

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

SIZE APPEAL OF:

The Competitive Edge II, LLC  
d/b/a  
@Work Medical Services

Appellant

Appealed from  
Size Determination No. 03-2009-67

SBA No. SIZ-5117

Decided: March 23, 2010

**ORDER DISMISSING APPEAL**

On July 27, 2009, The Competitive Edge II, LLC d/b/a @Work Medical Services (Appellant) filed a Certificate of Competency application with regard to a solicitation issued by the U.S. Department of Veteran's Affairs under North American Industry Classification System (NAICS) code 561320, Temporary Help Services, which has a corresponding size standard of \$13.5 million in average annual receipts. Upon review of the application, the U.S. Small Business Administration's (SBA) Government Contracting Area Director determined that Appellant may be other than small and requested a formal size determination pursuant to 13 C.F.R. § 121.1001(b)(3)(ii).

On August 21, 2009, the SBA Office of Government Contracting, Area III (Area Office) issued Size Determination No. 03-2009-67 finding Appellant affiliated with its franchisor due to certain provisions in the franchise agreement between the parties. Upon aggregating the receipts of Appellant with those of its corporate franchisor and all its franchisees, the Area Office determined that Appellant is other than small for the applicable size standard. The record reflects that Appellant received the Size Determination that same day via facsimile transmission.

On March 5, 2010,<sup>1</sup> Appellant filed an appeal of the Size Determination with the SBA Office of Hearings and Appeals (OHA). An appeal from a size determination in a pending procurement must be filed within fifteen days of Appellant's receipt of the determination, and an appeal from a size determination other than one in a pending procurement must be filed within thirty days of Appellant's receipt of the determination. 13 C.F.R. § 134.304(a).

---

<sup>1</sup> The Appeal Petition is dated February 26, 2010, but OHA received it on March 5, 2010. A pleading is considered filed as of the date of its receipt at OHA. 13 C.F.R. § 134.204(b).

Here, the Size Determination was issued on August 21, 2009, and Appellant did not file its appeal until March 5, 2010. There is no indication in the record or in the appeal that the transmission of the Size Determination was somehow delayed. Therefore, whether the procurement is pending or not, the appeal is grossly untimely and must be dismissed.

Moreover, an appeal must contain “[a] full and specific statement as to why the size determination . . . is alleged to be in error, together with argument supporting such allegations.” 13 C.F.R. § 134.305(a)(3). The instant appeal fails to provide any statement or argument as to why the size determination is based on any error of fact or law. In fact, the appeal does not allege that the Area Office erred at all. Rather, Appellant claims it has remedied the problems the Area Office found in its franchise agreement.

Based upon these observations, it appears that Appellant intends to seek recertification as a small business rather than to appeal the Size Determination. The procedures for recertification are set forth at 13 C.F.R. § 121.1010. Appellant must apply to the Area Office to be recertified as a small business.

Because Appellant’s appeal is untimely and does not allege that the Area Office’s Size Determination was based on clear error, this appeal is **DISMISSED**. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(b).

---

CHRISTOPHER HOLLEMAN  
Administrative Judge