

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

SIZE APPEAL OF:

Reams Enterprises, Inc.

SBA No. SIZ-5137

Appellant

Decided: June 8, 2010

Re: Far East Construction Corp.  
Team Construction, LLC  
Slope Associates, Inc.  
TEPA EC, LLC

Appealed from  
Size Determination No. 3-2010-098

**ORDER DENYING APPEAL**<sup>1</sup>

I. Background

A. Solicitation and Protest

On December 29, 2009, the USPFO, Purchasing & Contracting, in Atlanta, Georgia (USPFO), issued Solicitation No. W912JM-10-R-0002 (RFP) for construction and limited design/build services in Georgia as a small business set-aside. The Contracting Officer (CO) assigned the RFP North American Industry Classification System (NAICS) code 236220 (Commercial and Institutional Building Construction), with a corresponding \$35 million annual receipts size standard. Amendment 0002 (dated January 29, 2010) extended the proposal deadline to February 5, 2010.

On April 22, 2010, the CO notified unsuccessful offerors that he had awarded 21 contracts under the RFP. On April 23, 2010, Reams Enterprises, Inc. (Appellant) filed a size protest against four of the awardees: Far East Construction Corp., Team Construction, LLC, Slope Associates, Inc., and TEPA EC, LLC. The CO referred Appellant's protest to the Small Business Administration's (SBA) Office of Government Contracting, Area III, in Atlanta, Georgia (Area Office), for size determinations.

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<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.

On May 7, 2010, the Area Office dismissed Appellant's protest for lack of standing. Size Determination No. 3-2010-98 (Size Determination).

B. Appeal

On May 24, 2010, Appellant appealed the Size Determination to the Office of Hearings and Appeals (OHA). Appellant asserts the letter it received from the CO stated that its proposal was considered acceptable, but not among the highest rated. Appellant asserts that it therefore has standing. Appellant asserts it has requested a debriefing but has received no response.

Appellant includes a copy of the letter it received from the CO. On April 22, 2010, the CO informed Appellant:

[P]roposal meets most solicitation requirements but does not offer significant advantages to the Government over basic RFP requirements. ... Your proposal was not among the most highly rated, that was selected for award.<sup>2</sup>

The Area Office file contains communications from the CO to the Area Office. The CO informed the Area Office that:

We received 59 proposals on 5 Feb 2010 and thru the Selection Board process we eliminated 38 proposals due to the packages did not meet most of the elements as required in the solicitation. ... We did not eliminate Reams enterprises because of their size. We eliminated because their ratings were not nearly as high as the 21 contractors we chose for the MATOC contract.

Email from CO to Area Office, May 7, 2010.

Reams was not considered to be in the competitive range to award a MATOC contract based on the Source Selection Criteria used in the solicitation. They're standing out of 59 contractors was 40. If the four contractors protested against doesn't meet SBA criteria, we do not intend on having another source selection board and will go with the seventeen contractors we've awarded to.

Email from CO to Area Office, May 6, 2010.

II. Discussion

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).

The letter Appellant submits from the CO is not in the Area Office file, and Appellant has failed to make a proper motion to admit it. 13 C.F.R. § 134.308(a). Nevertheless, I ORDER it

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<sup>2</sup> All quotations from the CO's letter and emails are verbatim.

ADMITTED *sua sponte* because it clarifies factual issues in this appeal while not unduly enlarging the issues. *Size Appeal of T/J Technologies, Inc.*, SBA No. SIZ-4832 (2007).

I find the Area Office properly dismissed the protest. The applicable regulation provides that, in the case of a procurement restricted to small business: “Any offeror whom the contracting officer has not eliminated for reasons unrelated to size” may file a size protest. 13 C.F.R. § 121.1001(a)(1)(i).

Here, it is clear the CO has eliminated Appellant from consideration for reasons unrelated to size. The CO states the Appellant was not in the competitive range for this procurement. The CO states he ranked Appellant 40 out of 59 in a competition where he selected 21 awardees. The CO further asserts that if any of the 21 are eliminated as other than small, he will not make additional awards but will simply rely on the contractors to whom award has already been made.

The CO’s letter to Appellant states that Appellant’s proposal only met “most solicitation requirements” and was not among the most highly rated. The letter makes clear that Appellant would not have been considered for award. Appellant’s proposal has clearly been found wanting, and Appellant was thus eliminated for reasons unrelated to size. Under these circumstances, it is clear Appellant has no standing to protest the size of any of the challenged firms. *Size Appeal of Applied Companies*, SBA No. SIZ-4688 (2005).

### III. Conclusion

For the above reasons, I AFFIRM the Area Office’s dismissal of Appellant’s protest 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