

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

IN THE MATTER OF:

Major Contracting Services, Inc.

Appellant

RE: RonJon Rentals, Inc.

Solicitation No. W9124B-10-T-0023

U.S. Department of the Army

SBA No. VET-206

Decided: December 6, 2010

ORDER REMANDING CASE

On November 19, 2010, Major Contracting Services, Inc. (Appellant) appealed the dismissal by the Small Business Administration (SBA) Director of Government Contracting (D/GC) of its protest contending that RonJon Rentals, Inc. (RonJon Rentals) is not an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC).

Appellant explains the Contracting Officer (CO) for the U.S. Department of the Army notified Appellant on September 2,¹ 2010, that it and RonJon Rentals were each awarded contract line items under the blanket purchase agreement (BPA) issued as a result of Solicitation No. W9124B-10-T-0023. Appellant received a delivery order under the BPA on October 15, 2010. On October 21, 2010, Appellant filed the protest underlying this appeal. The protest alleges RonJon Rentals is neither an eligible SDVO SBC nor a small business.

On November 5, 2010, the D/GC dismissed the instant SDVO SBC protest as untimely because Appellant had been notified of the successful offerors on September 2, 2010. 13 C.F.R. § 125.25(d). As stated above, Appellant filed the instant appeal on November 19, 2010. Appellant argues the determination is in error because 13 C.F.R. § 404(g)(3)(vi) provides that a BPA is not a contract, and a firm's size cannot be determined at the time it submits an offer in response to a solicitation for a BPA. Appellant explains that its initial protest in this matter was dismissed as premature by the SBA Office of Government Contracting, Area VI (Area Office) based upon this same rationale—*i.e.*, because the protest had been filed upon award of the BPA, which is not a procurement.² The record does not reflect whether this first protest, filed in

¹ The record reflects a discrepancy about whether the notification occurred on September 1, 2010, or September 2, 2010. The distinction is not relevant here.

² Size Determination No. 6-2010-143 (September 27, 2010).

September 2010, was only a size protest, or both a size protest and an SDVO SBC eligibility protest, as is the instant protest.

On December 1, 2010, RonJon Rentals filed a response to the appeal contending Appellant's SDVO SBC protest was properly dismissed under 13 C.F.R. Part 125, which governs SDVO SBC eligibility appeals. RonJon Rentals emphasizes that the size regulations at 13 C.F.R. Part 121 have no applicability here, but RonJon Rentals did not address the Area Office's dismissal of Appellant's first size protest.

On December 1, 2010, Appellant and the SBA filed a Joint Motion for Dismissal and Remand. The motion indicates the SBA believes the dismissal of Appellant's protest may have been in error, and the parties request dismissal of the instant appeal and remand of the case. On December 2, 2010, RonJon Rentals submitted its Opposition to the motion. RonJon argues remand is unnecessary because the D/GC's dismissal was proper, and the record is complete with respect to timeliness.

Although I understand the position of RonJon Rentals, I have determined the record is not clear regarding what effect (if any) Appellant's initial protest may have here. For this reason, and because the SBA believes it may have made an error, I will remand this matter to the D/GC. Accordingly, the joint motion is GRANTED, and the matter is REMANDED to the D/GC for further consideration of Appellant's SDVO SBC protest of RonJon Rentals, Inc.

CHRISTOPHER HOLLEMAN
Administrative Judge