

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

SIZE APPEAL OF:

Focus Revision Partners JV LLC,

Appellant,

RE: NWI&T Atkins SB JV, LLC

Appealed From  
Size Determination No. 06-2021-071

SBA No. SIZ-6152

Decided: May 11, 2022

ORDER DISMISSING APPEAL<sup>1</sup>

I. Background

A. Introduction

On November 4, 2021, the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) received the above-captioned appeal from Focus Revision Partners JV LLC (Appellant). The appeal challenged Size Determination No. 06-2021-071, in which SBA's Office of Government Contracting — Area VI (Area Office) denied Appellant's size protest and found that NWI&T Atkins SB JV, LLC (NWI&T) is an eligible small business for the subject procurement. NWI&T now moves to dismiss the appeal, contending that Appellant is not an interested party and lacks standing to appeal. Appellant opposes the motion. For the reasons discussed *infra*, NWI&T's motion is granted and the appeal is dismissed.

B. Solicitation and Protest

On March 15, 2021, the Federal Emergency Management Agency (FEMA) issued Synopsis No. HSFE60-21-S-0002 for architect and engineering (A&E) services. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541330, Engineering Services, with a corresponding size standard of \$16.5 million average annual receipts. Phase I proposals were due

---

<sup>1</sup> This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded the parties an opportunity to request redactions if desired. After reviewing the decision, the parties informed OHA that they had no requested redactions. Therefore, OHA now issues the entire decision for public release.

on April 14, 2021 for offerors to provide their qualifications. Phase II proposals were due on July 8, 2021, extended to July 13, 2021.

On September 15, 2021, FEMA issued Pre-Award Notice letters announcing that NWI&T was the apparent awardee. The Pre-Award Notice for Appellant was addressed to “Focus Revision Partners.” (Pre-Award Notice (Sept. 15, 2021), at 1.)

On September 17, 2021, Appellant filed a size protest with the CO alleging that NWI&T is not a small business. Appellant's protest was filed in the name of “Focus Revision Partners JV, LLC,” which Appellant described as “an actual offeror under the Solicitation [that] was not eliminated for procurement-related reasons.” (Protest at 1-2.)

In the protest, Appellant acknowledged that NWI&T is a joint venture between an SBA-approved mentor and protégé under the All-Small Mentor-Protégé Program (ASMPP). (*Id.* at 4.) However, Appellant asserted, the underlying mentor-protégé agreement (MPA) may be invalid, because the protégé firm may have undergone a restructuring or name change without SBA authorization. (*Id.* at 5-7.) Furthermore, apart from any defects in the MPA, NWI&T's joint venture agreement (JVA) likely does not comport with SBA regulations. (*Id.* at 7-16.)

### C. Size Determination

The CO forwarded Appellant's size protest to the Area Office for review. On October 20, 2021, the Area Office issued Size Determination No. 06-2021-071, denying the protest and concluding that NWI&T is small under the applicable size standard.

### D. Appeal

On November 4, 2021, Appellant filed the instant appeal challenging Size Determination No. 06-2021-071. Appellant alleges several errors in the size determination that, in Appellant's view, warrant reversal or remand. The appeal, like the protest, was filed in the name of “Focus Revision Partners JV LLC.” (Appeal at 1.) On March 25, 2022, after Appellant's counsel reviewed the Area Office file under an OHA protective order, Appellant moved to supplement its appeal to address “new issues first discovered” during that review. (Supp. Appeal at 1.) The supplemental appeal was filed in the name of “Focus Revision Partners JV LLC.” (*Id.*)

### E. Motion to Dismiss

On March 24, 2022, NWI&T moved to dismiss the appeal for lack of standing. NWI&T argues that Appellant — “Focus Revision Partners JV LLC” — did not submit a proposal for the instant procurement. Appellant therefore is not a party “adversely affected” by the size determination within the meaning of 13 C.F.R. § 134.302(a).

NWI&T highlights that the Pre-Award Notice informing Appellant of the planned award to NWI&T was addressed to “Focus Revision Partners” rather than to “Focus Revision Partners JV LLC.” (Motion at 2.) A search in the System for Award Management (SAM) for “Focus Revision” or “Focus Revision Partners” reveals that the only entity registered under such names

has the unique Data Universal Numbering System (DUNS) number associated with “Focus Revision Partners, Inc.” (*Id.*, citing Exhs. 1 and 2.) “Focus Revision Partners, Inc.,” though, is not the same entity as Appellant, which identifies itself as “Focus Revision Partners JV LLC.” (*Id.*) NWI&T observes that, according to New York state records, “Focus Revision Partners, Inc.” is a corporation established in New York on December 24, 2020. (*Id.*, citing Exh. 3.)

OHA has repeatedly held that an affiliate, subcontractor, or subsidiary lacks standing to bring a size appeal on behalf of an actual offeror, because such entities have no “direct stake” in the outcome of the appeal. (*Id.* at 3-4, citing *Size Appeal of Ma-Chis Lower Creek Indian Tribe Enters., Inc.*, SBA No. SIZ-5333 (2012); *Size Appeal of Doss Aviation, Inc.*, SBA No. SIZ-5648 (2015); *Size Appeals of Sabre88, LLC and Phacil, Inc.*, SBA No. SIZ-5113 (2010); *Size Appeal of D&G Support Servs.*, SBA No. SIZ-5739 (2016); and *Size Appeal of Conrad Shipyard, LLC*, SBA No. SIZ-5873 (2017).) Here, Appellant evidently did not submit a proposal for the instant procurement, and Appellant, in any event, is not registered in SAM and thus would not be eligible for contract award. (*Id.* at 2, 5-7, citing Federal Acquisition Regulation (FAR) clause 52.204-7(b).) Instead, given that FEMA did not reject the “Focus Revision Partners” proposal, the actual offeror presumably was “Focus Revision Partners, Inc.” (*Id.* at 1, 5.) While Appellant may be a parent, subsidiary, affiliate, or subcontractor of “Focus Revision Partners, Inc.,” such entities have no standing to appeal at OHA. (*Id.* at 5-6.) NWI&T asserts that, as the party seeking relief, Appellant bears the burden of providing “relevant, adequate proof to establish jurisdiction by a preponderance of the evidence.” (*Id.* at 11-12.) Under the circumstances presented here, Appellant cannot meet this threshold.

#### F. Appellant's Opposition and Motion to Amend

On April 1, 2022, Appellant opposed NWI&T's motion to dismiss, and moved to amend its appeal and supplemental appeal to substitute the name “Focus Revision Partners” in place of “Focus Revision Partners JV LLC.” (Consolidated Opp. and Motion, at 1.) Appellant acknowledges that “Focus Revision Partners JV LLC does not exist.” (*Id.* at 2.) Appellant “inadvertently” filed its protest, appeal, and supplemental appeal under this incorrect name “due to a simple clerical error,” which Appellant first discovered as a result of NWI&T's motion to dismiss. (*Id.* at 1.)

Appellant asserts that the “single relevant entity” bearing the “Focus Revision Partners” name is “Focus Revision Partners,” which is a partnership and joint venture between two other concerns, Leonard Jackson PE LLC d/b/a Leonard Jackson Associates and Taylor Engineering, Inc. (*Id.* at 2, citing Exhs. C and D.) “Focus Revision Partners” is registered in SAM and is eligible for government contracts. (*Id.*, citing Exh. D.) “Focus Revision Partners, Inc.” also should be understood as referring to “Focus Revision Partners.” (*Id.*) According to Appellant, “Focus Revision Partners, a partnership (as its SAM profile attests), was inadvertently registered as a corporation with the New York Secretary of State.” (*Id.*) Appellant states that “Focus Revision Partners, Inc.” and “Focus Revision Partners” utilize the same DUNS number and are not separate entities. (*Id.* at 2-3.)

Appellant urges that OHA should permit Appellant to amend its appeal and supplemental appeal to reflect that they were filed by “Focus Revision Partners” rather than by “Focus

Revision Partners JV LLC.” (*Id.* at 1, 3-5.) Appellant offers proposed amended versions of these documents (Exh. A), as well as redline versions (Exh. B) purporting to show the “minimal changes” Appellant seeks. (*Id.* at 1 n.1.)

Appellant argues that the proposed amendments will not prejudice NWI&T nor create unreasonable delay, because the amendments “will be immediate, seamless, and non-substantive” and will not alter the underlying facts or legal theories. (*Id.* at 3-4, citing 13 C.F.R. § 134.207(a); *Size Appeal of Barlovento, LLC*, SBA No. SIZ-5191, n.3 (2011); and *Innovative Element, LLC v. United States*, 140 Fed. Cl. 743 (2018).)

Appellant next contends that any possible defects in the size protest should not impact its standing before OHA. (*Id.* at 6.) In particular, OHA's decision in *Size Appeal of Conrad Shipyard, LLC*, SBA No. SIZ-5873 (2017) “presents no obstacle to amendment.” (*Id.* at 5.) Appellant argues that: (1) unlike the scenario in *Conrad Shipyard*, NWI&T did not request that the Area Office dismiss Appellant's size protest for lack of standing; (2) an offeror may file a size appeal even if it did not file a size protest; and (3) OHA's rules of procedure at 13 C.F.R. § 134.207(a) allow for a pleading to be amended “even after the filing deadline.” (*Id.* at 5-6.)

Appellant urges OHA to follow decisions that allow non-substantive corrections to a party's name, particularly asserting that *Hemphill Contracting Co. v. United States*, 34 Fed. Cl. 82 (1995)<sup>2</sup> should be the “roadmap for resolution” in the instant case because “Focus Revision Partners” and “Focus Revision Partners JV LLC” are not different entities. (*Id.* at 8.) Appellant reiterates that “Focus Revision Partners” is registered in SAM and submitted a bid for the procurement; hence, it has standing to appeal. (*Id.* at 9.)

#### G. NWI&T's Opposition to Motion to Amend

On April 11, 2022, NWI&T opposed Appellant's motion to amend. In NWI&T's view, Appellant's admission that Appellant filed the instant appeal in the name of an entity that does not exist means that “OHA never had jurisdiction over this matter in the first place because a non-existent entity does not have standing to file [an] appeal.” (Opp. at 1.) Since Appellant had no standing to bring the original appeal, Appellant also lacks standing to amend that appeal. (*Id.*) NWI&T insists that “OHA has never granted a motion to amend to allow a party to change its own identity.” (*Id.*) Further, Appellant's failure to specify the correct name of the appellant in the appeal petition is, by itself, an independent ground to dismiss the appeal. (*Id.*, citing 13 C.F.R. § 134.305(a)(4) and (e).)

Contrary to Appellant's suggestions, the filing of the size protest and subsequent appeal in the name of “Focus Revision Partners JV LLC” cannot be overlooked as mere clerical errors. Under New York state law, partnerships and corporations are “distinctly different organizational forms.” (*Id.* at 2, quoting *People v. Zinke*, 555 N.E.2d 263 (1990) (emphasis

---

<sup>2</sup> In *Hemphill*, the U.S. Court of Federal Claims granted a plaintiff's request to amend the name on its complaint from “Hemphill Contracting Company, Inc.” to “Hemphill Contracting Co., Inc.,” finding the latter name to be an abbreviation of the former. *Hemphill*, 34 Fed. Cl. at 86.

added by NWI&T.) Consequently, “Focus Revision Partners” (which Appellant characterizes as a partnership) cannot possibly be the same entity as “Focus Revision Partners, Inc.” (*Id.* at 2-3.) NWI&T highlights that the only entity associated with the DUNS number referenced in SAM is “Focus Revision Partners, Inc.” (*Id.* at 11.) Accordingly, that same DUNS number cannot belong to “Focus Revision Partners” or “Focus Revision Partners JV LLC.” (*Id.*) The instant case is thus “factually and substantially different” from *Hemphill*, as amendment of Appellant's name is not an abbreviation or minor variation as Appellant contends. (*Id.* at 12.) Permitting Appellant to substitute a different entity as the real party in interest would be contrary to OHA precedent confirming that “an affiliate cannot file a size protest or appeal on behalf of an affiliated entity.” (*Id.*)

NWI&T complains that Appellant offers “no real explanation for why” Appellant utilized the name “Focus Revision Partners JV LLC” on every document previously filed with the Area Office and with OHA. (*Id.* at 4.) But in any event, no entity named “Focus Revision Partners JV LLC” ever submitted a proposal for this procurement or is registered in SAM. (*Id.*) As a result, “Focus Revision Partners JV LLC” is not adversely affected by the size determination.

