

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

SIZE APPEAL OF:

Platinum Business Corporation,

Appellant,

RE: Medtemps, Inc.

Appealed From
Size Determination Nos. 05-2011-016, -017

SBA No. SIZ-5198

Decided: February 11, 2011

APPEARANCE

Barry M. Tapp, Esq., Laurel, Maryland, for Appellant

ORDER DENYING APPEAL¹

I. Background

On February 16, 2010, the Department of the Navy, Naval Medical Logistics Command, at Ft. Detrick, Maryland (Navy), issued Solicitation No. N62645-09-R-0012 for dental services. The Navy set the procurement aside for small businesses and assigned to it North American Industry Classification System (NAICS) code 621210, Offices of Dentists, with a corresponding \$7 million annual receipts size standard. Initial offers were due March 24, 2010.

On December 30, 2010, the Contracting Officer (CO) notified unsuccessful offerors that Medtemps, Inc. (Medtemps) was an apparent successful offeror. On December 30, 2010, Platinum Business Corporation (Appellant) filed a size protest stating, “In regards to the above referenced solicitation, Platinum Business Corporation is challenging the small business size status of two of the apparently successful offerors — In Genesis Arora LLC, and Medtemps, Inc.”

On December 30, 2010, the CO referred Appellant's protest to the U.S. Small Business Administration (SBA) Office of Government Contracting, Area V (Area Office). On January 4,

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.

2011, the Area Office issued Size Determination Nos. 05-2011-016 & -017² (Size Determination) dismissing Appellant's protest as insufficiently specific.

On January 13, 2011, Appellant appealed the Size Determination to the SBA Office of Hearings and Appeals (OHA). Appellant asserts the protest was “plain and specific enough to place the contracting officer ‘on notice’ that a serious allegation was being made which should have triggered an investigation” under Federal Acquisition Regulation (FAR) 19.302. Further, the FAR places “a legal onus” on the CO “to make at a minimum a cursory inquiry” about the size status of a successful offeror, notwithstanding the specificity requirement. Appellant also asserts, for the first time on appeal, that Medtemps “received funding of \$5,26,943.00 through FYs 2007-2009.” As relief, Appellant requests its protest be allowed.

Medtemps did not respond to the appeal.

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).

I find the Area Office properly dismissed the protest. The size regulation provides:

A protest must include specific facts. A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. *A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest.*

13 C.F.R. § 121.1007(b) (emphasis added). The Area Office must dismiss protests that are not sufficiently specific. 13 C.F.R. § 121.1007(c). Here, the Appellant's protest provides nothing beyond the bare allegation that Medtemps, the protested concern, is not small. The protest, therefore, is clearly within the regulatory definition of a non-specific protest. Accordingly, the Area Office properly dismissed it.

I also must reject Appellant's argument that FAR § 19.302 places “a legal onus” on the contracting officer to investigate non-specific size protests. There is no such requirement.

Appellant's appeal presents some additional information about Medtemps; however, Appellant cannot cure an insufficiently specific protest on appeal by submitting information it did not present in its protest. *Size Appeal of Val-Coast, Inc.*, SBA No. SIZ-5031 (2009).³

² The Size Determination was incorrectly numbered “05-2010-016 & -017”.

³ Even if Appellant had presented in its protest the additional information it presents on appeal, the protest still would have been insufficient. An allegation of \$5.2 million in receipts does not allege that the protested concern exceeds a \$7 million size standard.

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. 13 C.F.R. § 134.316(b).

CHRISTOPHER HOLLEMAN
Administrative Judge