

UNITED STATES OF AMERICA  
SMALL BUSINESS ADMINISTRATION  
OFFICE OF HEARINGS AND APPEALS  
WASHINGTON, D.C.

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SIZE APPEAL OF:	)	
	)	
Jacob-Reliable Enterprises	)	Docket No. SIZ-2006-12-22-77
	)	
Appellant	)	Decided: February 5, 2007
	)	
RE: Nabholz Construction Corp.	)	
	)	
Solicitation No. DOL069RB20275	)	
U.S. Department of Labor	)	
Division of Job Corps, A & E and Construction	)	
Services	)	
Washington, D.C. 20210	)	
_____	)	

ORDER DISMISSING APPEAL<sup>1</sup>

I. BACKGROUND

On September 25, 2006, the United States Department of Labor (DOL) issued Solicitation No. DOL069RB20275 for commercial and institutional building construction. The Contracting Officer (CO) designated the solicitation a 100% Service-Disabled Veteran-Owned Small Business (SDVOSB) set-aside. The North American Industry Classification System (NAICS) code is 236220 with a \$31 million size standard. On December 7, 2006, two bids were opened, read, and recorded. Intelligent Information Technology Solutions-Nabholz, LLC, (IITS-Nabholz) self-represented as a SDVOSB and was the apparent low-bidder.

On December 12, 2006, Jacob-Reliable Enterprises (Appellant), the other bidder, filed a protest against IITS-Nabholz with the Government Accountability Office (GAO). Appellant alleged that IITS-Nabholz does not qualify as an SDVOSB, is not small, and did not comply with instructions to bidders. Appellant’s GAO protest was dismissed and Appellant redirected its protest to the CO. The CO forwarded Appellant’s protest to the Small Business Administration (SBA) Office of Government Contracting-Area V in Fort Worth, Texas (Area Office).

On December 19, 2006, the Area Office dismissed the protest since Appellant did not provide specific evidence that IITS-Nabholz exceeds the \$31 million size standard. A copy of

<sup>1</sup> This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134.

Appellant's concerns regarding the SDVOSB status of IITS-Nabholz was forwarded to the Office of Government Contracting Headquarters in Washington, D.C. The Area Office also explained that matters of bid responsiveness are determined by the CO and are outside the purview of the Area Office. On December 20, 2006, Appellant received the dismissal.

On December 22, 2006, Appellant filed the instant appeal with this Office. Appellant reasserts its original protest. Appellant alleges IITS-Nabholz is not a qualified SDVOSB because a large business owns forty-nine percent of the company. Appellant states the Area Office dismissed its protest for lack of specificity and supporting evidence, but Appellant argues the evidence was readily available in government databases and on the internet. Appellant includes new evidence, not considered by the Area Office, with its appeal: the Central Contractor Registration (CCR) information for Nabholz Construction Corporation (Nabholz) and media information from Nabholz's website.

On January 19, 2007, the day the record closed, Nabholz filed a response. Nabholz indicated it is not a bidder in the solicitation and has not represented itself as a small business. Nabholz stated it entered into a mentor-protégé agreement with Intelligent Information Technology Solutions, LLC (IITS). Nabholz indicated that although it understood that SBA had approved the mentor-protégé agreement prior to the bid it recently learned the mentor-protégé agreement had not been formally approved by SBA.

IITS also filed a response on January 19, 2007. IITS indicated it is a SDVOSB. IITS stated it entered into a mentor-protégé agreement with Nabholz on November 11, 2006. IITS stated that the mentor-protégé agreement was submitted to SBA for approval. IITS indicates it had ongoing discussions with SBA and understood the mentor-protégé agreement was approved by the board, but recently learned the mentor-protégé agreement had not yet been approved by SBA.

On January 23, 2007, Appellant filed a response to the January 19, 2007 filings of Nabholz and IITS. Appellant asserts the responses of Nabholz and IITS demonstrate that no mentor-protégé agreement existed between Nabholz and IITS at the time bids were submitted and no joint venture existed. Appellant states by their own admissions Nabholz and IITS do not qualify for the solicitation eligibility requirements.

## II. DISCUSSION

Appellant filed the instant appeal within 15 days of receiving the size determination, and thus the appeal is timely. 13 C.F.R. § 134.304(a)(1).

Nevertheless, the appeal must be dismissed. A size protest must contain specific facts to provide reasonable notice of the grounds on which the protested concern's size is questioned. 13 C.F.R. § 121.1007(b); see *Size Appeal of C & D Security Management, Inc.*, SBA No. SIZ-4823, at 5 (2006) (citing *Size Appeal of Carriage Abstract, Inc.*, SBA No. SIZ-4430, at 6 (2001)

(holding challenger's protest was sufficiently specific in that the protest asserted that the challenged firm was other than small, included the grounds for the challenge, and incorporated factual allegations to support their allegations)). A protest must include specific facts and any available evidence. 13 C.F.R. § 121.1007(b). A protest which merely asserts that the challenged firm is not small, and does not state the basis for this allegation, is insufficiently specific. 13 C.F.R. § 121.1007(b); *Size Appeal of L. Washington & Associates, Inc.*, SBA No. SIZ-4463 (2001). An area office must dismiss an insufficiently specific protest, and this Office will uphold such a dismissal. 13 C.F.R. § 121.1007(c); *Size Appeal of L. Washington & Associates, Inc.*, SBA No. SIZ-4463 (2001).

Here, Appellant's protest asserted IITS-Nabholz does not qualify as an SDVOSB, is not small, and did not adhere to bid requirements, but offered no factual basis for its assertions that IITS-Nabholz is other than small.<sup>2</sup> Appellant presented broad allegations without presenting specific grounds to support the allegations. *See Size Appeal of Seville Construction, Inc.*, SBA No. SIZ-2537, at 3 (1986). An area office has a regulatory obligation to conduct size investigations, but an area office is not required to ferret out information to support unspecific protests. *Size Appeal of Diamond Pacific*, SBA No. SIZ-2220, at 3 (1985) ("The case law has clearly held that a protest which alleges no particulars and/or proffers no basis of support should properly be dismissed for nonspecificity, and that it does not constitute an unreasonable burden upon protestants to require them to set forth specific allegations and argument."). Thus, Appellant's protest lacked the specificity required by the regulation to trigger a size investigation. For that reason, the Area Office correctly dismissed the protest. *Size Appeal of Operations Technologies, Inc.* SBA No. SIZ-4258, at 4 (1997) (affirming area office's dismissal of protest that lacked the specificity required by the regulation).

Appellant attempts to cure the protest's deficiency by introducing new evidence on appeal. Appellant argues it did not include the evidence with its protest because the information is readily available in the government's CCR database and on the internet. However, it is not SBA's role to search out information to buttress a protestor's unspecific allegations; a protestor must include supporting materials, if supporting materials are available. 13 C.F.R. § 121.1007(b).

Appellant's protest did not include specific evidence that IITS-Nabholz exceeds the \$31 million size standard. There was no basis for the protest as presented to the Area Office and the Area Office correctly dismissed it as insufficiently specific. While 13 C.F.R. § 134.308

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<sup>2</sup> Compliance with bid requirements is beyond the jurisdiction of the SBA; however, the CO confirmed IITS-Nabholz did adhere to the bid requirements. Letter from Marissa G. Dela Cerna, Contracting Officer, U.S. Department of Labor, to Stephanie Lewis, Office of Government Contracting, U.S. Small Business Administration (Dec. 18, 2006). The question of Appellant's status as veteran-owned and controlled concern was properly referred to SBA's Associate Administrator for Government Contracting, and is not before us here. *See* 13 C.F.R. § 125.25(e).

permits the introduction of new evidence on appeal under certain limited circumstances, Appellant's submission of new evidence now is an attempt to cure an insufficiently specific protest, which this Office will not permit. *Size Appeal of Strand Hunt Construction, Inc.*, SBA No. SIZ-4435, at 3 (2001). I can find no basis for a finding that the Area Office's action was based on a clear error of fact or law, and thus reversible. 13 C.F.R. § 134.314; *Size Appeal of Rebmar, Inc.*, SBA No. SIZ-4173, at 4 (1996) (holding appellant has the burden of proof in a size appeal proceeding to show error in the area office's determination). Accordingly, I must dismiss this appeal.

Although I must dismiss the instant appeal because there is no evidence the Area Office's determination was based on clear error of fact or law, the pleadings in this case have introduced troubling evidence. In their respective January 19, 2006 filings, both Nabholz and IITS admit their mentor-protégé agreement has not been approved by SBA. Based on this information, the CO or SBA may decide to initiate a new size protest. I note that the time limitations for filing protests do not apply to contracting officers or the SBA, and they may file protests before or after award. 13 C.F.R. § 121.1004(b); *Size Appeal of Regent Manufacturing, Inc.*, SBA No. SIZ-4533, at 6 (2003).

### III. CONCLUSION

For the above reasons, the I DISMISS the instant appeal and AFFIRM the Area Office's dismissal of Appellant's protest.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. §134.316(b).

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CHRISTOPHER HOLLEMAN  
Administrative Judge