

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

SIZE APPEAL OF:

Stuff Overnight, LLC,

Appellant,

RE: Path-Tec, LLC

Solicitation No. 36C24421Q1151

SBA No. SIZ-6153

Decided: May 13, 2022

ORDER DISMISSING APPEAL¹

I. Background

On May 11, 2022, Stuff Overnight, LLC (Appellant) filed the above-captioned appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). The appeal purports to challenge the failure of SBA's Office of Government Contracting — Area III (Area Office) to issue a formal size determination in response to Appellant's size protest against Path-Tec, LLC (Path-Tec). (Appeal at 1.) Appellant acknowledges that a formal size determination has not been issued. (*Id.*) Appellant requests, however, that OHA direct the Area Office to issue a size determination within 10 days, or alternatively, that OHA reassign the matter to a different area office. (*Id.* at 4-5.)

II. Discussion

The instant appeal is premature and must be dismissed. Under SBA regulations, OHA does not have 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 lacks 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 protest with the responsible Contracting Officer (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).

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.

In the instant case, Appellant has lodged a size protest against Path-Tec, but the Area Office has not yet rendered a formal size determination. Accordingly, OHA presently lacks jurisdiction over this case. *See, e.g., Size Appeal of Caldaia Controls, LLC*, SBA No. SIZ-6104 (2021) (dismissing size appeal as premature when no size determination had been issued). Without a size determination, Appellant lacks standing to appeal to OHA, as Appellant is not “adversely affected” by a size determination. 13 C.F.R. § 134.302(a). Further, OHA has no mechanism to reassign a size protest from one area office to another, or to dictate that an area office must prioritize a particular size protest. OHA thus could not grant the relief Appellant seeks here, even if this matter were otherwise properly before OHA.

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 once a formal size determination is issued.

KENNETH M. HYDE
Administrative Judge