

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

SIZE APPEAL OF:

In & Out Valet Company,

Appellant,

RE: Parking Veterans LLC

Appealed From

Size Determination No. 6-2015-078

SBA No. SIZ-5696

Decided: December 1, 2015

APPEARANCE

Nancy M. Camardo, Esq., Camardo Law Firm, P.C., Auburn, New York, for Appellant.

DECISION

I. Introduction and Jurisdiction

On October 8, 2015, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area VI (Area Office) issued Size Determination No. 6-2015-078 finding that Parking Veterans LLC (PV) is a small business under the size standard associated with the subject procurement. In & Out Valet Company (Appellant), which had previously protested PV's size, requests that SBA's Office of Hearings and Appeals (OHA) remand or reverse. For the reasons discussed *infra*, the appeal is dismissed.

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).

II. Background

A. Solicitation and Protest

On July 9, 2015, the U.S. Department of Veterans Affairs (VA) issued Request for Quotations (RFQ) No. VA261-15-Q-0848 for valet parking services. The Contracting Officer (CO) set aside the procurement entirely for service-disabled veteran-owned small business concerns (SDVO SBCs), and assigned North American Industry Classification System (NAICS) code 812930, Parking Lots and Garages, with a corresponding size standard of \$38.5 million

average annual receipts. On September 9, 2015, the CO announced that PV was the apparent awardee.

On September 11, 2015, Appellant filed a protest with the CO. Appellant alleged that PV is affiliated with The Status Company (SC) and therefore is not a small business. (Protest at 1-2.) In addition, Appellant questioned whether PV is controlled by a service-disabled veteran or otherwise meets eligibility criteria as an SDVO SBC. (*Id.*) Appellant requested that its size allegations be directed to SBA, and that its status allegations be forwarded to VA's Office of Small and Disadvantaged Business Utilization (OSDBU) to “determine who's in control of the SDVOSB firm.” (*Id.* at 2.)

B. Size Determination

On October 8, 2015, the Area Office issued Size Determination No. 6-2015-078. The Area Office found that PV is affiliated with SC under the newly organized concern rule, 13 C.F.R. § 121.103(g). (Size Determination at 3.) PV has no other affiliates, and the combined average annual receipts of PV and SC do not exceed the size standard. Therefore, PV is a small business for the instant procurement. (*Id.*)

C. Appeal

On October 22, 2015, Appellant filed the instant appeal with OHA. Appellant does not dispute the Area Office's determination that PV is a small business. (Appeal at 2.) Appellant argues, however, that the Area Office failed to consider whether PV is controlled by a service-disabled veteran pursuant to 13 C.F.R. § 125.10. (*Id.* 1-2.) Appellant requests that OHA remand the matter to the Area Office to address the issue of PV's SDVO status, or in the alternative, rule that PV is not an eligible SDVO SBC. (*Id.* at 3.)

III. Discussion

The instant case is substantially similar to OHA's decision in *Size Appeal of HAL-PE Associates Engineering Services, Inc.*, SBA No. SIZ-5391 (2012). In *HAL-PE*, a protester challenged both the size of the apparent awardee and the apparent awardee's eligibility as an SDVO SBC. The underlying procurement was conducted by VA and was set aside for SDVO SBCs. An SBA area office issued a size determination addressing only the size allegations, and the protester filed an appeal contending that the area office should also have considered whether the apparent awardee was an eligible SDVO SBC. OHA dismissed the appeal, explaining:

The only argument raised by [the protester] in its appeal is that the Area Office ignored the portions of [the] protest alleging that [the apparent awardee] is not an eligible SDVO SBC. [The protester] is correct that the size determination was silent on these matters. As OHA has explained in prior case decisions, however, under current law any SDVO status protest arising out of a VA solicitation will be decided by the VA OSDBU. *Matter of Airborne Construction Services, LLC*, SBA No. VET-203 (2010); *Matter of Reese Goel JV*, SBA No. VET-199 (2010). This is true because, in 2009, VA promulgated a regulation granting the

Executive Director of VA's OSDBU the authority and jurisdiction to decide any status protest regarding an SDVO SBC arising from a VA solicitation. 48 C.F.R. § 819.307. The regulation indicates that this process will remain in place until an agreement is reached between VA and SBA to allow SBA to decide these protests. *Id.* An agreement has yet to be executed, however, so VA OSDBU presently retains sole jurisdiction over SDVO status protests arising out of VA solicitations. Accordingly, the Area Office did not err by not addressing [the apparent awardee's] status as an SDVO SBC. Further, although VA OSDBU has now rendered a decision on [the apparent awardee's] status, OHA has no jurisdiction to entertain appeals from such determinations. Rather, “[t]he result of [48 C.F.R. § 819.307] is that VA has created its own SDVO status protest process with which neither SBA nor OHA may interfere.” *Reese Goel*, SBA No. VET-199, at 4.

HAL-PE, SBA No. SIZ-5391, at 4-5.

Likewise, in the instant case, Appellant protested both the size and the eligibility of the apparent awardee, PV, and the protest pertained to a VA procurement that was set aside for SDVO SBCs. Section II.A, *supra*. The Area Office addressed the size aspects of Appellant's protest, and Appellant does not take issue with those findings. Sections II.B and II.C, *supra*. Rather, Appellant's sole complaint is that the Area Office did not consider whether PV meets SDVO eligibility criteria. Section II.C, *supra*. As in *HAL-PE*, though, the inter-agency agreement contemplated by 48 C.F.R. § 819.307 has not been executed; therefore, the issue of PV's SDVO status rests solely with the VA OSDBU and is beyond the jurisdiction of SBA and OHA. The Area Office properly confined its review only to Appellant's size allegations.

IV. Conclusion

The instant appeal does not allege any error of fact or law in the size determination. Although the appeal does argue that the Area Office should have investigated PV's eligibility as an SDVO SBC, the Area Office correctly refrained from doing so. Under current law, SBA and OHA lack jurisdiction to decide any SDVO status protest arising from a VA procurement. Accordingly, this appeal is DISMISSED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge