

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

SIZE APPEAL of:

Tribologik Corporation,

Appellant,

Re: VPS Testing & Inspection, Inc.

Appealed From

Size Determination No. SIZ-2025-121

SBA No. SIZ-6353

Decided: May 2, 2025

APPEARANCES

Nicholas Reich, Vice President, Tribologik Corporation, Hammond, Indiana

Denise C. Clarke, Contracting Officer, U.S. Maritime Administration, Washington, D.C.

DECISION

I. Introduction and Jurisdiction

On March 7, 2025, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area V (Area Office) issued Size Determination No. SIZ-2025-121, dismissing a size protest filed by Tribologik Corporation (Appellant) against VPS Testing & Inspection, Inc. (VPS). The Area Office found that the protest was untimely and nonspecific. On March 24, 2025, Appellant filed the instant appeal. Appellant contends that the Area Office erred in dismissing the protest, and requests that SBA's Office of Hearings and Appeal (OHA) reverse or remand. 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 timely filed the instant appeal on March 24, 2025.¹ Accordingly, this matter is properly before OHA for decision.

¹ Pursuant to applicable regulations, a size appeal ordinarily “must be filed within 15 calendar days after receipt of the formal size determination.” 13 C.F.R. § 134.304(a). Here, Appellant received the size determination on March 7, 2025. Fifteen calendar days after March 7, 2025 was March 22, 2025. However, because March 22, 2025 was a Saturday, the appeal was due at OHA on the next business day: Monday, March 24, 2025. 13 C.F.R. § 134.202(d)(1)(ii).

II. Background

A. The Solicitation

On April 16, 2024, the U.S. Department of Transportation, U.S. Maritime Administration (MARAD) issued Request for Proposals (RFP) No. 693JF724R000005 for lube oil testing and analysis in support of the Ready Reserve Force (RRF) Maritime Fleet. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541380, Testing Laboratories and Services, with a corresponding size standard of \$19 million average annual receipts. (RFP at 46.) Appellant and VPS submitted timely offers.

B. Protest

On February 21, 2025, the CO informed Appellant that the contract had been awarded to VPS. (Letter from D. Clarke to N. Reich (Feb. 21, 2025), at 1.) Appellant requested a debriefing, which was held on March 5, 2025. In a letter memorializing the debriefing, the CO noted that the principal purposes of the debriefing were “to explain the evaluation process and the basis for the award decision; provide feedback to help [Appellant] improve future proposals; and ensure transparency and fairness in the procurement process.” (Letter from D. Clarke to N. Reich (Mar. 6, 2025), at 1.) Additionally, “during the debriefing [Appellant's] questions/concerns pertaining to NAICS code 541380 as it pertained to [VPS] was discussed.” (*Id.*)

On March 5, 2025, Appellant sent an e-mail entitled “Small Business Protest” to the CO. The e-mail consisted of a single paragraph, stating:

Following our discussions regarding the award to [VPS] for RFP 693JF724R000005, I would like to protest the size of [VPS] since they are directly related to the larger VPS laboratory performing the exact same work. The larger VPS is a world-wide laboratory that appears to be a dominant laboratory in the identified NAICS with many employees. We kindly ask you to forward the protest to [SBA] for their investigation[.]

(E-mail from N. Reich (Mar. 5, 2025).) Appellant did not include any supporting evidence with the protest.

The CO forwarded Appellant's protest to the Area Office for review. In her referral letter, the CO commented that “[n]otification of award was provided to unsuccessful offerors on February 21, 2025, and a debrief with [Appellant] was held on March 5, 2025. I received the subject protest via email on March 5, 2025.” (Letter from D. Clarke (Mar. 6, 2025), at 1.)

C. Size Determination

On March 7, 2025, the Area Office issued Size Determination No. SIZ-2025-121, dismissing the protest as both untimely and nonspecific. (Size Determination at 1-2.) The Area

Office found that the CO notified Appellant that VPS was the successful offeror on February 21, 2025. (*Id.* at 1.) Any size protest was due within five business days, or by February 28, 2025. (*Id.*, citing 13 C.F.R. § 121.1004(a)(2).) Because Appellant did not file its protest until March 5, 2025, the protest was untimely. (*Id.*)

The Area Office further found that, according to 13 C.F.R. § 121.1007(b):

A protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned. Some basis for the belief or allegation stated in the protest must be given. A protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest.

(*Id.* at 1-2.) Here, Appellant's protest alleged that VPS is not small, but “[n]o supporting documentation nor explanation of the information which led to the allegation was provided.” (*Id.* at 2.) The protest therefore lacked sufficient specificity. (*Id.*, citing *Size Appeal of Wilson Walton Int'l, Inc.*, SBA No. SIZ-6031 (2019).)

D. Appeal

On March 24, 2025, Appellant filed the instant appeal. Appellant acknowledges that it learned of the award to VPS on February 21, 2025. (Appeal at 1.) In Appellant's view, however, the Area Office erred in dismissing Appellant's protest, because the Area Office did not consider communications between Appellant and the CO which occurred after award notification. (*Id.* at 1-3.)

Appellant highlights that, on February 24, 2025, Appellant requested that the CO clarify “the process on how to submit a protest on the size of the awardee.” (*Id.* at 1.) Thereafter, in a meeting with the CO on February 26, 2025, Appellant “explained in detail[] as to why [VPS] do[es] not qualify to be classified under small business for the given NAICS code of the contract.” (*Id.*) Appellant sought a commitment from the CO that “there would be [a] proper investigation into the size standard,” and on March 3, 2025, the CO advised Appellant: “Yes, MARAD is reviewing this matter. You don't need to make a formal request.” (*Id.* at 2-3 (quoting E-mail from D. Clarke to N. Reich (Mar. 3, 2025)).) Nevertheless, during the debriefing on March 5, 2025, Appellant discovered that the CO's review would be “limited to [] checking the [VPS] self-certification on [the System for Award Management].” (*Id.* at 3.) Following the debriefing, Appellant immediately transmitted the size protest to the CO. (*Id.*) Given these facts, OHA should vacate the dismissal and conclude that “evidence was presented to MARAD in a timely manner.” (*Id.* at 4.)

Based on information from the companies' websites, Appellant alleges that VPS may be a subsidiary or affiliate of Veritas Petroleum Services (Veritas), a European firm which operates laboratories in several countries. (*Id.* at 3.) Appellant posits that the combined receipts of VPS and Veritas “would likely surpass the \$19 million threshold,” but offers no data or evidence to support this conclusion. (*Id.*)

E. CO's Response

On April 8, 2025, the CO responded to the appeal. The CO disputes Appellant's characterization of the February 26, 2025 meeting. (Response at 1.) According to the CO, while it is true that Appellant, at the meeting, “verbally expressed its belief that VPS is not a small business,” Appellant did not provide supporting evidence either “during or after this meeting.” (*Id.*) Likewise, the appeal refers to the VPS and Veritas websites, but Appellant never “share[d] any such website during any meetings with [the CO].” (*Id.* at 2.) The CO reiterates that “[Appellant] did not file a protest with the CO within five days of notification of award to VPS.” (*Id.* at 1.)

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

B. Analysis

Appellant has not shown that the Area Office erred in dismissing Appellant's protest. The appeal must therefore be denied.

Beginning with the issue of protest timeliness, SBA regulations require that, for a negotiated acquisition, a size protest “must be received by the [CO] prior to the close of business on the 5th day, exclusive of Saturdays, Sundays, and legal holidays, after the [CO] has notified the protestor of the identity of the prospective awardee.” 13 C.F.R. § 121.1004(a)(2). Here, there is no dispute that the CO informed Appellant that VPS was the successful offeror on February 21, 2025. Sections II.B — II.D, *supra*. Accordingly, and as the Area Office recognized, any size protest was due within five business days, or by February 28, 2025. Appellant did not actually file its protest until March 5, 2025, so the protest was untimely. Section II.B, *supra*.

On appeal, Appellant maintains that its delay in filing a size protest should be excused, because Appellant reasonably believed, based on conversations with the CO, that the CO would undertake her own investigation of VPS's size. Section II.D, *supra*. This argument fails because the procedures governing size protests are set forth in federal regulation, and it is well-settled law that all persons are charged with knowledge of federal regulations, “regardless of actual knowledge of what is in the regulations or of the hardship resulting from innocent ignorance.” *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380, 385 (1947). OHA thus has held that guidance from a procuring agency — even if faulty — “cannot override or alter” the regulatory size protest process. *Size Appeal of ReliaSource*, SBA No. SIZ-5536, at 4 (2014); *see also Size Appeal of HAL-PE Assocs. Eng'g Servs., Inc.*, SBA No. SIZ-5478 (2013). Accordingly, it is

immaterial whether Appellant may have been misled by the CO's actions or comments, as Appellant remained responsible in any event for knowing, and adhering to, the regulations governing size protests, including applicable deadlines.

The Area Office also found Appellant's protest to be nonspecific, and Appellant again has shown no error in this portion of the Area Office's decision. SBA regulations mandate that “[s]ome basis for the belief or allegation stated in the protest must be given.” 13 C.F.R. § 121.1007(b). As a result, “[a] protest merely alleging that the protested concern is not small or is affiliated with unnamed other concerns does not specify adequate grounds for the protest.” *Id.* To illustrate the concept of protest specificity, SBA regulations state that “[a]n allegation that concern X is affiliated with concern Y without setting forth any basis for the allegation is non-specific.” *Id.* § 121.1007(c) (Example 3). Similarly, “[a]n allegation that concern X has revenues in excess of \$5 million (where \$5 million is the applicable size standard) without setting forth a basis for the allegation is non-specific.” *Id.* (Example 5). Distilling these rules, OHA has explained that “a proper size protest must not merely assert that the challenged concern is not small, but rather must present specific supporting facts which, if true, would render the concern other-than-small.” *Size Appeal of Magnolia Contracted Servs.*, SBA No. SIZ-6296, at 4 (2024).

Here, Appellant's protest alleged, in conclusory form, that VPS is “directly related to the larger VPS laboratory.” Section II.B, *supra*. This allegation, though, lacked any supporting evidence or rationale, as in Example 3 discussed above, and Appellant did not identify the alleged affiliate by name, describing it only as “the larger VPS laboratory.” *Id.* Moreover, as in Example 5 discussed above, Appellant offered no reason to believe that the combined receipts of VPS and any affiliate(s) would exceed the applicable \$19 million size standard. *Id.* Instead, Appellant merely claimed, without any supporting data or facts, that “[t]he larger VPS is a world-wide laboratory that appears to be a dominant laboratory in the identified NAICS with many employees.” *Id.* Thus, the Area Office properly rejected the protest as nonspecific, as no supporting basis for Appellant's allegations was provided. “A nonspecific protest must be dismissed, and the Area Office was under no obligation to launch [its own] investigation in search of facts that might tend to corroborate Appellant's nonspecific protest.” *Magnolia*, SBA No. SIZ-6296, at 4 (citing 13 C.F.R. § 121.1007(c) and *Size Appeal of FreeAlliance.com, LLC*, SBA No. SIZ-6064 (2020)).

Lastly, on appeal, Appellant points to portions of the VPS and Veritas websites. Section II.D, *supra*. This information, though, is not properly before OHA. Appellant did not include this information with its protest, and as an appellate forum, OHA cannot consider new evidence not first presented to the Area Office. 13 C.F.R. § 134.308(a); *Size Appeal of Herren Assocs., Inc.*, SBA No. SIZ-6282, at 3 (2024). OHA thus has long held that “[a]n insufficiently specific protest cannot be cured on appeal by the submission of new evidence.” *Size Appeal of BahFed Corp.*, SBA No. SIZ-6327, at 9 (2024); *Size Appeal of NuGate Grp., LLC*, SBA No. SIZ-5821, at 3 (2017); *Size Appeal of Jenn-Kans Disposal Serv.*, SBA No. SIZ-5549, at 3 (2014).

IV. Conclusion

Appellant has not shown that the Area Office committed any error in dismissing Appellant's protest. Accordingly, the appeal is DENIED, and the size determination is AFFIRMED. This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.316(d).

KENNETH M. HYDE
Administrative Judge