

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

IN THE MATTER OF:

Royal Engineers & Consultants, LLC,

Petitioner

SBA No. BDP-367

Decided: September 15, 2010

**ORDER DISMISSING UNTIMELY APPEAL**

On September 10, 2010, Royal Engineers & Consultants, LLC (Petitioner) appealed the May 18, 2010 determination of the Small Business Administration (SBA) terminating Petitioner from the 8(a) Business Development (BD) program. *See* 13 C.F.R. Parts 124 & 134.

In accordance with 13 C.F.R. § 134.202(a)(1), a party other than the SBA “may commence a case by filing a written petition ... no later than 45 days from the date of receipt of the SBA action or determination to which the petition relates.” *See also* 13 C.F.R. § 124.304(e). Petitioner states it received the SBA's termination letter on June 28, 2010. Thus, the deadline for filing its appeal was August 12, 2010. Petitioner filed its appeal petition with OHA on September 10, 2010, nearly one month after the deadline. Therefore, the appeal petition is untimely filed.

Petitioner's counsel states the appeal was timely served on the Director, Office of Business Development (OBD), and the Associate General Counsel for Litigation, Office of General Counsel (OGC). Petitioner's counsel indicates she reviewed forms on the SBA website and “was under the impression that serving the Associate General Counsel for Litigation, counsel SBA.”

Petitioner's counsel's suggestion that timely serving OBD and OGC is sufficient to find the appeal was timely filed at the Office of Hearings and Appeals (OHA) is without merit. This idea assumes that OHA, OBD, and OGC are one, which is not the case.

The Small Business Act requires appeals of 8(a) BD terminations to be conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and be presided over by an Administrative Law Judge who by statute is independent of SBA, Small Business Act of 1958, § 8(a)(9)(A), (B)(ii), as amended, 15 U.S.C. § 637(a)(9)(A), (B)(ii). Therefore, OHA and other parts of SBA do not work together on 8(a) BD appeals. In fact, OBD is the party opposing Petitioner and is represented by OGC.

Moreover, proper and timely service is not a substitute for proper and timely filing for the purpose of commencing an 8(a) BD appeal, *Compare* 13 C.F.R. § 134.204(c) (defining service

as “the mailing, delivery, or facsimile to all other parties of a copy of each pleading or other submission filed with OHA”) *with* 13 C.F.R. § 134.204(b) (defining filing as “the receipt of pleadings and other submissions at OHA”); *compare* 13 C.F.R. § 134.204(c)(2) (providing service is effective the date of sending or mailing) *with* 13 C.F.R. § 134.204(b)(2) (providing a filing is effective the date it is received at OHA).

The Small Business Act requires me to decline to accept jurisdiction if an appeal is untimely filed. Small Business Act, § 8(a)(9)(E)(ii), 15 U.S.C. § 637(a)(9)(E)(ii); *see also* 13 C.F.R. § 134.405(a)(2) (providing the Administrative Law Judge “shall decline to accept jurisdiction over any matter if ... [t]he appeal is untimely filed under § 134.202”). The regulations further prohibit a judge to modify time limits established by statute and those governing when a case may be commenced. 13 C.F.R. § 134.103(b).

In sum, Petitioner's timely service of its appeal petition in compliance with the requirements of 13 C.F.R. § 134.204(c) does not satisfy the filing requirements of 13 C.F.R. § 134.204(b). Therefore, Petitioner did not file its appeal when Petitioner served OBD and OGC. Petitioner's subsequent correct filing after the 45-day deadline, a time limit which cannot be modified, must be considered untimely.

Accordingly, because the appeal petition is untimely filed and I must decline to accept jurisdiction over it, the appeal is DISMISSED.

Subject to 13 C.F.R. § 134.409(c), this is the final decision of the Small Business Administration. *See* Small Business Act, § 8(a)(9)(D), 15 U.S.C. § 637(a)(9)(D); 13 C.F.R. § 134.409(a).

BRENDA P. MURRAY  
Administrative Law Judge