

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

SIZE APPEAL OF:

JEQ & CO., LLC

Appellant,

RE: Alto Products Corp.

Purchase Order: SPE7L3-17-V08792

SBA No. SIZ-5912

Decided: May 22, 2018

ORDER DISMISSING APPEAL¹

I. Background

On July 17, 2017, the Contracting Officer (CO) for the Department Logistics Agency Land and Maritime (DLA) issued Request for Quotations No. SPE7L3-17-T-N699 (RFQ), which sought offers to supply 694 intermediate plates, identified by National Stock Number 2520-01-309-1003. 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 336350, Motor Vehicle Transmission and Power Train Parts Manufacturing, with a corresponding 1,500 employee size standard. Proposals were due on July 27, 2017.

On July 27, 2017, DLA notified unsuccessful offerors that Alto Products, Corp. (Alto) was the apparent successful offeror. On July 28, 2017, JEQ & CO, LLC (Appellant) filed a protest with the CO, alleging that, “Alto is not a HUBZone certified concern” and “[Appellant] is a HUBZone certified concern.” (Protest, at 1). Further, Appellant argues that for the instant set-aside, “HUBZone concerns are to be given preferential treatment if their costs are fair and reasonable.” (*Id.*)

On April 11, 2018, the CO acknowledged Appellant's July 28, 2017 protest and informed Appellant that an error was discovered in the award documentation for the instant solicitation. As a corrective action, DLA would re-evaluate the offers received under the RFQ and make a new award decision. Therefore, the CO determined that Appellant's protest was moot. (DLA Letter, April 11, 2018).

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 May 4, 2018, DLA informed Appellant that, upon re-evaluating the offers received under the RFQ, the CO's award decision would remain unchanged. Further, the CO explained that Appellant's offer was not fair and reasonable. (DLA Letter, May 4, 2018).

On May 5, 2018, Appellant filed an appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). In its appeal, Appellant argues that (1) Alto is not a HUBZone certified small business concern, (2) Appellant is a HUBZone certified small business concern, and (3) Appellant's offer for the instant procurement was fair and reasonable. (Appeal, at 2.) Further, Appellant requests that OHA (1) overturn the size determination entirely; (2) direct DLA to rescind the award from Alto and reaward the contract to Appellant; (3) leave undisturbed the award to Alto and award Appellant \$17,280.60 in damages; or (4) provide Appellant with "some other amount" determined by OHA, the Government Accountability Office (GAO), or the SBA Office of Government Contracting and Business Development. (*Id.* at 5).

On May 9, 2018, OHA ordered Appellant to show cause as to why the instant appeal should not be dismissed for a lack of jurisdiction. On May 10, 2018, Appellant filed a Petition for Referral of this appeal to OHA.

II. Discussion

I conclude that I must dismiss the instant appeal because OHA lacks jurisdiction to hear disputes regarding the certification of HUBZone small business concerns. Appellant's May 10, 2018 petition was nonresponsive to the Order to Show Cause and will not be considered.

OHA's jurisdiction is set out in 13 C.F.R. § 134.102. For example, OHA has jurisdiction over appeals from size determinations and NAICS Code designations. *See* 13 C.F.R. § 134.102(k). OHA also has jurisdiction over appeals from the Service-Disabled Veteran-Owned Small Business Concern Program under 13 C.F.R. § 134.102(q), and Women-Owned Small Business protests determinations under 13 C.F.R. § 134.102(s). However, 13 C.F.R. § 134.102 does not grant OHA jurisdiction to preside over HUBZone status protests, nor does OHA have the authority to directly overturn an award decision. *See Size Appeal of Browning Construction Co.*, SBA No. SIZ-4526 (2002) (concluding that OHA's jurisdiction "is limited and does not include HUBZone protests or appeals from HUBZone determinations.")

III. Conclusion

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

CHRISTOPHER HOLLEMAN
Administrative Judge