



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2008 MAY -5 A 9 29

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

HEARINGS OFFICE

In the Matter of	)	PCH-2008-1
)	
HI-TECH ROCKFALL	)	HEARINGS OFFICER'S
CONSTRUCTION, INC.,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Petitioner,	)	AND FINAL ORDER
	)	GRANTING RESPONDENT'S
vs.	)	MOTION TO DISMISS AND
	)	DENYING PETITIONER'S
COUNTY OF MAUI,	)	MOTION TO STAY ADMIN-
DEPARTMENT OF FINANCE,	)	ISTRATIVE HEARING PENDING
	)	FEDERAL COURT ACTION
Respondent.)	
_____)	

HEARINGS OFFICER'S FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS AND DENYING PETITIONER'S MOTION TO STAY
ADMINISTRATIVE HEARING PENDING FEDERAL COURT ACTION

I. INTRODUCTION

On February 27, 2008, HI-TECH Rockfall Construction, Inc. ("Petitioner"), filed a request for hearing to contest the County of Maui, Department of Finance's ("Respondent") February 20, 2008 decision to reject Petitioner's protest concerning a project known as Kalepa-Alelele Rockfall Protection, Job No. 06-66 ("Project"), District of Hana, Island of Maui. Petitioner's request for hearing was made pursuant to Hawaii Revised Statutes ("HRS") §103D-709. The matter was thereafter set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On April 9, 2008, Petitioner filed a motion to stay administrative hearing and on April 10, 2008, Respondent filed a motion to dismiss. Both motions came before the undersigned Hearings Officer on April 18, 2008. Petitioner was represented by John F. Bradach, Sr. and Mark K. Morita, Esq. Respondent was represented by Cheryl Tipton, Esq.¹

Having heard the argument of counsel and having considered the motions, memoranda, exhibits and declarations attached thereto, together with the records and files herein, and good cause appearing therefrom, the Hearings Officer hereby renders the following findings of fact, conclusions of law and final order.

II. FINDINGS OF FACT

1. On October 15, 2006, there was an earthquake that caused extensive damage throughout the State of Hawaii, including the closure of a portion of the Hana Highway on the island of Maui due to falling rocks.
2. On the same date, Governor Linda Lingle determined that a major disaster had occurred and issued a Proclamation which, among other things, suspended the application of HRS Chapter 103D.
3. Respondent subsequently issued invitation for bids (“IFB”) for the Project. The Project was aimed at making Hana Highway safe so that it could be reopened.
4. Petitioner and Janod, Inc. (“Janod”) submitted bids in response to the IFB. Petitioner’s and Janod’s bid amounts were \$8,952,850.00 and \$5,600,000.00, respectively.
5. By letter dated February 6, 2008, Petitioner filed a protest of the IFB.
6. By letter dated February 20, 2008, Respondent denied the protest.
7. On February 27, 2008, Petitioner filed a request for administrative hearing to contest Respondent’s February 20, 2008 denial.
8. On April 9, 2008, Petitioner filed a motion to stay administrative hearing pending federal court action and on April 10, 2008, Respondent filed a motion to dismiss.

¹ Both Mr. Bradach and Ms. Tipton appeared by telephone.

III. CONCLUSIONS OF LAW

There is no dispute that as a result of the 2006 earthquake, the Governor, pursuant to her authority as set forth in HRS §128-10, determined that a major disaster had occurred and issued a Proclamation suspending the application of HRS Chapter 103D for projects aimed at repairing the damage that resulted from the earthquake. The suspension of HRS Chapter 103D, including HRS §103D-709, removed the IFB from the jurisdiction and authority of the Hearings Officer. Indeed, Respondent acknowledges that the “Procurement Code is unquestionably suspended by the Governor’s Proclamation”, and that absent a retraction of the Proclamation, “the State Procurement Code (codified at Haw. Rev. Stat. Ch. 103D) is a nullity, as a matter of law, and there is no other statutory vehicle providing any appeal right to the Office of Administrative Hearings, DCCA.”

Under these circumstances, and mindful of the fact that administrative agencies are tribunals of limited jurisdiction, the Hearings Officer concludes that Petitioner’s request for administrative hearing falls outside the jurisdictional authority of the Hearings Officer. Consequently, the Hearings Officer lacks any legal authority to hear or stay this proceeding².

IV. FINAL ORDER

Based on the foregoing considerations, Respondent’s motion to dismiss is granted and this matter is hereby dismissed; and Petitioner’s motion to stay administrative hearing pending federal court action is denied.

Dated at Honolulu, Hawaii: _____

MAY - 5 2008

/s/ CRAIG H. UYEHARA

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

² Notwithstanding that, an administrative agency may always determine questions about its own jurisdiction. *Carl Corp. v. State*, 93 Haw. 155 (2000).