

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

SIZE APPEAL OF:

Assisted Building Solutions, LLC,

Appellant

RE: Modular Management Group, Inc.

Appealed From
Size Determination No. 05-2025-002

SBA No. SIZ-6315

Decided: November 5, 2024

APPEARANCE

Celine Jefferson, President, Assisted Building Solutions, Frisco, Texas

DECISION

I. Introduction and Jurisdiction

On October 10, 2024, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office) issued Size Determination No. 05-2025-002. The Area Office dismissed as not being specific the size protest of Assisted Building Solutions, LLC (Appellant) that Modular Management Group, Inc. (MMG) was not small for U.S. Department of the Air Force Solicitation No. FA252124QB062. On appeal Appellant contends that the size determination is clearly erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse or remand it. 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 15 days after 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 and Protest

On August 15, 2024, U.S. Department of the Air Force issued Solicitation No. FA252124QB062 for the design, construction, installation and maintenance of two modular buildings. The Contracting Officer (CO) set aside the procurement entirely for small business

and designated North American Industry Classification System (NAICS) code 532490, Other Commercial and Industrial Machinery and Equipment, with a corresponding \$40 million annual receipts size standard, as the appropriate code. Proposals were due September 13, 2024. On September 26, 2024, the Air Force awarded the contract to MMG.

On October 4, 2024, Appellant protested MMG's size, asserting they were ineligible for the award. The protest was attached to an email from Appellant to the CO. Appellant wrote:

Attached please find a formal protest from Assisted Building Solutions, LLC regarding the award of Solicitation No. FA252124QB062 — GSA RFQ 1718944 for the Temporary Modular Building project (Project Number: SXHT25-6000) to Modular Management Group, Inc. (“MMG”). ABS respectfully requests that the SBA Area Director initiate a size protest investigation to verify whether MMG meets the small business size standards for this procurement, as outlined in the NAICS code 532490.

(Protest email, C. Jefferson to K. Doty, Oct. 4, 2024.)

The formal protest attached to the email stated that Appellant was “an interested party and the modular building dealer in partnership with Active Deployment Systems of San Marcos, TX.” Appellant stated:

Based on a review of MMG's business activities and the scale of contracts they have successfully secured over time, including those through affiliated entities, ABS strongly believes that MMG may surpass the size standard ... Accordingly, ABS formally protests the award to MMG on the grounds that they likely do not meet the small business size standard for this project.

(Protest, at 1.)

On October 10, 2024, the Area Office dismissed the protest as not specific under 13 C.F.R. § 121.1007.

B. The Appeal

On October 14, 2024, Appellant filed the instant appeal. Appellant noted the Area Office had dismissed the protest and requested that it be reconsidered based upon the documentation Appellant was then submitting.

Appellant alleges MMG is affiliated with Modular Concepts, Inc., based upon common ownership and common management. Further, Appellant's review of MMG's federal contracting history on GovWin shows \$116 million in awards. Appellant asserts that based upon this information, SBA should reconsider its size protest.

III. Discussion

A. Standard of Review

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 finding of fact or law. *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2006).

B. New Evidence

OHA's review is based upon the evidence in the record at the time the Area Office made its determination. As a result, evidence that was not first presented to the Area Office is generally not admissible and will not be considered by OHA. *E.g.*, *Size Appeal of Maximum Demolition, Inc.*, SBA No. SIZ-5071, at 2 (2009) (“I cannot find error with the Area Office based on documents that Area Office was unable to review.”). 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 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 unusually enlarge the issues, and clarifies the facts on appeal.” *Size Appeal of Vista Eng'g Techs., LLC*, SBA No. SIZ-5041, at 4 (2009). 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).

Here, Appellant has attempted to submit information with its appeal which it failed to submit to the Area Office with its Protest and was thus not part of the record before the Area Office. Further, Appellant has failed to formally file and serve a motion for the admission of this new evidence and establish good cause for its submission. Particularly, the new evidence appears to have been available to Appellant at the protest stage, and Appellant failed to submit it then, thereby giving no reason for its failure to submit it at that time, or for its untimely submission now. Accordingly, I EXCLUDE Appellant's new evidence from the record.

C. Analysis

SBA's regulations require that a size protest be sufficiently specific to provide reasonable notice to the protested concern of the grounds upon which its size is questioned. 13 C.F.R. § 121.1007(b). The protest must give some basis for the belief. A protest merely alleging that the concern is not small or is affiliated with unnamed other concerns does not provide adequate grounds for the protest. *Id.* The regulation includes examples of specificity or its lack. The regulation provides that an allegation that a concern exceeds the size standard without setting forth a basis for the allegation is insufficiently specific. *Id.* at Example 5. An Area Office must dismiss an insufficiently specific protest. 13 C.F.R. § 121.1007(c).

Here, Appellant's protest is clearly not specific, it merely asserts that it believes MMG exceeds the size standard, but it gives no reason why it believes MMG exceeds the size standard. The protest fits precisely into the regulation's Example 5. The protest is plainly not specific, and therefore must be dismissed. *Size Appeal of Addison Construction Co.* SBA No. SIZ-6009 (2019). Appellant attempts to cure this lack of specificity in its appeal, asking for reconsideration of its protest, but a specific appeal cannot cure an insufficiently specific protest. *Id.*

Appellant has failed to show clear error in the size determination. I must therefore deny this appeal.

IV. Conclusion

Appellant has not demonstrated clear error of fact or law in the Area Office's size determination. Accordingly, I DENY the appeal, and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. See 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge