



**U. S. SMALL BUSINESS ADMINISTRATION**  
**Office of Government Contracting – Area II**  
Parkview Towers  
1150 First Avenue  
10th Floor - Suite 1001  
King of Prussia, PA 19406

Email: [Nicola.Puerto@dynasafe.com](mailto:Nicola.Puerto@dynasafe.com)

October 20, 2016

Dynasafe USA LLC  
11921 Freedom Dr. Ste. 550  
Reston, VA, 20190-5635

Attention: Nicola Puerto, Area Sales Manager Americas

Subject: Size Determination Case No: 2-2017-001-002  
Requested by: Mistral, Inc. (001)  
NABCO (002)  
Solicitation Number: FA8051-16-P-0036  
Procuring Activity Tyndall AFB  
NAICS Code: 332420  
Size Standard: 750 employees

Dear Mr. Puerto:

The Small Business Administration (SBA) has made a formal size determination that your business is other than small for the subject procurement. A copy of the formal size determination is enclosed.

Any person adversely affected by this decision may appeal to SBA's Office of Hearings and Appeals (OHA). To be timely, an appeal must be submitted to OHA in writing within 15 days of the date of receipt of this letter. An appeal petition may be sent by e-mail to [OHAFilings@sba.gov](mailto:OHAFilings@sba.gov); by mail or delivery to Office of Hearings and Appeals, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; or by facsimile at (202) 205-7059. OHA accepts filings between the hours of 8:30 a.m. and 5 p.m. Eastern Time. OHA's telephone number is (202) 401-8200. Full instructions for filing an appeal are set forth in 13 C.F.R. Part 134 and are accessible online at <http://go.usa.gov/Ymf>.

An appeal petition must include the information listed below:

- (1) A copy of the size determination being appealed;
- (2) The solicitation or contract number, and the name, address, and telephone number of the contracting officer;
- (3) A full and specific statement as to why the size determination is alleged to be in error, together with argument supporting such allegations; and
- (4) The name, address, telephone number, facsimile number, and signature of the appellant or its attorney.

Any party appealing this determination must also provide a copy of its appeal petition to each of the following: (1) The SBA official who issued the size determination; (2) The contracting officer responsible for the procurement affected by a size determination; (3) The business concern whose size status is at issue; (4) All persons who filed protests; and (5) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street, SW, Washington, DC 20416, facsimile (202) 205-6873, or e-mail at [OPLService@sba.gov](mailto:OPLService@sba.gov). The appellant must attach to the appeal petition a signed certificate of service meeting the requirements of 13 C.F.R. §134.204(d).

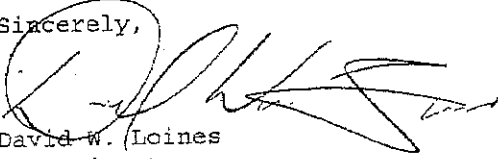
If you believe your business has been the subject of excessive or unfair regulatory enforcement or compliance actions as a result of this decision, you have the right under the Small Business Regulatory Enforcement Fairness Act to file a complaint or comment with SBA's National Ombudsman at:

Office of the National Ombudsman  
U.S. Small Business Administration  
409 Third St. SW  
Washington, DC 20416  
PH: 1-888-734-3247  
FX: 1-202-481-5719  
EM: [ombudsman@sba.gov](mailto:ombudsman@sba.gov)

The right to file a complaint or comment with SBA's National Ombudsman is independent of any other rights you may have to contest this decision. The National Ombudsman may not change, stop, or delay a Federal agency's enforcement action or impede any administrative or criminal process.

If additional information or assistance is needed, please contact Vincent Mazzotta at (610) 382-3190 or by email at [vincent.mazzotta@sba.gov](mailto:vincent.mazzotta@sba.gov).

Sincerely,



David W. Loines  
Area Director  
for Government Contracting

Enclosures: Size Determination 2-2017-001-002

cc: Chase Cooper, Contracting Officer  
Email: [stephen.cooper.15@us.af.mil](mailto:stephen.cooper.15@us.af.mil)

Jeffrey Weinstein, Counsel to NABCO  
Email: [jweinstein@twlawgroup.com](mailto:jweinstein@twlawgroup.com)

Jack A. Yohe, Jr., Mistral  
Email: [jyohe@mistralgroup.com](mailto:jyohe@mistralgroup.com)

**U.S. SMALL BUSINESS ADMINISTRATION  
Office of Government Contracting  
Area II**

**SIZE DETERMINATION**

Case No. 2-2017-001/002

Date: October 20, 2016  
Firm: Dynasafe USA, LLC  
Address: Reston, VA  
Solicitation No.: FA8051-16-P-0036  
NAICS Code: 332420  
Size Standard: 750

**INTRODUCTION:**

This size determination is issued by the Area II Office (Area Office) of Government Contracting, U.S. Small Business Administration (SBA), pursuant to 13 CFR Part 121.

On June 8, 2016, the United States Air Force, Tyndall Air Force Base, Florida, issued a solicitation for "Total Containment Vessels" as a small business set-aside. All offers were due on August 29, 2016. On September 26, 2016, the Contracting Officer (CO) notified unsuccessful offerors that Dynasafe USA, LLC (Dyn) was selected for award. On September 30, 2016 the CO received two size protests from Mistral Group and NABCO (protestors). Both protests were similar in scope and contested Dyn's ability to comply with the requirements of the non-manufacturing rule at 13 CFR § 121.406. Mistral Group's protest was assigned No. 2-2017-001 and NABCO's protest was assigned No. 2-2017-002. Both protests were timely and specific.

**EVIDENCE:**

Upon receipt of the protest the Area Office requested Dyn to provide a response to the allegations of both protests; complete and sign a SBA Form 355; provide evidence that it is either the manufacturer of the end-items and/or is in compliance with the non-manufacturing as outlined in 13 CFR § 121.406; provide organizational documents; and provide a breakdown of the number of employees for each pay period for the last 12 months prior to its order for this procurement. In addition, if applicable a separate SBA Form 355 for the actual manufacturer with breakdown of number of employees, and certification that all end items were being manufactured by a small business concern located in the U.S.

Dyn responded with a letter signed by its Area Sales Manager that upon review of the regulations it was determined that it could not comply with the requirements of 13 CFR 121.406. Dyn provided no other documents.

**FINDINGS:**

As noted previously, Dyn acknowledges that it couldn't comply with the requirements of 13 CFR § 121.406. Dyn indicated that it wasn't aware of 13 CFR § 121.406 requirements. Dyn noted that this regulation was not stated in the solicitation document. As a result, Dyn stated that it was an inadvertent and unintentional error. Dyn stated that when it submitted the proposal it was believed that it was complying with all regulations because the country of origin is an approved United States designated country. Dyn did not provide a SBA Form 355 or other requested documentation.

Dyn has not provided a Form 355 or other requested documentation to allow this office to issue a fair and accurate size determination. The regulation at 13 CFR § 121.1008(d) is stated as follows:

If a concern whose size status is at issue fails to submit a completed SBA Form 355, responses to the allegations of the protest, or other requested information within the time allowed by SBA, or if it submits incomplete information, SBA may presume that disclosure of the information required by the form or other missing information would demonstrate that the concern is other than a small business. A concern whose size status is at issue must furnish information about its alleged affiliates to SBA, despite any third party claims of privacy or confidentiality, because SBA will not disclose information obtained in the course of a size determination except as permitted by Federal law.

In the Size Appeal of Rich Chicks, LLC, SBA No. SIZ-5556 (2014), the SBA Office of Hearing and Appeals (OHA) has established a three-part test for assessing whether an adverse inference is appropriate. First, the requested information must be relevant; that is, it must logically relate to an issue in the size determination. Second, there must be a level of connection between the protested concern and the concern about which the information is requested. Third and finally, the request for information must be specific. If all three criteria are met, the challenged concern must produce the requested information or suffer the consequences of an adverse inference See, e.g., Size Appeal of AudioEye, Inc., SBA No. SIZ-5477, at 10 (2013), recons. denied, SBA No. SIZ-5493 (2013).

The regulation outlined at 13 CFR §121.406 is applicable to this determination and is stated as follows:

(a) General. In order to qualify as a small business concern for a small business set-aside, service-disabled veteran-owned small business set-aside, WOSB or EDWOSB set-aside, 8(a) contract, partial set-aside, reserve, or set-aside of orders against a multiple award contract to provide manufactured products or other supply items, an offeror must either:

(1) Be the manufacturer or producer of the end item being procured (and the end item must be manufactured or produced in the United States); or

(2) Comply with the requirements of paragraph (b), (c) or (d) of this section as a nonmanufacturer, a kit assembler or a supplier under Simplified Acquisition Procedures.

(b) Nonmanufacturers. (1) A firm may qualify as a small business concern for a requirement to provide manufactured products or other supply items as a nonmanufacturer if it:

(i) Does not exceed 500 employees;

(ii) Is primarily engaged in the retail or wholesale trade and normally sells the type of item being supplied;

(iii) Takes ownership or possession of the item(s) with its personnel, equipment or facilities in a manner consistent with industry practice; and

(iv) Will supply the end item of a small business manufacturer, processor or producer made in the United States, or obtains a waiver of such requirement pursuant to paragraph (b)(5) of this section.

The Area Office's request for information was consistent with the aforementioned OHA decisions. Dyn acknowledged that it was not in compliance with requirements of 13 CFR 121.406 which would be applicable to this procurement. Dyn is not a small business concern for this procurement.

**CONCLUSION:**

The Area II Office of Government Contracting of the U.S. Small Business Administration finds that Dynasafe USA, LLC is not a small business concern for the subject procurement.

This determination is effective immediately and remains in full force and effect unless and until reversed by the Office of Hearings and Appeals. Any person adversely affected by this decision has the right to file an appeal petition with SBA's Office of Hearings and Appeals (OHA). The specific procedures for filing an appeal are found at 13 CFR Part 134.



David Wm. Loines  
Director Area II  
Office of Government Contracting