

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

SIZE APPEAL OF:

Cliffdale Manufacturing, LLC,

Appellant,

Appealed From
Size Determination Nos. 06-2017-060, -
061

SBA No. SIZ-5879

Decided: January 23, 2018

ORDER DISMISSING APPEAL¹

I. Background

On May 25, 2017, the Department of the Army, Army Contracting Command (Army) issued Solicitation No. W58RGZ-16-R-0251, seeking “overhaul/upgrade/repair of the UH-60 Dampner, Flutter.” (Memorandum from C. Ethridge to P. Lee (Nov. 17, 2017); Solicitation No. W58RGZ-16-R-0251, at 7.) The Contracting Officer (CO) set aside the entire procurement for small businesses, and assigned North American Industry Classification System (NAICS) code 336413, Other Aircraft Parts and Auxiliary Equipment Manufacturing, with a corresponding 1,250 employee size standard. Cliffdale Manufacturing, LLC (Cliffdale) submitted an offer on June 23, 2017. (*See* Proposal Cover Sheet for Solicitation No. W58RGZ-16-R-0251, at 1 (stating “Cliffdale Mfg. LLC” under “Name and Address of Offeror”).) The CO notified unsuccessful offerors that Cliffdale was the apparent successful awardee on August 22, 2017. (Letter from C. Ethridge to M. Baron (Aug. 22, 2017).)

On June 13, 2017, the Army issued Solicitation No. W58RGZ-16-R-0171, seeking overhaul and recapitalization of hydraulic valves. (Memorandum from C. Ethridge to P. Lee (Nov. 17, 2017); Solicitation No. W58RGZ-16-R-0171, at 7.) The CO set aside the entire procurement for small businesses, and assigned NAICS code 332912, Fluid Power Valve and Hose Fitting Manufacturing, with a corresponding 1,000 employee size standard. Cliffdale submitted an offer on August 18, 2017. (*See* Proposal Cover Sheet for Solicitation No. W58RGZ-16-R-0171, at 1 (stating “Cliffdale Manufacturing LLC” under “Name and Address of

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. OHA did not receive any requests for redactions, and now issues the decision for public release.

Offeror”).) The CO notified unsuccessful offerors that Cliffdale was the apparent successful awardee on August 30, 2017. (Letter from D. Murphee to K. Weaver (Aug. 30, 2017).)

On August 25, 2017, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area VI (Area Office) received a size protest from Texas Aerospace Services (TAS) regarding Cliffdale's award under Solicitation No. W58RGZ-16-R-0251. (Letter from C. Hill to C. Ethridge (Aug. 25, 2017).) On September 5, 2017, the Area Office received a separate size protest from TAS regarding Cliffdale's award under Solicitation No. W58RGZ-16-R-0171. (Letter from C. Hill to C. Ethridge (Sept. 5, 2017).) In each protest, TAS alleged Cliffdale is other than small for the subject procurement.

On September 8 and September 18, 2017, respectively, RTC Aerospace, LLC (RTC) responded to the size protests on behalf of its subsidiary Cliffdale and other RTC entities. (Letter from J. Darley to M. Guerzon (Sept. 7, 2017); Letter from J. Darley to M. Guerzon (Sept. 18, 2017).) In its response on behalf of Cliffdale, RTC suggested Cliffdale's operations are intertwined with its other subsidiaries and referred to itself as “Cliffdale Manufacturing, LLC c/o RTC Aerospace LLC.” (Letter from J. Darley to M. Guerzon (Sept. 7, 2017).) Jason Darley, RTC's Chief Executive Officer, separately signed for RTC and for Cliffdale when certifying the number of employees on each firm's SBA Form 355. (*Id.*, at 4, 18, 19.)

On October 25, 2017, the Area Office issued Size Determination No. 06-2017-060, finding Cliffdale is other than small for Solicitation No. W58RGZ-16-R-0171. (Size Determination No. 06-2017-060, at 7.) On the same day, the Area Office also issued Size Determination No. 06-2017-061, finding Cliffdale is other than small for Solicitation No. W58RGZ-16-R-0251. (Size Determination No. 06-2017-061, at 7.)

On November 9, 2017, the SBA Office of Hearings and Appeals (OHA) received a size appeal from RTC on behalf of its subsidiary Cliffdale (collectively, Appellant) regarding Size Determination No. 06-2017-060. On that same day, Appellant filed a second size appeal of Size Determination No. 06-2017-061. In both appeal petitions, Appellant advanced substantively identical arguments. Appellant asserts the Area Office erred in finding affiliation with four firms based on common ownership by the Hart family, and in finding affiliation with an investment firm that is a minority shareholder in Appellant. (Appeals, at 2-3.)

On November 20, 2017, OHA consolidated the two appeal petitions in one appeal. In its order, OHA recounted several cases in which it consolidated size appeals involving the same firms, same issues, same size standards, and/or same procurement. (Order, at 1, citing *Size Appeals of G&C FAB-CON, LLC*, SBA No. SIZ-5649 (2015) and *Size Appeal of DooleyMack Gov't Contracting, LLC*, SBA No. SIZ-5086 (2009).) OHA concluded that while Appellant's two appeals involve different solicitations and size standards, both appeals involve the same protestor, same challenged firm, and the same issues. OHA further noted that neither appeal involved contract-specific issues.

On December 20, 2017, OHA reopened the record and requested comments from the SBA Office of General Counsel (OGC) as to whether RTC has standing to file the instant appeals on behalf of its subsidiary, Cliffdale. OHA noted it had recently held in *Size Appeal of*

Conrad Shipyards, LLC, SBA No. SIZ-5873 (2017) that a subsidiary does not have standing to file a size appeal on behalf of its parent company, and also noted that it has consistently held an affiliate of a protested concern does not have standing to file an appeal on behalf of the challenged concern because the size determination had no impact on the affiliate. (Order Requesting Comments, at 2.) OHA also pointed to the U.S. Government Accountability Office's (GAO) decision in *Integral Systems, Inc.*, B-405303.1 (Aug. 16, 2011) in which GAO held the parent company lacked standing to file a bid protest on behalf of a subsidiary because “the subsidiary, not the parent, was an actual or prospective bidder or offeror and would be the one contracting with the government.” (*Id.*, at 2, citing *Integral Systems, Inc.*) In addition, OHA suggests RTC may have standing to file on behalf of Cliffdale if it is merely doing business as Cliffdale with the government.

On December 21, 2017, SBA responded to OHA's order. In its response, SBA argues RTC, in fact, does not have standing to file the instant appeals on behalf of Cliffdale. (SBA's Comments, at 1.) Citing the rationale in *Integral Systems*, SBA suggests “absent a showing that the appellant is not a separate and distinct legal entity from the subsidiary, and absent a showing that the appellant could not separately . . . receive a Government contract,” RTC is not an interested party with standing. (*Id.*, at 1, citing *Integral Systems, Inc.*, at 2011 CPD ¶ 161.) SBA further suggests the Area Office's size determinations regarding Cliffdale “do not have an impact or consequence on whether RTC can submit offers for a particular procurement.” (*Id.*, at 1-2.) SBA also argues RTC is not an interested party because RTC has not shown the size determinations prevent RTC from representing itself as small or require RTC to update its status on Federal contracting databases. (*Id.*, at 2.) In addition, SBA asserts RTC is not merely doing business as Cliffdale and is a separate legal entity that wholly-owns Cliffdale. (*Id.*) According to SBA, there is no form on file in the State of Washington, RTC's domicile, attesting to RTC's use of Cliffdale's name for business purposes. (*Id.*) Likewise, SBA represents, there is no fictitious name certificate on file in the State of California, Cliffdale's domicile, suggesting RTC is doing business as Cliffdale. (*Id.*)

On January 9, 2018,² the day after the record closed for responses to SBA's comments, Appellant moved to reopen the record so that it could respond. In its motion, Appellant suggested several attempts were made “to meet and confer and add final comments,” but Appellant was unable to do so because of the intervening holidays and the schedules of its executives. (Motion, at 1.) On that same day, OHA granted Appellant's request and directed Appellant to file its response no later than January 17, 2018. However, Appellant failed to file a response.

II. Discussion

I conclude that I must dismiss the instant appeals. SBA regulations dictate “[a]ny person adversely affected by a size determination” has standing to appeal a size determination to OHA.

² OHA received Appellant's motion to reopen the record at 6:18 p.m. on January 8, 2018. However “[a]ny submission received at OHA after 5 p.m. eastern time is considered filed the next business day.” 13 C.F.R. § 134.204(b)(2); see *Size Appeal of Orion Construction Corporation*, SBA No. SIZ-5694, n. 1 (2015).

13 C.F.R. § 134.302(a). As stated in its order on December 20, OHA has refrained from extending standing to alleged affiliates, proposed subcontractors, and even ostensible subcontractors to appeal the size determination of a challenged firm because the size determination has no impact on their size or status. *See, e.g., Size Appeal of Ma-Chis Lower Creek Indian Tribe Enters., Inc.*, SBA No. SIZ-5333, at 1-2 (2012) (holding the affiliate lacked standing to appeal the size determination because the affiliate was not the subject of the size determination, which “has no apparent impact or consequence to [the affiliate]”); *Size Appeal of Doss Aviation, Inc.*, SBA No. SIZ-5648 (2015) (finding a subcontractor is not adversely affected, even though it can no longer perform as a subcontractor on the contract because of the size determination); *Size Appeal of Eagle Design and Mgmt., Inc.*, SBA No. SIZ-4645 (2004) (stating an ostensible subcontractor is not the one contracting with the Government and is usually itself ineligible for the subject procurement). OHA also recently refrained from extending standing to a subsidiary to appeal a size determination on behalf of its parent. *See Size Appeal of Conrad Shipyards, LLC*, SBA No. SIZ-5873 (2017). In *Conrad Shipyards*, OHA concluded the subsidiary lacks standing to appeal because it was not the offeror for the subject procurement and would not be contracting with the Government. *Id.*, at 6, 7. In its decision, OHA pointed to GAO's dismissal of a parent company's bid protest on behalf of its wholly-owned subsidiary, in which GAO held the parent company is not an interested party because the subsidiary, not the parent, would be contracting with the Government. *Id.*, citing *Integral Systems, Inc.*, B-405303.1 (Aug. 16, 2011). OHA held in *Conrad Shipyard* that “[w]here a parent may not file for its subsidiary, a subsidiary surely may not file for its parent.” *Id.* at 7.

Here, Cliffdale is the wholly-owned subsidiary of RTC. Cliffdale submitted the proposals for the subject procurements, was awarded the two subject contracts, and would be the firm contracting with the Government, not RTC. TAS protested Cliffdale's size, not RTC's, and the Area Office determined the size of Cliffdale, not RTC. The size determination has no impact or consequence on RTC's size or status. Despite RTC's suggestion that Cliffdale's operations are intertwined with those of RTC and its other subsidiaries, it is clear Cliffdale is a separate legal entity and is not merely a fictitious name or façade for RTC to use in contracting with the government. Therefore, RTC lacks standing to file the instant appeals on behalf of its wholly-owned subsidiary, Cliffdale.

III. Conclusion

For the above reasons, I DISMISS the instant appeal as untimely. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge