

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

SIZE APPEAL OF:

Absolute Staffers LLC,

Appellant,

RE: HealthCare Resource Network, LLC

Appealed From

Size Determination No. 02-2013-37

SBA No. SIZ-5441

Decided: February 4, 2013

ORDER DENYING APPEAL¹

I. Background

On April 10, 2012, the U.S. Department of the Treasury, Bureau of Engraving and Printing (BEP), issued Solicitation No. BEP-RFQ-12-0071 (RFQ) as a total small business set-aside. The RFQ was assigned North American Industry Classification System (NAICS) code 561320, Temporary Help Services, with a corresponding size standard of \$13.5 million in average annual receipts.

On September 17, 2012, BEP notified offerors, including Absolute Staffers LLC (Appellant), by e-mail that HealthCare Resource Network, LLC (HCRN) had been selected for award. On December 7, 2012, Appellant filed a size protest with BEP challenging HCRN's status as a small business.² BEP forwarded Appellant's protest to the U.S. Small Business Administration (SBA), Office of Government Contracting — Area II (Area Office) for consideration.

On December 18, 2012, the Area Office issued Size Determination No. 2-2013-037 dismissing Appellant's protest as untimely pursuant to 13 C.F.R. § 121.1004. The Area Office explained that, to be timely, Appellant's protest should have been submitted to BEP no later than September 24, 2012, five business days after BEP's September 17 announcement. (Size Determination at 1.)

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.

² A previous size determination in June 2011 found that HCRN was not a small business under a size standard of \$10 million. *Size Appeal of HealthCare Resource Network, LLC*, SBA No. SIZ-5263 (2011).

On December 20, 2012, Appellant filed the instant appeal with SBA's Office of Hearings and Appeals (OHA). Appellant acknowledges receipt of BEP's September 17 e-mail, but complains that subsequent "requests for more information were ignored." (Appeal at 2.) Appellant further asserts that BEP did not actually award the subject contract until November 30, 2012. Appellant maintains that the size protest was timely filed within five business days after the date of contract award. In Appellant's view, "the clock for the window of protest did not begin on September 17, 2012, but rather on November 30, 2012." (*Id.*)

II. Analysis

Appellant filed the instant appeal within fifteen days of receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). However, a timely appeal cannot cure an untimely size protest. *Size Appeal of Ian, Evan & Alexander Corp.*, SBA No. SIZ-5272, at 2 (2011). The key issue presented, then, is whether the Area Office properly dismissed Appellant's size protest as untimely.

Under SBA regulations, a size protest of a negotiated procurement is timely if "received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of the identity of the prospective awardee." 13 C.F.R. § 121.1004(a)(2). Here, it is undisputed that BEP notified Appellant of the planned award to HCRN on September 17, 2012. Appellant was therefore required to file any size protest by September 24, 2012. The protest was not actually filed until December 7, 2012. Accordingly, Appellant's protest was untimely and the Area Office properly dismissed it.

Appellant reasons that its protest window should have begun on November 30, 2012, the date of contract award to HCRN. This argument is meritless, and contrary to the plain language of 13 C.F.R. § 121.1004(a)(2). The regulation is clear — and OHA has specifically held — that "notification of the awardee's identity is the event that starts the time for protest running." *Size Appeal of Garco Construction, Inc.*, SBA No. SIZ-5308, at 3 (2011).

For the above reasons, I AFFIRM the Area Office's dismissal of the untimely protest and DENY the instant appeal. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge