

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

SIZE APPEAL OF:

Ordnance Holdings, Inc.,

Appellant,

RE: FPM Remediations, Inc.

Appealed From  
Size Determination No. 1-SD-2017-26

SBA No. SIZ-5833

Decided: May 30, 2017

ORDER DISMISSING APPEAL

I. Background

On March 30, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area I (Area Office) issued Size Determination No. 1-SD-2017-26 finding that FPM Remediations, Inc. is a small business. That same day, the Area Office transmitted copies of the size determination to the protester, Ordnance Holdings, Inc. (Appellant), by both e-mail and certified mail. On May 10, 2017, Appellant filed the captioned appeal with SBA's Office of Hearings and Appeals (OHA).

In its appeal, Appellant asserted that it never received the hardcopy of the size determination, since the document was subsequently returned to the Area Office as “Unclaimed.” (Appeal at 1.) After the hardcopy was returned, the Area Office re-transmitted the size determination to Appellant by e-mail on May 9, 2017. (*Id.*) The Area Office utilized the same e-mail address for Appellant in both the March 30, 2017 and May 9, 2017 e-mails, and Appellant transmitted its appeal to OHA from this same e-mail address. Because it appeared questionable whether the appeal was timely filed, OHA ordered Appellant to show cause why the appeal should not be dismissed.

On May 16, 2017, Appellant responded to OHA's order. Appellant acknowledges that it received the size determination by e-mail on May 9, 2017, but maintains that it “never received the size determination prior to May 9th (either hard copy or e-mail).” (Response at 1.) The hardcopy was not received, Appellant reiterates, because the document “came back [to the Area Office] as unclaimed.” (*Id.*) Appellant states that it “does not recall an e-mail on March 30th”, but offers no further explanation or evidence to support this assertion. (*Id.*)

## II. Discussion

The instant case is substantially similar to OHA's decision in *Size Appeal of Continental Solutions, Inc.*, SBA No. SIZ-5508 (2013). In *Continental Solutions*, the challenged firm denied receiving an e-mail transmitting the size determination on September 13, 2013, even though the challenged firm later used the same e-mail address to communicate with OHA. OHA found that “[i]n light of this evidence, it is reasonable to infer that [the challenged firm] received the size determination on September 13, 2013,” and rejected the challenged firm's arguments to the contrary as “not credible.” *Continental Solutions*, SBA No. SIZ-5508, at 2. Because the challenged firm did not file its appeal within 15 calendar days of September 13, 2013, OHA dismissed the appeal as untimely. *Id.*

Likewise, in the instant case, Appellant must be deemed to have received the size determination by e-mail on March 30, 2017. As in *Continental Solutions*, the same e-mail address used by the Area Office to transmit the size determination was later used by Appellant in its own communications with OHA. Section I, *supra*. Further, Appellant offers no explanation or evidence as to why it might not have received the March 30, 2017 e-mail. Indeed, Appellant does not even clearly deny receiving the March 30, 2017 e-mail, but instead merely asserts that it “does not recall” any such communication. *Id.* Insofar as Appellant may have simply overlooked the March 30, 2017 e-mail, such negligence is not excusable, as OHA has made clear that each litigant is responsible for “properly monitor[ing] its communications.” *Size Appeal of OxyHeal Med. Sys., Inc.*, SBA No. SIZ-5707, at 10 (2016).

Under SBA regulations, a size appeal must be filed at OHA within 15 days of receipt of the size determination, and OHA has no discretion to extend, or waive, this deadline. 13 C.F.R. §§ 134.304(a) and 134.202(d)(2)(i)(A); *Size Appeal of Supplies Now, Inc.* SBA No. SIZ-5655 (2015). Because Appellant is deemed to have received the size determination on March 30, 2017, any appeal was due at OHA no later than April 14, 2017. The instant appeal was not actually filed until May 10, 2017, and thus is plainly untimely.

## III. Conclusion

For the above reasons, I DISMISS the instant appeal as untimely. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge