

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

SIZE APPEAL OF:

Avenue Mori Medical Equipment, Inc.,

Appellant,

Appealed From  
Size Determination No. 06-2020-069

SBA No. SIZ-6090

Decided: February 5, 2021

ORDER DISMISSING APPEAL<sup>1</sup>

On August 25, 2020, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area VI (Area Office) issued Size Determination No. 06-2020-069, concluding that Avenue Mori Medical Equipment, Inc. (Appellant) is not a small business for the subject procurement. The Area Office found that Appellant does not meet all the requirements of the nonmanufacturer rule. On September 4, 2020, Appellant appealed the size determination to SBA's Office of Hearings and Appeals (OHA).

On October 22, 2020, Appellant informed OHA that the procuring agency, the U.S. Department of Veterans Affairs (VA), intended to undertake corrective action on the instant procurement. Specifically, VA planned to reopen discussions, solicit revised proposals, and make new award determinations. Appellant asserted that the corrective action renders the dispute academic, and that the appeal should be dismissed as moot.

On October 23, 2020, intervenor First Nation Group, LLC d/b/a Jordan Reses Supply Co. (First Nation), which had previously protested Appellant's size, requested that proceedings be temporarily stayed, until it was clear that VA would in fact solicit revised proposals. (Request for Stay at 1.) First Nation observed that a bid protest challenging the scope of the corrective action could still be filed, and that VA might ultimately choose not to solicit revised proposals. (*Id.* at 1-2.) In that eventuality, Appellant's size would be determined based on its existing proposal, and the instant appeal would not be moot, if Appellant were again selected for an award. (*Id.*)

On October 26, 2020, OHA issued an order temporarily staying proceedings. The order directed the parties to notify OHA once it became clear whether revised proposals would be solicited. (Order Staying Proceedings at 2.) OHA stated that “[i]f revised proposals are solicited,

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<sup>1</sup> 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.

OHA will dismiss the matter as moot.” (*Id.*) If, however, VA did not obtain revised proposals, the proceedings would remain stayed until the completion of corrective action. (*Id.*)

On November 3, 2020, First Nation informed OHA that, although VA had solicited new proposals for the instant procurement, a third party had filed a bid protest at the Government Accountability Office (GAO) challenging VA's corrective action. First Nation therefore requested that proceedings remain stayed pending resolution of the bid protest. On February 3, 2021, First Nation notified OHA that GAO had denied the bid protest.

In accordance with OHA's Order Staying Proceedings, this dispute must now be dismissed as moot. The only issue in the appeal was whether Appellant qualified for award under the nonmanufacturer rule, based on its proposal. That question has become moot because VA has obtained new proposals as part of the corrective action. *E.g.*, *Size Appeal of HRCI-MPSC PASS, LLC*, SBA No. SIZ-5500, at 2 (2013) (contract-specific issues, “which could only be decided based upon analysis of [the challenged firm's] proposal,” are moot when that particular proposal is no longer under consideration for award). By regulation, OHA cannot adjudicate issues which have become moot. 13 C.F.R. § 134.316(c).

For the above reasons, the appeal is **DISMISSED** as **MOOT**. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge