

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

SIZE APPEAL OF:

RELM Communications, Inc.,

Appellant,

RE: ACG Systems, Inc.

Appealed From
Size Determination No. 2-2014-06

SBA No. SIZ-5524

Decided: December 23, 2013

APPEARANCE

Pete Rogell, RELM Communications, Inc., West Melbourne, Florida

DECISION

I. Introduction and Jurisdiction

On October 30, 2013, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area II (Area Office) issued Size Determination No. 2-2014-06 dismissing a size protest lodged by RELM Communications, Inc. (Appellant) as non-specific. For the reasons discussed *infra*, the appeal is denied, and the dismissal is affirmed.

SBA's Office of Hearings and Appeals (OHA) decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 121 and 134. Appellant filed the instant appeal within fifteen days of receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation, Protest, and Size Determination

On August 8, 2013, the U.S. Department of the Navy (Navy) issued Request for Quotations No. RFQ807121 for wireless communications equipment. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 334220, Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, with a corresponding size standard of 750

employees.

On October 1, 2013, Appellant learned that ACG Systems, Inc. (ACG) was the awardee. That same day, Appellant sent an e-mail to the CO requesting a size review of ACG. Appellant stated that “[t]he non-manufacturer rule affects this acquisition”, and proceeded to briefly summarize the rule. (Protest at 1.) The CO forwarded Appellant's protest to the Area Office for consideration.

On October 30, 2013, the Area Office issued Size Determination No. 2-2014-06 dismissing Appellant's protest as non-specific. The Area Office explained:

[Appellant] provided a summary of the requirements of the non-manufacturer rule. However, [Appellant] provided no information or evidence that [ACG] exceeded the size standard for this procurement. In addition, no information/evidence was provided that would suggest that [ACG] was not the actual manufacturer of the end-items being procured or didn't meet the requirements for a non-manufacturer.

(Size Determination, at 1.)

B. Appeal

On November 12, 2013, Appellant filed the instant appeal. Appellant maintains that the CO did not provide Appellant with information about the products ACG would deliver, so it was “impossible for [Appellant] to claim that the Small Business requirements were not being met.” (Appeal at 1.) Appellant further explains that it summarized the non-manufacturer rule in its protest because that rule is frequently overlooked. Appellant asks OHA consider Appellant's protest and “allow [Appellant] to benefit from [its] small business manufacturer status.” (*Id.* at 2.)

III. Discussion

I find that the Area Office properly dismissed Appellant's protest. According to SBA regulations:

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). In assessing the sufficiency of protests, OHA will focus upon “(1) whether the protest was sufficiently specific to provide notice of the grounds upon which the protestor was contesting the challenged firm's size; and (2) whether the protest included factual allegations as a basis for these grounds.” *Size Appeal of Alutiiq Int'l Solutions, LLC*, SBA No. SIZ-5069, at 4 (2009). A non-specific protest must be dismissed. 13 C.F.R. § 121.1007(c).

Here, Appellant's protest summarized the non-manufacturer rule and stated that this rule is applicable to the subject acquisition. *See* Section II.A, *supra*. The protest did not, however, explain how ACG may have violated the non-manufacturer rule, and did not provide any supporting facts or evidence that might suggest a potential violation of the rule by ACG. *Id.* Nor did the protest identify any alleged AGC affiliates, or specify any other potential basis to conclude that ACG is not a small business. Accordingly, Appellant's protest was merely a request to investigate ACG, and was non-specific.

Appellant's contention that it was unable to prepare a detailed protest against ACG because the CO was not forthcoming with information is wholly unpersuasive. In, for example, *Size Appeal of Unitron, LP*, SBA No. SIZ-5084 (2009), OHA found that a size protest involving the non-manufacturer rule was adequately specific — despite the fact that the protester could not name an alleged off-shore manufacturer — because the protester “specifically delineate[d] how it contends [the challenged firm] has violated the rule.” *Unitron*, SBA No. SIZ-5084, at 3. Likewise, in the instant case, a dearth of information from the procuring agency would not have prevented Appellant from investigating, or attempting to explain, how ACG might have violated the non-manufacturer rule.

IV. Conclusion

For the above reasons, I AFFIRM the Area Office's dismissal of the protest and DENY the instant appeal. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge