

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

DECISION FOR PUBLIC RELEASE

SIZE APPEAL OF:

IEI-Cityside, JV,

Appellant,

Appealed From
Size Determination No. 2-2015-13/14/15

SBA No. SIZ-5664

Decided: June 16, 2015

APPEARANCES

Pamela J. Mazza, Esq., Kathryn V. Flood, Esq., Peter B. Ford, Esq., PilieroMazza PLLC, Washington, D.C., for Appellant.

Sam Q. Le, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION¹

I. Introduction and Jurisdiction

On March 12, 2015, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area II (Area Office) issued Size Determination Nos. 2-2015-13/14/15, finding that IEI-Cityside, JV (Appellant) is not a small business for the subject procurement. Appellant is a joint venture between Inspection Experts, Inc. (IEI), a participant in the 8(a) Business Development (BD) program, and Cityside Management Corporation (Cityside), its SBA-approved mentor. The Area Office determined that Appellant's joint venture agreement does not comply with 13 C.F.R. § 124.513(c) and (d), and that the exception to affiliation for mentor-protégé joint ventures is not applicable.

Appellant maintains that the size determination is clearly erroneous for three reasons: (1) Appellant's joint venture agreement meets the requirements of 13 C.F.R. § 124.513(c) and (d);

¹ This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. No redactions were requested, and OHA now publishes the decision in full for public release.

(2) the Area Office failed to assign IEI its proportionate share of receipts from joint ventures IEI previously entered into with Tidewater, Inc. (Tidewater); and (3) the Area Office should have excluded certain revenues attributable to real estate agent pass-through expenses. For the reasons discussed *infra*, the appeal is denied and the size determination is affirmed.

SBA's Office of Hearings and Appeals (OHA) decides appeals of size determinations under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134. The record reflects that Appellant received the size determination on March 16, 2015, and filed the instant appeal within fifteen days thereafter, 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 and Protests

On May 22, 2014, U.S. Department of Housing and Urban Development (HUD) issued Request for Proposals (RFP) No. DU204SA-13-R-0004 seeking field service manager services for HUD's single family real estate owned (REO) properties. The Contracting Officer (CO) set aside the procurement partially for small businesses and assigned North American Industry Classification System (NAICS) code 531311, Residential Property Managers, with a corresponding size standard of \$7 million average annual receipts. The RFP divided HUD's REO properties into eight geographic areas, seven of which were set aside for small businesses: 1P (Michigan); 3P (Connecticut, Maine, Massachusetts, Vermont, New Hampshire, New Jersey, New York, and Rhode Island); 4P (Ohio); 5P (Delaware, Maryland, Pennsylvania, Virginia, and West Virginia); 1D (Colorado, New Mexico, North Texas, and Utah); 4D (Iowa, Nebraska, South Dakota, and Wisconsin); and 5D (Minnesota, Montana, North Dakota, and Wyoming).

The RFP explained that “HUD has a need to manage and sell a sizable inventory of single-family homes.” (RFP § C.1.1.) For each geographic region in which it is awarded a contract, the contractor would perform seven major functions: (1) Pre-Conveyance Activity; (2) Conveyance Activity; (3) Claim Review Activity; (4) Management Activity; (5) Marketing Activity; (6) Closing Activity; and (7) Oversight Monitoring. (*Id.* § C.1.3.) The RFP indicated that HUD would award multiple indefinite delivery indefinite quantity (ID/IQ) contracts, each covering one or more geographic regions. Proposals were due July 5, 2014.

On October 1, 2014, the CO announced that Appellant had been selected for award of geographic areas 1P, 4P, and 5P. On October 3, 2014, MRAP, LLC d/b/a Market Ready Services, an unsuccessful offeror, filed a size protest with the CO alleging that Appellant is not a small business because neither of Appellant's joint venture partners is small. On October 6, 2014, A2Z Field Services and Atlanta Field Services, two other unsuccessful offerors, also filed size protests against Appellant alleging that IEI has established joint ventures with Tidewater, Project Enhancement Corporation (PEC), and Cityside, and as a result, IEI's receipts exceed \$7 million. The CO forwarded the size protests to the Area Office for review.

B. Joint Venture Agreement

The joint venture agreement between IEI and Cityside was executed on June 9, 2014.

The agreement stated that, in accordance with the RFP, “[t]he contractor shall perform inspections, preservation, maintenance, and property management services for HUD-owned properties and reconveyances.” (Joint Venture Agreement § 1.0.) The contractor's responsibilities would include “[i]nitial inspections to confirm whether property meets conveyance conditions,” “[p]reservation of property from conveyance to sale,” “[m]aintenance and preparation of properties intended for sale,” “[m]anagement of rental properties,” and “[m]anagement and maintenance of properties in the custody of, but not owned by HUD.” (*Id.*)

The agreement stated that IEI owns 51% of Appellant, and IEI's President, Ms. Shanthi M. Dabare, would serve as Appellant's Managing Director. (*Id.* §§ 2.0, 4.0.) Cityside owns the remaining 49%. (*Id.*) The agreement continued:

6.0 Equipment. Upon award of the contract identified in [§ 1.0], the Managing Director will purchase, in the name of the joint venture, facilities and equipment for the proper operation of this contract.

...

9.0 Negotiating the Contract. Shanthi M. Dabare will be responsible for negotiating the original contract, should negotiations be required by HUD.

...

14.0 Specific Responsibilities. 8(a) IEI shall perform fifty percent (50%) of the total dollar amount of the labor portion of the project, which also consists of labor and management personnel staff. Cityside Management Corporation shall perform fifty percent (50%) of the total dollar amount of the labor and management personnel portion of the project.

Pursuant to 13 C.F.R. § 124.513(d), IEI the 8(a) participant shall perform fifty percent (50%) of the work performed by the joint venture. Work is defined as labor portions of the project, beyond and not including subcontracted work, consisting of analytical, technical, and management personnel staff positions.

Cityside Management Corporation, the mentor, shall perform fifty percent (50%) of the work performed by the joint venture. Work is defined as labor portions of the project, beyond and not including subcontracted work, consisting of analytical, technical, administrative or, if waived by the 8(a) participant, and management personnel staff positions.

If labor portions cannot be distributed as listed above due to labor allocations which do not support a 40/60 delineation of work IEI the 8(a) participant to the

joint venture will have first right of refusal in the final selection of personnel staff positions. Selections shall be made which aid in their ability to gain knowledge from performance of the contracts and assists in its business development and must consist of analytical, technical, or management personnel staff positions. The joint venture partners agree to maintain the 50/50 delineation of work as closely as the contract staff positions dictate. IEI will not subcontract more than 60% of the work to Cityside Management Corporation or any other subcontractor, if necessary IEI will hire employees from Cityside Management Corporation as part of this joint venture in order to meet the percentage of work split.

(*Id.* §§ 6.0, 9.0, 14.0.)

C. Size Determination

On March 12, 2015, the Area Office issued Size Determination Nos. 2-2015-13/14/15 concluding that IEI and Cityside are affiliated for the instant procurement. The Area Office found that Appellant is a joint venture between IEI and Cityside; that IEI and Cityside are parties to an SBA-approved mentor-protégé agreement; and that Appellant is competing for a procurement outside the 8(a) BD program. (Size Determination at 4.) The Area Office explained that parties to a joint venture ordinarily are affiliated with each other with regard to the performance of that contract. (*Id.* (citing 13 C.F.R. § 121.103(h)(2)).) However, 13 C.F.R. § 121.103(h)(3) identifies three exceptions to affiliation, one of which applies to mentor-protégé joint ventures. (*Id.* (citing 13 C.F.R. § 121.103(h)(3)(iii)).) The exception from affiliation for mentor-protégé joint venture states:

Two firms approved by SBA to be a mentor and protégé under § 124.520 of these regulations may joint venture as a small business for any Federal government prime contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement and, for purposes of 8(a) sole source requirements, has not reached the dollar limit set forth in § 124.519 of these regulations. If the procurement is to be awarded through the 8(a) BD program, SBA must approve the joint venture pursuant to § 124.513. If the procurement is to be awarded other than through the 8(a) BD program (*e.g.*, small business set aside, HUBZone set aside), SBA need not approve the joint venture prior to award, but if the size status of the joint venture is protested, the provisions of §§ 124.513(c) and (d) will apply. This means that the joint venture must meet the requirements of §§ 124.513(c) and (d) in order to receive the exception to affiliation authorized by this paragraph.

(*Id.* 4-5 (quoting 13 C.F.R. § 121.103(h)(3)(iii)).)

In accordance with the regulation, the Area Office explained Appellant would be exempt from affiliation if Appellant's joint venture agreement meets the requirements of 13 C.F.R. § 124.513(c) and (d):

(c) *Contents of joint venture agreement.* Every joint venture agreement to perform an 8(a) contract, including those between mentors and protégés authorized by § 124.520, must contain a provision:

...

(6) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each;

(7) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the 8(a) partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section.

...

(d) *Performance of work.* (1) For any 8(a) contract, including those between mentors and protégés authorized by § 124.520, the joint venture must perform the applicable percentage of work required by § 124.510. For an unpopulated joint venture or a joint venture populated only with one or more administrative personnel, the 8(a) partner(s) to the joint venture must perform at least 40% of the work performed by the joint venture. The work performed by 8(a) partners to a joint venture must be more than administrative or ministerial functions so that they gain substantive experience. For a joint venture populated with individuals intended to perform contracts awarded to the joint venture, each 8(a) Participant to the joint venture must demonstrate what it will gain from performance of the contract and how such performance will assist in its business development.

(2)(i) In an unpopulated joint venture, where both the 8(a) and non- 8(a) partners are technically subcontractors, the amount of work done by the partners will be aggregated and the work done by the 8(a) partner(s) must be at least 40% of the total done by all partners. In determining the amount of work done by a non-8(a) partner, all work done by the non-8(a) partner and any of its affiliates at any subcontracting tier will be counted.

(*Id.* at 5-6 (quoting 13 C.F.R. § 124.513).)

The Area Office found that Appellant's joint venture agreement does not comply with 13 C.F.R. § 124.513(c) and (d). In particular, the Area Office determined that the regulation calls for the joint venture agreement to itemize all major equipment, facilities, and other resources to be furnished by each joint venture partner, with a detailed schedule of cost or value of each, but Appellant's joint venture agreement simply stated that "Upon award of the contract . . . , the Managing Director will purchase, in the name of the joint venture, facilities and equipment for the proper operation of this contract." (*Id.* at 6 (quoting Appellant's Joint Venture Agreement, §

6.0).) The Area Office found that Appellant did not itemize facilities or equipment, and that OHA has recognized that such a broad statement lacks the specificity necessary to comply with 13 C.F.R. § 124.513(c)(6). (*Id.* (citing *Size Appeal of Kisan-Pike, A Joint Venture*, SBA No. SIZ-5618 (2014)).) The Area Office also noted that Appellant's joint venture does not delineate the parties' respective responsibilities as required by 13 C.F.R. § 124.513(c)(7). (*Id.*) In addition, the Area Office found, it is not clear from the joint venture agreement how Appellant meets with the work requirements of 13 C.F.R. § 124.513(d). (*Id.*)

Citing the failure of Appellant's joint venture agreement to meet the criteria required by 13 C.F.R. § 124.513(c) and (d), the inapplicability of the exception from affiliation for mentor-protégé joint ventures provided in 13 C.F.R. § 121.103(h)(3)(iii), and OHA's decision in *Kisan-Pike*, the Area Office concluded that IEI and Cityside are affiliated for the purposes of the instant procurement. (*Id.* at 6-7.)

The Area Office went on to calculate IEI's size, including IEI's proportionate share of various joint ventures. (*Id.* at 7.) The Area Office rejected Appellant's arguments that: (1) IEI's proportionate share should be only 40% of joint venture receipts, rather than 51% based on IEI's ownership interests; (2) project expenses that IEI charges on the joint ventures should be excluded as inter-affiliate transactions; and (3) certain expenses incurred by an IEI-Tidewater joint venture under a HUD contract were passed through the joint venture and should be excluded. (*Id.* at 8-9.) The Area Office calculated the annual receipts of IEI from IEI's Form 1120 by adding the cost of goods sold to the total income. (*Id.* at 10 (citing 13 C.F.R. § 121.104(a).) The Area Office excluded income received from joint ventures to avoid double-counting of revenue. (*Id.*) The Area Office then performed the same computation using Form 1065 for IEI joint ventures. (*Id.*) The Area Office took 51% of the total income and the cost of goods sold for the joint ventures to calculate IEI's proportional share of receipts and then combined IEI's share of joint venture receipts into IEI's own to calculate IEI's average annual receipts. (*Id.* at 11.) According to the Area Office, IEI's average annual receipts exceeded the \$7 million size standard, even if the purported pass-through expenses from IEI-Tidewater's receipts were excluded. Cityside and its affiliates also exceed the size standard. (*Id.*)

The Area Office concluded that IEI and Cityside are affiliated for the instant procurement under 13 C.F.R. § 121.103(h)(2). Neither IEI nor Cityside is a small business under the applicable size standard. Therefore, Appellant is not an eligible small business for this procurement.

