

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

SIZE APPEAL OF:

Channel Logistics, LLC

Appellant

Re: InScope Solutions, Inc.

Appealed from  
Size Determination No. 2-2008-129

SBA No. SIZ-5019

Decided: December 17, 2008

APPEARANCE

Jatin S. Bains, for Channel Logistics, LLC.

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 September 12, 2007, the Department of the Navy, Fleet and Industrial Supply Center, Norfolk, Virginia (Navy), issued Solicitation No. N00189-07-R-0032 for a computer assisted maritime threat evaluation system. The Contracting Officer (CO) set the procurement aside for small business and designated North American Industry Classification System (NAICS) code 541511, Custom Computer Programming Services, with a corresponding \$23 million annual

receipts size standard, as the appropriate NAICS code. Per Amendment 8, issued July 17, 2008, offers were due on July 30, 2008.

On September 4, 2008, the CO issued a notice that InScope Solutions, Inc. (InScope) was the apparent successful offeror. On September 11, 2008, Channel Logistics, LLC (Appellant) filed a protest with the CO alleging that InScope was not a small business concern. Appellant asserted that publicly available information from Dun & Bradstreet and InScope's website indicated that InScope's revenues exceeded the size standard. The CO referred the protest to the Small Business Administration (SBA) Office of Government Contracting - Area II in Philadelphia, Pennsylvania (Area Office), for a size determination.

On September 15, 2008, the Area Office notified InScope of the protest and requested InScope to respond to the protest and to submit a completed SBA Form 355, together with its Federal income tax returns and other information.

#### B. The Size Determination

On October 16, 2008, the Area Office issued a size determination finding InScope was a small business. After first determining InScope had no affiliates, the Area Office noted that the three fiscal years prior to its "January 7, 2008," self-certification date were 2007, 2006, and 2005. The Area Office reviewed InScope's tax returns, and concluded that its annual receipts were within the size standard. Accordingly, the Area Office determined that InScope was an eligible small business.

On October 17, 2008, Appellant received the size determination. On November 3, 2008, Appellant filed the instant appeal with the SBA Office of Hearings and Appeals (OHA).

#### C. The Appeal

Appellant argues that InScope could not have made its certification on January 7, 2008, because, per Amendment 7 of the solicitation, offers submitted prior to the extended due date were not eligible for consideration. Appellant further argues that this means the appropriate years to consider in determining InScope's size were 2006, 2007, and 2008. Appellant apparently argues that calculating InScope's size with these years would show InScope was other than small.

Appellant attaches several documents to its appeal petition. Of these, a news item from InScope's web site dated September 25, 2008, and a *Washington Post* article dated October 22, 2008, are not in the record.

InScope did not respond to the appeal.

#### IV. Discussion

##### A. Timeliness and Standard of Review

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).

Appellant has the burden of proving, by a preponderance of the evidence, all elements of its appeal. Specifically, Appellant must prove the Area Office's size determination is based on a clear error of fact or law. 13 C.F.R. § 134.314. 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).

##### B. New Evidence

Appellant proffers evidence not presented to the Area Office without moving for its admission, which is not permitted by the regulation. 13 C.F.R. § 134.308(a). Further, the evidence addresses issues not relevant to the issues in this appeal. Therefore, I EXCLUDE Appellant's proffered new evidence.

##### C. The Merits

A firm's size is determined as of the date of its submission of its initial offer, including price. 13 C.F.R. § 121.404(a). If a solicitation is amended so that initial offers are no longer responsive to the solicitation, a firm's size is determined as of the date of its submission of a responsive offer, including price, to the modified solicitation. *Id.* The Area Office may have erred here, in that the date as of which InScope's size should have been determined might well have been July 30, 2008, rather than January 7, 2008.

However, such an error would have been harmless. A firm's receipts are defined as its "total income" plus "cost of goods sold" as those terms are defined and reported on its Federal tax returns. 13 C.F.R. § 121.104(a). A firm's annual receipts are determined by taking the average of its receipts for its most recently completed three fiscal years. 13 C.F.R. § 121.104(c)(1).

InScope reports its taxes on a calendar year basis. The year 2008 was not yet complete either on January 7th or July 30th; indeed, it is not yet complete at this writing. The Area Office accordingly properly took the average of InScope's receipts for the three complete years prior to 2008. A review of InScope's tax returns for 2005, 2006 and 2007 establishes that InScope's annual receipts were well within the applicable size standard.

Accordingly, the Area Office calculated InScope's size correctly and there is no error of fact or law in the size determination, and I must therefore affirm it.

V. Conclusion

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

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