

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

SIZE Appeal of:

Fiber Business Solutions Group, Inc. d/b/a
GForce,

Appellant,

Re: EC Praus LLC

SBA No. SIZ-6345

Decided: March 19, 2025

ORDER DISMISSING APPEAL¹

I. Background

On March 17, 2025, Fiber Business Solutions Group, Inc. d/b/a GForce (Appellant) filed the above-captioned appeal with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). In the appeal, which Appellant construes as a size appeal brought pursuant to 13 C.F.R. § 134.102(k) and Federal Acquisition Regulation (FAR) 19.302, Appellant challenges the dismissal of its “size protest” against EC Praus LLC (EC Praus). (Appeal at 2-3.) The protest alleged that EC Praus, a joint venture, is ineligible for award of a competitive 8(a) set-aside, because the Dynamic Small Business Search (DSBS) system indicates that EC Praus was not “admitted” into the 8(a) program until after it had submitted its offer for the subject procurement. (Protest at 2.)

According to documentation provided with the appeal, on March 5, 2025, the Associate Administrator of SBA's Office of Business Development and Certifications (AA/BDC) issued a letter dismissing Appellant's protest for lack of standing. The AA/BDC explained that, by regulation, “[t]he eligibility of a Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest.” (Dismissal at 2, quoting 13 C.F.R. § 124.517(a).) Furthermore, contrary to the premise of Appellant's protest, a joint venture competing for an 8(a) set aside typically will “not be identified as an 8(a) joint venture on DSBS until after the joint venture submitted its proposal for the solicitation and SBA has been notified [of the award] and [has] conducted its internal processing.” (*Id.* at 2-3, citing 13 C.F.R. § 124.501(g).)

¹ This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 121 and 134.

On appeal, Appellant maintains that the AA/BDC “misread” Appellant's protest. (Appeal at 3.) In Appellant's view, the protest did not dispute EC Praus' 8(a) eligibility, but rather questioned the timing of when EC Praus was admitted into the 8(a) program. (*Id.*) Appellant renews its claim that “[a]s the [DSBS] profile on [EC Praus] clearly shows, [EC Praus] was not admitted to the 8(a) Program until December 13, 2024, rendering its proposal ineligible for the contract award.” (*Id.* at 3.)

II. Discussion

Although Appellant argues on appeal that it brought a “size protest” against EC Praus, the record reflects that Appellant labeled its protest an “8(a) Eligibility Protest.” (Protest at 1.) Furthermore, Appellant reiterated in the opening sentence of the protest that it was “herewith submitting this protest of the 8(a) status/eligibility of the awardee, EC Praus.” (*Id.*) Accordingly, SBA reasonably interpreted the protest as an attempt to challenge EC Praus' 8(a) status, and properly rejected the protest because applicable regulations state that “[t]he eligibility of a Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest.” 13 C.F.R. § 124.517(a); *see also* FAR 19.813(a).

Consistent with the above regulations, 8(a) eligibility protests, and/or appeals thereof, are not types of disputes within OHA's jurisdiction. *See* 13 C.F.R. § 134.102. Insofar as Appellant now attempts to appeal the AA/BDC's dismissal of Appellant's 8(a) status protest, then, OHA lacks jurisdiction over the matter. While it is true, as Appellant observes, that OHA adjudicates “[a]ppeals from size determinations . . . under [13 C.F.R.] part 121,” a formal size determination must first be made by “[t]he responsible Government Contracting Area Director or designee,” and Appellant points to no such formal size determination that has been rendered in the instant case. 13 C.F.R. §§ 121.1002 and 134.102(k). Absent a formal size determination, a size appeal is premature. 13 C.F.R. § 121.1101.

III. Conclusion

For the above reasons, the appeal is DISMISSED for lack of jurisdiction. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge