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IN REPLY REFER TO:

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

OAHU

ISSUANCE OF A CONSTRUCTION RIGHT OF ENTRY AND LEASE TO SEA ENGINEERING, INC., FOR FAST LANDS AND A MONTH-TO-MONTH REVOCABLE PERMIT FOR CERTAIN ADJACENT SUBMERGED LANDS; AT AND ADJACENT TO PIER 27, HONOLULU HARBOR, OAHU, TAX MAP KEY NO. (1) 1-5-038: PORTIONS OF 1 [LOT 25 (LAND COURT CONSOLIDATION 82, SECTION MAP 12)] OF FAST AND SUBMERGED LANDS

LEGAL REFERENCE:

Sections 171-6, 171-13, 171-17, 171-35, 171-36, 171-53, 171-55, and 171-59, Hawaii Revised Statutes, as amended.

APPLICANT:

Sea Engineering, Inc. (SEI) is a domestic profit corporation whose mailing address is 836 North Nimitz Highway, Honolulu, Hawaii 96817.

CHARACTER OF USE:

To provide marine engineering and construction related services including commercial diving services, marine operations, coastal engineering, geophysical surveys, and oceanographic and environmental studies. The use of submerged lands is for the berthing of vessels utilized in the performance of the aforementioned marine services.

LOCATION:

Portion of Government lands situated at or adjacent to Pier 27, Honolulu Harbor, Oahu, Tax Map Key No. (1) 1-5-038: Portions of 1 [Lot 25 (Land Court Consolidation 82)] of Fast and Submerged Lands, see attached Exhibit A.

TRUST LAND STATUS:

Non-ceded section 5(a) lands of the Hawaii Admission Act.
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution:
YES _____ NO X

AREA:

The area is shown on the Department of Transportation, Harbors Division (DOT Harbors) lot development plan (Exhibits C and D) as Lot 11 (since designated and herein referenced as Lot 25) and is described as the following three (3) portions:

- 10,816 square feet of fast lands and 3,268 square feet of subsidence, not inclusive of riprap (total 14,084 square feet)
- 7,675 square feet of condemned pier (Pier 27 and 27 End)
- 8,610 square feet of submerged lands

CONSIDERATION:

Construction Right-of-Entry (CROE): Gratis

Lease: Annual land rent as follows:

- Years 1 to 20 \$113,800 per year
- Years 21 to 30 Reopener at 21st year, with step up¹ on the 26th year
- Years 31 to 40 Reopener at 31st year, with step up¹ on the 36th year

¹ Step up of 15%

Dates to be determined upon legislative approval of submerged land rental at a rate of \$34,700.00 per year.

The DOT Harbors recommends a rent waiver of one (1) year under the lease pursuant to Section 171-6(7), HRS, for SEI's significant minimum investment of \$4 million dollars to repair the subsidence, the condemned pier, and facilities for their marine service operations.

Revocable Permit (for submerged lands): annual rent of fifty percent (50%) of fast land rent.

ZONING:

State of Land Use Commission: Urban
City and County of Honolulu: I-3, Waterfront Industrial

TERM OF LEASE:

Forty (40) years. Twenty (years) fixed rent, with rent reopeners at the 21st and 31st years.

COMMENCEMENT DATE:

On the first (1st) day of the month upon execution of the lease between the Director of Transportation and duly authorized SEI officer.

CURRENT USE STATUS:

Pier 27 and Pier 27 End were condemned over twenty (20) years ago by DOT Harbors. Two (2) sides of Lot 25 are bordered by Pier 27 and Pier 27 End. The third (3rd) side of the lot is bordered by a revetment at the end of Pier 28. With the subsidence being a detriment to the lot and a Ficus tree growing through the pier, the land has been used for storage of maritime supplies and equipment (see attached Exhibit B). Lot 25 has been setback approximately fifteen (15) feet away from the edge of revetment.

There are no existing water or sewer lines connecting to Lot 25. DOT Harbors has awarded a contract to install the utility lines to the area with an engineering project estimate of \$14 million dollars. Notice to Proceed is expected during July 1, 2020 with 365 calendar days to complete the project.

LAND TITLE STATUS:

Owned by State of Hawaii; management and control of the property was transferred to the Department of Transportation by Executive Order No. 2903.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

DOT Harbors included the utility infrastructure development project of Piers 24-28 in its Final Environmental Impact Statement (August 2014).

Regarding the subsidence repair: is exempt under Exemption Class 2 for the:

“5. Replacement or repair of existing deteriorated and/or damaged structures to their original or better conditions within the jurisdiction of the Department of

Transportation such as piers mooring buoys, single story office buildings, warehouses, sheds, comfort stations, and shelters.”

While the work to repair Pier 27 and Pier 27 End is covered under DOT Harbors’ exemption, DOT Harbors is requiring the Applicant to comply with Chapter 343, HRS, as part of its in-water work permit from the United States Army Corps of Engineers, as necessary.

APPLICANT REQUIREMENTS:

Applicant shall:

- a. Proceed with any and all requirements attendant to the completion of the lease terms and provisions, including but not limited to, providing DOT Harbors with its development plans for the subject property as soon as practicable;
- b. Invest a minimum of \$4 million dollars in to the premises to, address the subsidence, and repair to Pier 27 and Pier 27 End within two (2) years from the effective date of the CROE, with extensions as approved by DOT Harbors and the Board of Land and Natural Resources (BLNR) , as appropriate, and for additional improvements to the premises, including a new building within one (1) year from the commencement date of the lease;
- c. Comply with any other restrictions and/or conditions that may be imposed by DOT Harbors and the BLNR, as necessary.

REMARKS:

Background

SEI was founded in 1973 by University of Hawaii graduate students to provide marine-related engineering, construction and diving services. SEI has three (3) office locations in Hawaii and California and over ninety (90) employees. Their core services include coastal engineering, geophysical surveys, oceanographic and environmental studies, as well as marine waterfront construction and industrial diving.

SEI contracts range in size, scope and complexity, and serves as both general contractor and sub-contractor. SEI’s commitment to excellence has extended to projects worldwide, from the Pribiloff Islands to Antarctica, from the Antilles to the Indian Ocean, and throughout the Pacific Basin.

Direct Negotiation

DOT Harbors did not consider public auction for the subject lands. The renovation of the leased area, which includes the renovating the condemned pier, address as the subsidence to the lot which was daunting to anyone without marine engineering experience. The DOT Harbors entered into lease negotiations with SEI under the direct negotiation provisions of Section 171-59(b), HRS, as SEI provides engineering services for the repair of pier structures. In doing so, DOT Harbors intended to promote competition among construction firms (Hawaiian Dredging, etc.), through bidding pursuant to State procurement law to repair State and Federal pier structures in and around harbors under the jurisdiction of the DOT Harbors.

Maritime Operations

DOT Harbors seeks approval to grant SEI a month-to-month CROE, month-to-month Revocable Permit, and lease by direct negotiation. DOT Harbors has determined that SEI has vessel assets used to provide maritime-related services to design and repair piers and wharves directly related to loading, unloading, and storage of goods of the maritime industry. SEI also provides engineering and construction services for the commercial harbor such as repairing the fendering systems, piles, and other services that directly support the loading and unloading of cargo.

Encourages Competition

DOT Harbors has increased its special maintenance projects budget from \$15 million dollars per year to \$20 million dollars per year. DOT Harbors has planned forty-eight percent (48%) of the budget or \$9.5 million dollars for repairs to fenders, substructure repairs, and revetment/erosion repairs. SEI competes with Hawaiian Dredging, as well as other companies through the State's competitive sealed bidding process (Section 103D-301, HRS, also referred to as low-bid) for DOT Harbors construction contracts. The term "encourages competition" is not defined by statute; however, the Senate Journal, Standing Committee Reports, for the proposed amendment to Section 171-59(b), HRS, expresses the legislative intent of the words as follows:

A New Section 2 has been added to the bill which would amend Section 171-59(b) of the Statutes. This amendment would permit the board to dispose of public lands for marine and maritime operations by negotiations without the necessity of going through a public auction, thereby allowing for maritime and maritime operations the same procedure as allows for its counterparts in transportation –airline and aircraft operations. The reason for exempting these operations from public bidding is to prevent larger operations from squeezing the smaller ones out although the larger company may not need the leased facility. The amendment would enable the State to get the maximum use from its harbors as well as its

airports. Your Committee recognizes that the best interest of the State are usually better protected by disposing of land by public auction because it is more democratic and in the long run results in more income to the State. However, where the lease is to airports and maritime operations which are public utilities by nature the prime interest is service to the public and the preservation of competition in addition to income. (1973 Senate Journal, pages 1295-1396).

Appraisal and Reductions

The DOT Harbors conducted its appraisal to establish the lease rent in accordance with the provision of Section 171-17(b), HRS. SEI reviewed the appraisal and agreed to the rental rates. At DOT Harbors' request, its appraiser provided the highest and best use market rent valuation for the property and acknowledge that a reduction is applicable to address subsidence. The condemned pier has no value.

The appraisal valued Lot 11 (Lot 25) as 14,084 square feet of fast lands; a ten percent (10%) downward adjustment of the appraised rent was applied to 3,268 square feet of fast lands due to subsidence which resulted in a detriment in value for such portion. Pier 27 and Pier 27 End has been condemned by the DOT Harbors with no appraised value¹. The subsidence can generally be described as the gradual sinking or caving in of an area of land; see also Exhibit B showing the subsidence area. SEI agreed to DOT Harbors' appraised values.

The appraisal value Lot 11 (Lot 25) as 14,084 square feet of fast lands' a ten percent (10%) downward adjustment to the appraised rent was applied to 3,268 square feet of the fast lands due to subsidence which resulted in a detriment in value for such portion. Pier 27 and Pier 27 End has been condemned by DOT Harbors with no appraised value.

Lease Terms

The specific terms and conditions of the Lease are under ongoing negotiation in accordance with the direct negotiation provisions of Section 171-59(b). DOT Harbors and SEI requests the BLNR to approve a CROE, a month-to-month Revocable Permit and Lease for submerged lands when repairs to the condemn pier allows SEI to berth its vessels for start of construction before December 31, 2020.

¹ Note: the increased rental value which could be attributed to the: (1) post-repair status of the subsidence area, and (2) Pier 27 and Pier 27 End is approximately \$278,685 and \$1,590,932, respectively, as of year 25 of the lease term (with a combined figure of \$1,869,617); after such time figures are approximated for the term of the lease (because the rent will be subject to re-opening). The total is expected to be less than the cost of repairs to be expended by SEI for the repairs to those areas.

DOT Harbors, with the approval of the BLNR, plans to issue SEI a CROE to: (a) repair the subsidence (Phase 1), and (b) remove safety hazards and increase the working/staging area to conduct repairs to Pier 27 and Pier 27 End (Phase 2). DOT Harbors projects the CROE will be needed for a total of about two (2) years before SEI enters into a lease and builds its facilities on improved fast lands (Phase 3).

Consideration for submerged lands will be fifty percent (50%) of the fast lands pursuant to a month-to-month permit. The effective date of the Revocable Permit will be the date the repaired pier enters service. The submerged lands will be included under the lease when SEI obtains required approval(s) from the Government of Hawaii and the Hawaii State Legislature authorizing a lease of submerged lands. This is anticipated to occur during the 2022 legislative session.

DOT Harbors recommends a rent waiver of one (1) year under the lease pursuant to Section 171-6(7), HRS, for SEI's significant minimum investment of \$4 million dollars to repair the subsidence, the condemned pier, and facilities for their marine service operations. DOT Harbors estimates that its cost to design and repair Pier 27 and Pier 27 End alone would be \$6 to \$7 million dollars if it were to undertake such pier repairs.

RECOMMENDATION:

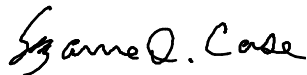
That the BLNR authorizes the issuance of (1) a CROE for planning, permitting, and construction and repair for the fast lands and Pier 27 and Pier 27 End as gratis; (2) the lease for a term of fifty (50) years for the fast lands and Pier 27 and Pier 27 End, as well as for the submerged lands, once necessary approvals are obtained as to such submerged lands; and (3) a month-to-month Revocable Permit for the submerged lands pending inclusion under the lease, as prescribed above.

Respectfully submitted,



JADE T. BUTAY
Director of Transportation

APPROVED FOR SUBMITTAL:



SUZANNE D. CASE
Chairperson and Member
Board of Land and Natural Resources

Attachments: Exhibits A to D

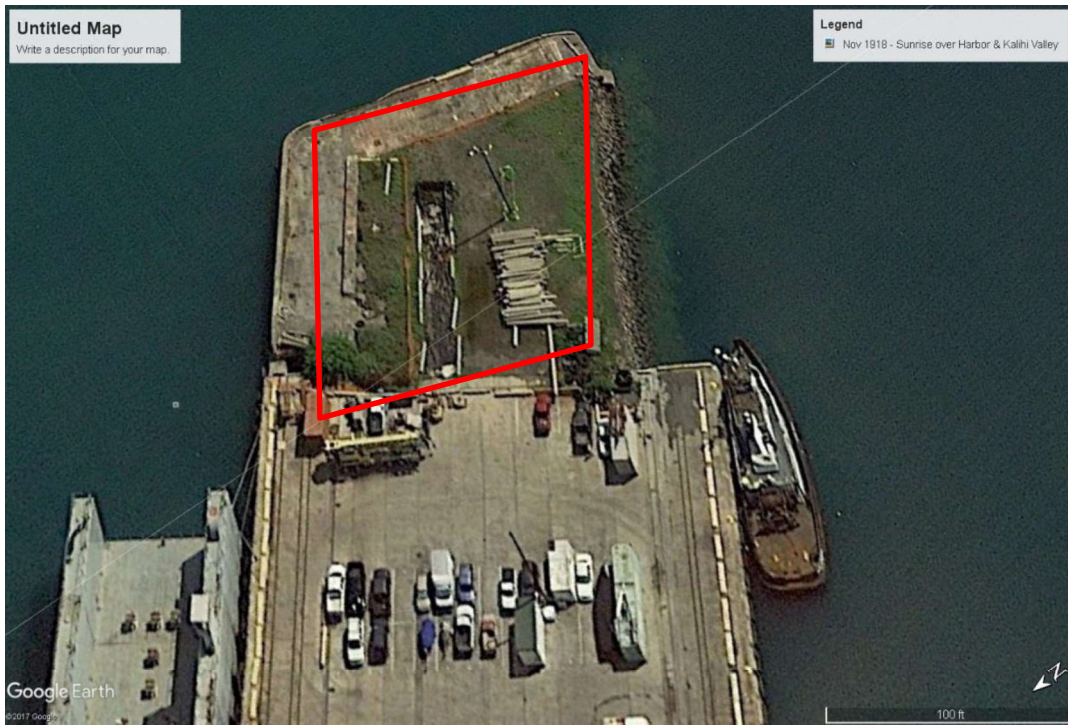


EXHIBIT B



EXHIBIT D