

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

SIZE APPEAL OF:

ARGO/LRS, JV

Appellant

RE: LATA-KEMRON Remediation, JV

Appealed from  
Size Determination No. 4-2009-8

SBA No. SIZ-5027

Decided: February 10, 2009

**ORDER DISMISSING UNTIMELY APPEAL**<sup>1</sup>

**I. Background**

On February 8, 2008, the Department of the Air Force, Brooks City-Base, Texas (Air Force) issued Solicitation No. FA8903-08-R-8348 (the RFP) for environmental restoration and construction services. The RFP was a multiple ID/IQ procurement with one contract expected to be set-aside for a service-disabled veteran-owned small business. The RFP was assigned North American Industry Classification System (NAICS) code 562910, Environmental Remediation Services, with a corresponding 500 employee size standard. On November 14, 2008, the Contracting Officer (CO) notified unsuccessful offerors that LATA-KEMRON Remediation, JV (LATA) was one of the apparent successful offerors for the service-disabled veteran-owned small business set-aside.

On November 21, 2008, ARGO/LRS, JV (Appellant) protested LATA's size status with the CO.

On November 25, 2008, the Small Business Administration's (SBA) Office of Government Contracting, Area IV, in Chicago, Illinois (Area Office) issued Size Determination No. 4-2009-8 (size determination), which dismissed Appellant's protest as untimely.

On January 26, 2009, the SBA Office of Hearings and Appeals (OHA) received a copy of Appellant's appeal petition, which appealed the Area Office's dismissal of its protest.

On February 3, 2009, I ordered Appellant to show cause, no later than February 9, 2009,

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<sup>1</sup> 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.

why its appeal petition should not be dismissed as untimely as it was filed fifty-six days after receipt of the size determination. On February 9, 2009, Appellant responded that it timely served all the interested parties on December 9, 2008 by facsimile but “does not have a record to demonstrate transmission and receipt of the fax at OHA on [December 9, 2008].” Appellant further states that it is unclear whether OHA was omitted from the distribution list or if there was a failure of transmission.

## 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. An appeal which is untimely under the 15 day rule but which is filed within 30 days of an appellant’s receipt of the size determination may proceed with respect to future procurements. 13 C.F.R. § 134.304(b).

Appellant received the size determination on December 1, 2008. Yet Appellant’s appeal was received at OHA, via facsimile, on January 26, 2009, fifty-six (56) days later. While Appellant appears to have timely served all the interested parties within the 15 day timeframe of 13 C.F.R. § 134.304(a)(1), Appellant unfortunately did not file the appeal at OHA until January 26, 2009.<sup>2</sup> An appeal must be received by OHA to be considered filed. 13 C.F.R. § 134.204(b). Service is the dispatch to the other parties of copies of the pleadings filed at OHA. 13 C.F.R. § 134.204(c). The fact that Appellant properly served the other parties, including offices of the SBA, does not save Appellant from a finding of untimely filing its appeal at OHA. *Size Appeal of UXB International, Inc.*, SBA No. SIZ-4930 (2008).

The appeal is thus untimely and I must dismiss it; I have no discretion to waive the time limit for filing an appeal. 13 C.F.R. §§ 134.103(b), 134.304(b).

## III. Conclusion

For the above reasons, I DISMISS the instant appeal as untimely.

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

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THOMAS B. PENDER  
Administrative Judge

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<sup>2</sup> Indeed, it appears OHA only received the appeal petition after the Area Office faxed a copy of the appeal to OHA on January 26, 2009.