



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2012 DEC 10 P 12:49

HEARINGS OFFICE

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

In the Matter of)	PDH-2012-006
)	
AIR RESCUE SYSTEMS CORP.,)	HEARING OFFICER'S FINDINGS OF FACT,
)	CONCLUSIONS OF LAW, AND DECISION;
Petitioner,)	EXHIBIT "A"
)	
vs.)	Senior Hearings Officer:
)	David H. Karlen
FINANCE DEPARTMENT, COUNTY OF)	
HAWAII,)	
)	
Respondent.)	
_____)	

**HEARING OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

I. INTRODUCTION

By petition submitted November 15, 2012, Petitioner Air Rescue Systems Corporation, Inc., (hereinafter "Petitioner" or "Air Rescue") filed its Request for Administrative Hearing ("RFAH") in this matter, which Request was assigned case number PDH-2012-006. Respondent was the Finance Department, County of Hawaii (hereinafter "Respondent" or "County").

Air Rescue did not file a cash or protest bond with its RFAH.

A Notice of Hearing and Pre-Hearing Conference was filed on November 16, 2012. A pre-hearing conference was set for November 29, 2012, and the hearing was set for December 6, 2012.

A Pre-Hearing Conference in this matter was held by telephone conference call on November 29, 2012. Air Rescue was represented by its agent, Ms. Lei Sullivan. Also present on behalf of Air Rescue was Mr. William Keahiolalo. The County was represented by Molly A. Stebbins, Esq.

On November 29, 2012, the County filed Nancy E. Crawford, Finance Director, County of Hawaii's Motion to Dismiss (hereinafter "County's Motion"). On November 30, 2012, the County filed its Response to the RFAH. Air Rescue filed its Petitioner's Motion for Summary Judgment to Award Air Rescue Systems Invitation for Bid ("IFB") No. 2854 as the Only Responsive Bid per Hawaii Revised Statute ("HRS") §103D-302 Competitive Sealed Bidding (hereinafter "Air Rescue's Motion") on November 29, 2012.

Air Rescue filed its Memorandum in Opposition to the County's Motion on December 5, 2012. The County filed its Memorandum in Opposition to Air Rescue's Motion on December 5, 2012.

The motions came on for hearing on December 6, 2012. Air Rescue was represented its agent, Ms. Lei Sullivan. Also present on behalf of Air Rescue was Mr. William Keahiolalo. The County was represented by Molly A. Stebbins, Esq.

The County's Motion was heard first. At the conclusion of argument on the Motions, the Hearings Officer orally granted the County's Motion. The Hearings Officer also expressed his opinion that if there were any need to reach the merits of Air Rescue's Motion, said motion would be denied. In view of the Hearings Officer's oral decision, there was no need for an evidentiary hearing, and the proceeding was adjourned.

This Decision, based on the record as of the conclusion of oral argument on December 6, 2012, more fully sets forth those rulings and stands as the formal order with respect to both of the aforesaid motions.

II. FINDINGS OF FACT

To the extent that any Findings of Fact are more properly construed as Conclusions of Law, they shall be so construed.

On or about September 28, 2012, the County issued Invitation for Bids (“IFB”) No. 2854, soliciting proposals for a price term agreement for managing, administering and furnishing flight operations, maintenance and support for a County helicopter. Exhibit 6 to the RFAH.¹

The helicopter is referred to as Chopper 2. The initial IFB referred to this helicopter as “Item 1.” An addendum to the IFB issued October 10, 2012, clarified that there was no “Item 2.”

The bid opening date was set by the IFB for October 31, 2012.

The contract period was one year beginning January 1, 2013, and ending December 31, 2013. In addition, the contract was to be renewable annually at the option of the County for five additional annual periods, until December 31, 2018, subject to availability of funds for each fiscal year.

The bid price for the first year of the contract for items 1, 1A, 2, and 2A were “firm”, while the prices for those items for the option years of the contract might be subject to negotiation based on economic factors.

Addendum No. 1 to the IFB changed these item designations to Items 1A, 1B, 1C, and 1D.

Item 1A on page 3 of the Proposal that is included in the IFB was titled “Personnel to Manage and Administer Contract; Pilots on Stand-By and On-Call duty to operate the

¹ Pursuant to an agreement reached at the prehearing conference, both parties could rely on the exhibits attached to Air Rescue’s RFAH without the need to re-introduce those documents as exhibits to their respective motions. Unless otherwise specifically noted, all further references to the IFB are to Exhibit 6 to the RFAH.

County Helicopter; All as Specified herein: (Bid price shall be a lump sum amount on a per month basis; see Specification 19.a for information). (Emphasis supplied)

Directly under Item 1A's description on page 3 of the Proposal, there were two line items to be filled in by the bidder with both monthly and annual prices. The first line item was for "1. Administration, Personnel and overhead." The second was for

2. Pilots:
 - A. Chopper 2: 24 hours stand-by

There was no line item 2B. for prices for on-call duty.

The Proposal form in the IFB was set up this way six times, once for the first year of the contract as well once for each individual option year (with a total of five possible option years).

The County intended for the contractor selected for the contract to maintain and operate Chopper 2 by, among other things, providing a pilot who would be on-duty and available to operate the aircraft around the clock. Paragraph 11 of the Specification in the IFB states as follows:

11. Availability

The Department provides emergency operations for search/rescue, firefighting, and medical services 365 days a year, 24 hours a day. It is the intent of this contract to maintain both aircraft and pilot in a state of readiness to respond to mission requests at any time. The following availability requirements apply to this contract:

- 1) A pilot will be on duty and available for call out at the South Kohala Fire Station 24 hours per day, 365 days per year, with a one hour lunch and dinner break permitted.

Paragraph 15 of the Specifications in the IFB, entitled Contract Price and Adjustments," provided that "contract prices shall be distributed as follows:"

- ...
2. Contract price for pilot personnel per aircraft (assuming the County operates more than one (1) helicopter). Separate contract prices shall be submitted dependent on duty time requirements:

24 hour stand-by; no on-call per duty day. (For Chopper 2).

During “stand-by” periods, pilots will be expected to fly all acceptable missions assigned without any additional charges. During “on-call” hours, the Contractor shall invoice the County at the hourly rate listed in the proposal, to the nearest one-tenth hour. (Emphasis supplied)

There were, however, no line items in the Proposal included in the IFB where an “on-call” hourly rate could be listed.

Paragraph 19 of the Specifications in the IFB, entitled “Invoicing” provides in Subparagraph A for an invoice that could include pilot hours required during “on-call” hours at the Waiakea (Hilo) station.

Special Provision 1 of the IFB required that all bids be submitted on the blank form of the Proposal included in the IFB.

Special Provision 9 of the IFB required that any exception to bid conditions and specifications be listed on a separate sheet of paper and warned that any exception to the specifications, special provisions, general conditions or the proposal would “in all likelihood” result in rejection of the bid.

Special Provision 18 of the IFB regarding evaluation of awards refers to a formula during the first year of the contract of “100% Admin, Chopper 2 annual rates, plus 25 hours of on-call labor.”

Neither Air Rescue nor any other potential bidder made any pre-bid inquiry regarding the terms of the IFB, including the lack of a line item on the Proposal for on-call labor.

The county received three bids in response to this IFB. Exhibit 2-A to the RFAH.

On “Page 4 of 9” of its Proposal submitted to the County (Exhibit D to the County’s Memorandum in Opposition to Air Rescue’s Motion), Air Rescue typed in 4 lines stating:

Per Award Section Outlined in Section SP 18a – On Call Rate= \$X/hr.

The “X” figure was \$85.00/hr. for the third year of the contract, \$90.00/hr. for the fourth year of the contract, \$95.00/hr. for the fifth year of the contract, and \$100.00/hr. for

the sixth year of the contract. Exhibit D to the County's Memorandum in Opposition to air rescue's Motion.

No such typed in lines for an on call rate were inserted on the Air Rescue Proposal for the first or second years of the contract. See "Page 3 of 9" of Exhibit D to the County's Memorandum in Opposition to Air Rescue's Motion.

The two other bidders did not type in any lines on the Proposals for on-call rates. Exhibit 2-A to the RFAH.

The County tabulated the bids but did not count consider the Air Rescue's on-call rates in evaluating the bids. The County stated:

Air Rescue Systems Corp. provided Chopper 2 "on call" hourly prices of \$100.00. No line item was provided on the bid for this cost, and since neither other bidder provided a price, it will not be considered in evaluation.

Exhibit 2-A to the RFAH.

While Air Rescue's proposal did not include any on-call rates for the first year of the contract, at oral argument on the motions Air Rescue asserted that it had included an on-call rate of \$100.00/hr in its Proposal for the contract's first year.

The parties and the Hearings Officer are in agreement that, for the purposes of this proceeding, the estimated value of the contract should be determined based on the price proposals for the first year of the contract since there was no guarantee the contract would be renewed after conclusion of the first year. In addition, the price for the second through sixth years could be re-negotiated.

The sum of the first two items on the bid tabulation is the estimated value of the contract for the first year. Compare Exhibit 2-A to the RFAH with "Page 3 of 9" in Exhibit D to the County's Memorandum in Opposition to Air Rescue's Motions. For the first bidder on the tabulation, the first year estimated value of the contract was \$488,068, for the second

bidder on the tabulation, it was \$460,448, and for Air Rescue it was \$787,461 (which figure does not include anything for pilots being on-call). Exhibit 2-A to the RFAH.

There was no evidence that the contract has been awarded to any bidder.

By letter dated November 2, 2012, Air Rescue submitted a procurement protest asserting that the other two bidders did not include any on-call hourly prices in their bids and were therefore nonresponsive. Exhibit 2 to the RFAH.

By letter dated November 8, 2012, the County rejected this protest. Exhibit 1 to the RFAH.

On November 15, 2012, Air Rescue submitted its RFAH to the Office of Administrative Hearings. Air Rescue did not submit a cash or protest bond to the Office of Administrative Hearings in connection with its RFAH.

Act 173 of the 2012 Hawaii Legislature was signed into law by Governor Neil Abercrombie on June 27, 2012, and became effective June 30, 2012.

In preparing its RFAH, Air Rescue apparently consulted the website of the State Procurement Office (“SPO”), but the SPO website had no reference or link to Act 173.

The Office of Administrative Hearings’ website contained an explanation of Act 173, a link to the text of the Act, and link to the bond forms to be used in filing a protest bond. See Exhibit “A” attached hereto. The Hearings Officer takes judicial notice of this publicly available website page.

The Notice of Hearing in this matter was sent to Air Rescue by fax on November 16, 2012. This Notice referred to the possibility of a motion for dismissal due to the failure to file a bond and specifically referred to Act 173 of the 2012 Legislature. Exhibit 8 to Air Rescue’s Memorandum in Opposition to the County’s Motion.

There is no evidence that Air Rescue ever looked up Act 173 on the Legislature’s website.

At the December 6, 2012 hearing on the motions, Air Rescue offered to post a cash or protest bond that day. This was the first time Air Rescue had offered to post a cash or protest bond. At the hearing, the Hearings Officer declined to accept this offer.

III. CONCLUSIONS OF LAW

A. General Considerations

If any of the following Conclusions of Law shall be deemed Findings of Fact, the Hearings Officer intends that every such Conclusion of Law shall be construed as a Finding of Fact.

Summary judgment is appropriate if the record herein shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties. The evidence, and all reasonable inferences from the evidence, must be viewed in the light most favorable to the non-moving party. Koga Engineering & Construction, Inc., v. State, 122 Haw. 60, 78, 222 P.3d 979, 997 (2010).

Bare allegations or factually unsupported conclusions are insufficient to raise a genuine issue of material fact. Reed v. City and County of Honolulu, 76 Haw. 219, 225, 873 P.2d 98, 104 (1994).

B. Jurisdiction

The question of lack of jurisdiction can be raised at any time in these proceedings. If not raised by the parties, it can be raised by the hearings officer *sua sponte*, as jurisdiction cannot be conferred by the stipulation, agreement, or waiver of the parties. Captain Andy's Sailing, Inc. v. Department of Natural Resources, 113 Haw. 184, 193-194, 150 P.3d 833, 842-843 (2006); Koga Engineering & Construction, Inc., v. State of Hawaii, *supra*, 122 Haw. at 84, 222 P.3d at 1003.

In its Motion, the County raised two jurisdictional arguments: (1) Air Rescue did not file a cash or protest bond with its RFAH as required by HRS §103D-709(e); and (2) the Air Rescue protest did not concern a matter that was greater than the minimum threshold amount required by HRS §103D-709(d).

1. **The Hearings Officer Lacks Jurisdiction Because Air Rescue Did Not File a Cash or Protest Bond with its RFAH**

The scope of the Department of Commerce and Consumer Affairs' ("DCCA") jurisdiction to hear and decide an administrative review of a procurement decision is set forth in HRS §103D-709(a), which provides that:

(a) The several hearings officers appointed by the director of the department of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review and determine de novo, any request from any bidder, offeror, contractor, person aggrieved under section 103D-106, or governmental body aggrieved by a determination of the chief procurement officer, head of a purchasing agency, or a designee of either officer under section 103D-310, 103D-701, or 103D-702.
(Emphasis supplied)

On June 27, 2012, Governor Neil Abercrombie signed into law HB2265 HD2 SD2 CD1, now known as Act 173 of the 2012 Legislature. Pursuant to Section 7 of Act 173, the effective date of Act 173 was June 30, 2012.

Act 173 modified subsections (d) and (e) of HRS §103D-709 to read as follows:

(d) Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under section 103D-302 or 103D-303 that is decided pursuant to section 103D-701 may initiate a proceeding under this section; provided that:

(1) For contracts with an estimated value of less than \$1,000,000, the protest concerns a matter that is greater than \$10,000; or

(2) For contracts with an estimated value of \$1,000,000 or more, the protest concerns a matter that is equal to no less than ten per cent of the estimated value of the contract.

(e) The party initiating a proceeding falling within subsection (d) shall pay to the department of commerce and consumer affairs a cash or protest bond in the amount of:

(1) \$1,000 for a contract with an estimated value of less than \$500,000;

(2) \$2,000 for a contract with an estimated value of \$500,000 or more, but less than \$1,000,000; or

(3) One-half per cent of the estimated value of the contract if the estimated value of the contract is \$1,000,000 or more; provided that in no event shall the required amount of the cash or protest bond be more than \$10,000.

If the initiating party prevails in the administrative proceeding, the cash or protest bond shall be returned to that party. If the initiating party does not prevail in the administrative proceeding, the cash or protest bond shall be deposited into the general fund.

As relevant here, pursuant to Act 173, HRS §103D-709(j) defines “estimated value of the contract” or “estimated value,” with respect to a contract, to mean “the lowest responsible and responsive bid” under section 103D-302.

The cash or protest bond required by HRS §103D-709(e) must be filed within the seven day period for filing a request for administrative review with the Office of Administrative Hearings that is set forth in HRS §103D-712(a). A cash or protest bond filed after that seven day period has expired is untimely. The lack of a timely filed cash or protest bond means that there is no jurisdiction to consider Air Rescue’s RFAH. Derrick’s Well Drilling and Pump Services, LLC v. County of Maui, Department of Finance, PDH-2012-001 (July 26, 2012).

In its opposition to the County’s Motion, filed December 5, 2012, Air Rescue argued that the cash or protest bond requirement of HRS §103D-709(e) should be somehow waived or modified in this case.

Air Rescue argued that it relied upon the website of the State Procurement Office (“SPO”) when filing its protest but that website did not mention a bond requirement. On November 16, 2012, Air Rescue received by fax a copy of the Notice of Hearing in this matter which referred to the possibility of a motion for dismissal due to the failure to file a bond. At that point, Air Rescue looked at the SPO website and was still unable to find any reference to a protest bond.

As stated in Air Rescue's Memorandum in Opposition to the County's Motion, the Notice of Hearing received November 16, 2012 specifically referred to Act 173 of the 2012 Legislature, but Air Rescue never looked up Act 173 on the Legislature's website.

While Air Rescue did not retain an attorney to file its RFAH, that does not excuse it from being responsible for knowing the law. Act 173 was not a secret even if the SPO website had not been updated to include new laws passed by the 2012 Legislature. Further, the Office of Administrative Hearings' website had an explanation of Act 173, a link to the text of the Act, and a link to the bond forms to be used in filing a protest bond. See Exhibit "A" attached hereto.²

The Hearings Officer concludes that an attorney licensed in Hawaii with some familiarity with procurement protests would have (1) checked the laws passed by the 2012 Legislature to see if any amendments had been made to the procurement protest statutes; and (2) checked the Office of Administrative Hearings website to be sure the RFAH was being correctly filed with the Office of Administrative Hearings.

There was an indication at the hearing on the motions of some kind of estoppel argument based upon what some unnamed SPO employee supposedly said about the SPO website. However, this assertion at oral argument was not sufficiently substantiated by any written Declaration submitted in opposition to the County's Motion. Even assuming for argument purposes that some kind of estoppel argument could theoretically be made, there was insufficient evidence to establish what was said, whether a responsible employee in a position of sufficient authority made the statements, and whether Air Rescue reasonably relied upon those statements.

² During the course of the hearing on the motions, the Hearings Officer took judicial notice of this publicly available website page.

