

Small Business Administration (S.B.A.)
Office of Hearings and Appeals

[Size Appeal]

SIZE APPEAL OF: JENN-KANS DISPOSAL SERVICE, APPELLANT

SBA No. SIZ-5549
Appealed from Size Determination No. 2-2014-48

April 11, 2014

DECISION

I. Introduction and Jurisdiction

On March 4, 2014, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area II (Area Office) issued Size Determination No. 2-2014-48, dismissing a size protest lodged by Jenn-Kans Disposal Service (Appellant) as non-specific. For the reasons discussed *infra*, the appeal is denied, and the dismissal is affirmed.

SBA's Office of Hearings and Appeals (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. Appellant filed the instant appeal within fifteen days of receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation, Protest, and Size Determination

On October 16, 2013, the U.S. Department of the Air Force (Air Force) issued Request for Proposals No. FA4497-13-R-0005 for performance of non-hazardous solid waste refuse collection, transportation, and disposal services at Dover Air Force Base. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 562111, Solid Waste Collection, with a corresponding size standard of \$35.5 annual receipts.

On January 28, 2014, Appellant learned that RPJ Waste Services (RPJ) was the awardee. On February 3, 2014, the CO received a letter from Appellant challenging RPJ's small business size for the procurement. Appellant stated that it requested a size determination of RPJ because it believed that "its collective ownership and possible affiliation with other companies involved in its collective ownership" could make RPJ ineligible for award. (Protest, at 1.)

On March 4, 2014, the Area Office issued Size Determination No. 2-2014-48 dismissing Appellant's protest as non-specific. The Area Office explained:

[Appellant] provided a fleeting statement that RPJ is other than small. It was only noted that RPJ was other than small due to its 'collective ownership and possible affiliation with other companies involved in its collective ownership, such as Kent Construction.' There was no other specific information provided concerning the nature of the affiliation between RPJ and Kent Construction.

(Size Determination, at 1.)

B. Appeal

On March 13, 2014, Appellant filed the instant appeal. Appellant attempts to expand on its protest by providing information of RPJ's affiliation and common ownership with Kent Construction and other business concerns that are owned or controlled by RPJ's Vice-President. Appellant maintains that in light of this information, RPJ is a large business ineligible for this procurement.

III. Discussion

I find that the Area Office properly dismissed Appellant's protest. According to SBA regulations:

A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest.

13 C.F.R. § 121.1007(b). If a protest is found to be non-specific, the SBA must dismiss it. 13 C.F.R. § 121.1007(c). In the past, OHA has stated that, in reviewing non-specific protests, it will consider “(1) whether the protest was sufficiently specific to provide notice of the grounds upon which the protestor was contesting the challenged firm's size; and (2) whether the protest included factual allegations as a basis for these grounds.” *Size Appeal of Alutiiq Int'l Solutions, LLC*, SBA No. SIZ-5069, at 4 (2009).

Here, Appellant's protest “formally” requested that a size determination be performed on RPJ. Appellant then states that there is “possible affiliation” between RPJ and other concerns, yet only listing Kent Construction as a possible affiliate. Lastly, the protest stated that this possible affiliation ““may cause” RPJ to exceed the size standard associated with the procurement.

Appellant's protest fails to specifically identify how RPJ violates SBA's affiliation rules. *Size Appeal of Enviro-Services & Training Center, LLC*, SBA No. SIZ-5517 (2013) (finding a protest nonspecific when its statements regarding affiliation lacked explicitness.) The protest fails to designate any particular violation of SBA's size regulations. Indeed, the protest fails to state definitively that RPJ is other than small. Rather, the protest merely raises the possibility of RPJ's affiliation with other concerns, “such as Kent Construction.” Appellant's statements lack any facts, documentation or specific information that could support its claim that RPJ was not a small business concern. Appellant's protest could not reasonably provide RPJ with notice of the grounds by which its size was being challenged or even attempted to explain how RPJ was in violation of SBA's affiliation regulations. Appellant's protest, in effect, amounted to asking the SBA, via the CO, to look into RPJ's small business size, without providing any factual information as to the allegations. The size protest regulations do not permit this. Rather, they require a specific allegation as to why the challenged concern is other than small, which the challenged concern may reply to and SBA may investigate.

Lastly, in its appeal, Appellant does not challenge the Area Office's determination, instead Appellant attempts to introduce new information to support its original allegations of RPJ's affiliation. Nevertheless, an insufficiently specific protest cannot be cured on appeal by the submission of new evidence. *Size Appeal of AMETEK SCP, Inc.*, SBA No. SIZ-5518 (2013). Appellant had ample opportunity to submit this information in its size protest and failed to do so. Accordingly, the appeal failed to state how the Area Office erred in dismissing Appellant's size protest, as required by 13 C.F.R. § 134.305(a)(3).

IV. Conclusion

For the above reasons, I AFFIRM the Area Office's dismissal of the protest and DENY the instant appeal. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

Christopher Holleman
Administrative Judge