

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

SIZE APPEAL OF:

Recycle Track Systems, Inc.,

Appellant,

RE: ITM4G Waste Management

Appealed From
Size Determination No. 02-2021-003

SBA No. SIZ-6083

Decided: December 8, 2020

APPEARANCE

Frank V. Reilly, Esq., Fort Lauderdale, Florida, for Recycle Track Systems, Inc.

ORDER DISMISSING APPEAL¹

I. Background

On September 4, 2020, the Department of Veterans Affairs (VA), issued Solicitation No. 36C24220R0145 (Solicitation), seeking trash removal and recycling services at the James J. Peters VA Medical Center and other community-based outpatient clinics. The Contracting Officer (CO) set aside the procurement for Service-Disabled Veteran-Owned Small Business (SDVOSBs) and designated North American Industry Classification System (NAICS) code 562111, Solid Waste Collection, with a corresponding \$41.5 million annual receipts size standard, as the applicable NAICS code for this procurement. Proposals were due September 23, 2020. On September 24, 2020, the VA notified the unsuccessful offeror.

On October 8, 2020, Appellant filed a size protest against ITM4G Waste Management (ITM4G). In the Protest, Appellant stated that it was an “other interested party.” However, it did not submit a proposal for this Solicitation because this procurement was a 100% service-disabled veteran-owned small business (SDVOSB) set-aside and the Appellant is not an SDVOSB. (Protest, at 2.)

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 November 6, 2020, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. 2-2020-003, dismissing the size protest filed Appellant. The Area Office determined that Appellant lacked standing to protest, because the procuring agency found Appellant did not submit an offer. (Size Determination, 1-2.)

On November 23, 2020, Appellant filed the instant appeal with SBA's Office of Hearings and Appeals (OHA). Appellant argues that the Area Office's dismissal was improper. (Appeal, at 2.) Appellant also stated that it did not submit an offer because it is a large business. (*Id.*)

On November 25, 2020, I issued an Order to Show Cause as to why the instant appeal should not be dismissed for lack of standing, since Appellant has not shown that it is a SDVOSB eligible for the procurement.

On December 4, 2020, Appellant responded to the Order to Show Cause. In its response, Appellant claims that the original statement that it is a large business was incorrect. (Response, at 1.) Appellant then claims that it is a small business but that it is not veteran owned. (*Id.*, at 2.) Appellant states its protest was filed under SBA's Small Business Set Aside program, and it has standing to protest under 13 C.F.R. § 121.1001(a)(1)(iv) as an “other interested party” when there is only one remaining offeror after the protestor is found to be other than small. This regulation gives standing to firms such as Appellant regardless of whether they are SDVOSB eligible. (*Id.*, at 5.)

Additionally, in a letter to the CO from Appellant's Business Development Manager, the letter states that Appellant would not be bidding because the solicitation is a 100% SDVOSB set-aside and Appellant is not an SDVOSB. (Response Attachment A, at 1.)

II. Discussion

The regulation applicable to size protests to be filed for procurements under the Service-Disabled Veteran Owned Small Business, such as the instant procurement, provides:

For SBA's Service-Disabled Veteran-Owned Small Business Concern program, the following entities may protest in connection with a particular service-disabled veteran-owned procurement:

- (i) Any concern that submits an offer for a specific service-disabled veteran-owned small business set-aside contract;
- (ii) The contracting officer;
- (iii) The SBA Government Contracting Area Director; and
- (iv) The Director, Office of Government Contracting, or designee.

13 C.F.R. § 121.1001(a)(8).

Appellant is not a concern that submitted an offer for this procurement, nor is it owned by a service-disabled veteran, and therefore Appellant does not have standing under this regulation.

Specific to Appellant's argument that it should be treated as an "other interested party" with standing to protest under 13 C.F.R. § 121.1001(a)(1)(iv), that regulation is inapplicable to the instant appeal. 13 C.F.R. § 121.1001(a)(1)(iv) applies to protests filed under SBA's Small Business Set Aside program. The applicable regulation for protests filed under SBA's Service-Disabled Veteran Owned Small Business program is 13 C.F.R. § 121.1008(a). However, even if 13 C.F.R. § 121.1001(a)(1)(iv) was applicable to the instant appeal, OHA has repeatedly held that the regulation's definition of "other interested parties" at § 121.1001(a)(1)(iv) applies only to the specific circumstances outlined in the regulation. *Size Appeal of FreeAlliance.com, LLC, SBA No. SIZ-6064*, at 8 (2020); *Size Appeal of AeroSage, LLC, SBA No. SIZ-5987*, at 3 (2019); *Size Appeal of Hummingbird Data Sys., LLC d/b/a Hummingbird Solutions, SBA No. SIZ-5311*, at 3 (2011). Because neither of the special circumstances set forth in § 121.1001(a)(1)(iv) are applicable here, Appellant cannot be considered an "other interested party."

For the reasons outlined above, I DISMISS the instant appeal for lack of standing. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge