United States Small Business Administration
Office of Hearings and Appeals

ORDER DISMISSING APPEAL

On February 22, 2016, the U.S. Department of State, Office of Acquisitions (Department of State), issued the instant combined synopsis/solicitation by posting it on the Federal Business Opportunities website (FBO). The Department of State was seeking to purchase TACMED Medical Course Equipment through an online reverse auction conducted by FedBid, Inc. (FedBid). The procurement was set aside for small businesses under North American Industry Classification System (NAICS) Code 334510, Electromedical and Electrotherapeutic Apparatus Manufacturing, with a size standard of 500 employees. On March 7, 2016, the Department of State extended response time for bids to March 9, 2016 at 1:00 PM.

On March 8, 2016, Latvian Connection, LLC (Appellant) filed a preaward bid protest at the Government Accountability Office (GAO), objecting to the use of FedBid for this procurement. GAO docketed the protest as B-412833.1, with a decision due by June 16, 2016.

On April 15, 2016, the Department of State posted an award notice on FBO, stating that Contract No. SAQMMA16M0694 had been awarded to US21, Inc. (US21).

On April 14, 2016, Appellant filed the instant appeal petition with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). Appellant states:

Dear Office of Hearings and Appeals,

[Appellant] files this size protest against US21 INC. for its award of the Dept of State FY16RR0002 that we have under GAO protest. The State Dept stated they

are awarding the contract regardless of the protest that is underway and has circumvented the AUTOMATIC STAY.

US21 INC do not hold the NAICS 33451... We believe that the 2 other bidders that have been redacted are also ineligible bidders... 3 of these companies bid 2 are redacted from my view.

Appeal at 1. Appellant attached to its appeal petition copies of the combined synopsis/solicitation, the FedBid posting, the GAO protest, the TacMed Equipment List, the Findings and Determinations to Support Contract Award During Preaward Protest to GAO (issued on March 25, 2016, by the Head of Contracting Activity), the “FAR and DFARS Report” for US21, Inc., the Bid Summary from FedBid (showing the bids of US21 and two others, whose names were redacted), and a five-slide Powerpoint deck.

OHA is an appellate forum that hears appeals of size determinations rendered by SBA area offices. 13 C.F.R. §§ 121.1101, 121.1103, 134.102(k). OHA has no authority to issue size determinations in the first instance. See id.; Size Appeal of Integrity Office Solutions, Inc., SBA No. SIZ-5606 (2014). Here, Appellant does not provide the required copy of, or even reference, an SBA area office size determination on US21. Further, it is obvious that Appellant meant to file a size protest against US21, the then-intended awardee. Both the Federal Acquisition Regulation (FAR) and SBA’s regulations governing the size determination program require that an interested party seeking to challenge an offeror’s eligibility as small business must file a size protest with the contracting officer, who will then refer the protest to the appropriate SBA area office for a size determination. FAR 19.302; 13 C.F.R. §§ 121.1003. This procedure clearly was not done, and as a result, there is no size determination to appeal.

For the above reasons, the appeal is DISMISSED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge