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HEARINGS OFFICE

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

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| In the Matter of |) | PCH-2001-6 |
| |) | |
| MATT'S TRANSMISSION REPAIR, |) | HEARINGS OFFICER'S FINDINGS OF |
| INC., a Hawaii Corporation, |) | FACT, CONCLUSIONS OF LAW, AND |
| |) | FINAL ORDER |
| Petitioner, |) | |
| |) | |
| vs. |) | |
| |) | |
| CAROLL TAKAHASHI, DIRECTOR OF |) | |
| THE DEPARTMENT OF BUDGET AND |) | |
| FISCAL SERVICES, CITY AND |) | |
| COUNTY OF HONOLULU, STATE OF |) | |
| HAWAII, |) | |
| |) | |
| Respondent, |) | |
| |) | |
| and |) | |
| |) | |
| PACIFIC DETROIT DIESEL-ALLISON |) | |
| COMPANY, |) | |
| |) | |
| Intervenor-Respondent. |) | |
| _____ |) | |

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND FINAL ORDER

I. INTRODUCTION

By a petition dated and filed on August 7, 2001, with the Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii, Eric S. Yamagata, Esq., on behalf of Matt's Transmission Repair, Inc., a Hawaii Corporation ("Petitioner") requested a review of the denial of the protest filed by Petitioner with Caroll

Takahashi, Director of the Department of Budget and Fiscal Services, City and County of Honolulu, State of Hawaii ("Respondent") on June 18, 2001. Petitioner was notified by letter dated June 28, 2001 that its protest was denied, whereupon Petitioner timely filed a request for a reconsideration of the denial of its protest. Thereafter, Respondent informed Petitioner that its request for reconsideration of the denial of protest was considered and a determination was made denying Petitioner's request for reconsideration and protest. Petitioner thereupon filed its request for a review of Respondent's denial of Petitioner's protest pursuant to the Hawaii Revised Statutes ("HRS") Chapter 103D and Sections 103D-709 and 103D-712 thereunder. The matter was set for a prehearing conference on August 16, 2001 and for a hearing on August 24, 2001, and the parties were duly notified thereof.

On August 16, 2001, the prehearing conference was convened as scheduled with Mr. Yamagata representing Petitioner and Diane T. Kawauchi, Esq. representing Respondent. Matters of procedure and the issues to be addressed at the hearing were discussed. Respondent who had not filed its prehearing statement in response to Petitioner's petition was requested to file its statement prior to the hearing scheduled for August 24, 2001.

By stipulation filed on August 21, 2001 the hearing was continued to September 7, 2001. On September 5, 2001, a second stipulation was filed to continue the hearing from September 7, 2001 to October 9, 2001. And, on October 9, 2001, a third stipulation was filed to continue the hearing from October 9, 2001 to October 19, 2001.

On October 12, 2001, the parties filed a Stipulation Permitting Detroit Diesel-Allison Company To Intervene As A Respondent, which stipulation was approved by the Hearings Officer.

On October 16, 2001, Respondent filed its response to Petitioner's request for an administrative review of Respondent's denial of protest, and, also, Respondent's motion to dismiss Petitioner's request for an administrative hearing.

Also, on October 16, 2001, Petitioner Matt's Transmission Repair, Inc.'s Motion to Dismiss was filed.

On October 16, 2001, Intervenor-Respondent, Pacific Detroit Diesel-Allison Company filed its joinder in Respondent's response to Petitioner's request for administrative hearing and motion to dismiss Petitioner's request for administrative hearing.

On October 17, 2001, Respondent filed its response to Petitioner's motion to dismiss.

On October 17, 2001, Intervenor-Respondent filed its joinder in Respondent's response to Petitioner's Motion to Dismiss.

On October 19, 2001, the hearing was held on both Respondent's and Petitioner's motions to dismiss with Petitioner represented by Mr. Yamagata and Respondent represented by Amy R. Kondo, Esq., and Intervenor-Respondent represented by David F.E. Banks, Esq. The Hearings Officer, upon review of the respective motions with memorandum of law filed by the parties and Respondent's response to Petitioner's motion to dismiss and consideration of the arguments presented by the parties, denied Petitioner's motion to dismiss and took Respondent's motion to dismiss under advisement.

The undersigned Hearings Officer, having considered Respondent Caroll Takahashi, Director of the Department of Budget and Fiscal Services, City and County of Honolulu's Motion to Dismiss Petitioner Matt's Transmission Repair, Inc.'s Request for Administrative Hearings, the memorandum in support thereof, with exhibits, and the arguments of the parties along with the entire record of these proceedings hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

1. Respondent issued a request for proposals to furnish, deliver and/or install remanufactured Allison transmissions to the City and County of Honolulu for a period of twelve months in compliance with specifications set forth therein. The bid opening date was June 15, 2001.

2. Pacific Detroit Diesel-Allison Company, Intervenor-Respondent, was determined to be the successful low bidder and Petitioner Matt's Transmission Repair, Inc. was the second low bidder.

3. Petitioner by letter dated June 18, 2001 filed a timely protest with Respondent pursuant to HRS § 103-701(a) contesting Respondent's determination that Pacific Detroit Diesel-Allison Company was the low bidder. Petitioner in its protest alleged that Intervenor-Respondent should be disqualified because at the time of the bid opening it lacked the necessary license to perform on the transmission repair contract as required by the request for proposals.

4. By letter dated June 28, 2001, Respondent notified Petitioner that Pacific Detroit Diesel-Allison Company would not be disqualified as it had the necessary license on the date of bid opening.

5. Petitioner's attorney, by letter dated July 12, 2001, requested that Respondent reconsider its decision denying Petitioner's protest which had been filed by its letter dated June 18, 2001.

6. By letter date July 27, 2001 addressed to Petitioner's attorney, Respondent notified Petitioner of its determination that Petitioner's protest and request for reconsideration were denied, and informed Petitioner:

Should you wish to appeal this decision, you may request the Department of Commerce and Consumer Affairs of the State of Hawaii to conduct an administrative review, pursuant to Section 103D-712, Hawaii Revised Statutes, within seven (7) calendar days of receipt of this determination.

Should you have any questions, please call Edlyn S. Taniguchi, Purchasing Administrator, at 523-4867.

7. The letter dated July 27, 2001, addressed to Petitioner's attorney, was sent by certified mail return receipt requested and was delivered on July 31, 2001.

8. Petitioner through its attorney, by letter dated August 1, 2001, notified Respondent in compliance with section 3-126-8(e) of the Hawaii Administrative Rules that it intended to file an administrative appeal of Respondent's determination denying the protest.

9. On August 7, 2001, Petitioner filed its Request for Administrative Hearing with the Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii.

III. CONCLUSIONS OF LAW

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

The Hearings Officer by provisions of HRS § 103D-709(a) was granted jurisdiction to review de novo the determinations of the chief procurement officer, head of a purchasing agency or a designee of either. The question presented for the Hearings Officer's determination by Respondent's motion to dismiss Petitioner's request for administrative hearing was whether Petitioner's request for administrative hearing was filed in compliance with the provisions of HRS § 103D-712 whose applicable provisions stated:

(a) Requests for administrative review under section 103D-709 shall be made within seven calendar days of the issuance of a written determination under sections . . . 103D-701 [Authority to resolve protested solicitation and awards]

A motion for dismissal or other summary disposition of a matter may be granted where there is no genuine issue as to any material fact when the inferences to be drawn from the record are viewed in the light most favorable to the party opposing the motion, and, the moving party is entitled to a judgment as a matter of law. Hulsman v. Hemmeter Dev. Corp. 65 HAW 58, 61(1982). No memorandum or response in opposition to Respondent's motion to dismiss was filed by Petitioner concerning the facts or inferences to be drawn from the record upon which the Respondent's motion was premised. Accordingly,

the Hearings Officer concludes that there was no genuine issue as to any material fact in this matter.

The Hearings Officer's review of the record revealed that Respondent's written determination denying Petitioner's protest and reconsideration of its denial of the protest was made by letter dated July 27, 2001. That letter was transmitted by certified mail with return receipt requested that was posted on or before July 30, 2001 and received by Petitioner on July 31, 2001. Petitioner's request for an administrative review of the Respondent's denial of its protest was thereafter filed with the Office of Administrative Hearing on August 7, 2001.


The provisions of HRS § 103D-712(a) required that Petitioner's request for administrative review of Respondent's written determination be made within seven calendar days of the issuance of the written determination. The date of issuance of the written determination was as early as July 27, 2001 a Friday but no later than July 30, 2001, a Monday, the day before its delivery to Petitioner's attorney by the postal service, on July 31, 2001. The statutory provision which confers jurisdiction in this matter has been strictly construed and the filing of an untimely request for administrative review has been consistently held to preclude the protestor from pursuing an administrative hearing. See: Brewer Environmental Industries, Inc. v. County of Kauai, PCH-96-9 (HOFO November 20, 1996) and Environmental Recycling of Hawaii, Ltd. V. County of Hawaii, PCH-95-4 (HOFO March 20, 1996). Accordingly, the Hearings Officer concludes that Petitioner, having filed an untimely request for an administrative review of Respondent's denial of its protest, was thereby precluded from pursuing an administrative hearing. Accordingly, Respondent's motion to dismiss should be granted.

IV. FINAL ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, for good cause shown, Respondent Carol Takahashi, Director of the Department of Budget and Fiscal Services, City and County of Honolulu's Motion to Dismiss Petitioner Matt's Transmission Repair, Inc.'s Request for Administrative Hearing is granted, and the Petitioner's request for an administrative hearing is hereby dismissed.

OCT 29 2001

DATED: Honolulu, Hawaii, _____.



GEORGE M. NAKANO
Administrative Hearings Officer
Department of Commerce

and Consumer Affairs