

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

SIZE APPEAL OF:

JEQ & CO., LLC

Appellant,

RE: Adept Fasteners, Inc.

Appealed From  
Size Determination No. 06-2018-56

SBA No. SIZ-5909

Decided: May 10, 2018

ORDER DISMISSING APPEAL<sup>1</sup>

I. Introduction

On April 24, 2018, the U.S. Small Business Administration (SBA) Office of Government Contracting, Area VI (Area Office) dismissed the size protest of JEQ & CO., LLC (Appellant), alleging that Adept Fasteners, Inc. (Adept) was other than small, for lack of standing and specificity. (Size Determination, at 1). On April 27, 2018, Appellant filed the instant appeal from that determination. For the reasons discussed *infra*, the appeal is denied, and the size determination is affirmed.

II. Background

On January 11, 2018, the Contracting Officer (CO) for the Department Logistics Agency Troop Support (DLA) issued Request for Quotations (RFQ) No. SPE5E3-18-T-4388 for the First Destination Transportation Program (FDTP). The procurement was a Combined Historically Underutilized Business Zone (HUBZone)/Small Business set-aside. The CO assigned the RFQ North American Industry Classification System (NAICS) code 332722, Bolt, Nut, Screw, Rivet and Washer Manufacturing, with a corresponding 500 employee size standard. Proposals were due on January 18, 2018. Appellant and Adept submitted timely offers.

On January 18, 2018, DLA notified unsuccessful offerors Adept was the apparent successful offeror. On January 19, 2018, Appellant filed a size protest with the CO, alleging that

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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.

Adept is not a HUBZone small business concern and “is not even categorized as a small business.” (Protest, at 1).

### III. Size Determination

On April 24, 2018, the Area Office found that Appellant is not an interested party on the instant procurement under 13 C.F.R. § 121.1001(a)(1)(i) because Appellant's offer was deemed technically unacceptable by the CO. (Size Determination, at 1). The Area Office also found Appellant's protest lacked specificity in its allegation that Adept Fasteners Inc. (Adept) was not a small business. *Id.*, See 13 C.F.R. § 121.1007 (stating, “A protest merely alleging that the protested concern is not small...does not specify adequate grounds for the protest”). Appellant cited to the Dynamic Small Business Search Engine (DSBS) to support its allegations. However, the Area Office found Adept's actual DSBS profile contradicts Appellant's assertion because Adept is certified there as a small business for a NAICS code with a lower employee size standard than the NAICS code for the instant procurement. (*Id.*, at 2). Therefore, the Area Office dismissed Appellant's protest for lack of standing and specificity.

### IV. Appeal Petition

In its appeal, Appellant argues the Area Office “did not provide any justification for the offer of [Appellant] being technically unacceptable and as such [the size determination] should be overruled on the ground that it is unspecific.” (Appeal, at 2). Appellant asserts that: (1) the instant procurement was set aside for HUBZone small business concerns; (2) it is a HUBZone small business concern, and (3) Adept is not a HUBZone small business concern. Therefore, Appellant requests that: (1) OHA overrule the size determination entirely; (2) direct DLA to rescind the award to Adept and reaward the contract to Appellant; (3) leave undisturbed the award to Adept and award Appellant \$24,999.99 in damages; or (4) provide Appellant with “some other amount determined by [OHA].” (*Id.* at 3).

### V. Discussion

#### A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove the size determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

#### B. Analysis

I conclude that I must dismiss the instant appeal because Appellant lacked standing to file it and its protest lacked specificity.

Under 13 CFR § 121.1001(a)(1)(i), “any offeror that the [CO] has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability, or outside of the competitive range,” may file a size protest in connection with a particular procurement. Accordingly, OHA has held that an offeror is barred from filing a size protest when the CO has found its offer technically unacceptable. *See Size Appeal of KAES Enters, LLC*, SBA No. SIZ-5425 (2012) (finding that an unsuccessful offeror is barred from bringing a size protest), *see also Size Appeal of ILKA Technologies*, SBA No. SIZ-5903 (2018) (dismissing an unsuccessful offeror's appeal after she was given a Post-Award Debriefing from the CO explaining why the offer was found technically unacceptable)).

The Area Office properly found that Appellant did not have standing to file a protest because the CO eliminated Appellant from consideration for technical unacceptability. Therefore, the Area Office did not clearly err in dismissing Appellant's protest for lack of standing under 13 C.F.R. § 121.1001(a)(1)(i).

Further, I agree with the Area Office that Appellant's protest lacked specificity. Appellant alleges that Adept is not a HUBZone small business concern. OHA's jurisdiction “is limited and does not include HUBZone protests or appeals from HUBZone determinations.” *Size Appeal Browning Construction CO.*, SBA No. SIZ-4526 (2002). In reviewing the evidence accompanying the appeal, the citation to the DSBS may show that Adept is not a HUBZone small business concern, but it does not show that Adept is not a certified small business. The CO assigned the procurement as a Combined HUBZone/Small Business Set Aside, which does not specifically require the successful offeror to be a HUBZone small business concern. Further, as the Area Office found, Adept is a certified small business under a NAICS code with a lower size standard than the instant procurement. Therefore, the Area Office did not err in dismissing Appellant's protest for lack of specificity.

## VI. Conclusion

Accordingly, I DENY the instant appeal and AFFIRM the size determination. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN  
Administrative Judge