

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

SIZE APPEAL OF:

ROAM LP, LLC d/b/a ROAM Lake
Powell,

Appellant,

Appealed From
Size Determination No. 05-2022-018

SBA No. SIZ-6175

Decided: October 13, 2022

ORDER DIMISSING APPEAL¹

I. Background

On September 12, 2022, the U.S. Small Business Administration (SBA) Area V Office of Government Contracting (Area Office) issued Size Determination No. 05-2022-018 (Size Determination), finding that ROAM LP, LLC d/b/a ROAM Lake Powell (Appellant) is other than small under the \$8 million annual receipts size standard. On September 28, 2022,² Appellant first filed an incomplete appeal with the SBA Office of Hearings and Appeals (OHA) challenging the Size Determination and stating it was received on September 13, 2022. (Appeal at 1.) Particularly, Appellant failed to include a copy of the Size Determination being appealed and failed to serve the appeal petition upon the SBA official who issued it and the SBA's Office of General Counsel, Associate General Counsel for Procurement Law, as required under 13 C.F.R. §§ 134.305(a)(1), 134.305(b)(1), (5).

Upon receipt of the incomplete filing, OHA informed Appellant of the deficiencies, *supra*, and requested Appellant to comply with the requirements before it could process the appeal. (E-mails from OHAFilings@sba.gov to P. Hartig (Sep. 28, 2022, and Sep. 29, 2022).) On September 29, 2022, Appellant properly filed its appeal.

On October 3, 2022, the Area Office informed OHA that Appellant received the Size Determination on September 12, 2022, at 8:22 a.m., Mountain Daylight Time, proffering a copy of the receipt of service.

¹ OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 et seq., and 13 C.F.R. parts 121 and 134.

² Appellant filed after 5:00 p.m. Eastern Daylight Time on September 27, 2022. Therefore, it is counted as filed on the next business day. 13 C.F.R. § 134.204(b)(2).

On October 4, 2022, OHA issued a Show Cause Order directing Appellant to show cause, no later than October 11, 2022, as to why its appeal should not be dismissed as untimely.

To date, Appellant has not responded to the Show Cause Order.

II. Analysis

The instant appeal is untimely and fails to comply with OHA regulations. Therefore, I must dismiss it. 13 C.F.R. § 134.304(c).

The rules and practice for appeals from size determinations state that a size appeal must be filed within 15 calendar days after receipt of the size determination. *See Size Appeal of Sentient Digital, Inc., d/b/a Entrust Government Solutions*, SBA No. SIZ-5963 (2018); 13 C.F.R. § 134.304(a). A filing received by OHA after 5 p.m. Eastern Time is considered filed on the next business day. 13 C.F.R. § 134.204(b)(2). Further, the Judge may not modify the time limit for filing an appeal. 13 C.F.R. § 134.202(d)(2)(i)(A). Conversely, the regulations require that an untimely appeal be dismissed. 13 C.F.R. § 134.304(c).

Here, Appellant received the Size Determination on September 12, 2022. Section I, *supra*. Any appeal rising from this Size Determination was due by September 27, 2022. Contrary to Appellant's statement that the date of receipt of the Size Determination was September 13, 2022, the Area Office's documentation establishes that the Size Determination was delivered on September 12, 2022, via e-mail. Therefore, the instant appeal is plainly untimely, as the initial defective appeal was filed 16 calendar days after receipt of the Size Determination, and the subsequent, compliant appeal was filed 18 calendar days after receipt of the Size Determination.

III. Conclusion

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

CHRISTOPHER HOLLEMAN
Administrative Judge