

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

IN THE MATTER OF:

Marine Construction Services, LLC

Appellant

Solicitation No. HSCG80-10-R-P45GK4

SBA No. VET-218

Decided: September 13, 2011

APPEARANCES

Dennis E. Manelli, Esq., Tampa, Florida, for Marine Construction Services, LLC, the Appellant.

Alison M. Mueller, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C., for the Agency.

DECISION

I. Jurisdiction

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.

II. Issue

Did Appellant timely file its appeal? *See* 13 C.F.R. § 134.503.

III. Background

On July 8, 2011, the U.S. Small Business Administration (SBA) Acting Director of Government Contracting (AD/GC) issued his determination, concluding that Marine Construction Services, LLC (Appellant), was not an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) at the time it submitted its proposal for United States Coast Guard Solicitation No. HSCG80-10-R-P45GK4. On that same day, SBA's AD/GC also issued his determination concluding that Appellant was not an eligible SDVO SBC at the time it submitted its proposal for United States Coast Guard Solicitation No. HSCG80-11-Q-P45009A.

The AD/GC transmitted both determinations to Appellant on July 8, 2011, via facsimile transmission. The AD/GC's records show that both transmissions were successfully made to

Appellant's listed facsimile number. Appellant timely appealed the determination made in connection with Solicitation No. HSCG80-11-Q-P45009A, which appeal was denied. *Matter of Marine Construction Services, LLC*, SBA No. VET-216 (2011).

On July 29, 2011, Appellant's counsel inquired as to the status of SBA's determination in the instant case. On that same day, SBA replied that the AD/GC had issued his determination on July 8th, and provided Appellant's counsel with another copy.

On August 12, 2011, Appellant filed the instant appeal from the AD/GC's determination, representing that it had received the determination on July 29th.

On August 19, 2011, SBA moved to dismiss the instant appeal as untimely. Appellant has failed to timely respond to SBA's motion.

IV. Discussion

The record clearly establishes that Appellant received the AD/GC's determination on July 8, 2011, the same day as the determination in connection with Solicitation No. HSCG80-11-Q-P45009A, which latter determination it timely appealed. However, the appeal of the instant determination was not filed until August 12th, 25 business days after Appellant's receipt of the determination.

Appeals from an SDVO SBC protest determination must be filed within ten business days of an appellant's receipt of the AD/GC's determination. 13 C.F.R. § 134.503. An untimely appeal must be dismissed. 13 C.F.R. § 134.509(a)(3). Further, Appellant has failed to timely respond to SBA's motion to dismiss, which means it is deemed to have consented to the requested relief of dismissal. 13 C.F.R. § 134.211(c).

Accordingly, I conclude that I must DISMISS the instant appeal as untimely.

V. Conclusion

For the reasons discussed above, the appeal is DISMISSED AS UNTIMELY.

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

CHRISTOPHER HOLLEMAN
Administrative Judge