

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

SIZE APPEAL OF:

Hallmark-Phoenix Joint Venture

Appellant

RE: Santa Barbara Applied Research, Inc.

Appealed from

Size Determination No. 6-2007-091

SBA No. SIZ-4870

Decided: October 23, 2007

APPEARANCES

Johnathan M. Bailey, Esq., Bailey & Bailey, P.C., San Antonio, Texas, for Appellant.

Grace Vaswani, President, Santa Barbara Applied Research, Inc. (SBAR), Ventura, California, for SBAR.

DECISION

HOLLEMAN, Administrative Judge:

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 121 and 134.

II. Issue

Whether the size determination was based on clear error of fact or law. *See* 13 C.F.R. § 134.314.

III. Background

A. Solicitation and Protest

On April 12, 2007, the Department of Air Force, 21 Contracting Squadron, Peterson Air Force Base, Colorado, issued Solicitation No. FA2517-06-R-6003 (RFP) for multi-wing logistics services at various Air Force base command locations as a 100% small business set-aside. The

Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 561210, Facilities Support Services, with a corresponding \$32.5 million annual receipts size standard.

On September 7, 2007, Hallmark-Phoenix Joint Venture (Appellant) received notice that Santa Barbara Applied Research, Inc. (SBAR) was the apparent successful offeror.

On September 14, 2007, Appellant filed a size protest with the CO. Appellant alleged SBAR's average annual revenues, combined with its affiliates' revenues, exceeded the size standard for this procurement. Appellant alleged affiliation between SBAR and two firms: MCA Engineers, Inc. (MCA) and GPA Technologies, Inc. (GPA).

Appellant asserted SBAR acquired MCA in 2003 and MCA's recent annual revenues are reported on Dun and Bradstreet as \$19.3 million. Appellant alleged SBAR is also affiliated with GPA, based on familial and business relationships between the two firms. GPA's President and Chief Executive Officer (CEO) is Michael Vaswani, the brother of Grace Vaswani, the 60% owner of SBAR. Additionally, Appellant alleges GPA's website indicates GPA has teamed with SBAR and that the two companies share management.

Appellant also alleges SBAR's revenues alone may exceed the size standard for this procurement. Appellant stated: SBAR's self-reported annual revenues for 2005 to Dun and Bradstreet were \$22,825,873; in 2005 SBAR was awarded a contract by the California Institute of Technology, Jet Propulsion Laboratory, with a potential value of \$75 million for the first four-year term; and Experian indicates SBAR's most recent annual revenues are \$60 million.

#### B. The Size Determination

On September 20, 2007, in response to Appellant's size protest the Small Business Administration (SBA), Office of Government Contracting, Area VI, in San Francisco, California (Area Office) issued Size Determination No. 6-2007-091 (the size determination) finding SBAR to be a small business for the relevant size standard.<sup>1</sup>

The Area Office calculated SBAR's size as of May 23, 2007, the date of the submission of its initial offer and its self-certification as a small business. Based on SBAR's federal income returns for the applicable years, the Area Office determined SBAR's average annual receipts were within the applicable size standard of \$32.5 million.

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<sup>1</sup> Appellant's size protest was the second size protest the Area Office received regarding this procurement. On September 11, 2007, the Area Office received a size protest filed by Logistics Support Services Joint Venture (LSS). In response to LSS's size protest, the Area Office issued Size Determination No. 6-2007-090 finding SBAR to be a small business. Appellant's allegations were not raised by LSS and therefore the Area Office issued a second size determination to address Appellant's allegations and the evidence provided in response to the new allegations.

The Area Office determined MCA is not an affiliate of SBAR. SBAR acknowledged it purchased most of MCA's assets in October 2003, including all open contracts. However, SBAR did not purchase all of MCA's assets and MCA continues to operate as an active corporation with M.T. Schmoll as the president.

The Area Office did find SBAR is affiliated with GPA based on identity of interest. The Area Office noted SBAR's President and CEO, Ms. Vaswani, is the sister of GPA's President, Mr. Vaswani, and the Vaswanis are not estranged. Moreover, SBAR and GPA share office space and employees, GPA has a consultant agreement with SBAR for contract administration, and GPA subcontracts work to SBAR. The Area Office was not persuaded by SBAR's argument that the SBA previously found the relationship between SBAR and GPA acceptable when GPA entered the 8(a) program in February 2001. Due to affiliation between SBAR and GPA, the Area Office added GPA's annual receipts for the relevant period to SBAR's annual receipts. Nevertheless, the combined annual receipts for the two companies total less than the applicable size standard of \$32.5 million. Therefore, a finding that SBAR and GPA were affiliated did not alter SBAR's size status.

The Area Office found Appellant's allegations of SBAR's affiliation with Aegir Systems, a company located in the same building as SBAR and GPA, and companies owned by George Hambrick, a minority shareholder of SBAR, were not supported by the evidence, and therefore found no affiliation with those firms.

### C. The Appeal

On September 26, 2007, Appellant filed an appeal of the size determination. Appellant asserts SBAR is other than small because of its affiliation via interlocking management and other connections with MCA. Appellant disputes the Area Office's acceptance of SBAR's representations that its arrangement with MCA was only a purchase of assets. Appellant states the Area Office overlooked that SBAR uses MCA as an assumed name. Appellant states the domain name "MCAEng.com" is listed as belonging to a division of SBAR and a SBAR email and phone number is listed as the contact information. Appellant also states MCA advertises as a division of SBAR.

Appellant argues the evidence submitted with the protest should have been sufficient to find affiliation. Appellant also moves to submit new evidence and explains the evidence was not previously submitted because prior to SBAR's response to this size protest, SBAR had publicly claimed MCA was a wholly-owned division of SBAR.

### D. Appellant's Motion to Add Additional Exhibits

On September 26, 2007, Appellant filed a Motion to Add Additional Exhibits. The Appellant requested six documents be included in the record: (1) Information from the MCA website home page; (2) Contact information from the MCA website; (3) a May 25, 2006 attendance roster for the pre-proposal site visit for contract FA4610-06-R-0004; (4) Emails between Mr. Schmoll and Phoenix Management, Inc., employees regarding SBAR's proposal on a different procurement; (5) a Dun and Bradstreet Report on MCA, dated September 20, 2007;

and (6) the affidavit of Frank Alexander, Vice President of Business Development at Phoenix Management, Inc. Appellant argues good cause exists for the admission of the documents to rebut SBAR's defense to Appellant's size protest. Appellant asserts the exhibits are relevant and necessary to the intimate connection of the business operations of SBAR and MCA. Appellant argues the evidence is of greater evidentiary value than the evidence submitted by SBAR and that the additional evidence does not unduly enlarge the issues.

#### E. SBAR's Response and Request to Include Additional Evidence

In response to Appellant's allegation, SBAR asserts it entered into an Asset Purchase Agreement with MCA on September 30, 2003. SBAR states a copy of the agreement was submitted to the Area Office on September 18, 2007. SBAR asserts it purchased MCA's: active contracts, billed accounts receivable, cash in accounts, prepayment and sums, fixed assets, trade secrets, technology, know-how, and the license to use the name "MCA Engineers." SBAR restates there is no affiliation between SBAR and MCA. In the alternative, SBAR provides the revenue for MCA for MCA's last three fiscal years and argues, even if combined with the annual revenue of SBAR and GPA, SBAR is still within the \$32.5 million size standard for NAICS code 561210.

### IV. Discussion

#### A. Timeliness

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

#### B. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of their appeal. Specifically, Appellant must prove the Area Office size determination is based on a clear error of fact or law. 13 C.F.R. § 134.314; *Size Appeal of Procedyne Corp.*, SBA No. SIZ-4354, at 4-5 (1999). OHA will disturb the Area Office's size determination only if the Administrative Judge, after reviewing the record and pleadings, has a definite and firm conviction the Area Office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

#### C. New Evidence

In accordance with 13 C.F.R. § 134.308(a), new evidence may not be submitted on appeal unless the Judge orders it *sua sponte* or a motion is filed and served establishing good cause for the submission of the new evidence. OHA has found good cause when the new evidence is relevant to the issues on appeal, does not unduly enlarge the issues, and clarifies the facts on the issues on appeal. *Size Appeal of Pointe Precision, LLC*, SBA No. SIZ-4434 (2001).

Appellant pleads good cause for the submission of six documents: (1) Information from the MCA website home page; (2) Contact information from the MCA website; (3) a May 25,

2006 attendance roster for the pre-proposal site visit for contract FA4610-06-R-0004; (4) Emails between Mr. Schmoll and Phoenix Management, Inc., employees regarding SBAR's proposal on a different procurement; (5) a Dun and Bradstreet Report on MCA, dated September 20, 2007; and (6) the affidavit of Frank Alexander, Vice President of Business Development at Phoenix Management, Inc. SBAR presents new information in its response, including MCA's gross receipts for the previous three fiscal years. Appellant's and SBAR's arguments for inclusion of new evidence are unpersuasive. The parties are responsible for presenting all evidence to the Area Office. 13 C.F.R. 121.1009(b). The parties cannot submit evidence on appeal they neglected to submit at the protest stage. *Size Appeal of Carriage Abstract, Inc.*, SBA No. SIZ-4430 (2001). The SBAR public statements Appellant seeks to admit have less probative weight than the detailed documents of the purchase and sale which SBAR submitted in response to the protest. Neither party has established good cause to enlarge the record to incorporate the proffered documents or information. Therefore, the motion for submission of new evidence is DENIED and I EXCLUDE both parties' additional information from the record.

#### D. The Merits

Appellant's argument here is wholly without merit. The Area Office's size determination is based upon SBAR's sworn submission with its SBA Form 355, copies of SBAR's income tax returns and GPA's income tax returns for the relevant period, and SBAR's Asset Purchase Agreement with MCA. Appellant bases its appeal on rearguing its size protest allegations that SBAR is affiliated with MCA. OHA affords far more evidentiary weight to the signed, sworn statements accompanying a SBA Form 355 than to assertions by other parties. *Size Appeal of Corporate Research Services, Inc.*, SBA No. SIZ-4646, at 3 (2004); *Size Appeal of J.M. Waller Associates, Inc.*, SBA No. SIZ-4322, at 9 (1998). Appellant bases its appeal on puffery found in public statements, rumor, and speculation. The Area Office bases its size determination on the hard evidence provided under oath in the SBA Form 355 and the accompanying documentation. Thus, the more reliable evidence was submitted to the Area Office and considered in rendering a size determination on SBAR. This evidence supports the size determination. The information clearly establishes that Appellant is small under the applicable size standard, and has no other affiliations other than those found by the Area Office. Accordingly, I conclude that Appellant has failed to meet its burden of establishing error by the Area Office.

#### V. Conclusion

For the above reasons, I AFFIRM the Area Office's size determination and DENY the instant appeal.

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