

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

SIZE APPEAL OF:

American Woolen Company International,
Inc.

Appellant

Appealed from
Size Determination No. 01-2009-049

SBA No. SIZ-5094

Decided: November 24, 2009

ORDER DISMISSING APPEAL

On March 30, 2009, the Contracting Officer (CO) for the Defense Logistics Agency, Defense Supply Center in Philadelphia, Pennsylvania, posted a presolicitation notice to the Federal Business Opportunities website, <http://www.fedbizopps.gov>, regarding Solicitation No. SPM1C109R0075, a total small business set-aside, for the purchase of disaster blankets. On September 14, 2009,¹ unsuccessful offerors were notified that Northwest Woolen Mills (Northwest) was the intended awardee. On September 17, 2009, American Woolen Company International, Inc. (Appellant), an unsuccessful offeror, filed a protest of Northwest's size.

On October 7, 2009, the U.S. Small Business Administration's (SBA) Office of Government Contracting, Area I (Area Office) issued Size Determination No. 01-2009-049 denying Appellant's protest and finding Northwest to be a small business for this procurement. According to the U.S. Postal Service return receipt, Appellant received the Size Determination on October 13, 2009.

On November 3, 2009,² Appellant filed its appeal of the Size Determination with the SBA Office of Hearings and Appeals (OHA). On November 6, 2009, Appellant submitted a second "Appeal Protest for Fraud" to supplement its initial appeal. 13 C.F.R. § 134.304(a)(1), which governs the timeliness of size appeals, provides: "If the appeal is from a size determination in a pending procurement or pending Government property sale, then the appeal petition must be filed and served within 15 days after appellant receives the size determination."

¹ The notification letter is dated August 28, 2009. There is a note in the Record indicating that due to a clerical error, the actual date the letters were sent was September 14, 2009. Thus, Appellant's protest was judged to be timely.

² The Appeal Petition is dated October 30, 2009, but it was received by OHA on November 3, 2009.

According to the CO, the procurement at issue was awarded to Northwestern on October 29, 2009. In *Size Appeal of Blaine Larsen Farms, Inc.*, SBA No. SIZ-4743 (2005), OHA found that “a procurement remains pending even after award of a contract.” *Id.* at 6 (citing *Size Appeal of Witter Mfg., Inc.*, SBA No. SIZ-4624 (2004); *Size Appeal of MBI Corp.*, SBA No. SIZ-4375 (1999)).

Thus, the procurement at issue is still considered a “pending procurement,” and Appellant was required to file its appeal within fifteen days of receiving the Area Office’s dismissal. 13 C.F.R. § 134.304(a)(1). Because Appellant received the Size Determination on October 13, 2009, Appellant’s appeal was due to OHA by October 28, 2009. OHA did not receive the appeal until November 3, 2009, rendering it untimely. 13 C.F.R. § 134.304(b) provides: “An untimely appeal will be dismissed. However, an appeal which is untimely under paragraph (a)(1) of this section, with respect to a pending procurement or sale, may, if timely under paragraph (a)(2) of this section, proceed with respect to future procurements or sales.” The time limit provided in 13 C.F.R. § 134.304(a)(2) is thirty days, which Appellant satisfied. Pursuant to this provision, I will discuss the merits of Appellant’s appeal.

I find that even after addressing the merits, this appeal must be dismissed. OHA reviews a size determination issued by an SBA area office to determine whether it is “based on clear error of fact or law.” 13 C.F.R. § 134.314; *see also Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2009). Furthermore, it is Appellant’s burden to prove, by a preponderance of the evidence, that the Area Office committed an error. 13 C.F.R. § 134.314.

Under 13 C.F.R. § 134.305(a)(3), Appellant must submit an appeal containing “[a] full and specific statement as to why the size determination . . . is alleged to be in error, together with argument supporting such allegations.” Further, 13 C.F.R. § 134.305(e) provides: “An appeal petition which does not contain all of the information required in paragraph (a) of this section may be dismissed, with or without prejudice, by the Judge at his or her own initiative, or upon motion of a respondent.”

The instant appeal fails to provide a full and specific statement as to why the size determination is alleged to be in error. The appeal merely alleges that Northwest requested a change in its NAICS code to classify as a small business and notes that Appellant objects to such a change. Appellant’s supplemental petition alleges Northwest has engaged in illegal conduct and should be prohibited from entering into federal procurement contracts. These allegations are not related to the Size Determination at issue.

The Size Determination dealt with the concerns raised by Appellant’s protest regarding Northwest’s affiliations, and the Area Office determined that Northwest is still small after taking all of its affiliates into account. Appellant’s appeal fails to address the Size Determination or dispute any of the Area Office’s factual findings or legal conclusions. There is no allegation that the Area Office committed any error at all, let alone a clear error. Consequently, Appellant fails to state a valid claim. *See, e.g., Size Appeal of ALROD Enterprises, Inc.*, SBA No. SIZ-4704 (2005) (“[B]ecause Appellant neither disputes any fact cited in the size determination, nor claims the Area Office made any legal error in its analysis, the appeal fails to state a claim that can be addressed. Thus, the appeal must be dismissed.”).

The purpose of an appeal is not to reargue one's case to OHA or to bring up new and original allegations. Rather, the purpose of an appeal is to correct a specific error on the part of an area office. *See* 13 C.F.R. § 134.314. Because Appellant's appeal petition lacks the specificity required by SBA regulations, I will dismiss it.

Appellant's appeal is untimely and it does not allege that the Area Office's Size Determination was based on clear error. Accordingly, this appeal is **DISMISSED**. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(b).

THOMAS B. PENDER
Administrative Judge