

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

SIZE APPEAL OF:

Land Shark Shredding, LLC,

Appellant,

RE: Security Group Operations  
International, LLC

Appealed From  
Size Determination No. 05-2020-001

SBA No. SIZ-6037

Decided: November 18, 2019

APPEARANCE

Don Gerard, Jr., President and CEO, Land Shark Shredding, LLC, Bowling Green, Kentucky

DECISION

I. Introduction and Jurisdiction

On October 3, 2019, the U.S. Small Business Administration (SBA) Office of Government Contracting - Area V (Area Office) issued Size Determination No. 05-2020-001, dismissing a size protest filed by Land Shark Shredding, LLC (Appellant) against Security Operations Group International, LLC (SOGI). The Area Office found that Appellant lacked standing to protest because Appellant did not submit a timely quotation for the underlying procurement.

On October 18, 2019, Appellant filed the instant appeal. Appellant maintains that its quotation was timely, and requests that SBA's Office of Hearings and Appeals (OHA) remand the matter for a new size 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 appeal within fifteen days after receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. Solicitation and Protest

On July 29, 2019, the U.S. Department of Veterans Affairs (VA) issued Request for Quotations (RFQ) No. 36C25819Q0366 for on-site document destruction services. The Contracting Officer (CO) set aside the procurement entirely for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Quotations were due September 4, 2019 at 12:00 p.m. Eastern time.

On September 12, 2019, the CO informed Appellant that its quotation was untimely and therefore would not be evaluated. (Letter from D. Thiel to P. Kahoe (Sept. 12, 2019).) In response, Appellant argued that it had submitted its quotation by e-mail at 10:57 a.m. Central time, approximately two minutes before the deadline, and should not be penalized because “[VA's] server delayed in delivering it to your inbox for several minutes.” (E-mail from P. Kahoe to D. Thiel (Sept. 13, 2019).) The CO replied that, according to VA's computer records, Appellant's quotation “did not hit the VA email gateway until 12:04:46 Eastern time,” four minutes after the deadline. (E-mail from D. Thiel to P. Kahoe (Sept. 13, 2019).) Regardless of when the quotation was transmitted, it was not actually received until after the deadline. (*Id.*) In addition, the CO stated, the RFQ had warned that “[t]he Government will not be responsible for delays or failures of either the Contractor's or the Government's e-mail system.” (*Id.*)

On September 24, 2019, the CO announced that SOGI was the apparent awardee. On October 1, 2019, Appellant filed a protest challenging SOGI's size and its status as an SDVOSB. The CO forwarded the size portion of the protest to the Area Office for review.<sup>1</sup> In his letter referring the size protest to the Area Office, the CO highlighted that Appellant “was notified on September 12, 2019 [that it was] being excluded from evaluation due to a ‘LATE’ offer.” (Letter from D. Thiel to S. Lewis (Oct. 2, 2019), at 1.)

### B. Size Determination

On October 3, 2019, the Area Office issued Size Determination No. 05-2020-001, dismissing the size protest. The Area Office explained that “VA has informed our office that [Appellant's quotation] was not timely and not evaluated; therefore, [Appellant] is not able to protest the size of the apparent successful offeror because [Appellant] has been eliminated from consideration.” (Size Determination at 1, citing 13 C.F.R. § 121.1001(a)(1)(i).)

### C. Appeal

On October 18, 2019, Appellant filed the instant appeal. Appellant argues that, contrary to the CO's assertions, Appellant's quotation was timely. Specifically, Appellant timely submitted its quotation by e-mail at 10:57 a.m. Central time, approximately two minutes before

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<sup>1</sup> The status portion of Appellant's protest was processed separately. *See CVE Protest of Land Shark Shredding, LLC*, SBA No. CVE-139-P (2019).

the deadline. (Appeal at 1-2.) Appellant is concurrently pursuing a bid protest at the U.S. Court of Federal Claims in an effort to overturn the CO's decision. (*Id.* at 2.)

### 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 that 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

SBA regulations make clear that an offeror which has been “eliminated from consideration for any procurement-related reason” lacks standing to protest the size of the apparent awardee. 13 C.F.R. § 121.1001(a)(1)(i). This rule reflects SBA's long-standing policy that only “those concerns whose successful [size] challenge would enable them to compete for award” should be eligible to bring a size protest. *Size Appeal of FitNet Purchasing Alliance*, SBA No. SIZ-5089, at 4-5 (2009) (discussing regulatory history).

In the instant case, at the time Appellant's size protest was filed, Appellant had been excluded from the competition and was ineligible to win the award. Section II.A, *supra*. Accordingly, the Area Office correctly dismissed Appellant's size protest for lack of standing. While Appellant highlights that it is disputing the rejection of its quotation through a bid protest at the U.S. Court of Federal Claims, the fact remains that Appellant did not have standing to challenge SOGI's size at the time its size protest was filed. In the event that Appellant ultimately prevails on its bid protest and is readmitted into the competition, Appellant could at that point have standing to protest the size of the new apparent awardee.

### IV. Conclusion

The Area Office did not err in dismissing Appellant's size protest. The appeal therefore is DENIED, and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge