



STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
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March 30, 2009

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION

HOUSE CONCURRENT RESOLUTION NO. 227  
HOUSE RESOLUTION NO. 196

COMMITTEE ON TRANSPORTATION

House Concurrent Resolution 227 and House Resolution 196 urge the Department of Transportation to reconsider its lease prices with rental car agencies at Molokai Airport.

**The Department of Transportation (DOT) opposes these resolutions.**

The DOT respectfully submits that the information contained in the “whereas” provisions are inaccurate and therefore give a false impression of the ability of the DOT to carry out these resolutions.

Section 102-1, of the Hawaii Revised Statutes provides the following definition: “The word ‘concession’ as used in this chapter means the grant to a person of the privilege to: (1) conduct operations involving the sale of goods, wares, merchandise and services to the general public including but not limited to food and beverage establishments, retail stores, motor vehicle rental operations under chapter 437D, advertising, and communications and telecommunications services, in or on buildings or land under the jurisdiction of any government agency;...”

Section 102-2 HRS, states in part:

“(a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of either by contract, lease, license, permit or any other arrangement, except under contract let after public notice for sealed bids in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed fifteen years; provided further that and subject to approval by county council resolution, the fifteen-year limit shall not apply to nonprofit corporations organized pursuant to chapter 414D.

(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

(1) For operation of ground transportation services and parking lot operations at airports, except for motor vehicle rental operations under chapter 437D;...”

Clearly the intent of statute is to have car rental concession contracts on state property issued through a public bidding process.

Section 102-4 HRS, entitled "Advertisement for bids" states, "Public notice of a call for bids shall be made not less than three different days statewide, with respect to any state agency, or county-wide within the particular county with respect to any county or county agency."

The DOT published a notice to bidders on August 26, 27 and 28, 2008, in the Honolulu Star-Bulletin, Hawaii Tribune Herald, West Hawaii Today, Maui News and Garden Island newspapers and on the same date placed the same notice on the concession notices page of the DOT Airports website.

The notice stated the DOT would be offering tenders by sealed bids for non-exclusive rent-a-car concessions at Hilo International Airport, Kona International Airport at Keahole, Kahului Airport, Molokai Airport, Lanai Airport and Lihue Airport. For Molokai Airport the number of concession offerings was listed as three.

On October 28, 2008, the DOT held a pre-bid meeting to go over the bid document, which includes the concession agreement and ground lease, and provide preliminary responses to questions. The pre-bid meeting was attended by representatives of all the major car rental companies including Advantage, Alamo, Avis, Budget, Dollar, Enterprise, Hertz, National, and Thrifty.

In the notice to bidders, the bid document and at the pre-bid meeting it was announced that the DOT would formally respond to any question submitted in writing by November 21, 2008. The DOT received 79 questions concerning various items in the bid documents. None of the questions dealt with the upset bid amount or improvement requirement for the concessions at Molokai Airport.

When DOT opened bids on February 24, 2009, the only bid submitted for the concession at Molokai Airport came from Alamo. That bid was for more than twice as much as the minimum upset bid of \$50,000 for the first year.

Section 102-9 HRS provides that concession contracts shall be in writing and "shall be made with the highest responsible bidder...". Since only one bid was received for the concession, the DOT is required to award the contract to that bidder.

It is clear from the entirety of Chapter 102, that the award of concession contracts be as transparent and open as possible, that all parties, incumbent and newcomer alike, be treated equally, and no special consideration given to any party either, before, during or after the bid and award process.

While the DOT has the authority under Chapter 102 to reject bids, it appears the only basis to reject the valid bid from Alamo would be to reduce the upset concession fee. To do so now, would open the DOT's bid process to challenge since it appears the only reason to reject the bid and seek a new bid is to circumvent the procurement process to give the incumbents a chance to get a concession at a price lower than someone else has already stated they are willing to bid.

There is also factual error in the resolutions. The resolutions state the rent will be \$50,000 for five years. The concession agreement stipulates the concession fee for the first year of the agreement is the greater of the Minimum Annual Guaranteed Fee bid by the rent-a-car operator or 10 percent of the concession's gross receipts. For each additional year of the concession agreement, the concession fee adjusts to 85% of what was paid and payable to the DOT in the prior year of the contract.

If a successful bidder had submitted a minimum bid of \$50,000, and that was the full concession fee due after the first year, the Minimum Annual Guaranteed Fee would drop to \$42,500 for the second year. If the Minimum Annual Guaranteed Fee was the amount required for each year of the agreement, in year three it would be \$36,125, in year four, \$30,706 and in the fifth year, \$26,100.

Since 2000, the lowest and highest concession fees paid by Budget at Molokai were \$72,996 in 2002 and \$110,702 in 2007. The lowest and highest concession fees paid by Dollar at Molokai since 2000 were \$58,138 in 2002 and \$107,913 in 2007.

Further, Dollar and Budget are not the only car rental companies active on Molokai. Island Kine Auto Rental is an off-airport operator with facilities in Kaunakakai.