NWI&T argues that, because Appellant did not have standing to file the original appeal, Appellant also lacks standing to amend the appeal. (*Id.* at 5-6, citing *Summit Office Park, Inc. v. United States Steel Corp.*, 639 F.2d 1278, 1282 (5th Cir. 1981) (“[W]here a plaintiff never had standing to assert a claim against the defendants, it does not have standing to amend the complaint and control the litigation by substituting new plaintiffs, a new class, and a new cause of action.”).) Multiple OHA decisions have recognized that “the correct interested party must bring the protest or appeal at the first instance or it will be dismissed for lack of standing.” (*Id.* at 7.) In *Size Appeal of Conrad Shipyard, LLC*, SBA No. SIZ-5873 (2017), OHA affirmed an area office's refusal to allow a protester to amend a size protest after the protest deadline had expired, and found unpersuasive the protestor's claim that the incorrect naming was merely “a minor, clerical error.” (*Id.* at 7.) NWI&T also asserts that OHA's rules of procedure at 13 C.F.R. § 134.207 do not include language that would allow amendments of pleadings to relate back to the date of the original pleading and thus cannot cure the defects in this appeal. (*Id.* at 6 (citing *Lans v. Gateway 2000, Inc.*, 84 F. Supp. 2d 112 (D.D.C. 1999), *aff'd sub nom. Lans v. Digital Equip. Corp.*, 252 F.3d 1320 (Fed. Cir. 2001); *Wright v. Dougherty Cty.*, 358 F.3d 1352 (11th Cir. 2004).)

Lastly, NWI&T argues that if a timely appeal was not filed by a party with proper standing, that party should not be allowed to fix its jurisdictional defects “more than five months after the deadline.” (*Id.* at 14.) According to NWI&T, Appellant “has already delayed these proceedings by admittedly bringing this appeal on behalf of a non-existent entity and in the wrong name,” and allowing correction of these defects at this late stage would prejudice NWI&T. (*Id.* at 14-15.)

## II. Discussion

I agree with NWI&T that this appeal must be dismissed. As NWI&T observes, the principal problem for Appellant is that, by Appellant's own admission, the entity in whose name the protest and the appeal were filed — “Focus Revision Partners JV LLC” — simply does not

exist. Sections I.B, I.D, and I.F, *supra*. This admission is largely fatal for Appellant because a non-existent entity plainly lacks standing to protest or to appeal.

Under SBA regulations, a size protest may be filed by “[a]ny offeror that the contracting officer has not eliminated from consideration for any procurement-related reason.” 13 C.F.R. § 121.1001(a)(1)(i). An area office “must dismiss a protest filed by a party without standing to protest.” *Size Appeal of Conrad Shipyard, LLC*, SBA No. SIZ-5873, at 6 (2017) (citing *Size Appeal of KAES Enters., LLC*, SBA No. SIZ-5425 (2012), *recons. denied*, SBA No. SIZ-5435 (2013) (PFR)). Further, if an area office fails to dismiss such a protest and proceeds to issue a size determination, OHA “will vacate a size determination issued in response to a protest by a party without standing.” *Size Appeal of A & H Contractors, Inc.*, SBA No. SIZ-5417, at 5 (2012) (quoting *Size Appeal of MBI Corp.*, SBA No. SIZ-4356, at 4 (1999)). In the instant case, by Appellant's own admission, the entity that filed the original size protest, “Focus Revision Partners JV LLC,” is non-existent and thus was not an actual offeror on the subject procurement. Sections I.B and I.F, *supra*. It follows that Appellant lacked standing to protest under 13 C.F.R. § 121.1001(a)(1)(i).

Apart from the question of Appellant's standing to protest, Appellant's admission that “Focus Revision Partners JV LLC” does not exist also casts doubt on Appellant's standing to have brought the instant appeal. OHA's rules of procedure stipulate that “[a]ny person adversely affected by a size determination” may file a size appeal at OHA. 13 C.F.R. § 134.302(a). In interpreting this provision, OHA has held that a party has standing to appeal, even if that party was not also a protestor, if it is “an otherwise eligible small business offeror on the procurement.” *Size Appeal of Tiger Enters., Inc.*, SBA No. SIZ-4647, at 7 (2004) (citing *Size Appeal of Empire Home Med., Inc.*, SBA No. SIZ-4291 (1998)). OHA has explained that, if an otherwise eligible small business offeror were to prevail on its size appeal, there is a chance it could, ultimately, be awarded the contract. *Id.* This possibility is what causes an unsuccessful offeror to be adversely affected by a size determination favorable to a rival.

