

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

APPEAL OF:

Governance and Information Technology
Program Management, LLC,

Appellant,

Solicitation No. 47QTCB20R0005

SBA No. BDP-6112

Decided: August 2, 2021

ORDER DISMISSING APPEAL¹

On July 20, 2021, Governance and Information Technology Program Management, LLC (Appellant) filed the instant appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). The appeal stated that Appellant seeks to challenge the determination of an SBA District Office that Appellant is ineligible to receive an award under Solicitation No. 47QTCB20R0005. (Appeal, at 1.) Appellant explained that, because the underlying procurement was set aside for participants in SBA's 8(a) Business Development program, the Contracting Officer requested that the District Office review Appellant's eligibility for award pursuant to 13 C.F.R. § 124.507. (*Id.*, at 3.)

On July 26, 2021, OHA ordered Appellant to show cause why the appeal should not be dismissed for lack of jurisdiction. OHA noted that, according to SBA regulations, a District Office's determination that an 8(a) participant “is ineligible for the contract” is normally not subject to appeal. 13 C.F.R. § 124.517(c). Further, OHA's rules of procedure provide that OHA has jurisdiction only over certain types of 8(a) program determinations, and the instant appeal does not appear to fall within any of those categories. 13 C.F.R. §§ 134.102(j) and 134.401.

On July 30, 2021, Appellant responded to OHA's order. Appellant reiterates its view that the District Office clearly erred in finding Appellant ineligible for the instant procurement. (Response, at 1-2.) Because the District Office failed to conduct “a lawful 8(a) eligibility review,” OHA “should exercise jurisdiction to correct this injustice.” (*Id.*, at 2.) In the alternative, Appellant requests that OHA promptly dismiss the appeal, so that Appellant may seek review of the District Office's decision at the U.S. Court of Federal Claims.

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received no requests for redactions. Therefore, I now issue the entire decision for public release.

I find that OHA lacks jurisdiction over this appeal. As explained in OHA's Order to Show Cause, SBA regulations stipulate that an 8(a) participant "cannot appeal SBA's determination not to award it a specific 8(a) contract," except to request a formal size determination from SBA's Office of Government Contracting. 13 C.F.R. § 124.517(c). It does not appear here that Appellant ever requested a formal size determination, or that any such determination has been issued.

OHA's rules of procedure provide that OHA has jurisdiction only over certain types of 8(a) program decisions: "[d]enial of program admission based solely on a negative finding as to social disadvantage, economic disadvantage, ownership or control"; "early program termination"; "program graduation"; "denial of a waiver of the requirement to perform to completion an 8(a) contract"; and "[p]rogram suspension." 13 C.F.R. §§ 134.102(j) and 134.401. While Appellant argues that SBA's decision was contrary to law, it has not even attempted to show that the instant appeal falls within any of the categories of decision OHA has jurisdiction to review. The decision by an SBA District Office to find a firm ineligible for award is clearly not among the categories of decision over which the regulations give OHA jurisdiction to hear appeals.

For the above reasons, I DISMISS the instant appeal for lack of jurisdiction. This is the initial decision of the SBA. Absent a request for review under 13 C.F.R. § 134.228(a), this decision will become SBA's final decision thirty days after the date of this decision. *See* 13 C.F.R. § 134.227(a).

CHRISTOPHER HOLLEMAN
Administrative Judge