

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

SIZE APPEAL OF:

OER Services, LLC

Appellant,

RE: NESCO, LLC

Appealed From
Size Determination No. 4-2016-041

SBA No. SIZ-5757

Decided: July 6, 2016

ORDER REMANDING PROCEEDING¹

I. Background

On March 17, 2016, The Department of the Navy, Navy Facilities Engineering Command, Mid-Atlantic (Navy), issued Solicitation No. N40085-16-C-6364, for the lease of two bucket trucks at Marine Base Camp Lejune, NC as a small business set aside. The Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 532412, Construction, Mining and Forestry Machinery and Equipment Rental Leasing, with a corresponding \$32.5 million annual receipts size standard, as the applicable NAICS code for this procurement. Offers were due March 31, 2016. On May 18, 2016, the Navy awarded the contract to NESCO, LLC (NESCO).

On May 24, 2016, OER Services, LLC (Appellant) filed a size protest against NESCO. Appellant's protest alleged that NESCO, the company awarded the contract, "clearly does not meet" the requirements of a small business concern. (Protest at 2.) Appellant also submitted a copy of NESCO's System for Award Management (SAM) profile.

On June 9, 2016, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area IV (Area Office) issued Size Determination No. 4-2016-041, dismissing Appellant's protest for lack of specificity pursuant to 13 C.F.R. § 121.1007. The Area Office

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.

stated that “[n]othing in the protest alleges a sufficiently specific basis to show that the protested concern may be other than small.” (Size Determination, at 1.)

On June 15, 2016, Appellant filed the instant appeal with SBA's Office of Hearings and Appeals (OHA). Appellant argues NESCO's SAM profile demonstrates NESCO is not a small business concern, and requests OHA examine it. Appellant requests as relief the award of the contract.

II. Discussion

Appellant's protest alleged, without any rationale, that NESCO is not a small business concern because it exceeds the size standard applicable to the instant procurement. Ordinarily, this would justify a dismissal for lack of specificity, as SBA regulations are clear in requiring that a size protest “must include specific facts,” and “[a] protest merely alleging that the protested concern is not small . . . does not specify adequate grounds for the protest.” 13 C.F.R. § 121.1007(b). The protest must “provide reasonable notice as to the grounds upon which the protested concern's size is questioned.” *Id.*

However, the protest included in its submission NESCO's SAM profile. This information, from NESCO itself, states that NESCO is not small for NAICS code 532412, nor for any other NAICS code with a \$32.5 million annual receipts size standard. This is in the nature of an admission by NESCO that it is not small for this size standard. This information, from a source other than the protestor, provides notice to NESCO of the basis upon which its size is questioned, and is enough for the protest to meet the standard for specificity. *Size Appeal of Allan Baker, Inc., d/b/a Korreect Optical*, SBA No. SIZ-4486 (2002) (submission of Dun & Bradstreet report with a protest showing challenged firm's receipts exceed the applicable size standard constitutes a specific protest); *Size Appeal of Tri-Chem, Inc.*, SBA No. SIZ-4002 (1995) (submission of Dun & Bradstreet report showing challenged concern's receipts exceed the applicable size standard constitutes a specific protest.)

Accordingly, I find that Appellant's protest was sufficiently specific, in that it gave NESCO notice of the basis upon which its size was protested, and provided the Area Office with specific facts as to NESCO's possibly exceeding the applicable size standard. Accordingly, I REMAND this case to the Area Office for a new size determination.

III. Conclusion

Appellant has demonstrated that the size determination is clearly erroneous, because the Area Office failed to review the information Appellant submitted, in the form of NESCO's SAM report, which established the protest was specific. Accordingly, the appeal is GRANTED, the size determination is VACATED, and the matter is REMANDED to the Area Office for further determination.

CHRISTOPHER HOLLEMAN
Administrative Judge