

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

SIZE APPEAL OF:

Global Solutions Network, Inc.

Appellant

Re: Accurate Conceptions, LLC

Appealed from
Size Determination No. 2-2007-111

SBA No. SIZ-4881

Decided: January 16, 2008

ORDER DISMISSING APPEAL

I. Introduction and Jurisdiction

On November 27, 2007, the Small Business Administration (SBA) Office of Government Contracting, Area Office II (Area Office) issued Size Determination No. 2-2007-111 finding Accurate Conceptions, LLC (ACL) a small concern under RFP No. W91QV1-06-R-0003 (RFP). On December 12, 2007, Appellant filed the instant appeal.

The Contracting Officer (CO) informed OHA that she had awarded the contract arising from the RFP before SBA determined whether Accurate Conceptions, LLC was a small concern.

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. Accordingly, this matter is properly before OHA.

II. Issue

Whether the appeal, which is based upon an ostensible subcontractor determination, must be dismissed pursuant to 13 C.F.R. § 121.1101(b) since the CO awarded the contract.

III. Discussion

OHA's ability to decide certain issues is limited by regulation. For example, while an area office may consider an ostensible subcontractor protest submitted after a contracting officer

awards a contract, 13 C.F.R. § 121.1101(b) provides:

OHA will not review a formal size determination where the contract has been awarded and the issue(s) raised in a petition for review are contract specific, such as compliance with the nonmanufacturer rule (*see* § 121.406(b)), or joint venture or ostensible subcontractor rule (*see* § 121.103(h)).

Therefore, as OHA held in the *Size Appeal of Evolver, Inc.*, SBA No. SIZ-4844 (2007), OHA lacks the authority to review an appeal where the contract has been awarded and the issue is an alleged violation of the ostensible subcontractor rule. Therefore, I have no alternative but to DISMISS this appeal.

IV. Conclusion

I have considered Appellant's Petition, the applicable law and the Record. It is clear the contract has been awarded and the size determination is predicated upon Appellant's allegation of an alleged violation of the ostensible subcontractor rule. Consequently, this appeal is DISMISSED pursuant to 13 C.F.R. § 121.1101(b) and the November 27, 2007 size determination issued by the Area Office remains in full effect.

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

THOMAS B. PENDER
Administrative Judge