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Electronically Filed
FIRST CIRCUIT
1CCV-23-0000923
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Attorneys for Appellee

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

KUHIO 5G LLC,

Appellant,

vs.

OFFICE OF ADMINISTRATIVE
HEARINGS, DEPARTMENT OF
COMMERCE AND CONSUMER
AFFAIRS, STATE OF HAWAII;
STATE OF HAWAII, DEPARTMENT
OF HAWAIIAN HOME LANDS,

Appellees.

Civil No. 1CCV-23-0000923
(Agency Appeal)

FINAL JUDGMENT

Oral Argument:

Date: August 2, 2023

Time: 2:00 p.m.

Judge: Hon. James H. Ashford

FINAL JUDGMENT

In accordance with this Court's Order Affirming Hearings Officer's Findings of Fact, Conclusions of Law, and Final Order Granting Respondent's Motion to Dismiss, entered on July 5, 2023, entered on August 4, 2023, **IT IS HEREBY**

ORDERED, ADJUDGED AND DECREED that Final Judgment is entered pursuant to

Haw. R. Civ. P. Rules 72 and 58 in favor of Appellee OFFICE OF ADMINISTRATIVE

/s/ JHA

HEARINGS, DEPARTMENT OF

COMMERCE AND CONSUMER AFFAIRS, STATE OF HAWAII, and Appellee
STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS and against
Appellant KUHIO 5G LLC on all claims, consistent with the Court's Order. There are /s/ JHA
no remaining claims, parties, or issues in this action. All other claims, parties, or issues
in this action, if any, are dismissed with prejudice.

DATED: Honolulu, Hawai'i, August 4, 2023.

BY ORDER OF THE COURT

/s/ James H. Ashford
Judge of the above-entitled Court



APPROVED AS TO FORM:

/s/ Jordan A.K. Ching
Craig Y. Iha
Jordan A.K. Ching
Attorneys for Appellee
STATE OF HAWAII,
DEPARTMENT OF HAWAIIAN HOME LANDS

/s/ Addison D. Bonner
Addison D. Bonner
Attorney for Appellant KUHIO 5G LLC

/s/ Bryan C. Yee
Bryan C. Yee
Attorney for Appellee
OFFICE OF ADMINISTRATIVE HEARINGS,
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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Attorneys for Appellee

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1CCV-23-0000923
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

KUHIO 5G LLC,

Appellant,

vs.

OFFICE OF ADMINISTRATIVE
HEARINGS, DEPARTMENT OF
COMMERCE AND CONSUMER
AFFAIRS, STATE OF HAWAII;
STATE OF HAWAII, DEPARTMENT
OF HAWAIIAN HOME LANDS,

Appellees.

Civil No. 1CCV-23-0000923
(Agency Appeal)

ORDER AFFIRMING HEARINGS
OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND FINAL
ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS, ENTERED ON
JULY 5, 2023

Oral Argument:

Date: August 2, 2023

Time: 2:00 p.m.

Judge: Hon. James H. Ashford

**ORDER AFFIRMING HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND FINAL ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS, ENTERED ON JULY 5, 2023**

On July 14, 2023, Appellant KUHIO 5G LLC ("Kuhio") filed a Notice of Appeal to Circuit Court, appealing the Hearings Officer's Findings of Fact, Conclusions of Law, and Final Order Granting Respondent's Motion to Dismiss, entered on July 5, 2023

(“OAH Dismissal Order”), by Appellee OFFICE OF ADMINISTRATIVE HEARINGS, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, STATE OF HAWAII (“OAH”).


Oral argument was held on August 2, 2023, before the Honorable James H. Ashford, with Jordan A. K. Ching, esq., Deputy Attorney General, appearing in-person on behalf of Appellee STATE OF HAWAII, DEPARTMENT OF HAWAIIAN HOME LANDS (“DHHL”), and Addison D. Bonner, esq., and Harold Johnston, client-representative, appearing in-person on behalf of Kuhio.

Having reviewed and considered all of the pleadings, record on appeal, written submissions from the parties, and the parties’ oral arguments, the Court finds that:

1. On May 26, 2023, DHHL issued its denial of Kuhio’s bid protest to the award of RFP-23-HHL-013, as evidenced by the postmark date. See Nihi Lewa, Inc. v. Dept. of Budget and Fiscal Services, 103 Hawai’i 163, 167, 80 P.3d 984, 988 (2003) (holding “that ‘issuance’ means the date of mailing, as evidenced by the postmark date”).
2. Under Hawaii Revised Statutes (“HRS”) § 103D-712(a), Kuhio was required to submit its request for administrative review to OAH within seven calendar days of the date DHHL issued its denial to Kuhio, which fell on June 2, 2023.
3. Kuhio filed its request for administrative review with OAH on June 5, 2023, and was thus untimely under HRS § 103D-712(a).
4. Given the foregoing, OAH did not err in dismissing Kuhio’s request for lack of jurisdiction due to untimeliness under HRS § 103D-712(a).

IT IS THEREFORE HEREBY ORDERED that the OAH Dismissal Order is affirmed. There are no further issues or claims outstanding.

DATED: Honolulu, Hawai'i, August 4, 2023.

/s/ James H. Ashford 
Judge of the above-entitled Court

APPROVED AS TO FORM:

/s/ Jordan A.K. Ching
Craig Y. Iha
Jordan A.K. Ching
Attorneys for Appellee
STATE OF HAWAII,
DEPARTMENT OF HAWAIIAN HOME LANDS

/s/ Addison D. Bonner
Addison D. Bonner
Attorney for Appellant KUHIO 5G LLC

/s/ Bryan C. Yee
Bryan C. Yee
Attorney for Appellee
OFFICE OF ADMINISTRATIVE HEARINGS,
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS,
STATE OF HAWAII



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

In the Matter of)	PDH-2023-003
)	
KUHIO 5G LLC,)	HEARINGS OFFICER’S FINDINGS
)	OF FACT, CONCLUSIONS OF LAW,
Petitioner,)	AND FINAL ORDER GRANTING
)	RESPONDENT’S MOTION TO
vs.)	DISMISS
)	
STATE OF HAWAII, DEPARTMENT)	
OF HAWAIIAN HOMELANDS,)	
)	
Respondent.)	
)	

HEARINGS OFFICER’S FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND FINAL ORDER GRANTING RESPONDENT’S MOTION TO DISMISS

I. INTRODUCTION

On June 5, 2023, Kuhio 5G LLC. (hereinafter referred to as “Petitioner” or “K5G”) filed a request for hearing to contest Respondent State of Hawaii, Department of Hawaiian Homeland’s (hereinafter referred to as “Respondent” or “DHHL”) denial of Petitioner’s protest in connection with RFP-23-HHL-013, Request for Proposals for the Telecommunications Infrastructure Assessment and Feasibility Study to Support the Tribal Broadband Connectivity Program. A Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On June 9, 2023, Respondent filed its response to Petitioner’s request for hearing. Respondent also filed Respondent’s Motion to Dismiss Petitioner’s Request for Hearing filed June 5, 2023. Petitioner filed its response to Respondent’s motion to dismiss on June 13, 2023.

On June 13, 2023, a pre-hearing conference was convened in the matter. Petitioner was represented by its president, Harold Johnston, accompanied by Craig Kahui, representative of La’iopua Development Corporation, a partner with K5G. Jordan A.K. Ching, Esq. and

Craig Y. Iha, Esq. appeared on behalf of Respondent. At the pre-hearing conference, hearing on Respondent's motion to dismiss was set for June 14, 2023.

On June 14, 2023, Respondent's motion to dismiss came on for hearing before the undersigned Hearings Officer in accordance with the provisions of Hawaii Revised Statutes ("HRS") Chapter 103D. Petitioner was represented by Harold Johnston and Respondent was represented by Deputy Attorney General Jordan A.K. Ching, Esq.

Having reviewed and considered the arguments presented, along with the memorandum, declarations, and exhibits attached thereto, together with the records and files herein, the Hearings Officer granted Respondent's motion.

The Hearings Officer hereby renders the following findings of fact, conclusions of law, and decision granting Respondent's motion to dismiss.

II. FINDINGS OF FACT

1. On March 29, 2023, DHHL issued RFP-23-HHL-013, Request for Proposals for the Telecommunications Infrastructure Assessment and Feasibility Study to Support the Tribal Broadband Connectivity Program ("RFP").

2. In response to the RFP, Respondent submitted its proposal April 19, 2023.

3. On April 26, 2023 DHHL awarded the contract to Hawaiian Telcom, Inc. ("Hawaiian Telcom").

4. By letter dated May 10, 2023, K5G protested the award of the solicitation to Hawaiian Telcom alleging: Hawaiian Telcom's bid was contrary to law because its total price was not all-inclusive, including the GET to the State; Hawaiian Telcom's bid was nonresponsive; and that DHHL refused to disclose the names of the evaluation committee during K5G's debriefing.

5. By letter dated May 25, 2023, and postmarked May 26, 2023, DHHL denied K5G's protest.

6. On June 5, 2023, K5G filed a request for administrative hearing with the Office of Administrative Hearings ("OAH") to review DHHL's denial of its protest.

III. CONCLUSIONS OF LAW

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

In bringing its motion to dismiss, Respondent contends Petitioner's request for administrative hearing was untimely under HRS §103D-712 and moves for dismissal of the matter for lack of jurisdiction.

The provisions of 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.

(Emphasis added).

The mandatory language in HRS §103D-712(a) specifies that requests for administrative review be made within seven calendar days of the *issuance* of a written determination by the purchasing agency. "Issuance" means the date of mailing, as evidenced by the postmark date, rather than receipt of the mailing. *Nihi Lewa, Inc. v. Dept. of Budget & Fiscal Services*, 103 Haw. 163, 80 P.3d 984 (2003); *Aloha Tool & Rental, Inc. v. Department of Budget & Fiscal Services*; PCH-2004-13 (September 15, 2004); *American Marine Corp. v. DOT, et al.*, PCH-2005-12 and PCH-2006-1 (March 30, 2006); *Akamai Roofing, Inc. v. Dept. of Transportation, et al.*, PCH-2009-5 (April 21, 2009); *Friends of He'eia State Park v. Dept. of Land and Natural Resources, State of Hawaii*, PCX-2009-4 (November 19, 2009); *Alpha Inc. v. Dept. of Finance, County of Maui*, PDH-2021-011 (November 29, 2021).

The salient facts are not in dispute. On May 10, 2023, Petitioner protested the award of the contract to Hawaiian Telcom. By letter dated May 25, 2023, DHHL denied Petitioner's protest. DHHL mailed its protest denial letter to Petitioner on Friday, May 26, 2023. Petitioner submitted a request for administrative review of the protest denial to the Office of Administrative Hearings ("OAH") on Monday, June 5, 2023.

In its request for administrative hearing, Petitioner asserts that the seven day timeline commenced Tuesday, May 30, 2023, the date it received DHHL's denial letter and accordingly, the deadline to submit its request for administrative hearing fell on Wednesday,

June 7, 2023.¹ However, in its response to Respondent’s motion to dismiss, Petitioner does not dispute Respondent’s calculation of the time period to file and concedes the issuance date of the denial letter is May 26, 2023. In this case, the protest denial was issued May 26, 2023 and the seven day deadline to submit a request for hearing was June 2, 2023.

Although Petitioner does not dispute the June 2, 2023 statutory deadline to submit a request for administrative hearing on the denial of its protest, Petitioner contends DHHL should be estopped from arguing Petitioner’s request was untimely. In support of its position, Petitioner argues that DHHL’s actions allowed Petitioner only three days to file its request for administrative hearing. Petitioner argues that DHHL was aware it was denying Petitioner’s protest on May 25, 2023, the date the denial letter was signed, and could have emailed or hand delivered the notice. Petitioner also opines had DHHL mailed the denial letter earlier in the day on Friday, May 26, 2023, it was probable Petitioner could have received the denial letter on Saturday, May 27, 2023. Petitioner asserts that because DHHL mailed the denial letter late Friday afternoon before a three-day weekend, Petitioner was not notified of the denial until Tuesday, May 30, 2023.² Petitioner argues that DHHL showed disregard for “fair and equitable treatment” by jeopardizing Petitioner’s ability to respond to the protest denial in the “very tight seven calendar day timeframe.” Petitioner argues that a strict adherence to the June 2, 2023 filing deadline would allow Petitioner only three days to file its request for administrative hearing.

In enacting HRS Chapter 103D, the Legislature sought to establish a comprehensive code that would, among other things, ensure efficiency in the procurement process. *Standing Committee Report No. S8-93, 1993, Senate Journal at 39; HAR §3-120-1*. This office has consistently held that the accomplishment of the underlying objections of the Procurement Code requires strict adherence to the time constraints for the initiation and prosecution of protests. *GTE Hawaiian Telephone Co., Inc. v. County of Maui, PCH 98-6 (December 9, 1998)*. See also, *Clinical Laboratories of Hawaii, Inc. v. City & County of Honolulu, Dept. of Budget and Fiscal Services, PCH-2000-8 (October 17, 2000)(strict, rather than substantial compliance with the time*

¹ Petitioner cites Hawaii Administrative Rules (“HAR”) §3-126-49(a) in its request for administrative in support of its proposition that Petitioner’s request was timely filed. HAR §3-126-49 provides: “Unless otherwise provided by statute or rule, in computing any period of time prescribed or allowed by this chapter, the day of the act, event, or default after which the designated period of time is to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal State holiday, in which event the period runs until the next day which is neither a Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays, and holidays shall not be included in a computation when the period of time prescribed or allowed is seven days or less.”

² Monday, May 29, 2023, was Memorial Day Holiday and there was no mail service on that date.

constraints set forth in HRS 103D-701 (a) required in order to effectuate the state's underlying purpose); CR Dispatch Service, Inc., dba Security Armored Car & Courier Services v. DOE, et al., PCH-2007-7 (December 12, 2007); Ludwig Construction, Inc. v. County of Hawaii, PCX-2009-6 (December 21, 2009). The rationale for requiring protests to be submitted to the procuring agency on or before the close of business on the last day on which filings could be made applies equally to the filing of requests for administrative review under HRS §103D-709. Maui County Community Television Inc. v., State of Hawaii, PCX-2010-3 (July 9, 2010) (request for administrative review file-stamped at 4:31pm was late and untimely, therefore the Hearings Officer lacked jurisdiction over the matter). The strict timelines for filing protests and requests for administrative review are intended to expedite the resolution of protests and provide agencies with some degree of certainty as to when protests may be filed. While the Hearings Officer notes that Petitioner could have discovered its protest had been denied earlier had DHHL sent a courtesy email to Petitioner or mailed the denial letter a different date or time, it remains Petitioner's responsibility to ensure that its request for review was filed with OAH in a timely matter. Apex Software, Inc. v. State Procurement Office; PCH-2003-29 (July 8, 2004). In this case, Respondent issued its protest denial letter May 26, 2023, and the deadline to submit a request for administrative hearing was June 2, 2023. Based on the foregoing, the Hearings Officer concludes that Petitioner's June 5, 2023 request for administrative review was untimely under HRS §103D-712 and OAH therefore lacks jurisdiction to hear the matter.

In response to Respondent's motion, Petitioner also argues the motion should be dismissed, asserting debriefing had not been completed and a further debriefing should be scheduled. Petitioner does not cite any authority for the Hearings Officer to make such an order and the Hearings Officer is not aware of any statute or rule authorizing such. Further, because this Hearing Officer has determined OAH lacks jurisdiction to hear the matter, the merits of Petitioner's arguments regarding the inadequacy of debriefing shall not be addressed.

IV. DECISION

Based upon the foregoing considerations, Respondent's motion to dismiss is granted and the matter is hereby dismissed. The parties shall bear their own attorney's fees and costs incurred in pursuing this matter.

DATED: Honolulu, Hawaii, July 5, 2023.



DESIRÉE L. HIKIDA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs