

National Defense Industrial Association

October 30, 2008

Presented by:

Pamela J. Mazza, Esq.
Pilieromazza, PLLC



888 17th Street, N.W., Suite 1100
Washington, D.C. 20006
202-857-1000
pmazza@pilieromazza.com
www.pilieromazza.com

Recent Decisions implicating Size Issues

Delex Systems, Inc.

B-400403, October 8, 2008

- GAO sustained a protest where the Navy failed to set-aside the solicitation for a delivery order and the record showed that the agency had not reasonably determined that it did not have an expectation of offers from two or more small businesses
- The set-aside provisions of the FAR apply to competitions for task and delivery orders under MACs
- GAO recommends the Navy cancel the current solicitation and reissue it as a small business set-aside if they can verify two or more small businesses are qualified to bid on it

Size Appeal of TCE Incorporated

SBA No. SIZ-5003, September 24, 2008

- OHA determined that there was no affiliation based on the ostensible subcontractor rule
- The Area Office's determination that the subcontractor's greater experience in the field caused undue reliance came "perilously close" to being a responsibility determination
- OHA acknowledged that too much emphasis should not be placed on the challenged firm's prior experience in making an ostensible subcontractor determination because it "runs the risk of closing the door on new small firms entirely."

Size Appeal of WRS Infrastructure and Environment, Inc.

SBA No. SIZ-5007, October 1, 2008

- Appellant's size should be determined on the date it submitted its offer, including price
- OHA stated that its regulations do not require that an agreement in principle be legally binding in order to be given present effect
- Under the decision even nonbinding Letters of Intent could be given present effect resulting in affiliation between seller and purchaser

Size Appeal of M&S Foods Ltd. Co.

SBA No. SIZ-4971, July 14, 2008

- Individual waivers are more comprehensive in scope than less specific class waivers
- Based on the text of the waiver, the solicitation and the agency's requirements, OHA found that the waiver of the non-manufacturer rule applied to the entire procurement, including the services associated with the end product being delivered by the large-business manufacturer
- The Court of Federal Claims upheld this determination, but the matter is currently under reconsideration

Additional Questions or Comments?

- Pamela Mazza, Esq.
(202) 857-1000
pmazza@pilieromazza.com



888 17TH STREET, NW, SUITE 1100
WASHINGTON D.C. 20006

PHONE 202 857-1000

FAX 202 857-0200

WWW.PILIEROMAZZA.COM