

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

SIZE APPEAL OF:

Bid Solve, Inc.

Appellant,

RE: CWS Marketing Group, Inc.

Appealed From  
Size Determination No. 02-2018-228

SBA No. SIZ-5906

Decided: May 7, 2018

ORDER DISMISSING APPEAL<sup>1</sup>

I. Background

On April 4, 2018, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. 02-2018-228, denying a size protest filed by Bid Solve, Inc. (Appellant) against CWS Marketing Group, Inc. On April 19, 2018, Appellant served copies of its appeal of the size determination to various parties, including the Area Office and SBA's Office of Procurement Law. (E-mail from E. Rayburn to H. Goza and OPLService@sba.gov (Apr. 19, 2018).) However, Appellant did not transmit the appeal to SBA's Office of Hearings and Appeals (OHA) until April 24, 2018. (E-mail from E. Rayburn to OHAFilings@sba.gov (Apr. 24, 2018).)

Because the appeal appeared to have been filed more than 15 days after Appellant's receipt of the size determination, OHA ordered Appellant to show cause why the appeal should not be dismissed as untimely. On May 3, 2018, Appellant responded to OHA's order, stating that “[i]n this [s]ize appeal, the [A]ppellant made a minor clerical error by not copying the proper OHA email despite serving the remaining parties, and immediately corrected the deficiency the moment it came to [Appellant's] attention.” (Response to Order at 2.) Appellant also offers a letter from its President, Mr. Erik Rayburn, attesting that he “sent out the appeal on [] April 19th 2018 to all the parties believing the submission to OHA and all parties timely.” (Letter at 1.) After “a few days with no response”, Appellant transmitted the appeal to OHA's e-mail address on April 24, 2018 pursuant to a discussion with OHA staff. (*Id.*)

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<sup>1</sup> 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

## II. Discussion

Under SBA regulations, “[s]ize appeals must be filed within 15 calendar days after receipt of the formal size determination.” 13 C.F.R. § 134.304(a). An untimely appeal must be dismissed. *Id.* § 134.304(c). An appeal petition or other pleading is “filed” when it is received by OHA. *Id.* § 134.204(b). In addition to filing a pleading at OHA, a party also must serve copies of that pleading to other interested parties. *Id.* § 134.204(c). However, “service of other parties — including other offices within SBA — does not satisfy the requirement for filing.” *Size Appeal of NiSUS Techs. Corp.*, SBA No. SIZ-5513, at 2 (2013). Applying these rules, OHA has repeatedly held that “[a]n appeal that is properly served [to other parties] but not timely filed [at OHA] must be dismissed as an untimely filed appeal.” *Size Appeal of Rod Robertson Enters., Inc.*, SBA No. SIZ-5808, at 1 (2017); *see also Size Appeal of Silvergate Pharms., Inc.*, SBA No. SIZ-5418 (2012); *Size Appeal of REES Group, Inc.*, SBA No. SIZ-5387 (2012).

In the instant case, Appellant received the size determination on April 4, 2018. Section I, *supra*. Although Appellant served its appeal on other parties within 15 calendar days after receipt of the size determination, Appellant did not file the appeal with OHA until 20 calendar days after receipt. *Id.* As a result, the appeal is untimely and must be dismissed.

Appellant maintains that the delay in filing its appeal with OHA was an oversight which Appellant promptly corrected. Although I sympathize with Appellant, SBA regulations afford OHA no discretion to extend, or waive, the deadline for filing an appeal. 13 C.F.R. § 134.202(d)(2)(i)(a). This is true even when failure to meet the appeal deadline is unintentional or inadvertent. *E.g.*, *Size Appeal of AeroSage, LLC*, SBA No. SIZ-5880, at 2 (2018) (dismissing appeal as untimely despite “good faith” miscalculation of the filing deadline).

## III. Conclusion

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

KENNETH M. HYDE  
Administrative Judge