

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

IN THE MATTER OF:

A. Grant Services

Appellant

Solicitation No.  
FA4417-09-R-0003  
Department of the Air Force

SBA No. VET-151

Decided: June 17, 2009

**ORDER DISMISSING APPEAL**<sup>1</sup>

On June 5, 2009, the Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received an email from the Department of the Air Force (Air Force), Air Force Special Operations Command, Hurlburt Field, Florida, containing a copy of the appeal petition of Appellant A. Grant Services (Appellant). OHA logged the appeal petition in as filed on June 5, 2009. *See* 13 C.F.R. § 134.204(b)(2) (date of filing is the date the filing is received by OHA).

The appeal petition, dated May 11, 2009, states the SBA notified Appellant on April 29, 2009, that SBA determined that Appellant did not meet the service-disabled veteran-owned small business concern (SDVO SBC) eligibility requirements at the time Appellant submitted an offer on Solicitation No. FA4417-09-R-0003. The certificate of service accompanying the appeal petition indicated that Appellant's counsel had served the appeal petition on interested parties, but there was no indication that the appeal petition was filed on OHA. On June 8, 2009, because the appeal petition appeared to be untimely, I ordered Appellant to show cause why the appeal petition should not be dismissed as untimely.

On June 12, 2009, Appellant filed a response to the show cause order and a copy of its appeal. Appellant asserts it has not received a fair opportunity to present information and protect its interests and requests that I exercise my statutory discretion under 13 C.F.R. § 134.103 and federal case law and find that the appeal petition is timely filed.

The regulations governing SDVO SBC status appeals provide that an appeal must be commenced by filing and serving an appeal petition within 10 business days after the appellant receives the SDVO SBC protest determination. 13 C.F.R. § 134.503. The regulations also cross-

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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 125 and 134.

reference § 134.204 for filing and service requirements and require OHA to dismiss an untimely appeal. 13 C.F.R. §§ 134.503, 134.509(a)(3). Further, the regulations do not permit OHA to modify time limits governing when a case may be commenced. 13 C.F.R. § 134.103(b).

Therefore, because Appellant received the SBA's SDVO SBC protest determination on April 29, 2009, and an appeal petition was not filed within 10 business days, Appellant's appeal petition is untimely. Further, Appellant's apparent timely service of its appeal petition on interested parties, while in compliance with the requirements of 13 C.F.R. §§ 134.204(c) and 134.505(b), does not satisfy the requirement of 13 C.F.R. §§ 134.204(b), 134.503, and 134.509(a)(3) to timely file its appeal petition at OHA.

Appellant's arguments to the contrary are utterly meritless. Appellant asserts that I have statutory discretion to waive the regulation and hear its appeal. This is simply not true. OHA is a creature of statute, not regulation, and those regulations explicitly deny OHA the authority to waive the time limit for filing an appeal. 13 C.F.R. § 103(b); *Size Appeal of UXB International*, SBA No. SIZ-4930 (2008). Service on the parties and filing with OHA are two different actions, and doing one does not excuse the failure to do the other in compliance with the regulations. *Size Appeal of Argo/LRS, JV*, SBA No. SIZ-5027 (2009). Appellant may have properly served the other parties, but it failed to timely file its appeal here. Therefore, I must dismiss its appeal. Further, Appellant's reliance on the regulations at 4 C.F.R. is completely misplaced. These are the regulations for the Government Accountability Office and have no bearing on any case before OHA.

Accordingly, because the appeal petition is untimely filed and OHA may not modify the time limit governing when the case may be commenced, A. Grant Services' appeal is DISMISSED.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.515(a).

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CHRISTOPHER HOLLEMAN  
Administrative Judge