

CITY ADMINISTRATIVE RULES

TITLE 03

DEPARTMENT OF BUDGET AND FISCAL SERVICES

SUBTITLE 4 PURCHASING

CHAPTER 60

AWARD OF A BEACH SERVICES CONCESSION TO A REGISTERED  
NON-PROFIT BEACHBOY ASSOCIATION

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Historical note: This chapter is based substantially upon Award of a Beach Services Concession to a Registered Non-Profit Beachboy Association, Department of Finance, Administrative Rules, Subtitle 13, Chapter 106. [Eff 7/27/03; R **OCT 31 2004** ]

§03-60-1 Purpose. Pursuant to and by the virtue of the authority set forth in article 3, section 28-3.3 of the Revised Ordinances of Honolulu, 1990, the Director of Budget and Fiscal Services, subject to the approval of the Mayor of the City and County of Honolulu, hereby establishes rules and regulations relating to the fair and equitable award of any non-profit beachboy concession. [Eff **OCT 31 2004** ] (Auth: HRS §§91-2, 102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-2 Definitions. (a) "Beachboy" means a person currently licensed with the Department of Land and Natural Resources pursuant to chapter 250, title 13, Hawaii Administrative Rules.

(b) "Non-Profit Beachboy Association" means a beach service association dedicated to the preservation of the Hawaii beachboy tradition and incorporated as a non-profit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law.

(c) "Director" means the Director of Budget and Fiscal Services. [Eff **OCT 31 2004** ] (Auth: HRS §102-2; ROH §28-1.3, 28-3.3) (Imp: ROH §28-3.3)

§03-60-3 Qualification of Applicants. Before any prospective applicant shall be considered for award under this set of rules, the applicant shall, not less than six calendar days prior to the day designated for selection of the award of a beach services concession contract, give written notice to the Director of the applicant's intention to apply for the award. The Director shall satisfy himself or herself of the prospective applicant's qualification as a Non-Profit Beachboy Association and financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the Director may require prospective applicants to submit answers, under oath, to written questions of the qualifications, experience, competence and financial standing of such prospective applicants. Whenever it appears to the Director that any prospective applicant is not fully qualified to carry out the terms and conditions of the contract that may be awarded, the Director may, after affording such prospective applicant an opportunity to be heard by the Director or his or her designee, refuse to receive or consider any application offered by such applicant. All information contained in the answers to questionnaires shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be subject to penalties as provided by law. Questionnaires so submitted shall be returned to the applicants after having served their purpose. [Eff **OCT 31 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-4 Award Procedures. As a matter of fairness and to afford all qualified non-profit beachboy associations an equal opportunity, the award of the contract shall be based on the drawing of lots. The procedures for the drawing of lots, and other applicable requirements, including the applicant qualification requirements and the monthly concession fee requirement, shall be stated in the specifications of the application document for the award of the concession

contract. [Eff **OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3)  
(Imp: ROH §28-3.3)

§03-60-5 Advertisement for Applications. Publication of a call for applications for the awarding of a concession or concession space shall be made at least on three separate days in a daily newspaper of general circulation in the City and County of Honolulu. Such public announcement shall include, but not be limited to the following information:

- (1) Description of the concession, and the objectives for it;
- (2) Location;
- (3) Scope of the award;
- (4) Length of the award;
- (5) Description of any special requirements of unique features. [Eff

**OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-6 Drawing of Lots--Rejection. The drawing of lots for the award of a beach services concession contract shall take place at the hour and place to be stated in the notice to applicants, in the presence of all applicants who attend. The Director may reject any or all applications and waive any defects, when in the Director's opinion such rejection or waiver will be in the best interest of the City and County. Upon completion of the evaluation and selection process, the Director shall file with the City Clerk a written report, including the identity of the successful applicant. The City Clerk, upon receipt of the written report, shall post same for public inspection under an appropriate title on the bulletin board on which meeting notices of the council, including its agenda, are posted and such report shall be a public record. [Eff **OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-7 Deposits to Accompany Application. All applications shall be accompanied by a deposit of legal tender or by a certified check payable to the Director drawn on a bank doing business within the State of Hawaii, for or in a sum of not less than \$100.00. [Eff **OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-8 Forfeiture of Deposits--Return. If the applicant to whom the contract is awarded fails or neglects to enter into the contract and furnish satisfactory security as required by this article, within ten (10) days after the

award or within such further time as the Director may allow, the Director shall pay the deposit into the treasury of the City and County of Honolulu. If the contract is entered into and the security furnished within the required time, the deposit shall be returned to the successful applicant. Deposits by the unsuccessful applicants shall be returned after the contract is entered into or, if the contract is not entered into, after the expiration of sixty (60) days from the opening of the applications or after the Director publishes another call for tenders, whichever is sooner. [Eff **OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-9 Bond in Lieu of Deposit. In lieu of the deposit of legal tender or a certified check, an application may be accompanied by a surety bond naming the City and County as obligee, with the applicant as principal, by a surety company, authorized to do business as such in this state or as provided herein, in a penal sum equal to the deposit required under section 03-60-7, conditioned upon the applicant entering into the contract and furnishing the required security within ten (10) days after the award or within such further time as the Director may allow. [Eff **OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-10 Contract Execution--Award to Qualified Applicant Successful in the Drawing of Lots. All such contracts shall be in writing, shall be executed by the Director in the name of the City and County of Honolulu, and shall be made with the qualified and successful applicant determined by the drawing of lots for the award of the beach services concession contract, provided that such applicant shall submit to the City, the security required herein below. However, if the qualified applicant determined in the drawing of lots has been rejected, or has failed to enter into the contract or furnish satisfactory security, the Director may award the contract to the next successive qualified applicant based on the drawing of lots. [Eff **OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-11 Security Deposit. Before any contract is entered into, the applicant shall give security for the compliance therewith by deposit of an amount equal to two months' rental or other charge required under the contract. In lieu thereof the Director may accept good and sufficient bond for the said amount, naming the City and County as obligee, with the applicant as principal, and a surety company authorized to do business as such in this state, as surety. [ Eff **OCT 3 1 2004** ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

§03-60-12 Surety on Bond--Justification. If the surety or sureties on such bond shall be other than a surety company authorized to do business under the laws of this state, there shall be not more than four such sureties who shall severally justify such amounts as, taken together, will aggregate the full amount of the bond; provided, that in the case of such sureties they shall deposit with the Director certified checks or certificates of deposit (payable on demand on or after such period as the Director may stipulate) or bonds, stocks or other negotiable securities, or execute and deliver to such officer a deed or deeds of trust of real property, all of such character as shall be satisfactory to the Director, in security equal to the full cash value of 100 percent of the amount for which each surety shall have assumed. The Director may waive the necessity of furnishing such security, in cases where the Director is satisfied as to the financial responsibility of the proposed surety or sureties; provided, that if there be but one personal surety, said surety shall justify the full amount of the bond. [ Eff  
OCT 31 2004 ] (Auth: HRS §102-2; ROH §28-3.3) (Imp: ROH §28-3.3)

DEPARTMENT OF BUDGET AND FISCAL SERVICES  
CITY AND COUNTY OF HONOLULU

Title 3, Chapter 60, Award of a Beach Services Concession to a Registered Non-Profit Beachboy Association, on the summary page dated [ **OCT 12 2004** ] following public hearing held on July 29, 2004 after public notice was given in the Honolulu Advertiser on June 14, 2004.

These rules shall take effect ten days after filing with the Office of the City Clerk.

  
for IVAN M. LUI-KWAN, Director  
Department of Budget and Fiscal Services

APPROVED AS TO FORM AND LEGALITY:

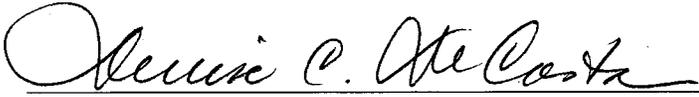
  
Deputy Corporation Counsel

APPROVED:

  
JEREMY HARRIS, Mayor  
City and County of Honolulu

Dated: October 12, 2004

Received this 21st day of October, 2004.

  
DENISE COSTA, City Clerk

CERTIFICATE

I, Ivan M. Lui-Kwan, Director of Budget and Fiscal Services, City and County of Honolulu, hereby certify:

1. That the foregoing is a full, true and correct copy of Title 03, Chapter 60 of the Rules and Regulations of the Director of Budget and Fiscal Services, relating to award of a beach services concession to a registered non-profit beachboy association, having been adopted by the Director of Budget and Fiscal Services after a public hearing held on July 29, 2004.
2. That notice of public hearing on the foregoing Rules and Regulations, which notice included a statement of the substances of the proposed Rules and Regulations, was published in the Honolulu Advertiser on June 14, 2004.

  
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For: IVAN M. LUI-KWAN  
Director of Budget and Fiscal Services  
City and County of Honolulu