Again, though, Appellant, “Focus Revision Partners JV LLC,” is not an unsuccessful offeror that could potentially be awarded this contract if NWI&T were determined to be other than small. Rather, because Appellant is non-existent, and is not registered in SAM as required by FAR 52.204-7(b), Appellant cannot be awarded the contract regardless of whether it prevails on appeal at OHA. Accordingly, Appellant is not adversely affected by the instant size determination and lacks standing to appeal. *Size Appeal of Nuclear Fuel Servs., Inc.*, SBA No. SIZ-5324, at 5 (2012) (in order to have standing to appeal, a concern must demonstrate “a direct stake in the outcome of the case.”).

In opposing NWI&T's motion to dismiss, Appellant contends that “Focus Revision Partners,” a partnership, did submit a proposal for this procurement, and would have had standing to protest and to appeal. Section I.F, *supra*. Appellant requests leave to amend its appeal and supplemental appeal under 13 C.F.R. § 134.207(a) to substitute the name “Focus Revision Partners.” *Id.* NWI&T objects to Appellant's request, highlighting that neither the protest nor the appeal were filed in the name of “Focus Revision Partners”; rather, the protest and appeal were brought on behalf of an entity which Appellant itself concedes does not exist. Section I.G, *supra*. In NWI&T's view, because the appeal was filed by an entity without standing, OHA cannot

properly permit Appellant to now amend the appeal. *Id.* NWI&T further argues that, although “Focus Revision Partners,” a partnership, is registered in SAM, the unique DUNS number reflected in the SAM profile is for a corporation, “Focus Revision Partners, Inc.” *Id.* Under New York law, a corporation and a partnership are not legally the same type of entity. *People v. Zinke*, 555 N.E.2d 263 (1990). In light of this inconsistency in the SAM profile, NWI&T maintains, it is not clear that “Focus Revision Partners” would be eligible for award, or would have had standing to protest or to appeal.

I find NWI&T's reasoning persuasive. Logically, since Appellant lacked standing to have filed the initial appeal, Appellant also lacks standing to later amend that appeal. While it may be true, as Appellant contends, that “Focus Revision Partners” could have filed its own appeal, “Focus Revision Partners” did not actually do so, and the deadline to bring a new appeal has long since expired. 13 C.F.R. § 134.304(a). Moreover, even if OHA were to interpret § 134.207(a) as enabling Appellant to substitute the name of a different entity as the real party in interest for appeal purposes, the fact would remain that Appellant's protest too was filed in the name of an entity without standing. The regulation at § 134.207(a) applies only to OHA proceedings and does not permit retroactive amendments to a size protest. Amendment of the appeal and supplemental appeal, then, would not suffice to allow the instant case to proceed, as OHA also would have to conclude that a valid size protest was properly filed.

Lastly, the decision of the U.S. Court of Federal Claims in *Hemphill Contracting Co. v. United States*, 34 Fed. Cl. 82 (1995) does not compel a different result. In *Hemphill*, the Court rejected a motion to dismiss a complaint for lack of standing, instead permitting the plaintiff to revise the name on its complaint from “Hemphill Contracting Company, Inc.” to “Hemphill Contracting Co., Inc.” The Court found that “Co.” is “a well-known abbreviation” of “Company,” and that “[t]he difference between an abbreviation and a full word should not be sufficient to dismiss an action.” *Hemphill*, 34 Fed. Cl. at 86.

Unlike *Hemphill*, the amendments Appellant seeks here are not abbreviations. Instead, Appellant proposes to substitute a different entity in place of an admittedly “non-existent” one. Section I.F, *supra*. Further, as noted above, Appellant also filed its underlying size protest in the name of the same non-existent entity. Even if OHA were to permit amendment of the appeal and supplemental appeal, OHA has no mechanism to permit retroactive amendments to a size protest.

### III. Conclusion

For the above reasons, NWI&T's motion to dismiss is GRANTED, Appellant's motion to amend is DENIED, and the appeal is DISMISSED. 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