

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawaii 96813

June 23, 2017

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

PSF No.:SP0523

Sale of Lease at Public Auction for Concession Purposes and Issuance of
a Revocable Permit to Gladys I. Tano, for Concession Purposes
Pending Public Auction, Waikoloa, Hawaii, TMK: (3) 6-6-002:035 (Por)

Background:

The subject property was awarded at Public Auction to Gladys I. Tano was for a period of three (3) years through SP0523, which commenced on June 14, 2014 and will expire on June 14, 2017. The Applicant has expressed a desire to continue her business on the property with a month-to-month revocable permit for a period of six (6) month or until the issuance of a revocable permit is awarded through the Invitation For Bid (IFB) process. As a result of the continued use of the property, the effective date for the revocable permit would be for a period of six (6 months), which will be continuous with the existing lease for SP0523.

State Parks is seeking a long term competitive process to rebid the concession area but also request that the Board authorize approval to issue an Invitation For Bid (IFB). In the meantime, State Parks request that the Board approve the issuance of a revocable permit to Gladys I. Tano for an additional six (6) months until the IFB is ready to be processed for solicitation and further recommends the Board delegate to the Chairperson the authority to negotiate any other specific terms or additional time necessary to effectuate the lease.

PUBLIC AUCTION

REQUEST:

Sale of lease at public auction for concession purposes for operating restaurant and retail operation.

LEGAL REFERENCE:

Sections 171-6, -13,-14, -14.5, -16, and other applicable sections of Chapter 171, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waikoloa, Hawaii, situated at South Kohala, Hawaii, identified by Tax Map Key: (3) 6-6-002:035 (portion), as shown on the attached map labeled Exhibit A.

AREA:

.0537 acres, more or less.

ZONING:

State Land Use Urban
District: County of Hawaii CZO:

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO X

CURRENT USE STATUS:

Encumbered by Governor's Executive Order 2909 setting aside land for state park purposes to be under the control and management of the Department of Land and Natural Resources, Division of State Parks for the Hapuna State Park. Currently encumbered under Concession Lease SP0523 to Gladys I.Tano for concession purposes to operate restaurant and retail operation. Lease commenced on June 15, 2014 and expires June 14, 2017.

CHARACTER OF USE:

Concession purposes for operating restaurant and retail operation.

MONTHLY RENTAL:

To be determined by the highest successful bidder awarded through the IFB bid process.

COMMENCEMENT DATE:

June 15, 2017 or as determined by the Chairperson for a period of six (6) months to run continuous with the existing SP0523 to Gladys I. Tano, which lease will expire on June 14, 2017, or The date of sale if the then current authorized occupant, if any, 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.

MINIMUM UPSET ANNUAL RENT:

To be determined by staff, subject to review and approval by the Chairperson. The highest bid shall determine the upset rent for the term of the permit.

METHOD OF PAYMENT:

Monthly payments, in advance.

PERFORMANCE BOND:

Twice the annual rental amount.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item Nos. 47 and 51 as stated in the Exemption Notification attached as Exhibit B.

REVOCAABLE PERMIT

APPLICANT:

Gladys I. Tano

LEGAL REFERENCE:

Sections 171-55, and other applicable sections of Chapter 102 and 171, Hawaii Revised Statutes, as amended.

AREA:

.0537 acres, more or less,

CHARACTER OF USE:

Concession purposes for operating restaurant and retail operation.

COMMENCEMENT DATE:

June 15, 2017 or as determined by the Chairperson for a period of six (6) months to run continuous with the existing SP0523 to Gladys I. Tano, which permit will expire on June 14, 2017, or The date of sale if the then current authorized occupant, if any, 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.

MONTHLY RENTAL:

The minimum monthly guaranteed rent of One Thousand Nine Hundred Fifty Nine and No/100 Dollars (\$1,959.00), which is the existing rent amount under SP0523; or a sum equal to the following percentages of the Concessionaire's Gross Receipts for items sold for the month (8.1% -Food and alcoholic beverage sales; 8.1%- Retail Items).

Continuation of the existing permit rent amount under SP0523 for a period of six(6 months) until the issuance of a new permit is awarded pending sale of lease at public auction to the highest bidder.

COLLATERAL SECURITY DEPOSIT:

Surety Bond in an amount equal to the amount of the improvements.

CHAPTER 343- ENVIRONMENTAL ASSESSMENT:

In accordance with the Exemption List for the Department of Land and Natural Resources Environmental Impact Statement Exemption List", approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item Nos. 47 and 51 as stated in the Exemption Notification attached as Exhibit B.

DCCA VERIFICATION:

Not applicable. The Applicant is sole proprietorship and, as such, is not required to register with DCCA.

REMARKS:

The Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions. No comments were solicited from other government or community agencies, however, upon approval for the issuance of a revocable permit for an additional six (6) months, the applicant would need to be in compliance to all county, state and federal laws and ordinances pertaining to this permit.

Staff is recommending that the Board approve the issuance of a revocable permit to Gladys I. Tano for an additional six (6) months for concession purposes for operating restaurant and retail operation until an IFB is ready to be processed for solicitation.

RECOMMENDATION: That the Board:

PUBLIC AUCTION:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the sale of a lease at public auction covering the subject area for Concession purposes for operating restaurant and retail operation purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current business, commercial or industrial general lease form, as may be amended from time to time;
 - b. Should the Applicant, Gladys I. Tano not be the winning bidder at the public auction, the successful bidder shall be required to reimburse State Parks for any advertisement cost.
 - c. Review and approval by the Department of the Attorney General; and
 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

REVOCABLE PERMIT:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the issuance of a revocable permit to Gladys I. Tano, for a period of six (6) months, covering the subject area for Concession Purposes for operating restaurant and retail operation purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current revocable permit form, as may be amended from time to time;

 - b. The minimum monthly guaranteed rent of One Thousand Nine Hundred Fifty Nine and No/100 Dollars (\$1,959.00), which is the existing rent amount under SP0523; or a sum equal to the following percentages of the Concessionaire's Gross Receipts for items sold for the month (8.1% -Food and alcoholic beverage sales; 8.1%- Retail Items). Continuation of the existing rent under SP0523 pending sale of lease at public auction;

 - c. Review and approval by the Department of the Attorney General; and

 - d. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

3. Authorize the Chairperson to negotiate any other specific terms necessary to effectuate the revocable permit.

Respectfully Submitted,



Curt A. Cottrell
Administrator

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Sale of Lease at Public Auction for Concession Purposes and Issuance of a Revocable Permit to Gladys I. Tano, for Concession Purposes Pending Public Auction.,

Project / Reference No.: PSF SP0523

Project Location: Waikoloa, Hawaii, TMK:(3) 6 - 6 - 0 0 2 : 0 3 5 (Portion).

Project Description: Sale of Lease at Public Auction for Concession Purposes and Issuance of a Revocable Permit to Gladys I. Tano, for Concession Purposes Pending Public Auction.,

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Section 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, Item 47 that states, "Leases of state land involving negligible or no expansion of change of use beyond that previously existing", and item 51 that state "Permits, licenses, registrations, and rights-of- entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing", respectively..

SP0523 was issued to Gladys I. Tano for a period of three (3) years, commencing on June 14, 2014 and will expire on June 14, 2017. The Applicant, Gladys I. Tano, is requesting the issuance of a revocable permit for six (6) months for concession purposes for operating restaurant and retail operation.

The issuance of a revocable permit to Gladys I. Tano, would allow the property to be occupied until such time that State Parks is prepared to issue a new lease by public auction through the IFB bid process.

As such staff believes that the proposed event would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Not applicable

Recommendation:

It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

Suzanne D. Case, Chairperson
Date