

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

SIZE APPEAL OF:

Allegiance Security Integration,

Appellant,

RE: Trofholz Technologies, Inc.

Appealed From

Size Determination No. 06-2016-004

SBA No. SIZ-5693

Decided: November 17, 2015

ORDER DENYING APPEAL¹

I. Background

On July 31, 2015, the U.S. Department of the Navy, Naval Special Warfare Command, issued Request for Quotations (RFQ) No. H92240-15-T-0081 for enterprise integrated electronic security. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 561621, Security Systems Services (except Locksmiths), with a corresponding size standard of \$20.5 million in average annual receipts. Allegiance Security Integration (Appellant) and Trofholz Technologies, Inc. (TTI) submitted timely quotations.

On September 22, 2015, Appellant was notified that TTI was the apparent awardee. On October 2, 2015, Appellant filed a size protest with the CO challenging TTI's status as a small business. The CO forwarded Appellant's protest to the U.S. Small Business Administration (SBA), Office of Government Contracting – Area VI (Area Office) for review.

On October 8, 2015, the Area Office issued Size Determination No. 06-2016-004 dismissing Appellant's protest as untimely pursuant to 13 C.F.R. § 121.1004(a). The Area Office explained that, to be timely, Appellant's protest should have been submitted to the CO within five business days of being notified of the identity of the prospective awardee. (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.

On October 16, 2015, Appellant filed the instant appeal with SBA's Office of Hearings and Appeals (OHA). Appellant states that it relied on information found on SBA's website, which indicated that there is no time limit for filing a size protest. (Appeal at 2 (citing <https://www.sba.gov/content/size-protest-guidelines>).) Appellant further argues that, beginning on September 28, 2015, Appellant attempted to contact its local SBA district office in order to obtain guidance on filing a size protest. After numerous calls to various SBA personnel over the ensuing days, Appellant eventually was advised that it should direct its size protest to the CO. Nevertheless, Appellant maintains, the “limited, false, or conflicting” information provided by SBA personnel, including “4 days of no return call or reaching a live person,” contributed to Appellant's protest being untimely. (*Id.* at 2-3.)

TTI did not respond to the appeal.

II. Analysis

Appellant received the size determination on October 8, 2015, and filed the instant appeal within 15 days thereafter, 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 American Patriot Construction Services, Inc.*, SBA No. SIZ-5671, at 2 (2015). The key issue presented, then, is whether the Area Office properly dismissed Appellant's size protest as untimely.

SBA regulations provide that a size protest of a contract award in 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); *see also* Federal Acquisition Regulation (FAR) 19.302(d)(1). Here, Appellant acknowledges that it learned that TTI was the prospective awardee on September 22, 2015. Therefore, excluding two weekend days, Appellant's size protest was due by September 29, 2015. Appellant's protest was not actually filed until October 2, 2015, so the Area Office correctly dismissed the protest as untimely. 13 C.F.R. § 121.1004(d).

Appellant asserts that it relied on information provided on SBA's website, which indicated that there is no time limit for filing a size protest. The web page in question, though, pertains to size protests filed by contracting officers. Consistent with the web page, SBA regulations and the FAR do not impose a deadline on size protests brought by contracting officers, unlike size protests filed by private parties. 13 C.F.R. § 121.1004(b); FAR 19.302(d)(2); *Size Appeal of Aerospace Engineering Spectrum*, SBA No. SIZ-5469, at 2 (2013) (contracting officer's size protest, filed more than a year after contract award, was nevertheless timely). Because Appellant is not a contracting officer, the web page provides no basis to find Appellant's protest timely.

Appellant also argues that its size protest was delayed due to “limited, false, or conflicting” information provided by SBA personnel. While I sympathize with Appellant, the size protest deadlines are clearly specified in regulation, and “[i]t is settled law that all persons are charged with knowledge of Federal regulations, ‘regardless of actual knowledge of what is in the regulations or of the hardship resulting from innocent ignorance.’” *Size Appeal of A-Top*

Security Company, SBA No. SIZ-5227, at 3 (2011) (quoting *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947)). Accordingly, Appellant was responsible for complying with the regulatory deadline, notwithstanding Appellant's difficulties in obtaining guidance from SBA.

For the above reasons, I AFFIRM the Area Office's dismissal of Appellant's 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