

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

SIZE APPEAL OF:

Ekagra Partners, LLC.,

Appellant,

RE: Halvik Corp.

Appealed From
Size Determination No. 02-2022-057

Solicitation No. 1331L521R13OS0006
U.S Department of Commerce

SBA No. SIZ-6189

Decided: February 3, 2023

APPEARANCES

Antonio R. Franco, Esq., Patrick T. Rothwell, Esq., PilieroMazza PLLC, Counsel for Ekagra Partners, LLC

Alexander J. Brittin, Esq., Brittin Law Group, P.L.L.C, Counsel for Halvik Corp.

DECISION¹

I. Introduction and Jurisdiction

On September 27, 2022, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area II (Area Office) issued Size Determination No. 02-2022-057 (Size Determination), dismissing the size protest of Ekagra Partners, LLC (Appellant) that Halvik Corp. (Halvik) was other than small. On October 12, 2022, Appellant filed the instant appeal from that Size Determination. For the reasons discussed *infra*, the appeal is denied, and the Size Determination is affirmed.

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. Appellant filed the instant appeal within

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received no requests for redactions. Therefore, I now issue the entire decision for public release.

fifteen days of receiving the size determination, so the appeal is timely. 13 C.F.R. § 134.304(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation

On November 12, 2021, the Department of Commerce, Enterprise Services issued Solicitation No. 1331L521R13OS0006 for Commerce Acquisition for Transformational Technology Services (“CATTS”). (Solicitation, at 1-7.) The Contracting Officer (CO) set the procurement 100% aside for small business and designated North American Industry Classification System (NAICS) code 541519, Other Computer Related Services, with a corresponding \$30 million annual receipts size standard, as the appropriate code. (*Id.*, at 9.)

CATTS is a multiple-award indefinite delivery, indefinite quantity contract with a 10-year period of performance. (*Id.*) The purpose of the solicitation is to leverage Cloud-based platforms delivering information technology (“IT”) “as-a-service” and ensuring redundancy, agility, and responsiveness in delivering solutions quickly and securely to support new business requirements. (*Id.*, at 11.) The solicitation will obtain enterprise-wide IT services in six task areas: (1) Chief Information Officer (“CIO”) support, (2) digital document and records management, (3) managed service outsourcing and consulting, (4) IT operations and maintenance, (5) information technology services management, and (6) cyber security. (*Id.*, at 12.) Initial offers were due April 18, 2022. (Amendment 0012, at 1.)

B. Protest and Size Determination

On September 12, 2022, the CO issued a pre-award notice that Halvik was the apparent successful offeror. On September 19, 2022, Appellant filed a size protest, alleging Halvik was other than small because its annual revenue exceeds the \$30 million size standard. (Protest, at 2.) The CO referred the protest to the Area Office on September 20, 2022. (CO Referral Email, at 2.) The CO provided a reference sheet with the referral and informed the Area Office that “the protestor does not have an opportunity to be awarded as their proposal was Unsatisfactory.” (Referral to CO, at 1.)

On September 27, 2022, the Area Office issued Size Determination No. 02-2022-057, dismissing the protest. The Area Office found that the CO previously determined Appellant's proposal was unsatisfactory and thus eliminated Appellant from consideration. (Size Determination, at 1.) Therefore, Appellant had no standing to protest, citing 13 C.F.R. § 121.1001(a)(1)(i). (*Id.*, at 2.)

C. Appeal

On October 12, 2022, Appellant filed the instant appeal with OHA and alleged that the Area Office erred in fact and law in its Size Determination that Appellant lacked standing. (Appeal, at 1.) First, Appellant asserts the Area Office should have suspended the determination when bid protests were filed with the Government Accountability Office (GAO) and the Court of

Federal Claims (COFC) challenging the award. (*Id.*, at 6.) Appellant contends it was permitted to file the size protest and did not receive any information regarding its elimination. (*Id.*) Appellant was instead directed to a list of apparently successful offerors; the CO did not inform Appellant its proposal was eliminated from consideration until after September 27, 2022, when GAO and COFC protests were filed. (*Id.*, at 7.)

Further, Appellant contends the longstanding practice of OHA and SBA require the Area Office to postpone size protests when bid protests challenging a pending solicitation are filed. (*Id.*, at 8-9.) According to Appellant, SBA practice and OHA precedent is to stay size protest proceedings, when there is a pending GAO protest and when corrective action has “the potential to alter the outcome of the source selection.” (*Id.*, citing *Size Appeal of Davis Def. Grp., Inc.*, SBA No. SIZ-6016 (2019) (citing *Size Appeal of Synaptek Corp.*, SBA No. SIZ-5954, at 22 (2018).) Appellant relies upon an SBA proposed rule and asserts SBA clarified the intent to suspend size protest proceedings when a bid protest is filed with the GAO. (*Id.*, citing SBA Proposed Rule Ownership and Control and Contractual Assistance Requirements for the 8(a) Business Development Program, 87 Fed. Reg. 55642, 55,666, proposed 13 C.F.R. § 121.1009(a)(1)(ii) (Sept. 9, 2022).) Appellant asserts that based on OHA caselaw, SBA policy, and the proposed rule, the Area Office should have postponed the size protest the same day the bid protests were filed. (*Id.*)

According to Appellant, one bid protest was filed with COFC, and five bid protests were filed with GAO, all on September 26, 2022. (*Id.*, at 9.) Appellant also filed a bid protest with COFC on October 3, 2022. (*Id.*) Appellant notes that COFC protests are analogous to GAO protests because a decision in either forum may lead to a corrective action that may affect the source selection. (*Id.*) According to Appellant, if any protests are successful, this will “trigger corrective action by the Agency,” that may alter the pre-award list. (*Id.*) Thus, the Area Office erred when it failed to postpone Appellant's size protest until all pending bid protests with GAO or COFC were resolved. (*Id.*, at 10.) In further support of its argument, Appellant cites to precedent where OHA has considered an SBA proposed rule to “seek clarity when the current, relevant regulations are either ambiguous or silent.” (*Id.*, citing *Size Appeal of Digital Mgmt., Inc.*, SBA No. SIZ-5709 (2016).) Appellant argues that the facts in *Digital Mgmt.* are similar to those here because SBA issued the proposed rule prior to the bid protests and the Size Determination and argues “the preamble and proposed regulation clarified known, pre-existing SBA policy.” (*Id.* at 10-11.) Appellant contends that given the proposed rule and OHA precedent, SBA has an “existing practice” to postpone size protests, and the Area Office erred by dismissing Appellant's size protest. (*Id.*)

Appellant further asserts the Area Office based its Size Determination on the CO's assertion regarding Appellant's proposal instead of considering the entire record, and thus erred as a matter of law. (*Id.*, at 12.) Appellant asserts regulations require the Area Office to base its determination “upon the record, including reasonable inferences from the record, and will state in writing the basis for its findings and conclusions.” (*Id.* at 13, citing 13 C.F.R. § 121.1009(e).) According to Appellant, SBA “did not comply with this regulation.” (*Id.*, at 13.) Appellant cites to OHA precedent where OHA has vacated an area office's size determination when it found an “area office based its decision solely on the CO's vague statement.” (*Id.*, citing *Size Appeal of Lost Creek Holdings, LLC d/b/a All-Star Health Sols.*, SBA No. SIZ-5823 (2017).) Appellant

argues the CO's statements on this matter are “even more vague” than *Lost Creek Holdings, LLC*, and argues that there is no evidence to suggest the Area Office considered supporting documents, and instead relied on an “ambiguous statement as its sole justification.” (*Id.*, at 13.) Appellant concludes that the Area Office erred by making its Size Determination on a conclusory statement by the CO.

D. Halvik's Response to Appeal

On October 28, 2022, Halvik Corp. filed its response and opposition to Appellant's petition of appeal and motion to supplement the record. First, Halvik contends that the Area Office correctly dismissed Appellant's size protest after the CO found Appellant's proposal technically unacceptable. (Response, at 2-3.) Specifically, 13 C.F.R. § 121.1001(a)(1)(i) permits any concern to file a size protest, if the CO has not eliminated that concern for procurement related reasons such as technical unacceptability. (*Id.*, at 3.) Halvik notes that SBA has amended this regulation three times since the May 31, 2016 adoption of the regulation; however, these amendments did not change requirements under § 121.1001(a)(1)(i). (*Id.*) Halvik contends that OHA's interpretation of § 121.1001(a)(1)(i) has previously upheld area office determinations to dismiss protests for lack of standing when the concern was eliminated for technical unacceptability. (*Id.*, at 4, citing *Size Appeal of JEQ & Co., LLC*, SBA No. SIZ-5909 (2018); *Size Appeal of Davis Defense Group*, SBA No. SIZ-6016 (2019); *Size Appeal of Financial & Realty Servs., LLC*, SBA No. SIZ-6142 (2022).)

Halvik further rejects Appellant's argument that the Area Office is required to postpone a size protest pending a bid protest and argues that OHA precedent regarding lack of standing does not mandate a stay pending procurement related protest. (*Id.*, at 4.) Specifically, Halvik references *Size Appeal of Davis Defense Group*, SBA No. SIZ-6016 (2019) and argues that Appellant “misleadingly cites to dicta” which notes that if corrective action is initiated then the size protest should be postponed. (*Id.*) Halvik maintains that Appellant's reliance is misplaced because in the instant appeal, the CO has not initiated corrective action. (*Id.*, at 4-5.) According to Halvik, the GAO has dismissed all pending cases, leaving no possibility for corrective action before the GAO; and the U.S. Department of Justice is defending the bid protest before the COFC; and there is thus no indication of corrective action before the COFC. (*Id.*, at 5.) Halvik maintains that Appellant's arguments overlook the main issue of whether Appellant has standing to initiate a size protest. (*Id.*) Specifically, SBA regulations and OHA precedent do not “provide for tolling of a size protest pending resolution of a procurement-related protest filed by a technically unacceptable protester based on a chance the agency may take corrective action.” (*Id.*, at 6.)

Second, Halvik contends that Appellant incorrectly relies on SBA's regulations for timing as opposed to SBA's regulations on standing. (*Id.*) Specifically, the proposed rule was intended to clarify the timelines for size protests, while SBA regulations on standing remained unchanged. (*Id.*, at 6-7.) Even if the proposed rules apply to time frames for size protest, they do not apply here because there are no pending protests before GAO. (*Id.*) Halvik maintains the issue is whether Appellant has standing to bring a size protest under 13 C.F.R. § 121.1001(a)(1)(i). The proposed rule at 87 Fed. Reg. 55642 does not alter § 121.1001(a)(1)(i). (*Id.*) Halvik rejects Appellant's reference to *Digital Management, Inc.*, SBA No. SIZ-5709 (2016) and maintains that

the proposed rule is not related to standing and “only proposed”; whereas the area office in *Digital Management, Inc.* relied upon a final rule. (*Id.*, at 7-8.)

Third, Halvik rejects Appellant's argument that the Area Office made a determination without evidence and maintains that the Area Office acted in good faith and there is no evidence the CO misrepresented the record. (*Id.*, at 9.) “There is no doubt or inconsistency; the CO unequivocally stated Ekagra's proposal was evaluated and determined to be technically unacceptable.” (*Id.*) Further, citing OHA precedent, Halvik argues that the Area Office may dismiss a size protest for lack of standing even though the protester was not informed that its proposal was technically unacceptable. (*Id.* at 10, citing *Size Appeal of Advant-Edge Sols. Of Middle Atlantic, Inc.*, SBA No. SIZ-6089 (2021) (quoting *Size Appeal of KAES Enters., LLC*, SBA No. SIZ-5425 (2012), recons. denied, SBA No. SIZ-5435 (2013)). Citing OHA precedent, Halvik further contends that ““OHA lacks jurisdiction over disputes arising from an agency's conduct of a procurement.”” (*Id.* at 11, citing *Size Appeal of Advant-Edge Sols. Of Middle Atlantic, Inc.*, SBA No. SIZ-6089 (2021) (quoting *Size Appeal of Mystic Ventures Grp., LLC*, SBA No. SIZ 6006, at 6 (2019)).)

Lastly, in response to Appellant's motion to supplement the record, Halvik contends that Appellant is attempting to include dismissed GAO bid protests, which have no “bearing on Ekagra's standing to file a size protest.” (*Id.*, at 11-12.)

E. Agency Comment

On October 28, 2022, SBA filed an Agency Comment. SBA confirms the current proposed rule at 87 Fed. Reg. 55642 is an attempt to clarify when and how size protests are stayed in the SBA size protest process. (Comment, at 1.) In its comment, SBA clarifies reasons for this policy. Supporting Appellant's interpretation, SBA states that “if there is a pending parallel bid protest [,] the size protest should be stayed.” (*Id.*, at 2.)

Second, SBA clarifies whether the proposed rule extends by analogy to bid protests at COFC. (*Id.*) Favoring Appellant's argument, SBA confirms that “a COFC parallel bid protest is the functional equivalent [of] a GAO bid protest given the stated policy reasons by SBA for this type of stay.” (*Id.*) From SBA's point of view, a stay in a COFC protest and a GAO protest serve the same policy objective. However, SBA notes that to meet the stay requirements, the parallel proceedings must be initiated prior to SBA issuing the size determination. (*Id.*) As a result, a stay may only occur if the requesting concern can provide “documentation to SBA that the other proceeding has been initiated” prior or during the size protest. (*Id.*) In this case, SBA asserts that if OHA decides that a stay is the correct course of action, that Appellant provide SBA with documentation of when the COFC bid protest was filed. (*Id.*) SBA admits there is a “lack of current clarity on this issue.” (*Id.*) For similar issues, SBA confirms that if the parallel litigation results in correcting the standing issue, then SBA will consider a future size protest and will start the clock for filing a new protest at the time the concern was notified of its standing. (*Id.*)

F. Halvik's Response to Agency Comment

On November 10, 2022, Halvik filed a response to the Agency Comment and maintains that the comment does not opine on standing, but instead on a different regulation that occurs after standing is established under 13 C.F.R. § 121.1001. (Halvik Response to Agency Comment, at 1-2.) Halvik asserts that the comment and proposed rule do not change § 121.1001; and the proposed rule “only relates to the time frame to decide a size protest filed by a protester already determined to have standing.” (*Id.*, at 3.)

Further, Halvik argues that Appellant's interpretation of SBA's regulations is flawed and violates a basic rule of statutory construction that meaning must be given to all the language used in the statute. (*Id.*, at 3-4.) Specifically, Appellant's interpretation expands 13 C.F.R. § 121.1009 by granting standing to technically unacceptable concerns; and would “read-out” SBA's standing requirements under 13 C.F.R. § 121.1001(a)(1)(i) by creating standing when the technically unacceptable concern files a procurement related protest with GAO. (*Id.*, at 4.)

G. Appellant's Reply to Halvik and Reply to Agency Comment

Also on November 10, 2022, Appellant filed a motion for leave to reply to Halvik's response and the Agency Comment, together with the Reply. Appellant asserts that its size protest met the conditions set forth in SBA's Agency Comment and believes “SBA correctly frames the issue.” (*Id.*, at 3.) Specifically, several concerns filed bid protests with GAO on a day prior to the Area Office's dismissal and this is sufficient to trigger a stay on Appellant's size protest. (*Id.*, at 4.) Appellant acknowledges Halvik's argument that the GAO protests have been dismissed, but asserts that the COFC protests, also filed prior to the size determination, were consolidated and are still pending. (*Id.*, at 5.)

According to Appellant, “the most straightforward path would be for OHA to reverse the dismissal of Ekagra's size protest and direct the Area Office to stay the size protest until the resolution of the pending bid protests of Ekagra and the other offerors.” (*Id.*)

Further, Appellant rejects Halvik's argument that Appellant lacked standing and maintains that Appellant did not receive notice that its proposal was technically unacceptable until after receiving the pre-award notice and after the time to file a size protest had lapsed. (*Id.*) Therefore, if Appellant waited until its debriefing, the Area Office would have dismissed the protest as untimely. (*Id.*) Appellant further contends that the Size Determination was “unreasonable, contrary to SBA policy, and unfair,” and maintains that SBA's Agency Comment appears to recognize the Area Office should have provided Appellant an opportunity to challenge the source selection. (*Id.*, at 5.)

In the alternative, Appellant proposes that should Appellant's bid protest lead to correcting the issue of standing, OHA direct the Area Office to issue a new size protest, and OHA find that the time for Appellant to file the protest to begin from the date Appellant is notified of the correction. (*Id.*, at 6.)

III. Discussion

A. Standard of Review and New Evidence

Appellant has the burden of proving, by a preponderance of the evidence, all elements of the appeal. Specifically, Appellant must prove the Size Determination is based upon a clear error of fact or law. 13 C.F.R. § 134.314. OHA will disturb an area office's size determination only if, after reviewing the record, the administrative judge has a definite and firm conviction that the area office erred in making its key findings of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

New Evidence may be admitted on appeal at the discretion of the administrative judge if “[a] motion is filed and served establishing good cause for the submission of such evidence.” 13 C.F.R. § 134.308(a). The proponent must demonstrate, however, that “the new evidence is relevant to the issues on appeal, does not unduly enlarge the issues, and clarifies the facts on the issues on appeal.” *Size Appeal of Vista Eng'g Techs., LLC*, SBA No. SIZ-5041, at 4 (2009). It is well-settled that OHA “will not accept new evidence when the proponent unjustifiably fails to submit the material to the Area Office during the size review.” *Size Appeal of Project Enhancement Corp.*, SBA No. SIZ-5604, at 9 (2014). In the instant case, I find that Appellant has not established good cause. The evidence proffered did not exist until after Appellant filed its protest with the Area Office. Therefore, a failure to consider it could not have been the source of error, because the information was not before the Area Office to consider. I DENY Appellant's Motion for New Evidence.

B. Analysis

Upon review of the record and the arguments of the parties, I find that Appellant has not shown that the Area Office clearly erred in dismissing Appellant's protest for lack of standing. I must therefore deny this appeal.

According to SBA regulations, any offeror may initiate a size protest if “the contracting officer has not eliminated [the offeror] from consideration for any procurement related reason, such as non-responsiveness, technical unacceptability or outside of the competitive range.” 13 C.F.R. § 121.1001(a)(1)(i). OHA has repeatedly held that offerors lack standing to initiate a size protest when it is eliminated from consideration for reasons unrelated to size (e.g., nonresponsiveness; technical unacceptability; outside the competitive range). *See* 13 C.F.R. § 121.1001(a)(1)(i); *see also Size Appeal of Straughan Env'tl, Inc.*, SBA No. SIZ-5767, at 3 (2016); *Size Appeal of KAES Enters, LLC*, SBA No. SIZ-5425, at 3 (2012).

Here, when asked whether Appellant was in the competitive range and considered technically acceptable, the CO informed the Area Office that Appellant did not have an opportunity to receive an award because Appellant's proposal was unsatisfactory. Section II.B, *supra*. Therefore, Appellant was eliminated from competition for reasons unrelated to size. *Id.* The Area Office's dismissal was supported by clear OHA precedent, which requires the dismissal for lack of standing for a protest filed by an offeror where the procuring agency has found the proposal to be technically unacceptable. *Size Appeal of Davis Defense Group, Inc.*,

SBA No. SIZ-6016, at 3-4 (2019); *Size Appeal of JEQ & Co., LLC*, SBA No. SIZ-5911, at 3 (2018).

Appellant maintains the Area Office erred by relying on a vague statement from the CO without supporting evidence. Section II.C, *supra*. Appellant relies upon *Size Appeal of Lost Creek Holdings, LLC d/b/a All-Star Health Sols.*, SBA No. SIZ-5823 (2017), which held that it was unclear whether that appellant's proposal was technically unacceptable based on the CO's statement. *Id.* However, *Lost Creek Holdings, LLC d/b/a All-Star Health Sols.*, is distinguished because in the instant appeal, the CO provided the Area Office a definitive statement. The CO clearly and unequivocally stated: "The protester does not have an opportunity to be awarded as their proposal was Unsatisfactory." Section II.B, *supra*. Nothing could be clearer than the CO's statement to the Area Office that Appellant was ineligible for award.

Further, neither the Area Office nor OHA have jurisdiction over the conduct of the procurement and cannot entertain Appellant's arguments over the finding that its proposal was technically unacceptable. *Size Appeal of Advant-Edge Solutions of Middle Atlantic, Inc.*, SBA No. SIZ-6089, at 4-5 (2021); *Size Appeal of Ilka Technologies, Inc.*, SBA No. SIZ-5903, at 2-3 (2018). I cannot say it was a clear error for the Area Office to accept and act upon that information, rather than to conduct its own investigation into the CO's finding, an investigation the Area Office has no authority to conduct. *Size Appeal of Piedmont Propulsion Systems, LLC*, SBA No. SIZ-6166, at 9 (2022). Appellant's argument the Area Office relied upon a conclusory statement is meritless. SBA does not evaluate proposals and make determinations as to whether a proposal is satisfactory. It is the CO's job to draw those conclusions. Thus, I find the Area Office did not err when it relied upon the CO's statement.

Appellant further maintains it is OHA precedent and SBA policy to postpone a size determination until the resolution in a pending bid protest with the COFC and GAO. Sections II.C and II.F, *supra*. SBA provided the Agency Comment and agreed that under the proposed rule, the Area Office may stay a size determination if the protester provides proof of pending and concurrent COFC or GAO bid protest. Section II.E, *supra*. It is worth noting however, that SBA did not confess error on the part of the Area Office, and request a remand of the case, as it could, in order to conduct a new size determination. *Size Appeal of GC&V Construction, LLC*, SBA No. SIZ-6181 (2022). Further, SBA did not have the Area Director or any of the other SBA officials authorized to initiate a size protest do so. *Id.*, *Size Appeal of Apogee Engineering, LLC*, SBA No. SIZ-6078 (2020); 13 C.F.R. § 121.1001(a)(1)(iii). SBA thus does not appear to consider the Area Office in error in this case.

Appellant relies upon a proposed rule. Under it, "SBA suspends processing the size protest pending the outcome of the GAO decision" when the award is simultaneously protested at the GAO. 87 Fed. Reg. 55642, 55645 (Sept. 9, 2022). SBA further commented that GAO protests are analogous to COFC protests because they both "may require corrective action which could affect the apparent successful offeror." *Id.* However, a proposed rule is not governing authority. Appellant relies upon *Size Appeal of Digital Management, Inc.*, SBA No. SIZ-5709, at 12-13 (2016) as supporting relying upon a proposed rule. Section II.C., *supra*. But *Digital Management, Inc.* did not rely upon a proposed rule. Rather, it looked to the regulatory history of the rule in question, including the preamble of proposed rules, to aid in determining the meaning

of the rule actually in effect at that time in the case at hand. *Digital Management, Inc.*, SBA No. SIZ-5709, at 12-13. The plain meaning of the rule was the decisive point in *Digital Management, Inc. Id.*

Here, the Area Office is not mandated under any current authority to postpone size determinations pending GAO or COFC bid protests. It is the discretion of the Area Office to make that decision, and OHA lacks the jurisdiction to mandate a postponement. Appellant argues that SBA policy requires the stay it requests. Section II.C, *supra*. But the Agency has not taken the opportunity afforded by this case to either request a remand or initiate a new size determination, in order to carry out such a policy. The Area Office, under the existing regulation, has the discretion to determine whether to stay the proceeding, and I cannot say that it was clear error for it to decline to do so. Thus, I cannot say it was a clear error for the Area Office to dismiss Appellant's protest, rather than stay proceedings pending decisions in COFC and GAO.

I find Appellant's remaining arguments unconvincing. Appellant asserts that the pending matters in COFC and GAO may lead to a corrective action that may result in a new source selection. Section II.C, *supra*. However, a mere filing is no indication that these tribunals intend to order corrective action. *Size Appeal of Davis Defense Group, Inc.*, SBA No. SIZ-6016, at 4 (2019). Appellant also maintains it was not notified it was found to be technically unacceptable. Section II.C., *supra*. However, it is longstanding precedent that OHA does not confer standing upon those offerors who were found to be technically unacceptable, even if they had not received notice of that finding. *Size Appeal of Piedmont Propulsion Systems, LLC*, SBA No. SIZ-6166, at 10 (2022); *Size Appeal of KAES Enterprises, LLC.*, SBA No. SIZ-5425, at 3 (2012); *Size Appeal of Glen/Mar Construction, Inc.*, SBA No. SIZ-5143, at 2 (2010).

I find that the Area Office did not err in its decision to issue a size determination, and Appellant does not have standing to protest Halvik's size, and thus the Area Office was correct in dismissing its protest.

IV. Conclusion

Appellant has failed to establish that the Size Determination is based upon any clear error of fact or law. Accordingly, I DENY the instant appeal, and I AFFIRM the size determination. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge