

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

FOR PUBLIC RELEASE

SIZE APPEAL OF:

Velocity Training, LLC,

Appellant,

Appealed From
Size Determination No. 03-2018-023

SBA No. SIZ-5916

Decided: May 30, 2018

ORDER DISMISSING APPEAL¹

DECISION²

I. Background

On August 4, 2017, the General Services Administration issued Solicitation No. ID07170035 (RFP) for airlift support for the U.S. Air Force Air Education Training Command (AETC). The Contracting Officer (CO) set the procurement aside for small businesses and designated it under North American Industry Classification System (NAICS) code 481211, Nonscheduled Charter Freight Air Transportation, with a corresponding 1,500 employee size standard.

On December 21, 2017, the CO issued a pre-award notice that Appellant was the apparent successful offeror. On December 29, 2017, Air Center Helicopters, Inc. (ACHI) protested Appellant's size. ACHI alleged that Appellant was affiliated with AAR Airlift Group, Inc. (AAR), a large business, and Archangel Aviation, LLC (AA) under the ostensible subcontractor rule. Appellant alleged AAR and/or AA would be performing the contract's primary and vital requirements. Appellant responded to the protest on February 25, 2018, and submitted further information at the Area Office request on March 9, 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.

² This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded Appellant an opportunity to request redactions if desired. After reviewing the decision, Appellant informed OHA that they had no requested redactions. Therefore, OHA now issues the entire decision for public release.

On March 9, 2017, Appellant informed SBA that AAR had decided to withdraw from the procurement, and Appellant has recruited Hillsboro Aviation, Inc. (Hillsboro) which has Part 135 and CARB certifications and is a similarly situated small business, to replace AAR as its subcontractor. Appellant requested that SBA dismiss the size protest as moot.

On March 19, 2018, the Area Office issued the size determination, finding Appellant is not an eligible small business for this procurement. The Area Office concluded that the primary and vital requirements of this contract are for the contractor to provide airlift services including aircraft and flight crews in support of aircraft and pilots to support AETC training. The contractor providing the aircraft and aircrew must possess Commercial Airlift Review Board (CARB) certification, issued by the Department of Defense (DoD). The Area Office concluded Appellant would be relying upon its large subcontractor, AAR, for the CARB certification, and was therefore in violation of the ostensible subcontractor rule. Accordingly, Appellant is affiliated with AAR for the purposes of this procurement, and is other than small.

On April 3, 2018, Appellant filed the instant appeal. Appellant contends the Area Office clearly erred in finding it in violation of the ostensible subcontractor rule. Appellant asserts it received the award on December 22, 2017, and ACHI filed a GAO bid protest on December 29, 2017. On January 2, 2018 GSA issued a stop-work order. GSA undertook corrective action, and GAO dismissed the bid protest as academic on January 8, 2018. Appellant asserts that on March 22, 2018, GSA terminated the contract for convenience.

On May 30, 2018, the CO provided OHA with a copy of her March 22, 2018 letter to Appellant. The letter states that “Contract No. ID07170035003 is hereby completely terminated under clause 52.212.-4, effective immediately. The [CO] has determined this termination to be in the Government's best interest. [Appellant] should immediately stop all work, terminate subcontracts, and place no further orders.” (Letter, T. Mattox to Appellant, March 22, 2018.)

II. Discussion

Appellant filed the instant appeal within 15 days of receiving the size determination, and thus the appeal is timely. 13 C.F.R. § 134.304(a).

However, the facts here require that I dismiss the instant appeal as moot. The Area Office found Appellant affiliated with AAR based on the ostensible subcontractor rule. The ostensible subcontractor rule is a contract-specific issue, which is rendered moot by cancellation or termination of the underlying procurement. *E.g.*, *Size Appeal of Bridgeway Professionals, Inc.*, SBA No. SIZ-5827 (2017); *Size Appeal of Assessment and Training Solutions Consulting Corp.*, SBA No. SIZ-5421, at 4 (2012); *Size Appeal of HRCI-MPSC PASS, LLC*, SBA No. SIZ-5500 (2013). Here, the issue for OHA to resolve is clearly a contract-specific contention, one which could only be decided based upon analysis of the solicitation and Appellant's proposal. Thus, given that the award has been cancelled, Appellant's proposal is no longer an issue and no live case or controversy exists. *Size Appeal of Navarro Research and Engineering, Inc.*, SBA No. SIZ-5473 (2013).

The Area Office found Appellant other than small for this procurement only, on the contract-specific issue of its compliance with the ostensible subcontractor rule. Appellant is free to self-certify as small on any future procurement. 13 C.F.R. § 121.1010(b). If the CO should recompile this requirement subsequent to the termination, and Appellant were to compete for it, Appellant's compliance with the ostensible subcontractor rule would be based upon the proposal it submits at that time. The subject proposal became irrelevant when, on March 22, 2018, the CO terminated for convenience the instant procurement. Accordingly, Appellant is not injured by the instant size determination, and I must dismiss this case as moot.

III. Conclusion

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

CHRISTOPHER HOLLEMAN
Administrative Judge