

**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. 06-2018-58

SBA No. SIZ-5913

Decided: May 22, 2018

DECISION

I. Introduction and Jurisdiction

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 specificity. On January 19, 2018, Appellant filed the instant appeal from that determination. For the reasons discussed *infra*, the appeal is denied, and the size determination is affirmed.

OHA decides size determination appeals under the Small Business Act of 1958, 15 U.S.C. 631 *et seq.*, and 13 C.F.R. parts 121 and 134. Appellant filed the instant appeal within fifteen days of receiving the size determination, so the appeal is timely. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation

On January 10, 2018, the Contracting Officer (CO) for the Department Logistics Agency Troop Support (DLA) issued Request for Quotations (RFQ) No. SPE5E3-18-T-4316 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 17, 2018. Appellant and Adept submitted timely offers.

On January 17, 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 Adept is not a HUBZone small business concern and “is not even categorized as a small business.” (Protest, at 1).

B. Size Determination

On April 24, 2018, the Area Office found that Appellant's protest lacked specificity. (Size Determination, at 1), *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 included a screenshot of Adept's Dynamic Small Business Search Engine (DSBS) profile to support its allegation that Adept is not a small business. 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). Further, the Area Office found that Appellant's protest did not mention any specific facts or include additional information “that would call into question the size of the protested concern for the 500 employee size standard.” (*Id.*) Therefore, the Area Office dismissed Appellant's protest for lack of specificity.

C. Appeal Petition

On April 25, 2018, Appellant filed a size appeal asserting that: (1) the instant procurement was set aside for HUBZone small business concerns; (2) Appellant is a HUBZone small business concern, and (3) Adept is not a HUBZone small business concern. (Appeal, at 2-3). 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 \$21,437.00 in damages; or (4) provide Appellant with “some other amount determined by [OHA].” (*Id.* at 4).

III. 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 agree with the Area Office that Appellant's protest lacked specificity. As the Area Office found, Appellant provided no information that could lead to a finding that Adept is other than small. In reviewing the evidence accompanying the appeal, Appellant does not provide a coherent argument as to why the Area Office erroneously found its size protest non-specific.

Appellant provided a screenshot of Adept's DSBS profile without any explanation as to how it shows the Area Office committed a clear error of fact or law in dismissing the size protest for lack of specificity. Therefore, the Area Office did not err in dismissing Appellant's protest for lack of specificity.

Appellant alleges that Adept is not a HUBZone small business concern. However, the Combined HUBZone/Small Business set aside does not specifically require the successful offeror to be a HUBZone small business concern. Furthermore, 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).

III. 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