



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

## **PUBLIC AUCTION BID PACKET**

FOR  
PUBLIC AUCTION SALE  
OF STATE OF HAWAII LAND LICENSE  
ISLAND OF HAWAII

PUBLIC AUCTION DATE:  
**Thursday, September 30, 2021**

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## NOTICE OF SALE

### PUBLIC AUCTION SALE OF ONE STATE OF HAWAII LICENSE ON THE ISLAND OF HAWAII

The Department of Land and Natural Resources (“DLNR”), Land Division, Hawaii District Branch, will be conducting a public auction sale of one (1) license of State lands at the following date and location:

**DATE & TIME** Thursday, September 30, 2021 at 10:00 am

**PLACE** West Lanai of the State Office Building, 75 Aupuni Street, Hilo, Hawaii 96720

The license to be auctioned on the above date is as follows:

**Location:** Portion of Government (Crown) land of Waiakea, situated at Waiakea, South Hilo, Island of Hawaii, Hawaii, as shown and described on Government Survey Map C.S.F. No. 25,805 dated July 31, 2020

**Tax Map Key:** (3) 2-1-013:portion of 002

**Land Area:** 37.822 acres, more or less

**Permitted Use:** To enter and quarry, crush, stockpile, and remove rock and waste deposits for commercial use provided the operation of a rock crusher(s) on and within the license area shall be a permitted use

**License Term:** 20 years

**Minimum Upset Annual License Fee and Royalty Rate:** \$32,000 per annum, payable semi-annually in advance, with a royalty rate of \$0.65 per ton

**Rental Reopening:** The license fee and royalty rate to be reopened at the end of the 10<sup>th</sup> year of the license term

**Performance Bond:** Twice the amount of the annual rental payable

**Special Conditions:** Yamada and Sons, Inc. initiated the request for the use of the subject land for quarry purposes, paid for the environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes, and obtained the Finding of No Significant Impact required for the quarry use. If Yamada and Sons, Inc. is not the successful bidder at auction, the successful bidder shall reimburse Yamada and Sons, Inc. \$49,844.90 for its environmental assessment costs.

## **APPLICATION AND BIDDING INFORMATION**

Any person wishing to bid and purchase a license for the item described above must first qualify to bid under the general qualifying criteria and the pre-qualifying criteria as described in the **Public Auction Bid Packet**. Eligibility to bid shall be determined by the information supplied by prospective bidders in the **Application and Qualification Questionnaire** form (“**Application**”) provided as **Appendix A** of the Public Auction Bid Packet.

Applications by prospective bidders for the above listed items must be **received** by DLNR no later than **4:00 pm on Thursday, September 16, 2021** at any one of the District Land Offices listed below. Applicants shall submit one (1) original and four (4) copies of the Application (including copies of all required attachments). Any person who has failed to submit the completed Application and all required attachments (and required copies) by this date and time will not be allowed to bid. Each applicant shall be informed in writing in advance of the auction date as to the applicant’s eligibility to bid at the public auction. See Public Auction Bid Packet for further instructions.

The Public Auction Bid Packet (which describes the auction sale procedures, bidder qualification requirements and other requirements, and contains the Application form, memorandum of license, and other relevant information) and a draft of the license document (which contains a survey map and description of the subject property) may be obtained from any of the District Land Offices listed below or downloaded from the DLNR website at [www.hawaii.gov/dlnr/land/publicnotices/](http://www.hawaii.gov/dlnr/land/publicnotices/). Persons requiring information in an alternate format should call, or write to these offices:

- Oahu District Land Office  
1151 Punchbowl Street, Room 220, Honolulu, Oahu 96813 (808) 587-0433
- Hawaii District Land Office  
75 Aupuni Street, Room 204, Hilo, Hawaii 96720 (808) 961-9590
- Maui District Land Office  
130 Mahalani Street, Wailuku, Maui 96793 (808) 984-8103
- Kauai District Land Office  
3060 Eiwa Street, Room 208, Lihue, Kauai 96766 (808) 274-3491

Prospective bidders are responsible to thoroughly read and understand the covenants, terms and conditions contained in the Public Auction Bid Packet and draft license document. The property is to be licensed in an “AS IS” condition, and prospective bidders are responsible to inspect the property and complete their due diligence prior to submitting an application.

All bidders or authorized representatives must be present in person at the auction. DLNR reserves the right to cancel the public auction, to postpone or change the date of the public auction or any other deadlines, to reject any and all Applications or request the submittal of additional information, and to waive any defects when, in the opinion of the Chairperson of the Board of Land and Natural Resources, such action will be in the best interest of the State.

Honolulu Star Advertiser, Hawaii Tribune Herald, West Hawaii Today  
August 26, 2021

## INSTRUCTIONS TO BIDDERS

### 1. PURPOSE

This Public Auction Bid Packet provides information, instructions, documents, and forms related to the sale of a State of Hawaii land license scheduled for public auction on August 31, 2021, at 10:00 a.m., at the West Lanai of the State Office Building, 75 Aupuni Street, Hilo, Hawaii 96720 for the State license listed in the Notice of Sale. This auction may be cancelled, postponed, held at a different date or time, or continued by order of the Chairperson of the Board of Land and Natural Resources (the "Chairperson").

### 2. SIGNIFICANT DATES

Advertisement of Public Auction	August 26, 2021
<b>Applications Due</b>	<b>September 16, 2021; 4:00 p.m.</b>
Compliance Review of Applications	September 20, 2021
Substantive Review and Qualification of Applicants	September 22, 2021
Notice of Auction Qualification/Disqualification	September 24, 2021*
<b>Public Auction</b>	<b>September 30, 2021; 10:00 a.m.*</b>
All Required Auction Documents Signed	October 1, 2021

\*Dates are subject to change by the Department of Land and Natural Resources ("DLNR")

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

Any person shall be entitled to participate in this public 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 or the Chairperson's agent at the public auction, the sum of \$16,000.00, in cash, certified check, or cashier's check made payable to the Department of Land and Natural Resources;
- e. Fails to submit, as part of a completed application, evidence satisfactory to the Chairperson that the bidder is duly authorized to bid at the auction and enter into the new license if the successful bidder. For example, a corporate bidder shall submit a certified corporate resolution; or
- f. Fails to meet the pre-qualifying criteria as outlined in Section 4.

#### 4. PRE-QUALIFYING CRITERIA TO BE MET BY ALL BIDDERS

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

a. Pre-Qualifying Criteria:

- i. Qualifications and Experience: Qualifications and experience in the type of use and business operations proposed by the applicant for the property - including but not limited to, the type and duration of business experiences; expertise and success in that particular field of business, and expertise in management, financial and marketing matters related or relevant to that particular field of business
- ii. Business Plan and Development Plan: Business Plan and Development Plan for the property – including but not limited to, the soundness and feasibility of the applicant's management, marketing, financial, and development plans for the property
- iii. Financial Capacity: Financial capacity – including but not limited to, the financial capacity to fund the applicant's proposed operations and improvements to the property (including the improvements required under the license, if any) and the applicant's creditworthiness and credit history
- iv. Convictions for Violation of Law: Convictions of the applicant or any principals, owners, shareholders, partners, members, or directors of the applicant

b. The applicant shall be deemed to have met the pre-qualifying criteria of this Section 4 if the applicant is registered with the U.S. Securities and Exchange Commission and has been publicly traded for the last three years.

#### 5. APPLICATION PROCEDURES

Eligibility to bid on the license shall be determined by the information supplied by prospective bidders in the Application and Qualification Questionnaire form ("Application") provided as **Appendix A**. Any person who has not completed and submitted an Application by the date and time indicated below will not be allowed to bid for the State license at the public auction.

One (1) original and four (4) copies of the completed Application with all required attachments (including, but not limited to, all documentation required to establish the bidder's eligibility to bid at the auction) must be received no later than 4:00 p.m., September 16, 2021 by DLNR at any one of the District Offices listed in Section 15 below. Facsimile or electronically submitted 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 license that may be awarded.

A prospective bidder, at the time an Application is submitted, shall have inspected the subject parcel to be licensed and understands the parcel shall be licensed 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 license.

Each applicant shall be informed in writing in advance of the date of the auction as to the applicant's 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 and execution of the new license. 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. The screening committee may, but shall not be required to, use numerical rating systems in evaluating the applications.

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 rejection 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 four (4) 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 the applicant's disqualification. Any such request shall be in writing and received by DLNR, 1151 Punchbowl Street, Room 220, Honolulu, Hawaii, 96813, within seven (7) calendar days from the day DLNR mailed the notice of disqualification to the applicant. The applicant shall state the reasons why the applicant believes the disqualification was improper and refer to evidence in the application to support such reasons. The Chairperson's decision on any reconsideration shall be final.

## 9. AUCTION PROCEDURES

- a. All prospective bidders shall be qualified pursuant to Sections 3 and 4 above.
- 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 license.

10. DUTIES AND OBLIGATIONS OF SUCCESSFUL BIDDER

- a. Upon the fall of the hammer, the successful bidder shall:
  - i. Execute the Memorandum of License (**Appendix B**) for the purchase of the license;
  - ii. Execute an Affidavit stating that the successful bidder 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, and that the successful bidder has not during the five years preceding the date of the public auction had a previous sale, lease, license, permit or easement covering public lands cancelled for failure to satisfy the terms, conditions and covenants thereof; and
  - iii. Pay to DLNR in cash, certified, or cashier's check, the amount set forth in Section 3.d above
- b. Within one (1) working day from the date of the auction, the successful bidder shall pay in cash, or certified check or cashier's check made payable to the Department of Land and Natural Resources:
  - i. All charges required by law, including the cost of survey maps and descriptions (estimated at \$25), documents (estimated at \$30), advertising costs related to the Notice of Sale document (estimated at \$1,500), appraisal costs to determine the upset rent (\$12,800, HRS Section 171-17) recording fees, and conveyance taxes (if any), all such amounts being non-refundable, collectively, the "**Reimbursable Costs**"; and
  - ii. The difference between the minimum amounts required to be paid at the fall of the hammer, as described in Section 10(a)(iii) above, and fifty per cent (50%) of the annual minimum base rent bid by the successful bidder and \$16,000. The amounts paid pursuant to Section 10.a.iii and this Section 10.b.ii shall be collectively referred to as the "Initial Deposit".
- c. Yamada and Sons, Inc. initiated the request for the use of the subject land for quarry purposes, paid for the environmental assessment pursuant to Chapter 343, Hawaii Revised Statutes, and obtained a Finding of No Significant Impact required for the quarry use. If Yamada and Sons, Inc. is not the successful bidder at auction, the successful bidder shall reimburse Yamada and Sons, Inc. \$49,844.90 for its environmental assessment costs. Within one (1) working day from the date of the auction, the successful bidder shall deliver to the Department of Land and Natural Resources cash, or certified check, or cashier's check made payable to Yamada and Sons, Inc. in the amount of \$49,844.90 for reimbursement of such environmental assessment.

Failure to execute the Memorandum of License, 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 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 portion thereof, previously paid by the successful bidder.

11. COMMENCEMENT DATE FOR NEW LICENSE

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 greater of (a) the amount of the annual minimum base rent bid by the successful bidder at public auction; or (b) the annual percentage rent required in the license, if applicable.

13. CONDITION OF THE PROPERTY

The property shall be licensed 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 proposed by the prospective bidder or for any other uses permitted in the license.

14. MEMORANDUM OF LICENSE

The successful bidder shall be required to execute a Memorandum of License, which shall set forth the terms and conditions that must be performed by the successful bidder prior to issuance of the license and shall be substantially in the form of **Appendix B**.

15. LICENSE DOCUMENT

A copy of the license document setting forth fully the terms and conditions to be observed and performed by the licensee together with survey maps and descriptions of the lands to be licensed may be examined at the following DLNR Land Division offices or on the DLNR website at: <http://dlnr.hawaii.gov/ld/public-hearings-and-notice/>.

Oahu District Land Office  
Kalanimoku Building, Room 220  
1151 Punchbowl Street, Honolulu, Oahu 96813  
Tel. (808) 587-0433

Maui District Land Office  
130 Mahalani Street  
Wailuku, Maui 96793  
Tel. (808) 984-8103

Hawaii District Land Office  
State Office Building, Room 204  
75 Aupuni Street, Hilo, Hawaii 96720  
Tel. (808) 961-9590

Kauai District Land Office  
State Office Building, Room 306  
3060 Eiwa Street, Lihue, Kauai 96766  
Tel. (808) 274-3491

Refer to the Memorandum of License (**Appendix B**) and the license document for the obligations of the successful bidder, rent and royalty rate provisions, bond requirements, rental reopening, insurance requirements, 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 license or auction. Each prospective bidder shall notify the Chairperson, in writing, of any ambiguity, inconsistency or conflict in the documents prior to submitting an Application.

16. EFFECT OF SALE

Following the public auction sale, a license 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 license 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.

17. DEFAULT BY SUCCESSFUL BIDDER

If the successful bidder fails to execute the Memorandum of License or perform any of the terms/conditions contained therein, provide the required tax clearance certificates and other required documentation, make all payments, and perform all duties of the successful bidder within the time periods stated in Section 10 above, DLNR, at its option, may terminate any and all rights which such defaulting bidder may have acquired at said public auction sale. In the event of any termination due to the successful bidder's default prior to the execution of the license, DLNR may retain the sums, or any portion thereof, previously paid by the successful bidder, as liquidated damages.

In the event of any termination prior to the execution of the license, DLNR may, at its option, re-auction the license. DLNR, in its sole discretion, may also limit participation in the new auction to only those bidders that were previously determined by the screening committee to be qualified to participate in the initial auction and not reopen the auction to the general public. If DLNR elects to limit the participation in the new auction to those remaining qualified bidders, DLNR shall provide notice to said bidders regarding the details of the new auction. Publication of any notice of sale shall not be required.

18. OTHER

DLNR reserves the right to cancel, postpone, or change the date of the public auction or any other deadlines, to reject any and all Applications or request the submittal of additional information, and waive any defects when, in the opinion of the Chairperson, such action will be in the best interest of the State.