

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

SIZE APPEAL OF:

Caldaia Controls, LLC,

Appellant,

RE: Venergy Group, LLC

Solicitation No. 36C25621Q0433

SBA No. SIZ-6104

Decided: June 16, 2021

ORDER DISMISSING APPEAL¹

I. Background

On June 2, 2021, Caldaia Controls, LLC (Appellant) filed the captioned appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). The appeal purported to “appeal the award of Veterans Affairs Solicitation number 36C25621Q0433 which resulted in the Award number 36C25621P0841 to Venergy Group, LLC” (Venergy). (Appeal at 1.) Because the appeal did not reference, nor include a copy of, any formal size determination that Appellant intended to challenge, OHA ordered Appellant to show cause why the appeal should not be dismissed as premature and/or for lack of standing.

In response to OHA's Order, Appellant asserted that the Contracting Officer (CO) was not sufficiently responsive to Appellant's concerns about the award to Venergy, so Appellant “elected to file appeals outside of their office as they were the source of the problem.” (E-mail from J. Wilson (June 14, 2021).) Appellant does not claim that it ever filed a size protest against Venergy, and does not argue that any formal size determination pertaining to Venergy has been issued. (*Id.*)

II. Discussion

The instant appeal is premature and must be dismissed. Under SBA regulations, OHA lacks jurisdiction to adjudicate a size appeal unless, and until, a formal size determination has been issued. 13 C.F.R. §§ 121.1101(a) and 134.102(k). Further, OHA itself has no authority to issue a formal size determination in the first instance. 13 C.F.R. § 121.1002. To request a formal size determination against a competitor, an unsuccessful offeror normally must first file a size

¹ 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.

protest with the CO. 13 C.F.R. §§ 121.1001 and 121.1003. The CO then “must forward the protest promptly to the SBA Government Contracting Area Office serving the area in which the headquarters of the [challenged firm] is located.” 13 C.F.R. § 121.1006(a).

In the instant case, it does not appear that any size protest has been filed against Venergy, nor that any formal size determination has been issued. As a result, OHA presently lacks jurisdiction over this case. Further, insofar as no formal size determination has yet been issued, Appellant is not “adversely affected” by a size determination, and therefore does not have standing to appeal to OHA. 13 C.F.R. § 134.302(a).

III. Conclusion

For the above reasons, the appeal is DISMISSED as premature and for lack of standing. This dismissal is WITHOUT PREJUDICE to any new appeal that may be filed in the event that a formal size determination is subsequently issued.

KENNETH M. HYDE
Administrative Judge