

Dec 17 1 46 PM '99

HEARINGS OFFICE



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

|                           |   |                    |
|---------------------------|---|--------------------|
| In the Matter of          | ) |                    |
|                           | ) |                    |
| NEHI LEWA INC.,           | ) |                    |
|                           | ) | PCH 99-13          |
| Petitioner,               | ) |                    |
| vs.                       | ) |                    |
|                           | ) | ORDER OF DISMISSAL |
| DEPARTMENT OF BUDGET AND  | ) |                    |
| FISCAL SERVICES, CITY AND | ) |                    |
| COUNTY OF HONOLULU,       | ) |                    |
|                           | ) |                    |
| Respondent.               | ) |                    |
| _____                     | ) |                    |

ORDER OF DISMISSAL

On December 8, 1999 this office received a letter dated December 6, 1999 from the Director of the Department of Budget and Fiscal Services for the City and County of Honolulu ("Respondent") which transmitted as an attachment a letter (with its enclosures) dated December 3, 1999 from the law firm representing Nehi Lewa Inc. ("Petitioner"). The Petitioner's letter had, *inter alia*, requested an administrative review of the Respondent's November 23, 1999 decision that denied the Petitioner's bid protest of Job No. 11-99, Contract No. F-96730 (Waipahu Wastewater Pump Station Modifications).

Upon receipt of the Director's December 8, 1999 letter a folder was opened in this matter, and on December 10, 1999 a Notice of Hearing and Prehearing Conference was filed and transmitted to the parties. The notice set a prehearing conference to be held on December 17, 1999 and a hearing to commence on December 21, 1999. Upon further *sua sponte* review of the record (the correspondence/documents referred to above), however, serious procedural concerns became evident – calling into question the jurisdiction of this office to conduct any further proceedings.

First, the provisions of Hawaii Revised Statutes ("HRS") § 103D-712(a) state that:


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.

This mandatory language in the statute is clear as to the time, place, and manner of filing requests for administrative review – such as that attempted by the Petitioner. The record, however, is equally clear that the Petitioner has not complied with the requirement that such requests “shall be made directly to the office of administrative hearings” (Emphasis added). The fact that the Petitioner filed its request with the Respondent does not meet the threshold requirements of HRS § 103D-712(a) and does not confer jurisdiction on the office of administrative hearings. The authority of this office is set by statute and can neither be enlarged nor diminished by the independent receipt, and transmittal, of such a request by another office of a county or state government.

Second, although the Petitioner’s failure to comply with the requirements of HRS § 103D-712(a) is sufficient to warrant a dismissal of its request, even if making a request on the Respondent was to be construed to be the same as making it on this office, the request was not made within the seven calendar days required by that statute. The record reflects that the Respondent issued its decision denying the Petitioner’s protest on November 23, 1999, and yet the Petitioner’s request was not made until 10 days later on December 3, 1999. Once again, the statute is clear in requiring that such requests be made “within seven calendar days of the issuance of a written determination” (Emphasis added) rather than specifying either the date of mailing or date of receipt to be the time from which the seven calendar days begins to run. See, *Soderholm Sales and Leasing, Inc. vs. County of Kauai*, PCH 99-4 (March 9, 1999); see also, *Brewer Environmental Industries, Inc. vs. County of Kauai*, PCH 96-9 (November 20, 1996), and *Environmental Recycling of Hawaii, Ltd. vs. County of Hawaii*, PCH 95-4 (March 20, 1996).

Accordingly, it is hereby ORDERED that the Petitioner’s request for an administrative hearing is dismissed, with each of the parties to bear their own attorney’s fees and costs.

DATED: Honolulu, Hawaii, DEC 17 1999

  
Richard A. Marshall  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs