

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

SIZE Appeal of:

BahFed Corporation,

Appellant,

Re: Government Acquisitions, Inc.

Appealed From
Size Determination No. 04-2024-033

SBA No. SIZ-6327

Decided: December 18, 2024

APPEARANCES

Holly Roth, Esq., Jeremy Burkhart, Esq., Kelsey Hayes, Esq., Holland & Knight LLP, Tysons, Virginia, for Appellant

Kathy C. Potter, Esq., Sharon A. Roach, Esq., Potter & Murdock, P.C., Washington, D.C. 20005, for Government Acquisitions, Inc.

DECISION¹

I. Introduction and Jurisdiction

On October 4, 2024, the U.S. Small Business Administration (SBA) Office of Government Contracting — Area IV (Area Office) issued Size Determination No. 04-2024-033, dismissing a protest filed by BahFed Corporation (BahFed) (Appellant) against Government Acquisitions, Inc. (GAI). The Area Office found that the protest was not specific. (Size Determination at 1.)² On October 21, 2024, Appellant filed the instant appeal. Appellant maintains that the Area Office clearly erred in dismissing the protest, and requests that SBA's

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded the parties an opportunity to file a request for redactions if desired. No redactions were requested, and OHA therefore now issues the entire decision for public release.

² BahFed's protest challenged both its size and its status as a HUBZone. (See Exhibit B, Size Protest.) The Area Office dismissed only BahFed's size protest. (See Exhibit C, Size Protest Dismissal Email.) The Director of SBA's Office of the HUBZone Program issued its decision on BahFed's HUBZone status protest on Thursday, October 17. This decision only addresses the size protest.

Office of Hearings and Appeal (OHA) remand the matter for a new size determination. (Appeal at 1.) 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 of 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. The Solicitation

On April 20, 2021 (Phase I) and August 3, 2022 (Phase II), the U.S. Department of Homeland Security (DHS) issued a Request for Proposals (RFP) Solicitation No. 70RTAC21R00000003 to establish FirstSource III, DHS's department-wide vehicle for a wide variety of IT commodities (hardware and software) and value-added reseller services. The solicitation had two phases. An advisory down-select was conducted after Phase I. Phase I of the solicitation closed on June 9, 2021. The advisory down select notices were distributed on August 3, 2022. Phase II of the solicitation closed on January 25, 2023. The contract scope provided DHS with a wide and renewable variety of IT commodities and solutions (hardware and software) from multiple original equipment manufacturers (OEMs). The Contracting Officer (CO) set aside the procurement entirely for small business in five separate tracks: 8(a), HUBZone, Service-Disabled Veteran Owned Small Businesses (SDVOSB), Women Owned Small Businesses (WOSB), and All Small Businesses. Each track had a separate source selection and a separate contract award. Both Appellants received referral letters for the Information Technology Value Added Resellers (ITVAR) Functional Category, designated under North American Industry Classification System (NAICS) code 541519 IT Value Added Resellers with a corresponding 150 employee size standard. (RFP at 1.)

The FirstSource III acquisition and source selection was conducted in accordance with the solicitation and evaluation plan, Federal Acquisition Regulation (FAR) Part 12, Commercial Items, Part 15, Contracting by Negotiation, and Part 16.5, Indefinite Delivery Contracts. Appellant and GAI submitted timely offers. On September 16, 2024, HUBZone contracts were executed by all successful offerors, including GAI.

B. Protest

On September 17, 2024, Appellant filed a protest with the CO challenging GAI's size under 13 C.F.R. § 121.1007 based on its alleged number of employees and allegedly affiliated companies. In its protest, Appellant alleged GAI's size exceeded the 150-employee size standard based on employees and affiliated businesses. As evidence of GAI's size exceeding 150 employees Appellant referred to its LinkedIn page "Associated Members" data reflecting 1,087 such members. (Protest at 4.). Appellant also claimed GAI was affiliated with multiple entities in connection with its immediate owner, SSI IT Acquisition LLC ("SSI IT"), and SSI IT's principal owner, Mr. Roger Brown, a Partner at Nashville Capital Group, LLC, a Tennessee based private equity firm. (*Id.*) Appellant supported these allegations with publicly available information,

including GAI's SAM.gov profile, Tennessee business records, and Nashville Capital Group's website:

Because GAI has over 150 employees (over 1,000 employees), it does not qualify as 'small' for purposes of the FirstSource III IDIQ competition. Accordingly, the Area Office should issue a determination finding GAI 'other than small.'

D. GAI is Affiliated with Numerous Entities Through Nashville Capital Group and Mr. Roger Brown.

Finally, it appears that GAI is other than small due to the affiliations of its parent company, and CEO/founder, Roger Brown. Publicly available information shows that GAI is affiliated with multiple entities in connection with its immediate owner SSI IT Acquisition, LLC and that organization's principal owner, Mr. Roger Brown. Mr. Brown is also a partner at Nashville Capital Group, LLC ("Nashville Capital"), a private equity firm based in Brentwood, Tennessee. GAI's affiliation with SSI IT Acquisition, Mr. Brown, and Nashville Capital Group only further demonstrates that GAI is not in compliance with SBA's HUBZone requirements and does not fall under the 150-employee size standard. GAI's SAM.gov profile lists its immediate owner as SSI IT Acquisition, LLC ("SSI IT"). (See Ex. 11 at 1.)

(Protest at 9.)

As a result, Appellant asserted GAI did not qualify as small for purposes of the instant Solicitation and was not eligible for its award.

C. Size Determination

The CO forwarded Appellant's protest to the Area Office for review. On October 4, 2024 the Area Office issued Size Determination No. 04-2024-033, dismissing Appellant's protest as nonspecific under 13 C.F.R. § 121.1007. (Size Determination, at 1-4.)

The Area Office found that Appellant's allegations were speculative and that no direct evidence was provided by Appellant that GAI employed more than 150 employees or exceeded the size standard due to affiliation with other concerns. (*Id.* at 2.) Relying upon OHA precedent, the Area Office explained [OHA] has held that "[i]f an area office finds a protest is non-specific, it must dismiss the protest." (*Id.*; citing 13 C.F.R. § 121.1007(c)). OHA has held that, in reviewing non-specific protests, it will consider "(1) whether the protest was sufficiently specific to provide notice of the grounds upon which the protestor was contesting the challenged firm's size; and (2) whether the protest included factual allegations as a basis for these grounds." *Size Appeal of Carriage Abstract, Inc.*, SBA No. SIZ-4430, at 6 (2001); *Size Appeal of Alutiiq International Solutions, LLC*, SBA No. SIZ-5069, at 4 (2009); *Size Appeal of NuGate Group, LLC*, SBA No. SIZ-5821, at 2 (2017). (*Id.*)

The Area Office found that Appellant's allegations were wholly speculative or irrelevant, both as to GAI's number of employees exceeding 150, as well as its affiliation with other concerns based on LinkedIn data:

The protest alleges that the protested concern may not be small, however the allegation of 1,087 employees attributed to GAI is not supported with creditable information to be found sufficiently specific and does not specify adequate grounds for the protest. The allegation that GAI has 1,087 employees is based on GAI's LinkedIn profile showing that it has 1,087 'Associated Members.' Initially, this appears to meet the criterion for 13 C.F.R. § 121.1007(c) Example 2 from above. However, upon further review, the Area Office specifically notes that GAI does not appear to have the immediate ability to control who is included as an "Associated Member" on its LinkedIn page. The LinkedIn Help Page describing 'Associated Members' which is cited in the protest states, "If members select a company, university, or high school from the list of organizations, they automatically show up on that organization's LinkedIn Page as Associated Members." (*Id.*), p. 6 (emphasis added). This is an indication that literally anyone, including competitors, could manipulate the data shown here. In fact, the full text from the cited LinkedIn Help Page details that not only are members automatically added, but that these associations can be incorrect. Additionally, and perhaps more importantly, the term 'Associated Member' is not synonymous with "employee." The cited LinkedIn Help page states that associated members can be "employees or colleagues." Colleague generally means people working in the same field or profession, not necessarily within the same institution. The protest jumps to the conclusion that "Associated Members" means employees despite information to the contrary.

(*Id.*)

In addition, the Area Office noted GAI had submitted documentation under penalty of perjury reflecting it had less than 150 employees:

The protest also ignores that several of its submitted exhibits (Exhibits 5 and 12) clearly shows that GAI is categorized by LinkedIn as an entity with 51-200 "employees" which also does not clearly show whether the firm exceeds the 150-employee size standard, but appears to show the distinction between employees and associated members. It is also specifically noted by the Area Office that the protestor's Exhibit 4 (GAI's signed 2023 Treasury Form 5500-SF) also shows information to the contrary, that in fact GAI has submitted signed legal documents under the penalty of perjury demonstrating they only have 135 employees. Accordingly, because the information that the allegation is based upon uses the term 'Associated Member' and not employee, the Area Office finds that it is not sufficiently specific and comports with 13 C.F.R. § 121.1007(c) Example 1 and not Example 2 and is therefore dismissed.

As to Appellant's second argument that GAI exceeded the employee size standard due to affiliation with other concerns, the Area Office found that Appellant failed to establish how the

affiliations would result in GAI exceeding the size standard even if the allegations were true. The allegations of affiliation for GAI and Mr. Roger Brown, “while sufficiently specific for affiliation purposes (i.e. 13 C.F.R. § 121.1007(c) Example 4), fail to establish that even if the allegations were true, how the affiliations would make GAI exceed the size standard assigned to the procurement.” (*Id.* at 3.) The statement from the protest regarding Exhibit 4 explains “GAI’s Treasury Form 5500-SF, Small Employee Benefit Plan, discloses that it only had 135 employees at the end of 2023. Thus, on November 19, 2023, when GAI re-represented its compliance with the 35% HUBZone residency requirement, it likely had approximately 135 employees.” (*Id.*) However, the protest “does not state how many employees the alleged affiliates have.” (*Id.*)

Further, “Without identifying the number of additional employees to be included in the total count of employees due to the alleged affiliation, the allegation is simply that the firm has 135 employees plus an additional unidentified/unpublished number of employees if the allegations are accurate.” (*Id.*) Accordingly, the Area Office found that this was not a sufficiently specific allegation and did not specify adequate grounds for the protest because it is similar to Example 1 at 13 C.F.R. § 121.1007(c), describing a nonspecific protest and not Example 2, describing a specific one. (*Id.*)

Accordingly, the Area Office dismissed Appellant’s protest in accordance with 13 C.F.R. § 121.1007 (b) and (c) concluding that Appellant’s reliance on LinkedIn showing “Associated Members” as employees was speculative. (*Id.* at 2.)

D. Appeal

On September 17, 2024, Appellant filed the instant appeal. Appellant argues the Area Office’s analysis was clearly erroneous. (Appeal at 2.) In particular, the Area Office misapplied the law to Appellant’s claims and the evidence presented. As such, OHA should remand the protest to the Area Office for a proper size determination. (*Id.*)

Appellant argues that it presented evidence of specific allegations of fact which, if true, would render GAI other than small:

Accordingly, when assessing whether a protest is sufficiently specific, the Area Office must take the allegations as true. Here, the Area Office went beyond this standard by improperly weighing the evidence and making assumptions that the information and evidence were not true. Had the Area Office properly taken the allegations as true, it would have had to assume the following facts:

- GAI was affiliated with Roger Brown, Nashville Capital, and SSI IT Acquisition, LLC (“SSI”). GAI’s SAM.gov profile lists its immediate owner as SSI IT, and its SBA profile in DSBS lists Roger Brown as its CEO. Roger Brown is a partner and the “principal dealmaker” at Nashville Capital Group, LLC (“Nashville Capital”), a private equity firm based in Brentwood, Tennessee.

· Nashville Capital is affiliated with numerous companies, including but not limited to: Crabar, Segway, Sequiam Biometrics, Wired Red, Bentec Medical, EPDI, and Government Acquisitions, Inc.

· Roger Brown has invested in and manages over 2 million sq./ft of commercial, office, and warehouse real estate.

· 1,087 individuals claim to be employees of or associated with GAI on its LinkedIn Page.

· GAI's many affiliated entities, and its 1,087 "Associated Members" on LinkedIn, are pieces of evidence that demonstrates that GAI is not small. Had the Area Office properly assumed these allegations and facts as true (which it should have as a matter of law, and especially so because the above facts are backed up by public record), it would not have determined that BahFed's protest failed to meet the specificity requirement of 13 C.F.R. § 121.1007(b).

(Appeal at 6.)

Next, Appellant argues that the Area Office made an unjustified credibility determination, improperly weighing evidence. "Here, not only did the Area Office fail to assume that the supporting facts were true, it actually assumed that the information was false." (*Id.* at 8.) "While it is possible that all 1,087 'Associated Members' of GAI on LinkedIn are not actually GAI employees, it is also possible that such individuals are GAI employees, or are employees of an affiliated entity." (*Id.*) The Area Office went "beyond its mandate to dismiss the protest based on its own credibility determination, rather than taking the allegations as true." (*Id.*)

Finally, Appellant argues the Area Office ignored its allegations that GAI and its affiliates have 1,087 employees. Appellant asserts "BahFed stated that GAI and its affiliates have 1,087 employees. (*Id.*) Moreover, BahFed clearly alleged that GAI exceeded the 150-person size standard, supporting this allegation with specific evidence, which included (1) GAI's Treasury Form 5500-SF, Small Employee Benefit Plan, showing it had 135 employees at the end of 2023; (2) LinkedIn data showing that GAI has 1,087 'Associated Members' and (3) public records demonstrating that GAI is affiliated with ten different entities, including a private equity fund that owns over two million sq./ft of real estate." (*Id.* at 9-10.)

In conclusion, Appellant argues that a size protest must be sufficiently specific to provide reasonable notice as to the grounds upon which the protested concern's size is questioned, and that its protest complied with this requirement, and was sufficiently specific to be decided on the merits. (*Id.*) As a result, the Area Office not only improperly assumed the Appellant's allegations were false, but it also inaccurately characterized and ignored Appellant's arguments. Accordingly, the Area Office erred in dismissing the protest.

E. GAI's Response

On November 12, 2024, GAI responded and argued that OHA should dismiss the appeal, because Appellant has shown no clear error of law or fact in the Area Office's decision. (GAI Response at 1.) GAI agreed with the Area Office that Appellant's allegations were insufficiently specific. (*Id.* at 2.) In particular, GAI disputed the allegation that GAI had over 150 employees and argued that based on the evidence Appellant's claims were entirely unsupported and speculative. Accordingly, GAI argues the Area Office was correct in finding Appellant's arguments both nonspecific and irrelevant under 13 C.F.R. § 121.1007:

[N]either of Appellant's arguments have any basis whatsoever for its erroneous belief that GAI has more than 150 employees or had more than 150 employees at the time it submitted its proposal, and, in fact, Appellant itself put in evidence that GAI has less than 150 employees. Appellant's LinkedIn argument fails for lack of specificity because taking Appellant's allegation that GAI has 1,087 'Associated Members' as true, it is abundantly clear from LinkedIn's description of 'Associated Members' is that the term is not synonymous with employees and the number of 'Associated Members' give no insight whatsoever into how many employees GAI has. Appellant's second argument regarding affiliated concerns fares no better than its LinkedIn argument. Even if Appellant's allegations are true, Appellant fails to provide any specific facts or establish how these affiliations cause GAI to exceed 150 employees. In fact, the protest makes no allegations whatsoever as to how many employees the alleged affiliated concerns have.

(*Id.* at 2.)

Further, GAI asserts Appellant's argument the Area Office improperly weighed or ignored the evidence is untrue. GAI argues the Area Office reviewed the protest and its attached Exhibits as a whole, and correctly determined that an allegation that GAI has 1,087 "affiliated members" identified by the website LinkedIn was not a factual allegation as to GAI's number of employees as the two are unrelated and are not logically connected. (*Id.* at 4.) GAI maintains the Area Office was not required to accept Appellant's unsupported conclusion that because GAI has 1,087 "affiliated members" identified by LinkedIn, it therefore must have 1,087 employees. (*Id.*) The Area Office properly dismissed the protest based on Appellant's LinkedIn argument and OHA should uphold its Determination. (*Id.*)

GAI asserts that the Area Office properly dismissed Appellant's affiliation argument as well. (*Id.*) "Appellant does not allege how many employees are allegedly attributed to GAI through affiliation. To the contrary, Appellant affirmatively alleged, with supporting exhibits, that GAI has declared, under penalty of perjury, as recently as November 2023, that it has 135 employees." (*Id.*; citing Decision Letter at 3; Exhibit 4 to protest). Moreover, "even if OHA were to take Appellant's allegation that affiliated concerns exist as true, Appellant failed to allege how those affiliations lead to a determination that GAI has more than 150 employees." (*Id.*)

Furthermore, GAI argues Appellant submitted no specific facts or corroborating documentation to substantiate its claims. (*Id.* at 5). GAI relies on *Size Appeal of ACS Ventures*,

LLC, SBA No. SIZ-6160, at 5 (2022) (explaining that a “mere allegation of affiliation without information that the affiliation would render the concern other than small . . . is insufficiently specific.”) As a result, GAI insists that Appellant has failed to prove, by a preponderance of the evidence, that the Area Office erred in dismissing Appellant’s protest as nonspecific.

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

SBA regulations require that a size protest must be specific, so as to provide the protested concern reasonable notice of the grounds upon which its size is challenged. 13 C.F.R. § 121.1007(b). A mere allegation that the challenged concern is not small does not suffice. *Id.* In the past, OHA has held that, in reviewing non-specific protests, it will consider “(1) whether the protest was sufficiently specific to provide notice of the grounds upon which the protestor was contesting the challenged firm’s size; and (2) whether the protest included factual allegations as a basis for these grounds.” *Size Appeal of Alutiiq International Solutions, LLC*, SBA No. SIZ-5069, at 4 (2009). Among the examples the regulation gives of specific and nonspecific protests are:

Example 1: An allegation that concern X is large because it employs more than 500 employees (where 500 employees is the applicable size standard) without setting forth a basis for the allegation is non-specific.

Example 2: An allegation that concern X is large because it exceeds the 500-employee size standard (where 500 employees is the applicable size standard) because a higher employment figure was published in publication Y is sufficiently specific.

Example 3: An allegation that concern X is affiliated with concern Y without setting forth any basis for the allegation is non-specific.

13 C.F.R. § 121.1007(c).

It thus clear that to be compliant with the regulations, a size protest must not merely assert that the protested concern is small, but must also include specific supporting facts which, if true, would render the concern other than small. If the allegation raised in the protest would not, even if true, be the basis for challenging the protested concern’s size, the Area Office must

dismiss the protest as insufficiently specific. *Size Appeal of Mission Analytics, LLC*, SBA No. SIZ-6325 (2024).

In the instant case, Appellant alleges GAI exceeded the 150-employee size standard based upon LinkedIn's "Associated Members" data on GAI. However, Appellant's own protest quotes from LinkedIn that:

When LinkedIn members add or edit a position on their profile, they can specify an organization. If members select a company, university, or high school from the list of organizations, they automatically show up on that organization's LinkedIn Page as Associated members.

Protest at 6 quoting LinkedIn website.

It is thus clear that the "Associated Members" are not necessarily employees, and the number of individuals listed as "Associated Members" bears no relation to a concern's number of employees. Thus, the figure quoted bears no relation to a concern's number of employees. LinkedIn profiles are not credible evidence of an entity's employee count due to their unverifiable nature and user-generated content. The Area Office properly noted that Appellant's reliance on LinkedIn data, without corroborating documentation such as payroll taxes, tax filings, or other substantiating evidence, failed to meet the requirements of 13 C.F.R. § 121.1007(b). Appellant's own Exhibit 4, GAI's Treasury Form 5500-SF, submitted under penalties of perjury showed only 135 employees in 2023, and thus does not show GAI as other than small. Section II.D, *supra*. Accordingly, this ground of Appellant's protest failed to make an allegation which, even if true, would be the basis for finding GAI other than small, and thus the Area Office properly dismissed it as nonspecific.

Similarly, Appellant's allegations of affiliation with Roger Brown and SSI IT and other affiliated entities lacked sufficient detail or evidence to demonstrate how this relationship caused GAI to exceed the size standard. Appellant made no allegations as to how many employees these affiliates had. Appellant failed to explain why affiliation with these concerns would render GAI other than small. As shown in Example 3 to the regulation, a mere allegation of affiliation, without any supporting basis or rationale, is insufficiently specific.

The Area Office properly observed that while Appellant's allegations of affiliation were specific enough to suggest the relationship under Example 4 of 13 C.F.R. § 121.1007(c), the protest failed to show how such an affiliation materially impacted GAI's size or exceeded the applicable 150-employee standard specifically. Appellant did not provide evidence of shared payroll, integrated operations, or any additional employees stemming from the alleged affiliation. As a result, the allegations that the alleged affiliation rendered GAI other than small remain speculative and unsupported.

OHA concurs with the Area Office's determination concluding that Appellant's claims that GAI exceeded the size standard were vague and speculative, as Appellant offered no direct evidence, beyond bald assertion, to support its claim. Appellant's allegations, even if assumed to be true, lacked the specificity and factual bases necessary to support a finding of size and

eligibility. This conclusion aligns with OHA's precedent in *Size Appeal of Magnolia Contracted Services*, SBA No. SIZ-6296 (2024), which held that a protest must present specific credible facts demonstrating a size standard violation. As in *Magnolia*, Appellant here relied on generalized assertions without substantiating the exact extent or operational impact of the alleged affiliation, rendering the claims insufficient under SBA regulations. Appellant's submissions on appeal are irrelevant here. An insufficiently specific protest cannot be cured on appeal by the submission of new evidence. *Size Appeal of AMETEK SCP, Inc.*, SBA No. SIZ-5518 (2013). Therefore, OHA finds no clear error in the Area Office's dismissal of the protest as nonspecific.

IV. Conclusion

Appellant has not shown that the Area Office erred in dismissing Appellant's protest as nonspecific. 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).

CHRISTOPHER HOLLEMAN
Administrative Judge