

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

IN THE MATTER OF:

B&C Facility Services, Inc.

Appellant

Solicitation No. W91LV2-10-R-0031

U.S. Department of the Army

Mission & Installation Contracting Command

Fort Dix, New Jersey

SBA No. VET-207

Decided: December 9, 2010

ORDER DISMISSING APPEAL¹

On November 4, 2010, the U. S. Small Business Administration (SBA) Director of Government Contracting (D/GC) issued a determination that B&C Facility Services, Inc. (Appellant) was not a service-disabled veteran-owned small business concern (SDVO SBC). On November 26, 2010, Appellant filed an appeal of that SDVO SBC protest determination with SBA's Office of Hearings and Appeals (OHA).² On December 1, 2010, SBA moved to dismiss the appeal as untimely. SBA also moved to stay its time to respond on the merits.

The SDVO SBC determination is marked as having been sent by facsimile transmission, which means Appellant would have received it on November 4th. In accordance with 13 C.F.R. § 134.503, an appeal from an SDVO SBC protest determination must be filed and served within 10 business days after an appellant receives the SDVO SBC protest determination. Thus, the instant appeal should have been filed by November 19, 2010, one week before it was actually filed. OHA must dismiss an untimely appeal. 13 C.F.R. § 134.503.

On December 3, 2010, I issued an Order to Show Cause to Appellant to show why the appeal should not be dismissed. I also stayed SBA's time to reply on the merits.

On December 7, 2010, Appellant responded to the Order to Show Cause. Appellant admits it filed its appeal late. Appellant pleads the press of business its president's personal affairs, and requests that OHA not dismiss its appeal.

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 125 and 134.

² While the instant appeal is dated November 24, 2010, OHA received it via facsimile transmission on November 26th. At OHA, the date of filing is the date of OHA's receipt of the pleading. 13 C.F.R. § 134.204(b).

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-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 D/GC's SDVO SBC protest determination on November 4, 2010, and an appeal petition was not filed within 10 business days, Appellant's appeal petition is untimely.

I cannot grant Appellant's request that the time limit for filing be waived. I lack the authority to waive the regulation and hear this appeal. OHA is a creature of regulation, and those regulations explicitly deny OHA the authority to waive the time limit for filing an appeal. 13 C.F.R § 132.202(d)(2)(A); *Matter of A. Grant Services*, SBA No. VET-151 (2009).

Accordingly, because the appeal petition is untimely filed and OHA may not modify the time limit governing when the case may be commenced, B&C Facility Services, Inc.'s appeal is DISMISSED.

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

CHRISTOPHER HOLLEMAN
Administrative Judge