D. Appeal Petition

On March 30, 2015, Appellant filed its appeal of the size determination with OHA. Appellant argues that the Area Office made clear errors of law and fact and that the size determination should be reversed or remanded. (Appeal at 1-2.)

Appellant advances three principal arguments. First, Appellant argues that Appellant's joint venture agreement complies with 13 C.F.R. § 124.513(c) and (d) and the Area Office erred in concluding that IEI and Cityside are affiliated. (*Id.* at 5) Appellant highlights that SBA approved the mentor-protégé agreement between IEI and Cityside on September 12, 2011. (*Id.* at

6.) Further, SBA's Nebraska District Office approved Appellant's joint venture agreement for this solicitation on August 13, 2014. (*Id.*)

Appellant argues the Area Office erred in relying on *Kisan-Pike* to determine the joint venture agreement does not comply with 13 C.F.R. § 124.513(c) and (d). (*Id.* at 7.) Unlike *Kisan-Pike*, which involved a design-build construction project with specific and detailed technical specifications and requirements, the instant procurement is an IDIQ contract vehicle with eight geographic regions covering 30 states and no specific requirements identified until after award of the base contracts. (*Id.* at 7-8.) Thus, Appellant argues, it would not have been feasible or realistic to expect Appellant to specify equipment, facilities, and resources that IEI and Cityside would bring to the project at the time the joint venture agreement was executed. (*Id.* at 8-9.) Appellant emphasizes that, due to the nature of this procurement, it would have been “impossible” for Appellant to “itemize and specify facilities and equipment.” (*Id.* at 9.)

Similarly, Appellant asserts the Area Office erred in finding that the joint venture agreement did not define each joint venture partners' responsibilities as required by 13 C.F.R. § 124.513(c)(7), such that the Area Office “was therefore unable to determine how [Appellant] would meet the performance of work requirements required by 13 C.F.R. section 125.513(d).” (*Id.* at 10). Appellant argues that the joint venture agreement made clear that Ms. Dabare was to negotiate the contract in § 9.0 and described the work to be performed by each joint venture partners in § 14.0. (*Id.*) Appellant states that its joint venture is distinguishable from that seen in *Kisan-Pike*, which did not delineate responsibilities, because Appellant's joint venture agreement dedicates four paragraphs to the substantive duties to be performed by each party. (*Id.* at 11 (referencing Joint Venture Agreement § 14.0).) Appellant argues it would have been impracticable and beyond the scope of the RFP for Appellant to elaborate further on the delineation of duties between IEI and Cityside prior to contract award. “[A]ny further elaboration on the specific duties to be performed by each joint venture was not feasible at the proposal stage, due to the IDIQ nature of the procurement.” (*Id.* (emphasis in original).) Appellant notes that the terms of the joint venture agreement also provide IEI, the 8(a) BD participant, with the right of first refusal over any employee positions or portions of work in order to meet the minimum work requirements of 13 C.F.R. § 124.513(d). (*Id.* at 11-12 (quoting Joint Venture Agreement § 14.0).)

Appellant argues that the joint venture agreement adequately describes the responsibilities and performance work requirements for each party and supplies far more detail than the joint venture agreement in *Kisan-Pike*. (*Id.* at 12). Accordingly, Appellant asserts, the joint venture agreement meets the requirements of 13 C.F.R. § 124.513 and IEI and Cityside are not affiliated for this procurement. (*Id.*)

Appellant next argues that the Area Office failed to assign IEI only its proportionate share of the receipts from joint ventures it has entered into with Tidewater. (*Id.*) Appellant asserts the Area Office improperly attributed 51% of the receipts to IEI due to IEI's ownership interest. (*Id.*) However, Appellant states, IEI actually performed only 40% of the work and, in accordance with 13 C.F.R. § 121.103(h)(5), as both joint ventures are unpopulated, IEI's proportionate share of the joint ventures' revenues is 40%. (*Id.* at 12-13.)

Appellant contends that determining each joint venture partner's proportionate share commensurate with the work performed by the joint venture partner, irrespective of each joint venture partner's ownership interest, is supported by Federal Acquisition Regulation (FAR) 19.101:

Where a concern is not considered as being an affiliate of a concern with which it is participating in a joint venture, it is necessary, nevertheless, in computing annual receipts, etc., for the purpose of applying size standards, to include such concern's share of the joint venture receipts (as distinguished from its share of the profits of such venture).

(*Id.* at 13-14 (quoting FAR 19.101 (emphasis added by Appellant).) Appellant asserts if the Area Office had apportioned 40% of the Tidewater joint ventures' receipts based on work performed, rather than 51% based on ownership, the Area Office would have found IEI to be a small business under the \$7 million size standard. (*Id.* at 14-15.)

Third, Appellant maintains, the Area Office should have excluded portions of the IEI-Tidewater joint ventures' revenues that are real estate agent pass through expenses. (*Id.* at 15.) Appellant argues that these expenses are legitimate real estate expenses associated with the performance of a HUD contract, such as seller property taxes for HUD-owned properties that were paid by IEI-Tidewater JV and subsequently reimbursed by HUD. (*Id.* at 15-16.)

Appellant maintains that, excluding these real estate agent expenses from the receipts of IEI-Tidewater JV and including only IEI's 40% proportionate share in the joint ventures, the three year average annual receipts of IEI do not exceed the size standard. Appellant requests that OHA overturn the size determination and conclude that Appellant is an eligible small business for the RFP, or in the alternative remand the matter to the Area Office for a new size determination.

E. Motion to Supplement the Record

On April 15, 2015, SBA moved to supplement the record with two joint venture agreements between IEI and Tidewater. Although neither agreement is in the Area Office file, SBA argues that good cause exists to admit this evidence because the agreements address Appellant's contention that IEI should be charged only with 40% of the receipts from IEI's joint ventures with Tidewater. (Motion at 1.) SBA indicates that one of the joint venture agreements, dated October 2009, demonstrates that IEI agreed to perform 55% of the work. (*Id.*) The second agreement, dated February 2011, shows IEI agreed to perform 51% of the joint venture's work. (*Id.*) SBA also notes both joint venture agreements state that the income of the joint ventures will be allocated in proportion to the parties' ownership interests: IEI has 55% ownership of the 2009 joint venture and 51% ownership of the 2011 joint venture. (*Id.* at 2.)

F. Appellant's Opposition

On April 21, 2015, Appellant opposed SBA's motion. Appellant asserts that the 2011 joint venture did not receive any contract awards and, consequently, had no revenue as of

Appellant's July 5, 2014 self-certification. (Opposition at 1.) Accordingly, the 2011 joint venture is irrelevant to this appeal. (*Id.*)

Appellant states that the 2009 joint venture agreement originally did indicate that IEI would perform 55% of the joint venture's work. (*Id.* at 2.) However, Appellant maintains, IEI and Tidewater subsequently revised the agreement such that IEI would perform only 40% of the joint venture's work on the contract and Tidewater would perform 60%. (*Id.*) Appellant asserts that the revised division of work is reflected in the financial statements for the years in question.

In addition, Appellant argues that SBA misinterprets the terms of the 2009 joint venture agreement. (*Id.*) While SBA claims that the income of the joint ventures will be allocated in proportion with the parties' ownership interests, Appellant states that the agreement actually provides that the joint venture's profits will be allocated in proportion to the parties' respective ownership interests. (*Id.*) Further, Appellant maintains, the joint venture suffered a combined loss between 2011 and 2013, and was not profitable during the applicable period of measurement. (*Id.*) Accordingly, IEI's share of the joint venture's profits does not impact IEI's size. (*Id.*)

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. New Evidence

OHA's review is based upon the evidence in the record at the time the Area Office made its determination. As a result, evidence that was not previously presented to the Area Office is generally not admissible and will not be considered by OHA. *E.g.*, *Size Appeal of Maximum Demolition, Inc.*, SBA No. SIZ-5073, at 2 (2009) (“I cannot find error with the Area Office based on documents the Area Office was unable to review.”). New evidence may be admitted on appeal at the discretion of the administrative judge if “[a] motion is filed and served establishing good cause for the submission of such evidence.” 13 C.F.R. § 134.308(a). The proponent must demonstrate, however, that “the new evidence is relevant to the issues on appeal, does not unduly enlarge the issues, and clarifies the facts on the issues on appeal.” *Size Appeal of Vista Eng'g Techs., LLC*, SBA No. SIZ-5041, at 4 (2009).

In this case, the new evidence was not available to the Area Office and was not part of the Area Office's analysis. Moreover, the new evidence appears to have little, if any, relevance to the case. According to Appellant, the 2011 joint venture had no contract awards or revenue, and the 2009 joint venture was unprofitable. *See* Section II.F, *supra*. Thus, neither joint venture

impacts the size determination, and OHA need not consider this new evidence in order to resolve the appeal. SBA's motion to supplement the record is therefore DENIED, and the proffered evidence is EXCLUDED from the record.

C. Analysis

As the Area Office observed, the instant case is highly analogous to OHA's decision in *Size Appeal of Kisan-Pike, A Joint Venture*, SBA No. SIZ-5618 (2014). In *Kisan-Pike*, the challenged firm was a mentor-protégé joint venture competing for a procurement outside the 8(a) BD program. In such a situation, SBA regulations stipulate that the joint venture must comply with 13 C.F.R. §§ 124.513(c) and (d) in order to receive the exception to affiliation for mentor-protégé joint ventures. 13 C.F.R. §§ 121.103(h)(3)(iii) and 124.520(d)(1)(ii). OHA reviewed the joint venture agreement in *Kisan-Pike* and found that it did not meet the requirements of 13 C.F.R. §§ 124.513(c) and (d). The agreement contained only broad, general statements and did not designate specific tasks or responsibilities to the joint venture partners. *Kisan-Pike*, SBA No. SIZ-5618, at 9.

Likewise, in the instant case, Appellant is a mentor-protégé joint venture competing for a non-8(a) procurement. Appellant's joint venture agreement contains highly general statements, but lacks the specificity required by 13 C.F.R. §§ 124.513(c) and (d). *See* Section II.B, *supra*. In particular, Appellant's representation that Ms. Dabare will, in the future, purchase facilities and equipment for Appellant does not suffice to meet the requirement that the agreement “[i]temiz[e] all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each.” 13 C.F.R. § 124.513(c)(6). Further, the statement that IEI and Cityside each will perform 50% of total dollar value of the labor portion of the contract does not meet the requirement to “[s]pecify[] the responsibilities of the parties with regard to . . . contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the 8(a) partner(s) to the joint venture will meet the performance of work requirements set forth in paragraph (d) of this section.” 13 C.F.R. § 124.513(c)(7). Appellant's joint venture agreement does not designate specific tasks or responsibilities to IEI and Cityside, and fails to explain how Appellant will fulfill the performance of work requirements set out in 13 C.F.R. § 124.513(d). I therefore find no error in the Area Office's determination that Appellant's joint venture agreement does not meet the requirements of 13 C.F.R. §§ 124.513(c) and (d).

Appellant attempts to distinguish the instant case from *Kisan-Pike*, arguing that it would have been impossible for Appellant to provide the detail required by 13 C.F.R. §§ 124.513(c) and (d) given the undefined nature of the underlying IDIQ contract. This argument fails for two reasons. First, OHA rejected a similar argument in *Kisan-Pike*, explaining that the regulations do not authorize an exception for “situations where a joint venture may have difficulty providing detailed information.” *Kisan-Pike*, SBA No. SIZ-5618, at 10. Thus, Appellant's argument amounts to a complaint that the regulation itself is unfair or unreasonable. Such arguments should be directed to SBA policy officials, not to OHA, as it is well-settled that OHA “has no authority to determine the validity of the size regulations and can entertain no challenge to them.” *Size Appeal of ADVENT Envtl., Inc.*, SBA No. SIZ-5325, at 9 (2012) (quoting *Size Appeal of Condor Reliability Servs., Inc.*, SBA No. SIZ-5116, at 6 (2010).) Second, it is not

evident from the record that it would have been impossible for Appellant's joint venture agreement to comply with 13 C.F.R. §§ 124.513(c) and (d). The RFP described the types of work contractors would perform, and Appellant summarized these types of work in its joint venture agreement. *See* Sections II.A and II.B, *supra*. Thus, while Appellant would not have known, at the time the joint venture agreement was executed, which geographic regions or properties Appellant would be responsible for, Appellant might nevertheless have complied with 13 C.F.R. §§ 124.513(c) and (d) by discussing the types of work each joint venture partner would perform, and the resources each partner would contribute, for each region awarded to Appellant.

Appellant also argues that the Area Office erred in computing the size of IEI, the protégé member of the joint venture. I find it unnecessary to decide these issues. As discussed above, the Area Office correctly found that IEI is affiliated with Cityside for the instant procurement, and Appellant does not dispute that Cityside is a large business. It therefore is clear that IEI and Cityside together exceed the size standard. Regardless of the size of IEI alone, then, Appellant does not qualify as a small business for this procurement.

IV. Conclusion

For the above reasons, the appeal is DENIED and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge