

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

SIZE APPEAL OF:

Special Operations Group, Inc.,

Appellant,

RE: Storm Services Engineering, LLC

Appealed From  
Size Determination No. 3-2023-002

SBA No. SIZ-6183

Decided: December 21, 2022

ORDER DISMISSING APPEAL

I. Background

On December 2, 2022, Special Operations Group, Inc. (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 Size Determination No. 3-2023-002, in which SBA's Office of Government Contracting — Area III (Area Office) dismissed a size protest filed by MPW Industrial Services Group, Inc. (MPW) against Storm Services Engineering, LLC (Storm Services).

In the size determination, the Area Office found that MPW's protest pertained to a Blanket Purchase Agreement (BPA) awarded to Storm Services in June 2021. (Size Determination at 1.) The protest, though, was not filed until September 28, 2022, and therefore was plainly untimely. (*Id.*, citing 13 C.F.R. § 121.1004.) Furthermore, the Contracting Officer (CO) informed the Area Office that MPW “did not submit an offer on the subject procurement”. (*Id.* at 2.) As a result, the Area Office concluded, MPW also lacked standing to bring a size protest. (*Id.*, citing 13 C.F.R. § 121.1001(a)(1)(i).)

In its appeal petition, Appellant did not explain the relationship between itself and MPW. (Appeal at 1-3.) Appellant asserted that the purpose of the protest was “simply to make sure all mobile sleeper providers are on a level playing field with the [procuring agency]”. (*Id.* at 3.)

On December 9, 2022, OHA ordered Appellant to show cause why the appeal should not be dismissed for lack of standing. OHA explained that a size appeal may only be filed by a person or entity that is “adversely affected by a size determination.” (Order at 1, quoting 13

C.F.R. § 134.302(a).) In the instant case, the size protest apparently was filed by MPW, rather than by Appellant, and Size Determination No. 3-2023-002 likewise was issued to MPW, rather than to Appellant. (*Id.*) While MPW and Appellant may be related entities, OHA has repeatedly held that a concern other than an offeror — such as a subcontractor or an alleged affiliate — lacks standing to pursue its own size appeal, because such entities have no direct stake in the outcome of the case. (*Id.*)

On December 14, 2022, Appellant responded to OHA's Order. Appellant clarified that Appellant is “ultimately owned by MPW.” (Response at 1.) Specifically, “Special Operations Group, Inc. is a wholly-owned subsidiary of Pro Kleen Industrial Services, Inc. which is a wholly-owned subsidiary of MPW Industrial Services Group, Inc.” (*Id.*)

The CO forwarded to OHA a memorandum with additional background concerning the procurement. In his memorandum, the CO reiterated that MPW was not an offeror on this procurement. (Memo from C. Ericson, at 1.) Appellant did submit an offer, and was awarded a BPA on June 21, 2021. (*Id.* at 2.) The procuring agency, however, subsequently terminated Appellant's BPA on July 22, 2022. (*Id.*)

## II. Discussion

Appellant has not persuasively shown that it has standing to bring this appeal. As explained in OHA's Order to Show Cause, OHA's rules of procedure stipulate that an appeal may only be brought by a person or entity that is “adversely affected by a size determination.” 13 C.F.R. § 134.302(a). Here, Appellant does not dispute that the size protest was filed by MPW, rather than by Appellant. Section I, *supra*. Appellant likewise concedes that Appellant and MPW are different corporate entities. *Id.* As a result, Appellant lacks standing to pursue a size appeal at OHA, because the size determination has no direct impact or consequence to Appellant. Contrary to Appellant's suggestions, the mere fact that the protestor, MPW, is the ultimate parent company of Appellant does not resolve all issues of standing. Indeed, OHA has recognized that “a parent corporation has no standing to file a protest on behalf of a subsidiary, because it is not the parent who would be contracting with the Government.” *Size Appeal of Conrad Shipyard, LLC*, SBA No. SIZ-5873, at 7 (2017). Accordingly, the Area Office here properly rejected MPW's size protest, as MPW itself was not an offeror on the underlying procurement, and MPW lacks standing to bring a size protest on behalf of its subsidiary.

An additional problem for Appellant is that, although Appellant was an offeror on the procurement and was awarded a BPA, that BPA was later terminated effective July 22, 2022. Section I, *supra*. As a result, there is no longer any possibility that either Appellant or MPW could be awarded any work under this procurement. While Appellant expresses a general desire that the remaining BPA holders should enjoy a “level playing field”, such an interest is tangential and is not sufficient to establish standing to appeal. OHA case law instructs that a concern must demonstrate “a direct stake in the outcome of the case” in order to have standing to appeal a size determination. *Size Appeal of D&G Support Servs.*, SBA No. SIZ-5739, at 1 (2016); *Size Appeal of Ma-Chis Lower Creek Indian Tribe Enterprises, Inc.*, SBA No. SIZ-5333 (2012); *Size Appeal of Control Systems Research, Inc.*, SBA No. SIZ-5012 (2008). Appellant has shown no such

interest here, as Appellant could not be awarded any work under the procurement in question, irrespective of whether Storm Services is, or is not, a small business.

III. Conclusion

For the above reasons, the appeal is DISMISSED for LACK OF STANDING. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE  
Administrative Judge