

**United States Small Business Administration
Office of Hearings and Appeals**

SIZE APPEAL OF:

PM Services Company

Appellant

Re: CFS-BHS JV

Appealed from
Size Determination No. 2-2008-01

SBA No. SIZ-4878

Decided: January 9, 2008

ORDER DISMISSING APPEAL AS UNTIMELY¹

I. Background

On May 16, 2007, the Department of the Air Force, McGuire Air Force Base (Air Force) issued Solicitation No. FA4484-07-R-0009 (RFP) as a total 8(a) business development set-aside. The RFP is for facilities support services at McGuire Air Force Base in New Jersey. The RFP was assigned North American Industry Classification System (NAICS) code 561210, with a corresponding \$32.5 million size standard. On June 28, 2007, CFS-BHS JV (JV), a joint venture comprised of Crockett Facilities Services, Inc. (CFS) and Bob Holtz Services, Inc. (BHS), submitted its proposal.

On September 25, 2007, the Contracting Officer (CO) filed a protest with the Small Business Administration's (SBA) Office of Government Contracting, Area II, in Philadelphia, Pennsylvania (Area Office) that asserted the JV may not be a small business based on its CCR profile. On October 9, 2007, the Area Office notified the JV of the protest. The JV responded by stating that such a protest was premature as it was not notified that it was selected for award. On October 24, 2007, the CO notified all offerors that the JV was selected for award. Thereafter, the Area Office resumed processing the CO's size protest.

On December 3, 2007, the Area Office issued Size Determination No. 2-2008-01 (size determination) finding the JV to be a small business concern for the subject procurement after analyzing the JV's mentor-protégé agreement and the joint venture agreement between CFS and BHS.

¹ This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

On December 11, 2007, PM Services Company (Appellant), an unsuccessful offeror on the instant procurement, received the size determination. On January 3, 2008, Appellant appealed the size determination at the Office of Hearings and Appeals (OHA).

II. Discussion

In accordance with 13 C.F.R. § 134.304(a)(1), a size appeal in a pending procurement must be filed within 15 days after an appellant receives the size determination.

In *Size Appeal of Blaine Larsen Farms, Inc.*, SBA No. SIZ-4743 (2005), OHA explained the meaning of “pending procurement” in 13 C.F.R. § 134.304 in light of FAR 2.101. OHA held that as long as there is a continuing action to meet the Federal Government’s needs, there is a pending procurement, even if the contract has been awarded. All active solicitations or contracts are thus encompassed by this definition. I hold that the instant procurement is pending.

Appellant states that it received the size determination on December 11, 2007. Appeal Petition, at 2. Appellant asserts:

Counting 15 days from the 11th of December and accounting for 4 weekend days and 2 Federal holidays that fell within that time frame, we determined that this filing had to be postmarked no later than January 3, 2008. This Petition is being mailed Priority USPS on December 29, 2007 and should satisfy the time frame as noted.

Appeal Petition, at 2. However, Appellant misinterprets the regulations. Pursuant to 13 C.F.R. § 134.101, “day” is defined as a calendar day unless the Judge specifies otherwise. Accordingly, weekend days are included in the timeline calculus unless the last day falls on a weekend (then the last day falls on the next business day). 13 C.F.R. §§ 134.101, 134.103(a). Further, the regulations do not exclude Federal holidays when calculating size appeal deadlines unless the last day falls on a Federal holiday. 13 C.F.R. § 134.103(a). Finally, the date of filing for pleadings is the date the filing is received at OHA, not when the filing is postmarked. 13 C.F.R. § 134.204(b)(2).

Accordingly, Appellant’s appeal should have been filed (received at OHA) no later than 15 calendar days after December 11, 2007, *i.e.*, Wednesday, December 26, 2007 (the Federal government was open). *See* 13 C.F.R. §§ 134.101, 134.304(a)(1). Appellant’s appeal was received at OHA, via U.S. Priority Mail, on January 3, 2008, eight (8) days past the deadline. While the postmark date of the appeal is irrelevant under 13 C.F.R. § 134.204(b)(2), I note that the December 31, 2007 postmark was also beyond the 15 day deadline.² The appeal is thus untimely and I must dismiss it; I have no discretion to waive the time limit for filing an appeal.

² On December 28, 2007, OHA received a letter from Appellant notifying OHA of its intent to file an appeal (“We will formally appeal with your office within the time frame as required...”). While this letter is not an appeal, it was likewise filed beyond the 15 day deadline.

13 C.F.R. §§ 134.103(b), 134.304(b).

III. Conclusion

For the above reasons, I AFFIRM the Area Office's size determination and DISMISS the instant appeal as untimely.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(b).

THOMAS B. PENDER
Administrative Judge