


PubKLaw

(<http://law.pubkgroup.com>)

Legal news and insights for the government contracts community.



(<https://twitter.com/pubkgroup>) company/pubklaw-llc)

 Submit Query

SBA



 04/27/2016  Small Business Administration

Properly Found Affiliation Based on Economic Dependence, SBA No. SIZ-5723, Appeal of Core Recoveries LLC

The Small Business Administration denied an appeal over a finding that an offeror was not eligible for a small business contract, finding that the SBA area office properly concluded that the offeror was affiliated with a company that accounted for 70 percent of its annual business.

Core Recoveries LLC appealed SBA's finding that it was affiliated with West Asset Management Inc. through economic dependence, arguing that the area office did not consider the relationship between the two companies as it existed on the date that Core Recoveries self-certified as a small business. Core Recoveries cited a recent SBA Office of Hearings and Appeals decision in a case brought by OBXtek, in which OHA found that the revenues derived from the alleged affiliate had sharply declined after the period reviewed by SBA.

SBA's Office of Hearings and Appeals rejected the appeal, however, finding that, unlike the OBXtek case, Core Recoveries did not significantly reduce the amount of business it did with West after the period reviewed by SBA. While Core Recoveries was correct that SBA should have reviewed the current relationship between the companies, it did not present evidence that the relationship had changed enough to invalidate the finding of economic dependence, according to OHA. At most, the company could show that West's business dropped from 90 percent of Core Recoveries' revenues to 70 percent, still high enough to find dependence, according to OHA.

"The problem for Appellant here is that, unlike the challenged firm in OBXtek, Appellant did not prove that it was economically independent of its alleged affiliate as of the date to determine size," Administrative Judge Kenneth Hyde wrote. "West still represented well over 70% of Appellant's receipts during 2015, after having accounted for more than 90% of Appellant's receipts during each of the preceding three years."

Core Recoveries argued that it should have been exempt from the economic dependence finding because it was a newly formed business in 2011, and the subcontract with West was its first major subcontract. While OHA has recognized an exemption for startup businesses, Core Recoveries could not reasonably describe itself as a startup in 2015, according to the Board.

Core Recoveries is represented by Antonio R. Franco and Alexander O. Levine of PilieroMazza PLLC.

Source (<http://law.pubkgroup.com/wp-content/uploads/sites/6/2016/04/SBA-Core-Recoveries.pdf>)