

matter was thereafter set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On August 27, 2004, Respondents filed the instant motion to dismiss. On September 3, 2004, Petitioner submitted a memorandum in response to the motion.

The motion came before the undersigned Hearings Officer on September 7, 2004. Amy R. Kondo, Esq. appeared for Respondents; and David M.K. Lum, Esq. appeared on behalf of Petitioner.

Having reviewed and considered the motion, memoranda and exhibits attached thereto and the argument of counsel, the Hearings Officer hereby renders the following findings of fact, conclusions of law and final order.

II. FINDINGS OF FACT

1. In or about April 2004, Respondents issued Notice to Bidders, No. 14338, Proposal for the Sale of Recyclable Materials Collected in the Residential Curbside Collection Recycling Program of the Refuse Division, Department of Environmental Services, City and County of Honolulu ("IFB").

2. Bid opening in connection with the IFB was held on April 7, 2004.

3. Respondents received bids from Petitioner and Island Recycling, Inc. ("Island Recycling"). The apparent low bidder was determined to be Island Recycling.

4. By letter dated April 12, 2004, Petitioner submitted a protest in connection with the solicitation.

5. By letter dated July 15, 2004, Respondent denied Petitioner's protest. The denial was postmarked on July 16, 2004.

6. On July 27, 2004, Petitioner filed the instant request for administrative review with the Office of Administrative Hearings, Department of Commerce and Consumer Affairs ("OAH").

III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

Respondents' motion is based upon the timeliness requirement set forth in HRS §103D-712(a):

Time limitations on actions. (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).

Here, Respondents' denial of Petitioner's protest was issued on July 16, 2004, as evidenced by the postmark date. *See Nihi Lewa, Inc. v. Dept. of Budget and Fiscal Services, City & County of Honolulu, 103 Haw. 163 (Dec. 12, 2003)* ("issuance" means the date of mailing, as evidenced by the postmark date). Thus, any request for administrative review of that denial had to be filed with OAH by July 23, 2004. Nevertheless, Petitioner's request for administrative review was not filed until July 27, 2004. Under these circumstances, the Hearings Officer lacks jurisdiction over this matter.

IV. DECISION

Based on the foregoing considerations, Respondents' motion to dismiss is granted and this matter is hereby dismissed. Furthermore, in view of the Hearings Officer's decision, Respondents' motion to quash subpoena duces tecum and the Department of Planning and Permitting's motion to quash subpoena, filed on September 3, 2004, are rendered moot.

Dated at Honolulu, Hawaii: SEP 15 2004



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