



DEPARTMENT OF COMMERCE  
AND CONSUMER AFFAIRS  
SEP 23 2 10 PM '02  
HEARINGS OFFICE

OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

|                             |   |                         |
|-----------------------------|---|-------------------------|
| In the Matter of            | ) | PCH-2002-11             |
|                             | ) |                         |
| STONERIDGE RECOVERIES, LLC, | ) | HEARINGS OFFICER'S      |
|                             | ) | FINDINGS OF FACT,       |
| Petitioner,                 | ) | CONCLUSIONS OF LAW,     |
|                             | ) | AND DECISION GRANTING   |
| vs.                         | ) | RESPONDENT'S MOTION     |
|                             | ) | TO DISMISS PETITIONER'S |
| DEPARTMENT OF BUDGET AND    | ) | REQUEST FOR ADMINIS-    |
| FISCAL SERVICES, CITY AND   | ) | TRATIVE HEARING FOR     |
| COUNTY OF HONOLULU,         | ) | FAILURE TO COMPLY       |
|                             | ) | WITH SECTION 103D-712,  |
| Respondent.                 | ) | HAWAII REVISED STATUTES |
|                             | ) |                         |
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HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION GRANTING RESPONDENT'S MOTION TO DISMISS PETITIONER'S REQUEST FOR ADMINISTRATIVE HEARING FOR FAILURE TO COMPLY WITH SECTION 103D-712, HAWAII REVISED STATUTES

This matter having come on for hearing before the undersigned Hearings Officer on September 12, 2002; Amy R. Kondo, Esq. appearing for Respondent Department of Budget and Fiscal Services, City and County of Honolulu ("Respondent"); and Mark S. Kawata, Esq. appearing for Petitioner Stoneridge Recoveries, LLC ("Petitioner"); and after due consideration of the motion and memoranda filed by the parties and their arguments in light of the entire record in this matter, the Hearings Officer hereby sets forth the following Findings of Fact, Conclusions of Law and Decision.

I. FINDINGS OF FACT

1. Respondent issued a Notice to Bidders and Proposal Document No. 13878 to solicit bid proposals for the furnishing of motor vehicle towing services for various zones for a sixty-month period from August 1, 2002 to July 31, 2007.

2. The bids were scheduled to be opened on June 12, 2002.

3. By letter dated July 11, 2002, Respondent notified Petitioner of Respondent's rejection of Petitioner's bid.

4. By letter dated July 16, 2002, Petitioner protested the rejection of its bid.

5. By letter dated July 31, 2002, but mailed on August 2, 2002, Respondent notified Petitioner that Respondent was upholding its decision rejecting Petitioner's bid.

6. Respondent mailed the July 31, 2002 letter by depositing the envelope containing the letter in a United States Postal Service mailbox.<sup>1</sup>

7. Respondent's July 31, 2002 letter was posted on August 2, 2002 and received by Petitioner's counsel on August 5, 2002.

8. Petitioner filed the instant request for administrative review on August 12, 2002.

II. CONCLUSIONS OF LAW

In the instant motion, Respondent seeks the dismissal of Petitioner's request for administrative review, contending that Petitioner failed to file its request within the time allowed under Hawaii Revised Statutes ("HRS") §103D-712. HRS §103D-712 provides in relevant part:

(a) Requests for administrative review under section 103D-709 shall be made directly to the office of administrative hearings of the department of commerce and consumer affairs within seven calendar days of the *issuance* of a written determination under section 103D-310, 103D-701, or 103D-702.

(Emphasis added).

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<sup>1</sup> The Affidavit of Eric Uyehara that was attached to Respondent's motion stated in part: "5. Prior to his 4:00 pm departure from his employment [with the City & County of Honolulu] for the day, he deposited the envelope addressed to Mr. Kawata, in the United States Postal Service mailbox that showed a mail pickup time of 4:15 pm."

Respondent asserts that Petitioner's request for administrative review is untimely because it was filed more than seven calendar days following the issuance of its written determination denying Petitioner's protest. Consequently, Respondent argues that the Hearings Officer no longer has jurisdiction to hear this matter.

Petitioner does not dispute that Respondent's written decision denying the protest was mailed on August 2, 2002 and received by Petitioner's attorney on August 5, 2002. Petitioner also acknowledges that it did not file its request for administrative review until August 12, 2002. Instead, Petitioner argues that the "issuance" of Respondent's written determination of the protest occurred upon its *receipt* of the decision on August 5, 2002. Therefore, according to Petitioner, its August 12, 2002 request for administrative review was filed within the seven-day period allowed in HRS §103D-712(a).

The question here is one of statutory construction. When construing a statute, the foremost obligation is to ascertain and give effect to the intention of the legislature which is obtained primarily from the language contained in the statute itself. *Int'l Servs. Corp. v. Hurip*, 76 Hawaii 209 (1994). Where the language of a statute is plain and unambiguous, effect should be given to the statute's plain and obvious meaning. *Bumanglag v. Oahu Sugar Co., Ltd.*, 78 Hawaii 275 (1995). Further, in interpreting a statute, words should be given their common meaning, unless there is something in the statute requiring a different interpretation. *Ross v. Stouffer Hotel Co. (Hawaii) Ltd.*, 76 Hawaii 454 (1994).

"Issue" is defined as the act of sending out or putting forth." *The Random House Dictionary of the English Language* (1978).<sup>2</sup> Thus, under this definition, Respondent's denial of the protest was "issued" on August 2, 2002 when the letter was mailed out. Moreover, there is nothing in the statute that suggests a different interpretation. As a matter of fact, unlike HRS §103D-712(a), both Sections 9-402(1)(b)<sup>3</sup> and 9-506(2)(b)<sup>4</sup> of the *Recommended Regulations of*

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<sup>2</sup> "Issuance" is not defined in HRS Chapter 103D or its implementing rules.

<sup>3</sup> Section 9-402 states: "(1) *Protested Solicitations and Awards*. Any action under Section 9-401(1)(Waiver of Sovereign Immunity in Connection with Contracts, Solicitation and Award of Contracts) shall be initiated as follows . . . (b) within [14] days *after receipt of a final administrative decision* pursuant to either Section 9-101(3)(Authority to Resolve Protested Solicitations and Awards, Decision) . . ." (emphasis added).

<sup>4</sup> Section 9-506(2) states: "*Time Limitations on Filing a Protest or an Appeal*. . . (b) For an appeal under Subsection(1)(b) of this Section, the aggrieved person shall file an appeal within [seven] days *of receipt of a decision* under Section 9-101(3)(Authority to Resolve Protested Solicitations and Awards, Decision)." (emphasis added).

*the American Bar Association's Model Procurement Code for State and Local Governments (1997)* <sup>5</sup>, specify that the time to file an appeal of an administrative decision regarding a protest commences upon the *receipt of the decision* rather than upon its *issuance*. This buttresses the conclusion that the Legislature intended to commence the time for appeal upon the mailing of the decision rather than the receipt of that decision,<sup>6</sup> and is consistent with the express purpose of HRS Chapter 103D and its implementing rules “to promote economy, efficiency, and effectiveness in the procurement of goods and services.” See *Hawaii Administrative Rules (“HAR”) §3-120-17*. See also, *Standing Committee Report No.S8-93, 1993 Senate Journal, at 39*.<sup>8</sup>

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<sup>5</sup> In 1993, the Legislature enacted HRS Chapter 103D. To a large extent, HRS Chapter 103D was based upon the American Bar Association's Model Procurement Code for State and Local Governments. *Standing Committee Report No. S8-93, 1993 Senate Journal, at 39*.

<sup>6</sup> In reversing the Hearings Officer's decision in *Matt's Transmission Repair, Inc. v. City & County of Honolulu, PCH 2001-6*, the Circuit Court held, among other things, that “The Procurement Officer's decision [denying the protest] erroneously states that the time for appeal is seven (7) days from the date of receipt of the written decision, when the statute provides that the time to appeal is for seven days from the date of the issuance of the decision.” *Appeal of Matt's Transmission Repair, Inc. v. City & County of Honolulu; Civil No. 01-1-3242-11; 01-1-3309 (Consolidated Agency Appeal)(5/28/02)*. Thus, the Circuit Court's finding also supports the conclusion that the time to appeal under HRS §103D-712(a) commences upon the mailing of the decision rather than upon the receipt of the decision.

<sup>7</sup> HAR §3-120-1 states:

Purpose. The purpose of these rules is to promote economy, efficiency, and effectiveness in the procurement of goods and services, and the construction of public works for the State and counties, by:

- (1) Simplifying, clarifying, and modernizing the law governing procurement;
- (2) Requiring the continued development of procurement policies and practices;
- (3) Making the procurement laws of the State and counties as consistent as possible;
- (4) Ensuring the fair and equitable treatment of all persons who deal with the procurement system of the State and counties;
- (5) Providing increased economy in procurement activities and maximizing to the fullest extent practicable the purchasing value of public funds;
- (6) Fostering effective broad-based competition within the free enterprise system;
- (7) Providing safeguards for the maintenance of a procurement system of quality and integrity; and
- (8) Increasing public confidence in the procedures followed in public procurement.


<sup>8</sup> In *GTE Hawaiian Telephone Company, Inc. v. Dept. of Finance, County of Maui, PCH 98-6 (December 9, 1998)*, the Hearings Officer recognized the importance the Legislature placed on the “expeditious processing of protests through an efficient and effective procurement system so as to minimize the disruption to procurements and contract performance”. The Hearings Officer

Accordingly, the Hearings Officer concludes that HRS §103D-712(a) requires that a request for administrative review be made within seven calendar days after the decision is *mailed*. Here, there is no dispute that Respondent's written determination of the July 16, 2002 protest was mailed on August 2, 2002.<sup>9</sup> Accordingly, Petitioner had until August 9, 2002 within which to appeal. Because the appeal was not made until August 12, 2002, the Hearings Officer is divested of jurisdiction over this matter.

III. DECISION

Accordingly, based upon the above findings of fact and conclusions of law, Respondent's Motion to Dismiss Petitioner's Request for Administrative Hearing is granted and the above-entitled matter is hereby dismissed; each party to bear its own attorney's fees and costs.

DATED at Honolulu, Hawaii: SEP 23 2002

  
CRAIG H. UYEHARA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

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also recognized that "government is entitled to know, with some degree of certainty, when cases may be brought and when they may not" and that the "accomplishment of these objectives required strict adherence to time constraints for the initiation and prosecution of protests." Although *GTE Hawaiian Telephone Inc. v. County of Maui, PCH 98-6 (December 9, 1998)* involved the timeliness of a protest, the principles cited here are equally applicable to this case.

<sup>9</sup> In this case, because the decision was postmarked on August 2, 2002, there was little doubt that the letter was mailed by that date. However, a material factual issue may arise where the protestor can show that the decision was postmarked well after the alleged mailing date.

The better practice for governmental agencies would be to deliver the decision to the Post Office and obtain a Certified Mail Receipt evidencing the date of mailing.