
    - \* Soundness/feasibility of financial components
  - iii. FINANCIAL CAPACITY TO FUND OPERATIONS \*
    - Ability to fund operations
  - iv. CONVICTIONS FOR VIOLATION OF LAW
- c. For applicants qualifying to bid on agricultural/ pasture or business/commercial/industrial/resort leases, if at least one of the following criteria is met, the applicant shall be deemed to have met the pre-qualifying criteria of this section (applicants for agricultural/pasture leases are still required to meet at least one of the bona fide farmer criteria pursuant to §171-14.5, HRS):
- \* Is registered with the U.S. Securities and Exchange Commission and has been publicly traded for the last three years.
  - \* Has received a business loan within the last two years from an institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or from any federal mortgage lending agency qualified to do business in Hawaii and such loan was made for the same type of business as the applicant is proposing to use the State land for.

5. APPLICATION PROCEDURES

Eligibility to bid on a State lease shall be determined by the information supplied by prospective bidders in the Application and Qualification Questionnaire form ("Application"), Appendices A and B. Any person who has not completed and submitted an Application by the date and time indicated below will not be allowed to bid for any State leases at the public auction.

One (1) original and five (5) copies of the completed Application with all required attachments must be received no later than **4:30 p.m. (HST), Thursday, July 21, 2016** by the Department of Land and Natural Resources at any one of the District Offices listed in section 14. Facsimile copies shall not be accepted. The official time shall be that recorded on the receiving District Office's time stamp clock. These conditions apply regardless of whether an Application is mailed or hand-delivered. The State assumes no responsibility for lateness due to mail or other delivery service.

A prospective bidder, at the time an Application is submitted, must be capable of performing all of the terms and conditions of the Lease which may be awarded.

A prospective bidder, at the time an Application is submitted, shall have inspected the subject parcels to be leased and understands the parcels shall be leased in an "AS IS" condition, without any representations or warranties made by the State of the Department of Land and Natural Resources as to the condition of the land or suitability of the land for the use permitted in the applicable leases.

Each applicant shall be informed in writing in advance of the date of the auction as to his/her eligibility or non-eligibility to bid at the public auction.

All information provided in the Application and Qualification Questionnaire shall remain confidential until the conclusion of the public auction. Thereafter, any information which is protected under Chapter 92F, Hawaii Revised Statutes, including an individual's financial information, will continue to be held confidential.

6. REVIEW OF APPLICATIONS

All Applications will be reviewed by a screening committee. The screening committee will be guided by the general qualifying and pre-qualifying criteria in sections 3 and 4.

An Application may be rejected for any of the following reasons:

- (a) If the Application is late, conditional, incomplete or does not adhere to the format and instructions;
- (b) If it is shown that inaccurate statements are made in the Application;

- (c) If the Application fails to meet any of the general qualifying or pre-qualifying criteria in sections 3 and 4; or
- (d) If it is in the best interests of the State.

7. MODIFICATION OF THE APPLICATION

Modifications to a submitted Application may be made prior to the Application due date. One (1) original and five (5) copies of the modified sheets or replacement Application shall be submitted by the Application due date.

8. RECONSIDERATION OF DISQUALIFICATION

An applicant may request a reconsideration of his/her disqualification. Any such request shall be in writing and received by the Department of Land and Natural Resources, 1151 Punchbowl Street, Room 220, Honolulu, Hawaii, 96813, within seven (7) calendar days from the day the Department mailed the notice of disqualification to the applicant. The applicant shall state the reasons why he/she believes the disqualification was improper and refer to evidence in his/her application to support such reasons. The Chairperson's decision on any reconsideration shall be final.

9. AUCTION PROCEDURE

- a. All prospective bidders shall be qualified pursuant to Sections 3 and 4.
- b. All qualified bidders or authorized representatives must be present in person at the auction.
- c. All qualified bidders must bring and present a government issued picture ID. If the individual that will be bidding is an authorized representative of the qualified bidder, the individual shall provide evidence satisfactory to the Chairperson that the bidder is duly authorized to bid at the auction on behalf of the qualified bidder, e.g., a certified corporate resolution or power of attorney duly executed by the qualified bidder.
- d. All qualified bidders must bring and present the funds required pursuant to Section 3.d. above.
- e. Bidding shall commence at the upset minimum annual rental as stated in the Notice of Sale document and the qualified bidder making the highest bid at the fall of the hammer shall be the successful buyer of the lease.

10. DUTIES OF SUCCESSFUL BIDDER

The successful bidder shall, upon the fall of the hammer:

1. Execute a Memorandum of Lease for his/her purchase;
2. Execute an Affidavit of Non-Arrears stating that he or she is not in arrears in the payment of taxes, rents or other obligations owing to the State of Hawaii or any of its political subdivisions;
3. Pay in cash, certified, or cashier's check, the amount set forth in section 3.d. above; and
4. Within one (1) working day from the date of sale:
  - a. Pay all charges required by law, including the cost of survey maps and descriptions, documents, conveyance tax and advertising costs related to the Notice of Sale document.
  - b. Pay the difference between the minimum amount required to be paid at the fall of the hammer and fifty per cent (50%) of the annual rent bid.

Failure to execute the Memorandum of Lease, Affidavit of Non-Arrears, and make such payments within the stated time periods shall, at the option of the State of Hawaii, terminate any and all rights which such defaulting bidder may have been acquired at said public auction sale, and the State of Hawaii may, at its option, cancel the sale and retain as damages, the sums, or any portions thereof, previously paid by the successful bidder.

11. COMMENCEMENT DATE FOR LEASES

For Items I, II & IV: Sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

For Item III: The date of sale if the current occupant is the successful bidder, otherwise, sixty (60) days after the date of sale; provided that if such date is not on the first day of any month, the commencement date shall be the first day of the month following such date; and further provided that the Chairperson may amend the commencement date for good cause.

12. EFFECTIVE RENTAL

The amount bid at public auction.

13. CONDITION OF THE PROPERTIES

All properties shall be leased in an "AS IS" condition, without any representations or warranties made by the State or the Department of Land and Natural Resources as to the condition of the land or suitability of land for the use permitted in the lease.

14. LEASE DOCUMENTS

Proposed drafts of the lease documents setting forth fully the terms and conditions to be observed and performed by the lessee together with survey map and description of the lands to be leased may be examined at the following offices:

**Oahu District Land Office** **Tel. 587-0433**  
**Kalanimoku Building**  
**1151 Punchbowl Street, Room 220**  
**Honolulu, Oahu 96813**

**Maui District Land Office** **Tel. 984-8103**  
**State Office Building**  
**54 High Street, Room 101**  
**Wailuku, Maui 96793**

**Hawaii District Land Office** **Tel. 961-9590**  
**State Office Building**  
**75 Aupuni Street, Room 204**  
**Hilo, Hawaii 96720**

**Kauai District Land Office** **Tel. 274-3491**  
**State Office Building**  
**3060 Eiwa Street, Room 208**  
**Lihue, Kauai 96766**

15. ADDITIONAL REQUIREMENTS

Refer to the drafts of the lease documents for bond requirements, rental reopenings, fencing requirements, insurance requirements, land development and utilization plan requirements, utilization and clearing requirements, improvement requirements, assignment of lease evaluation policy, reservations and other terms and conditions.

Each prospective bidder shall carefully examine all documents. Failure on the part of any prospective bidder to make such an examination shall not be grounds for any claim that the prospective bidder did not understand the conditions of the lease or auction. Each prospective bidder shall notify the Administrator, in writing, of any ambiguity, inconsistency or conflict in the documents.

16. EFFECT OF SALE

Following the public auction sale, a lease document in conformance with the purchase shall be sent to the successful bidder for execution. In the event that the successful bidder shall fail to execute said lease document within thirty (30) calendar days after receipt, the State of Hawaii may, at its option, cancel the sale and retain the sums or any portion or portions thereof, previously paid by the successful bidder as liquidated damages. The retention of said sums shall be in addition to any other rights or remedies to which the State of Hawaii may be entitled.

DONE at the Office of the Department of Land and Natural Resources, State of Hawaii  
this 27<sup>th</sup> day of May, 2016.

BOARD OF LAND AND NATURAL RESOURCES

By:  \_\_\_\_\_  
Suzanne D. Case, Chairperson