

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

SIZE APPEAL OF:

Bridgeway Professionals, Inc.,

Appellant,

Appealed From
Size Determination No. 2-2017-061

SBA No. SIZ-5827

Decided: May 1, 2017

ORDER DISMISSING APPEAL¹

I. Background

On April 3, 2012, the U.S. Department of the Air Force (Air Force) issued Solicitation No. F3G4BA6250AW04 seeking a contractor to provide courier services. The procurement was set aside for small businesses and was assigned North American Industry Classification System (NAICS) code 492110, Couriers and Express Delivery Services, with a corresponding 1,500 employee size standard. Initial offers were due on December 30, 2016.

On January 25, 2017, the Contracting Officer (CO) awarded the contract to Bridgeway Professionals, Inc. (Appellant). On January 31, 2017, Crosstown Courier Service, Inc. (Crosstown) filed a size protest alleging Appellant was other than small, because it was unusually reliant upon its ostensible subcontractor. The CO forwarded the protest to the U.S. Small Business Administration's (SBA) Office of Government Contracting-Area II (Area Office) for a size determination.

On March 31, 2017, the Area Office issued Size Determination No. 2-2017-061 (Size Determination), finding Appellant to be an other than small business due to its affiliation with Advanced Delivery Systems (ADS), its ostensible subcontractor.

On April 11, 2017, the Air Force issued Amendment No. 1 to the solicitation terminating the instant procurement for convenience. The Amendment stated that the instant procurement, and the resulting contract to Appellant, have been terminated and all funds had been deobligated.

On April 17, 2017, Appellant filed the instant appeal. Appellant argues the Area Office erred because Appellant and ADS, combined, do not exceed the applicable size standard.

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.

On April 18, 2017, I issued an Order to Show Cause, instructing Appellant to respond as to why the instant appeal should not be dismissed as moot given the Agency's termination for convenience of the instant procurement.

On April 24, 2017, Appellant responded to the Order to Show Cause. Appellant states that it is being denied access to the “courier services market” due to a finding of affiliation under the ostensible subcontractor rule. (Appellant's Response, at 2.) Appellant contends that it is performing 50% of the costs incurred under the solicitation, and that courier services are part of Appellant's service offerings, as exemplified by Appellant performing the services required by the solicitation before the contract was terminated for convenience by the Air Force. Appellant adds that its SBA Form 355 indicated that the combined number of employees for Appellant and ADS fall under 1,500, yet the Area Office refused to consider this. Appellant claims that, even if the contract is terminated, the Area Office's decision would prohibit Appellant from qualifying to compete for contracts that have been issued under NAICS code 492110. (*Id.* at 3.) Thus, Appellant requests that OHA overturn the Area Office's decision.

II. Discussion

Appellant filed the instant appeal within 15 days of receiving the Size Determination, and thus the appeal is timely. 13 C.F.R. § 134.304(a).

However, the facts here require that I dismiss the instant appeal as moot. The Area Office found Appellant affiliated with ADS based on the ostensible subcontractor rule. The ostensible subcontractor rule is a contract-specific issue, which is rendered moot by cancellation or termination of the underlying procurement. *E.g.*, *Size Appeal of Assessment and Training Solutions Consulting Corp.*, SBA No. SIZ-5421, at 4 (2012); *Size Appeal of HRCI-MPSC PASS, LLC*, SBA No. SIZ-5500 (2013). Here, the issue for OHA to resolve is clearly a contract-specific contention, one which could only be decided based upon analysis of Appellant's proposal. Thus, given that the award has been cancelled, Appellant's proposal is no longer an issue and no live case or controversy exists. *Size Appeal of Navarro Research and Engineering, Inc.*, SBA No. SIZ-5473 (2013).

Appellant argues that the case remains a live controversy because it is now not eligible to compete as a small business under NAICS code 492110. However, the Area Office found Appellant other than small for this procurement only, on the contract-specific issue of its compliance with the ostensible subcontractor rule. Appellant is free to self-certify as small on any future procurement. 13 C.F.R. § 121.1010(b). Accordingly, Appellant is not injured by the instant size determination, and I must dismiss this case as moot.

III. Conclusion

Accordingly, I DISMISS the instant appeal as MOOT. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge