

STATE OF HAWAII  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY  
Kakaako Community Development District  
Honolulu, HI 96813

November 1, 2017

Chairperson and Members  
Hawaii Community Development Authority  
State of Hawaii  
Honolulu, Hawaii

HCDA Board Members:

**SUBJECT:**

Shall the Authority Authorize the Executive Director to Expend an Amount in Excess of \$25,000.00 to Procure the Services of a Hearings Officer for the Appeal and Contested Case Hearings for Docket Nos. ACC-2017-01 and DR-PET-2017-01 in Re the Petition of Golden Eagle Marine Charter Services Corp., and Docket Nos. ACC-2017-02 and DR-PET-2017-02 in Re the Petition of S.O.M. LLC from the Hawaii Community Development Revolving Fund, Leasing and Management Subaccount?

**SUMMARY:**

With regard to Docket Nos. ACC-2017-01 and DR-PET-2017-01 in Re the Petition of Golden Eagle Marine Charter Services Corp., and Docket Nos. ACC-2017-02 and DR-PET-2017-02 in Re the Petition of S.O.M. LLC, at its August 2, 2017 meeting, the Authority voted:

1. To assign the petitions requesting an appeal and contested case hearing for further proceedings before a hearings officer;
2. Petitions for declaratory relief be set for a hearing;
3. That the petitions for declaratory rulings be set before a hearings officer; and
4. Encourage parties of the contested cases to participate in mediation prior to any hearing.

The purpose of this action item is to authorize the Executive Director to procure the necessary services to carry out these board actions.

**AUTHORITIES:**

- Hawaii Administrative Rules (HAR) § 15-219-48 allows the Authority to appoint a hearings officer upon commencement of a contested case proceeding.
- HAR § 15-219-84 requires that the Authority take action within ninety (90) days after the receipt of a petition for declaratory order. At its August 2, 2017 meeting the Authority voted to set the matter for hearing.
- Hawaii Revised Statutes (HRS) § 91-8.5 indicates that an agency may encourage parties to a contested case hearing to participate in mediation prior the hearing.
- At the August 3, 2016 General Meeting, the Board set a policy to review and approve all procurement requests over \$25,000.

**BACKGROUND:**

The HCDA has sought the assistance of the Office of the Attorney General (AG) in the procurement of a hearings officer. On its annual professional services listing prepared in compliance with the State Procurement Code, the AG includes the category, hearings officer under legal services. Finalizing the list requires the AG to review the statement of qualifications provided by each respondent so only qualified parties are included.

Relative to cost, the statement of qualifications for the hearings officers included on the AG's final list include hourly rates for each respondent. With the final cost unknown, the AG has requested that the HCDA receive authorization from its Authority beyond \$25,000 in the event costs exceed the threshold.

**ANALYSIS:**

There are several factors that may affect the final cost of the proceedings that are unknown, like the number and length of exhibits, number of witnesses, intervenors, etc. The board also voted at its August 2, 2017 board meeting to encourage the parties to participate in mediation which could potential solve the issue. Otherwise, once the appeal and contested case hearing starts under the hearings officer, the proceedings should remain under the hearings officer.

This action would allow the Executive Director to expend in excess of \$25,000 if necessary and does not necessarily mean that fees will be in excess of \$25,000.

**RECOMMENDATION:**

Staff recommends approval to authorize the Executive Director to expend an amount in excess of \$25,000 from the Hawaii Community Development Revolving Fund (Leasing and Management Subaccount) to to procure the services of a hearings officer for the appeal and contested case hearings for Docket Nos. ACC-2017-01 and DR-PET-2017-01 in Re the Petition of Golden Eagle Marine Charter Services Corp., and Docket Nos. ACC-2017-02 and DR-PET-2017-02 in Re the Petition of S.O.M. LLC.

Respectfully submitted,

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Aedward Los Banos  
Administrative Services Officer

APPROVED FOR SUBMITTAL:

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Jesse K. Souki, Executive Director  
Hawaii Community Development Authority