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HEARINGS OFFICE



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

In the Matter of

PINKY TOWS HAWAII, INC.,  
PINKY TOWS ROADSIDE SERVICE,  
INC., AND PINKY TOWS PACIFIC, INC.,

Petitioners,

vs.

DEPARTMENT OF BUDGET AND  
FISCAL SERVICES, CITY AND COUNTY  
OF HONOLULU,

Respondent.

PDH-2018-007

HEARINGS OFFICER'S  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND FINAL ORDER GRANTING  
RESPONDENT DEPARTMENT  
OF BUDGET AND FISCAL  
SERVICES, CITY AND COUNTY  
OF HONOLULU'S  
MOTION TO DISMISS, OR IN  
THE ALTERNATIVE, FOR  
SUMMARY JUDGMENT

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND FINAL ORDER GRANTING  
RESPONDENT DEPARTMENT OF BUDGET AND FISCAL SERVICES,  
CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS,  
OR IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT

I. INTRODUCTION:

On June 28, 2018, Pinky Tows Hawaii, Inc., Pinky Tows Roadside Service, Inc., and Pinky Tows Pacific, Inc., ("Petitioner"), filed a request for hearing to contest the Department of Budget and Fiscal Services, City and County of Honolulu's ("Respondent") denial of Petitioner's April 20, 2018 protest regarding Respondent's March 19, 2018 Solicitation for Towing and Storage Services for Law Enforcement Initiated Tows under HRS Section 291C-165.5 for a 36 Month Period, RFP -CSD-1186103. This was a pre-bid protest regarding the contents of the solicitation.

The matter was thereafter set for a July 9, 2018 Pre-Hearing Conference. At the July 9, 2018 Pre-Hearing Conference, a response to motions deadline, and hearing on

motions and hearing dates were scheduled. On July 9, 2018, Respondent filed its Motion to Dismiss or, in the Alternative, Motion for Summary Judgment. On July 11, 2018, Petitioners filed their Memorandum in Opposition.

The motion came on for hearing before the undersigned Hearings Officer on July 13, 2018 in accordance with the provisions of Hawaii Revised Statutes (“HRS”) Chapter 103D. Petitioners were represented by Randall Harakal, Esq. Respondent was represented by Moana Yost, Esq. and Jessica Wong, Esq.

Having reviewed and considered the motion and memoranda, exhibits and declarations attached thereto, the arguments of counsel, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and decision.

## II. FINDINGS OF FACT:

1. On March 19, 2018, Respondent posted a Solicitation for Towing and Storage Services for Law Enforcement Initiated Tows under HRS Section 291C-165.5 for a 36 Month Period, under RFP-CSD-1186103 (“Solicitation”). Bids were due and scheduled to be opened on April 20, 2018.

2. On April 20, 2018, Petitioners filed a protest of the Solicitation, listing 11 reasons protesting the Solicitation. Petitioners listed the following:

1. The RFP limited the bid to one contractor;
2. The RFP did not provide for small business assistance initiatives;
3. The RFP did not allow for individual tow zones;
4. The timing of the RFP did not allow small tow companies to have a group meeting;
5. The City and County had tow zones in the past;
6. Because only one contract would be awarded, and no contractor could do all the work itself, subcontracting would be needed;
7. The RFP should address various types of tows by HPD;
8. The scoring system was secretive;
9. The City and County’s option for priority listed offerors was secretive;
10. Although the RFP allowed for subcontracting, the subcontractors did not have to meet criteria; and
11. The City and County failed to have tow companies’ input at a group meeting.

3. Respondent’s June 21, 2018 letter to Petitioners denied the April 20, 2018 Protest as it was untimely, both because Petitioners failed to submit the protest within 5 days that it knew or should have known the facts giving rise to the protest,

and because the protest was not submitted in writing prior to the date set for receipt of the offers.

4. Respondent's June 21, 2018 letter further denied the April 20, 2018 Protest as it argued that the Hearings Officer did not have jurisdiction in this matter as the threshold amount was not established; the Protest did not have sufficient supporting evidence; and the chief procurement officer (not Petitioners) had the duty and right to develop the specifications in the Solicitation.

5. On June 28, 2018, Petitioners filed a Petition for Administrative Hearing to review the denial of their Pre-bid Protest. Petitioners are requesting a hearing on the review of Respondent's June 21, 2018 Denial of their Pre-Bid Protest. Petitioners seek an order requiring Respondent to re-issue the RFP.

### III. ANALYSIS:

The issue is whether Respondent's decision to deny Petitioners' April 20, 2018 Pre-Bid Protest was proper. Although Respondent denied the Protest on numerous bases; initially, the issue that is raised is whether the Protest was timely.

Under HRS §103D-701(a) the Protest must be made within 5 days that Petitioners knew or should have known of the facts giving rise to the Protest. In relevant part, the statute states, "Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation...may protest to the chief procurement officer or a designee as specified in the solicitation. Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto..."

In this case, Respondent issued the Solicitation on March 19, 2018 for Towing and Storage Services for Law Enforcement Initiated Tows under HRS Section 291C-165.5 for a 36 Month Period, under RFP-CSD-1186103. Therefore, Petitioners had until March 27, 2018 (five business days after March 19, 2018 - March 26, 2018 was a holiday) to make a protest on the pre-bid Solicitation. However, Petitioners did not protest until April 20, 2018; clearly showing that the Protest was untimely.

Additionally, HRS §103D-701(a) further states, "[N]o protest based on the content of the solicitation shall be considered unless it is submitted in writing *prior* to the date set for receipt of offers." (Emphasis added.) As stated in the Solicitation, April 20, 2018 was the date set for receipt of offers. Petitioners made their Protest on April 20, 2018, the

date set for receipt of offers, not prior to the date set for receipt of offers as the statute requires. Bids were due and scheduled to be opened on April 20, 2018. Therefore, the Protest was untimely under this section of the statute as well.

Based on all of these considerations, the Hearings Officer concludes that Respondent has shown that Petitioners' April 20, 2018 protest was untimely, both because Petitioners failed to submit the protest within 5 days that they knew or should have known the facts giving rise to the protest, and because the protest was not submitted in writing prior to the date set for receipt of the offers.

Although the Motion to Dismiss also asserts that Petitioners' protest should also be denied on the bases that it failed to provide supporting documents and is filled with vague and conclusory statements and opinions, these allegations need not be addressed as the Protest was clearly untimely.

#### IV. DECISION

Based upon the foregoing findings and conclusions, the Hearings Officer concludes that there are no genuine issues of material fact left for determination at hearing and that Respondent is entitled to judgment in its favor as a matter of law. Accordingly, the Hearings Officer orders as follows:

- Respondent's July 9, 2018 Motion to Dismiss, or in the Alternative, for Summary Judgement is granted;
- Respondent's June 21, 2018 denial of Petitioners' April 20, 2018 Protest is affirmed; and
- Petitioner's June 28, 2018 Request for Hearing is dismissed.

Dated at Honolulu, Hawaii: JUL 17 2018



RICHARD A. YOUNG  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs

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*In Re Pinky Tows Hawaii, Inc.; Pinky Tows Roadside Service, Inc., and Pinky Tows Pacific, Inc. v. Departments of Budget and Fiscal Services, City and County of Honolulu; PDH-2018-007; Hearings Officer's Findings of Fact, Conclusions of Law, and Final Order.*