

Cite as: *Size Appeal of Sentient Digital, Inc. dba Entrust Government Solutions*,
SBA No. SIZ-5963 (2018)

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

SIZE APPEAL OF:

Sentient Digital, Inc. dba Entrust
Government Solutions

Appellant,

Appealed From
Size Determination No. 05-2018-057

SBA No. SIZ-5963

Decided: October 9, 2018

ORDER DISMISSING APPEAL¹

I. Background

On March 19, 2018, the U.S. Navy Military Sealift Command (MSC), in Norfolk, Virginia issued Solicitation No. N32205-18-R-1002 to procure information technology engineering support services. The Contracting Officer (CO) set aside the entire procurement for small businesses, and assigned North American Industry Classification System (NAICS) code 541512, Computer System Design Services, with a corresponding \$27.5 million annual receipts size standard, as the appropriate NAICS code for the procurement. (Size Determination at 1.)

On July 3, 2018, the CO notified unsuccessful offerors that Sentient Digital Inc. dba Entrust Government Solutions (Appellant) was the apparent successful offeror. On July 10, 2018, the CO received a timely size protest from Klett Consulting Group, Inc., an unsuccessful offeror. The CO referred this protest to the Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office). (*Id.*) On August 6, 2018, the CO awarded the contract to Appellant. (Appeal at 3.)

On August 23, 2018, the Area Office issued its size determination that Appellant is other than small for the instant procurement under the ostensible subcontractor rule. On August 24, 2018, the CO contacted Appellant to inquire whether it planned to appeal the size determination. The CO also informed Appellant that MSC was considering whether it was obligated to

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.

terminate the award after it had exercised its authority under FAR 19.302(g)(2) (or 13 C.F.R. § 121.1009(a)(3)) to proceed with award when the Area Office had not issued a size determination within 15 days of its receipt of the protest. (*Id.* at 4.) On August 27, 2018, Appellant informed MSC that, because the size determination was contract-specific, it would only appeal the size determination if MSC reversed its decision to proceed with Appellant's performance of the contract. On August 31, 2018, the CO informed Appellant it would not terminate the contract. Appellant did not file an appeal at that time, acting in reliance upon the CO's representations. (*Id.*)

On September 12, 2018, the CO informed Appellant that MSC was still considering whether to terminate the contract. The CO suggested Appellant request that the Area Office reconsider the size determination. Appellant did so. On September 17, 2018, the Area Office declined Appellant's request. On September 20, 2018, the CO informed Appellant that MSC was still considering whether to terminate its award to Appellant. The CO further stated that unless Appellant appealed the size determination, despite the fact that the deadline for filing an appeal had passed, MSC would likely terminate the contract. (*Id.* at 5.) On September 26, 2018, Appellant filed the instant appeal.

On September 27, 2018, I issued an Order to Show Cause why the instant appeal should not be dismissed as untimely. On October 2, 2018, Appellant filed its Response to the Order to Show Cause (Response). Appellant concedes that the 15-day deadline for filing an appeal has expired. (Response at 4; Appeal at 5.) However, Appellant maintains it did not file its appeal timely based upon the CO's representations that MSC would not terminate the award to Appellant. (Response at 4-5.) Appellant maintains MSC reversed its position and instructed Appellant to file the instant appeal. (*Id.*) Appellant thus maintains it filed its appeal within four business days after the CO's instruction, and six weeks into the contract performance authorized by MSC. (*Id.*) Appellant requests OHA rule that the appeal is timely. (*Id.*)

II. Discussion

I conclude that I must dismiss the instant appeal. An appellant must file a size appeal within 15 calendar days after receipt of the size determination. 13 C.F.R. § 134.304(a). Filing is the receipt of the appeal at OHA. 13 C.F.R. § 134.204(b). Here, Appellant concedes that it received the size determination no later than August 24, 2018. Appeal at 4. Appellant did not file its appeal until September 26, 2018. Appellant concedes it filed its appeal after the expiration of the deadline. Appellant pleads in mitigation of its actions the long time the Area Office took to issue the size determination and the CO's initial assurance that MSC would not terminate the award. Neither of these factors is relevant here. The regulation is clear; a size appeal must be filed within 15 days of receipt of the size determination. There are no exceptions. There is nothing in the regulation which permits an appellant to rely upon the word of a procuring agency to extend the time limit for filing a size appeal. Indeed, the regulation prohibits OHA from extending the deadline for filing an appeal. 13 C.F.R. § 134.202(d)(2)(i)(A). The fact that the CO initially indicated MSC would not terminate the award does not alter the time limit Appellant faced after receiving the size determination. Appellant relied upon the CO's word to its detriment. The regulation mandates that I dismiss this appeal.

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).

CHRISTOPHER HOLLEMAN
Administrative Judge