

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

SIZE APPEAL OF:

Arrow Moving & Storage -- Mayflower  
Transit,

Appellant,

RE: Alliance Relocation d/b/a Buehler  
Moving & Storage Co.

Appealed From  
Size Determination No. 05-2018-031

SBA No. SIZ-5902

Decided: May 1, 2018

ORDER DENYING APPEAL<sup>1</sup>

I. Background

On January 23, 2018, the U.S. Department of the Air Force (Air Force) issued Request for Proposals (RFP) No. FA2517-18-R-6000 for “the preparation of personal property of Department of Defense personnel for shipment and/or storage and related services”. (RFP, Attach. 1, at § I.A.) The Contracting Officer (CO) set aside the subject procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 488991, Packing and Crating, with a corresponding size standard of \$27.5 million average annual receipts. Proposals were due February 22, 2018. (RFP, Amendment 0001, at 1.)

On March 29, 2018, the CO informed Arrow Moving & Storage — Mayflower Transit (Appellant) that Alliance Relocation d/b/a Buehler Moving & Storage Co. (Alliance) was the apparent successful offeror. (Letter from A. Alexander to D. Ottoes (Mar. 29, 2018).) Appellant then filed a timely size protest challenging Alliance's size. The protest alleged that Alliance “ha[s] several locations that are all under common financial and administrative control that together do not meet the size requirements.” (Protest, at 1.) In support of this claim, Appellant offered a “screenshot from Unigroup website”, listing five alleged affiliates. (*Id.*)

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<sup>1</sup> 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 3, 2018, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office) dismissed Appellant's protest for lack of specificity. (Size Determination, at 1.) The Area Office explained that “[w]hile the protest lists the alleged affiliates, it does not include any evidence that [Alliance] exceeds the \$27.5 million size standard when the affiliates are aggregated.” (*Id.*)

Later that same day, Appellant filed the instant appeal with SBA's Office of Hearings and Appeals (OHA), contending that the Area Office improperly dismissed the protest. (Appeal, at 1.) With the appeal, Appellant provided screenshots from the D&B Hoover's website with sales data for Alliance and the alleged affiliates. (*Id.*) Appellant did not file a motion to supplement the record with new evidence.

## II. Discussion

The issue presented here is whether the Area Office improperly dismissed Appellant's protest for lack of specificity. According to SBA regulations:

A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest. No particular form is prescribed for a protest. Where materials supporting the protest are available, they should be submitted with the protest.

13 C.F.R. § 121.1007(b). The regulations go on to provide examples of protest allegations that are, or are not, sufficiently specific. *Id.* § 121.1007(c). One such example states:

*Example 5:* An allegation that concern X has revenues in excess of \$5 million (where \$5 million is the applicable size standard) without setting forth a basis for the allegation is non-specific.

*Id.* SBA will dismiss a protest that is not sufficiently specific. *Id.*

In the instant case, Appellant's protest alleged that Alliance is affiliated with other entities through “common financial and administrative control”. Section I, *supra*. The protest, though, offered no evidence to support the claim of common financial and administrative control. *Id.* Moreover, the protest provided no reason to believe that Alliance's receipts, even when combined with those of the alleged affiliates, exceed the \$27.5 million size standard. *Id.* Appellant's protest thus is analogous to Example 5 at 13 C.F.R. § 121.1007(c), where the protest did not “set[] forth a basis” for the allegation that the challenged firm exceeds the applicable size standard. Accordingly, the Area Office correctly dismissed Appellant's protest as non-specific. *Size Appeal of Millennium Health & Fitness, Inc.*, SBA No. SIZ-4877, at 3 (2008) (affirming dismissal of protest as insufficiently specific when the protest contained “just a bald allegation that the protested concern's receipts exceed a particular dollar size standard, without any supporting evidence”).

With its appeal, Appellant seeks to introduce sales data for Alliance and the alleged affiliates. *See* Section I, *supra*. OHA, though, cannot accept this new evidence, for two reasons. First, it is settled law that an insufficiently specific protest cannot be cured on appeal by the submission of new evidence. *E.g.*, *Size Appeal of NuGate Group, LLC*, SBA No. SIZ-5821, at 3 (2017); *Size Appeal of DataSavers of Jacksonville, Inc.*, SBA No. SIZ-5795, at 2 (2016). Even if OHA were to admit the new evidence, the evidence would not establish that the Area Office erred in dismissing the protest, because the Area Office did not have access to the information when it determined that the protest was non-specific. Second, SBA regulations preclude OHA from considering new evidence for the first time on appeal, unless a motion is filed establishing good cause for its submission. 13 C.F.R. § 134.308(a). Appellant here filed no such motion, and OHA has held that such an omission may be “fatal” to an attempt at introducing new evidence. *Size Appeal of Quigg Bros., Inc.*, SBA No. SIZ-5786, at 8 (2016). For these reasons, Appellant's new evidence is EXCLUDED from the record and has not been considered for purposes of this decision.

### III. Conclusion

Appellant has not established that the Area Office improperly dismissed Appellant's protest for lack of specificity. Accordingly, the appeal is DENIED and Size Determination No. 05-2018-031 is AFFIRMED. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge