

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

SIZE APPEAL OF:

Sunshine Kids Services, Inc.

Appellant

Re: DL PI Joint Venture

Appealed from
Size Determination No. 4-2011-7

SBA No. SIZ-5167

Decided: November 18, 2010

ORDER DENYING APPEAL¹

I. BACKGROUND

On June 23, 2010, the General Services Administration, Public Building Service, in Kansas City, Missouri, issued Solicitation No. GS-06P-10-GX-D-0049 for janitorial and related services. The Contracting Officer (CO) set the solicitation aside for small businesses, and designated it under North American Industry Classification System (NAICS) code 561720, Janitorial Services, with a corresponding \$16.5 million annual receipts size standard. On September 1, 2010, the CO notified Sunshine Kids Services, Inc. (Appellant), that the award would be made to DL PI Joint Venture (DL PI JV).

On September 21, 2010, Appellant filed a bid protest with the General Accountability Office (GAO).² On October 18, 2010, Appellant filed a size protest with the CO, alleging DL PI JV is other than small because LB&B Associates, Inc. (LB&B) is one of the two parties to the joint venture.³ The CO forwarded the size protest to the Small Business Administration (SBA) Office of Government Contracting - Area IV, in Chicago, Illinois (Area Office).

On October 22, 2010, the Area Office issued Size Determination No. 4-2011-7 (Size Determination), in which it dismissed Appellant's protest as untimely. Appellant received the Size Determination on October 25, 2010.

¹ 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.

² GAO Protest No. B-404000 is currently pending.

³ The other party is Dae Sung Corporation, an 8(a) participant firm. LB&B is Dae Sung's mentor under the 8(a) Mentor-Protégé program. *See* 13 C.F.R. §§ 121.103(h)(3)(iii), 124.520.

On October 26, 2010, Appellant filed the instant appeal. Appellant asserts its size protest was timely because Appellant did not know that LB&B was part of the joint venture until October 14, 2010, when it received the GSA's response to Appellant's GAO protest.

On November 10, 2010, DL PI JV responded in opposition to the appeal. DL PI JV asserts the pre-award notice to unsuccessful offerors need identify only the awardee, not all the members of joint venture. Thus, the CO provided proper notice on September 1, 2010. Because Appellant's five-day time period for filing its size protest began on that day, Appellant's October 18, 2010, size protest was untimely.

II. DISCUSSION

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). Nevertheless, a timely appeal cannot cure an untimely protest. *Size Appeal of Sarang-Herlihy JV*, SBA No. SIZ-5018 (2008).

Appellant argues that the five-day window for filing a size protest began on October 14, 2010, because that was when it first learned that LB&B was one of the joint venture partners. Thus, its October 18, 2010, size protest was timely.

Appellant's argument is meritless. A protest must be received by the contracting officer prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the contracting officer has notified the protestor of "the identity of the prospective awardee." 13 C.F.R. § 121.1004(a)(2); FAR 19.302(d)(1) ("notification . . . that identifies the apparently successful offeror"), FAR 15.503(a)(2)(ii)(A) (notice shall state the "name and address of the apparently successful offeror"). There is no separate regulatory requirement for joint ventures. A CO is under no obligation to identify the members of the joint venture, the shareholders of a corporation, or the individual partners in a partnership. A notification clearly identifying the awardee meets the requirements of the regulation. Thus, the contracting officer needed only to identify the joint venture, DL PI JV, that was the successful offeror or awardee, and was not required to identify the joint venture partners, and thus the notice the CO gave to Appellant on September 1, 2010, was proper.

The CO properly notified Appellant on September 1, 2010, of her intent to award to DL PI JV. The five-day window for filing a size protest therefore began on September 1, 2010, and the last day to file a timely size protest was September 9, 2010. Appellant's size protest was filed on October 18, 2010, more than five weeks late.

Therefore, I find the Area Office properly dismissed Appellant's protest as untimely, as required by 13 C.F.R. § 121.1004(a)(2). Accordingly, I must affirm the Area Office.

III. CONCLUSION

For the above reasons, I AFFIRM the Area Office's dismissal of Appellant's untimely protest and DENY the instant appeal.

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

CHRISTOPHER HOLLEMAN
Administrative Judge