Further, assuming that Air Rescue might have the possibility of making some equitable argument here, it has failed to establish that the equities are in its favor. It did not look up Act 173 when informed of it on November 16, 2012. It did not offer to post a bond when it received the County's motion on November 29, 2012, and provided no excuse for waiting until the hearing on December 6, 2012, before offering to post the bond.

Finally, Air Rescue complains that it was not told about the lack of a bond when it filed its RFAH with the Office of Administrative. However, it points to no legal authority requiring the Office of Administrative Hearings to provide legal advice to persons or companies filing an RFAH. The clerical personnel who accept filings are not attorneys and cannot make decisions about whether a legal document is complete or not.

There are some procurement protests where a protest bond is not required, namely protests over the terms of a solicitation that are filed before bids are opened. See Soderholm Sales and Leasing, Inc. v. Department of Budget and Fiscal Services, City and County of Honolulu, PDH-2012-005 (November 30, 2012) at pages 8-9. See also Maui County Community Television v. Department of Accounting and General Services, State of Hawaii, PCX-2010-003 (July 9, 2010), at pages 11-13, interpreting a statute with provisions similar to Act 173 and in effect from July 1, 2009 through June 30, 2011.

Because bonds are not always required, the clerical personnel accept all procurement protests even if a bond is not provided. The Office of Administrative Hearings' website specifically notifies potential protestors of this practice:

Requests for administrative hearings that are initially accepted for filing by the Office of Administrative Hearings, but are subsequently determined not to meet the jurisdictional amounts or have inadequate cash or protest bonds, may be subject to dismissal.

See Exhibit "A" hereto.

Accordingly, under the circumstances of this case, Air Rescue cannot be excused from the requirement of the timely filing of a cash or protest bond, and the County's Motion should therefore be granted.

2. The Hearings Officer Lacks Jurisdiction Because the Protest Concerns a Matter that is Less than the Required Threshold Amount

Because the contract has an estimated value of less than \$1,000,000, HRS §103D-709(d)(1) requires that the Air Rescue protest concern "a matter" that is greater than \$10,000.

(d) Any bidder, offeror, contractor, or person that is a party to a protest of a solicitation or award of a contract under section 103D-302 or 103D-303 that is decided pursuant to section 103D-701 may initiate a proceeding under this section; provided that:

(1) For contracts with an estimated value of less than \$1,000,000, the protest concerns a matter that is greater than \$10,000; or

(2) For contracts with an estimated value of \$1,000,000 or more, the protest concerns a matter that is equal to no less than ten per cent of the estimated value of the contract.

The estimated value of the contract in question is less than \$1,000,000 because only the first year is being considered, so the protest herein must "concern a matter" greater than \$10,000.

The County claimed in its Motion that the matter at issue here is of no value because on-call labor is not being provided under the contract and the County had voluntarily agreed not to consider the on-call rate proposed by Air Rescue when evaluating the bids. The Hearings Officer cannot accept this interpretation of the law because it is based on the County's proposed resolution of the merits of Air Rescue's claim. The statute, on the other hand, is concerned with the situation when the protest is "initiated."

Air Rescue, on the other hand, asserts that its protest meets the threshold requirement because its bid for the first year, plus hourly on-call rate of \$100/hr., yields a contract value of \$789,961. In other words, Air Rescue asserts that the matter of concern is the entire

contract, and in this case the amount of the contract would exceed the required \$10,000 minimum amount.

The Hearings Officer, however, cannot accept the proposition that the entire contract value is of concern in this particular procurement protest. Under Air Rescue's theory, a protest on any ground would challenge the entire contract value because a successful protest would lead to a rejection of the entire low bid. Such an interpretation would eliminate the threshold requirement because virtually all post-bid protests would bring into contention the full estimated value of the contract.

The Hearings Officer believes that the legislative intent behind the minimum threshold amount requirement was to eliminate protests over matters of a very small amount. In the past, it was possible that a successful protest over a minor portion of a bid could result in the disallowance of the entire bid. At the very least, such a protest could tie up a procurement amidst the uncertainty over whether a minor error could delay and ultimately detrimentally affect the entire procurement process.

The Hearings Officer therefore concludes that the "matter" of "concern" here is the alleged absence of an on-call rate in the bids of the other two bidders.

The Hearings Officer further concludes that the "matter" is, at most, \$2,500. Special Provision 18 of the Specifications used 25 hours of on-call hours for bid evaluation purposes, and that number is multiplied by the \$100.00/hr. figure which Air Rescue asserted at the December 6, 2012 hearing on the motions was the rate it proposed for the contract's first year. For argument purposes, the Hearings Officer will assume that there was a proposed rate of \$100.00/hr. for the first year even though no such figure was typed in on Air Rescue's Proposal.

There may be cases where the dollar amount of the “matter” of “concern” is difficult to calculate or where there is considerable debate over how to determine that amount. In the present case, however, there is no need to resolve such issues.

The requirement of a minimum amount at issue in HRS §103D-709(d) is separate and independent of the requirement to post a cash or protest bond contained in HRS §103D-709(e). The failure of Air Rescue’s protest to concern a matter greater than \$10,000.00 is therefore an independent basis for dismissal of Air Rescue’s protest even if the County’s arguments on the lack of a bond did not prevail.

3. Air Rescue’s Motion for Summary Judgment is Moot

Because the Hearings Officer has no jurisdiction to consider Air Rescue’s procurement protest, it would not be appropriate to issue a formal opinion on Air Rescue’s Motion. That Motion goes to the merits of the procurement protest, but, since there is no jurisdiction to consider that protest, there is no jurisdiction to consider a motion concerning the merits of the protest. In view of the jurisdictional rulings herein, Air Rescue’s motion is moot.

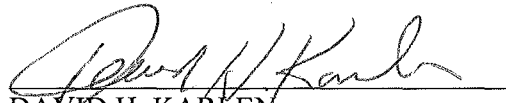
IV. DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearings Officer finds, concludes, and decides as follows:

- a. The County’s Motion is granted for the reasons stated above.
- b. Air Rescue’s Motion is dismissed as moot.
- c. The County’s denial of Air Rescue’s procurement protest is affirmed for the reasons stated herein. Air Rescue’s Request for Administrative Hearing herein is dismissed.

The parties will bear their own attorney’s fees and costs incurred in pursuing this matter.

DATED: Honolulu, Hawaii, DEC 10 2012.

A handwritten signature in cursive script, appearing to read "David H. Karlen", written over a horizontal line.

DAVID H. KARLEN
Senior Hearings Officer
Department of Commerce and Consumer Affairs

Procurement Hearings

IMPORTANT STATUTORY CHANGES:

On June 27, 2012, Governor Neil Abercrombie signed Act 173 (12) into law. Consequently, the amendments to the Hawaii Procurement Code that are implemented by Act 173 (12), have resulted in significant procedural and substantive changes in the administrative hearings conducted pursuant to HRS §103D-709, et seq.

Effective July 2, 2012, all requests for administrative hearings must comply with the provisions of HRS §103D-701, as amended by Act 173 (12), including: 1) the determination of the jurisdictional amount required by HRS §103D-709(1)(d); and 2) the submission of a cash or protest bond in the amount specified by HRS §103D-709(1)(e). Requests for administrative hearings that are initially accepted for filing by the Office of Administrative Hearings, but are subsequently determined not to meet the jurisdictional amounts or have inadequate cash or protest bonds, may be subject to dismissal.

Click on the link below to view and download Act 173 (12):

http://www.capitol.hawaii.gov/session2012/bills/GM1276_.PDF

Click on the link below to view the cash bond and protest bond forms that have been used by the State Procurement Office:

<http://hawaii.gov/forms/department-of-commerce-and-consumer-affairs>

The Office of Administrative Hearings is responsible for conducting administrative reviews of procurement disputes arising under the Hawai`i Procurement Code (Hawai`i Revised Statutes, Chapter 103D) between the procuring agency and contractors and/or vendors doing business with the agency.

Procurement cases brought before the Office of Administrative Hearings generally involve disputes regarding:

- the preparation and interpretation of bid specifications;
- the qualification and selection of successful bidders or offerors; and
- matters relating to the solicitation process.

Consequently, unlike other types of contested case hearings conducted by the Office of Administrative Hearings, the procurement administrative review proceedings: 1) have accelerated processing and disposition requirements; 2) follow the procedural rules that have been promulgated by the State Procurement Office.

Procurement hearings brought under the Hawaii Procurement Code, are governed by Hawaii Revised Statutes Chapter 103D, and Hawaii Administrative Rules Title 3, Chapter 126. Click on the link below to view and download Hawaii Revised Statutes Chapter 103D and Hawaii Administrative Rules Title 3, Chapter 126 but make sure you utilize that latest version of Hawaii Revised Statutes Chapter 103D:

<http://www.spo.hawaii.gov/statutes-and-rules>

EXHIBIT A