

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

IN THE MATTER OF:

National Sourcing Specialists, LLC,

Petitioner

SBA No. BDPE-502

Decided: August 22, 2013

**ORDER GRANTING AGENCY'S MOTION TO DISMISS & ORDER DENYING
PETITIONER'S MOTION FOR SUMMARY DECISION**

Petitioner National Sourcing Specialists, LLC (NSS or Petitioner) is an entity created as the result of a Joint Venture (JV) agreement between Technical Professional Services (TPS), a former 8(a) Business Development (BD) program participant, and KBTS Technologies, Inc. (KBTS), a current participant in the 8(a) BD program. Petitioner filed the instant appeal pursuant to 13 C.F.R. §§ 134.102(j)(1), 134.401(a) alleging the Small Business Administration (SBA or Agency) acted in an arbitrary and capricious manner by not deeming NSS eligible to receive 8(a) BD contracts prior to the SBA's approval of the JV.

RELEVANT DATES

Prior to July 28, 2012, TPS was a participant in the 8(a) BD program.

On July 28, 2012, TPS term of participation in the 8(a) BD program ended.

Prior to October 24, 2012, KBTS was a current participant in the 8(a) BD program.

On October 24, 2012, TPS and KBTS entered into a JV agreement thereby forming NSS.

On November 21, 2012, another 8(a) BD program participant was offered a sole source award. The Agency, on behalf of the 8(a) BD program participant, accepted the award.

On January 9, 2013, SBA approved the JV between TPS and KBTS and thus allowed NSS to performed one or more specific 8(a) BD contracts.

On June 10, 2013, NSS filed an appeal contesting the SBA's eligibility determination and alleging the matter was properly situated before Office of Hearings and Appeals (OHA) pursuant to 13 C.F.R. §§ 134.102(j)(1), 134.401(a).

JURISDICTION OF OHA

Pursuant to 13 C.F.R. § 134.1020), jurisdiction of SBA's OHA is strictly limited to the following circumstances:

Appeals from the following SBA 8(a) program determinations under the Act and part 124 of this chapter:

- (1) Denial of program admission based solely on a negative finding as to social disadvantage, economic disadvantage, ownership or control; program termination; program graduation; or denial of a waiver of the requirement to perform to completion an 8(a) contract; and
- (2) Program suspension[.]

Id.

Further, 13 C.F.R. § 134.405(a) provides:

The Administrative Law Judge selected to preside over an appeal *shall decline* to accept jurisdiction over any matter if:

- (1) The appeal does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the determination, including appeals of denials of 8(a) BD program admission based in whole or in part on grounds other than a negative finding of social disadvantage, economic disadvantage, ownership or control;
- (2) The appeal is untimely filed or is not otherwise filed in accordance with the requirements of this subpart or the requirements in subparts A and B of this part; or
- (3) The matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters.

Id. (emphasis added).

DISCUSSION

As per regulation, jurisdiction herein is strictly limited to circumstances involving 8(a) BD program determinations. *See* 13 C.F.R. §§ 134.102, 134.405.

NSS is a JV that was approved by the SBA to perform one or more specific 8(a) BD contracts. NSS has not an 8(a) BD participant. NSS has not applied for 8(a) BD certification. Petitioner's contention that the JV agreement is "both in form and substance" an application to the 8(a) BD program is without merit. The JV agreement submitted to the Agency is neither in form and/or substance an application to the 8(a) BD program. *See generally* 13 C.F.R. Part 124. Further, the Agency appropriately refuted such contention by filing a properly executed Affidavit attesting that Petitioner has not filed an application to participate in the 8(a) BD program.

Accordingly, NSS lacks standing to assert rights limited to 8(a) BD participants and applicants. *See* 13 C.F.R. §§ 134.102, 134.405. The court therefore, pursuant to 13 C.F.R. § 134.405(a)(1), declines to accept jurisdiction over the instant matter. **WHEREFORE,**

IT IS HEREBY ORDERED, that for the reasons described *supra*, the Agency's Motion to Dismiss for Lack of Jurisdiction is **GRANTED** and Petitioner's Cross-Motion for Summary Judgment is **DENIED**.

IT IS SO ORDERED.

Done and dated this 22d day of August 2013 at New Orleans, LA.

BRUCE T. SMITH
Administrative Law Judge