

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

SIZE APPEAL OF:

American Towing & Auto Dismantling,
Inc.

Appellant

RE: Starrue Inc. d/b/a Star Towing

Appealed from
Size Determination No. 06-2010-70

SBA No. SIZ-5123

Decided: April 14, 2010

ORDER DISMISSING APPEAL

On October 22, 2009, the Contracting Officer (CO) for the U.S. Marshals Service for the Southern District of California issued Request for Quotation No. DJMS-10-98-M-0002 (RFQ) for towing and disposal of seized or forfeited vehicles. The RFQ was issued as a total small business set-aside, and bids were due on October 30, 2009. On November 17, 2009, the CO awarded the contract to Starrue Inc. d/b/a Star Towing (Star Towing). On November 20, 2009, the CO notified unsuccessful offerors, including American Towing & Auto Dismantling, Inc. (Appellant) that the contract had been awarded to Star Towing.

On December 10, 2009, Appellant filed a protest challenging Star Towing's size. On March 3, 2010, the SBA Office of Government Contracting, Area VI (Area Office) dismissed the protest as untimely because it was filed more than five days after notification of the successful offeror. 13 C.F.R. § 121.1004(a)(1), (d). The Record reflects that Appellant received the determination that same day via email.

On March 24, 2010,¹ Appellant filed an appeal of the dismissal with the SBA Office of Hearings and Appeals (OHA). Appellant indicates that it is "request[ing] an investigation . . . of Star Towing's qualification as a Small Disadvantaged Business (SDB)." On April 13, 2010, Star Towing filed a response to the appeal claiming it has been certified as a small business by the California Small Business Administration.

An appeal from a size determination in a pending procurement must be filed within fifteen days of Appellant's receipt of the determination. 13 C.F.R. § 134.304(a). OHA has

¹ The Appeal Petition is dated March 16, 2010, but OHA received it on March 24, 2010. A pleading is considered filed as of the date of its receipt at OHA. 13 C.F.R. § 134.204(b).

previously determined that “a procurement remains pending even after award of a contract.” *Size Appeal of Blaine Larsen Farms, Inc.*, SBA No. SIZ-4743, 6 (2005) (citing *Size Appeal of Witter Mfg., Inc.*, SBA No. SIZ-4624 (2004); *Size Appeal of MBI Corp.*, SBA No. SIZ-4375 (1999)). Thus, the fifteen-day time limit applies to this case where the dismissal was issued on March 3, 2010, and Appellant did not file its appeal until March 24, 2010. There is no indication in the record or in the appeal that the transmission of the determination was somehow delayed. Therefore, the appeal is untimely and must be dismissed. 13 C.F.R. § 134.304(b).²

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 dismissal was based on any error of fact or law. In fact, the appeal does not allege that the Area Office erred at all. Rather, Appellant merely requests an investigation into Star Towing’s status. Furthermore, a letter from Appellant to the Area Office attached to the appeal indicates that its protest was not in relation to any specific contract award, but merely challenged Star Towing’s claim that it is a SDB generally.

OHA has jurisdiction to hear appeals from size determinations³ issued by SBA area offices. 13 C.F.R. § 134.102(k). OHA does not have the authority to conduct original investigations into the size or eligibility certifications of a firm. Because it appears from Appellant’s submission that it is attempting to initiate an investigation rather than appeal the dismissal of its protest, OHA has forwarded Appellant’s appeal petition to the Office of Business Development for review.

Because Appellant’s appeal is untimely and does not allege that the Area Office’s dismissal 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

² Even if the appeal were timely, I would have to deny it. The Area Office properly dismissed Appellant’s protest as untimely. 13 C.F.R. § 121.1004(a). A timely appeal cannot cure an untimely protest. *Size Appeal of Sarang-Herlihy JV*, SBA No. SIZ-5018 (2008).

³ Notably, size determinations always relate to a specific procurement when, as here, they are initiated by a nongovernment entity’s protest. *See* 13 C.F.R. § 121.1001(a).