

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

CVE Appeal of:

GCBO Sourcing Partners, LLC,

Appellant,

SBA No. CVE-112

Decided: April 22, 2019

APPEARANCE

Steven F. Gratzer, Co-Owner, GCBO Sourcing Partners, LLC, Charlotte, North Carolina

DECISION

I. Introduction and Jurisdiction

On December 14, 2018, GCBO Sourcing Partners, LLC (Appellant) appealed the decision of the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) cancelling Appellant's verification in the Vendor Information Pages (VIP) database of eligible Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Appellant maintains that the cancellation was clearly erroneous and requests that the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is denied.

OHA adjudicates CVE appeals pursuant to 38 U.S.C. § 8127(f)(8)(A) and 13 C.F.R. part 134 subpart K.¹ Appellant timely filed the instant appeal within ten business days of receiving the cancellation notice. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

¹ The regulations at 13 C.F.R. part 134 subpart K became effective October 1, 2018. 83 Fed. Reg. 13,626 (Mar. 30, 2018).

II. Background

A. Change of Name and Address

On July 18, 2018, Appellant informed CVE that Appellant had changed its name and address. On August 6, 2018, CVE instructed Appellant to submit additional information, no later than August 13, 2018, in order for CVE to approve the changes. CVE specifically requested the following documents:

Please provide copies of any and all CURRENT business license(s), issued by the City, County, and State, as required, to operate [Appellant]. If you are not sure whether a business license pertains to your business, please contact the City, County and State. If none are required, please provide an explanation stating the same; please include the name of who you contacted, the name of the agency where they are employed, and their contact number (and web address, if applicable).

Please print, sign, and upload the Business License Declaration (which will be sent as a separate document immediately following this email).

Please provide copies of any and all CURRENT technical licenses and any other applicable certifications, as required, to operate [Appellant]. If none are required, please select NO and then in the block to the right please enter an explanation stating the same.

Please provide a copy of a certificate issued by the State of Delaware showing [Appellant] is Active and/or in Good Standing with the State of Delaware.

...

For [Appellant's] office located at [xxx], please provide a copy of the following documents:

- If this address is your residence please provide a detailed explanation stating the same. The documents below are not required for a home office.
- CURRENT lease agreement(s)/amendment(s); AND
- Copies of three (3) recent rent checks.

...

Please upload a copy of the original Articles of Organization/Incorporation, including the state seal or filing documentation, for [Appellant]. Please provide copies of any amendments to the Articles that have been filed with the Secretary of State.

(Case File (CF), Exh. 2 (emphases in original).) Appellant did not provide the requested documents.

B. Notice of Proposed Cancellation

On October 23, 2018, CVE issued a Notice of Proposed Cancellation (NOPC) informing Appellant that CVE was proposing to cancel Appellant's verified status as an SDVOSB. The NOPC noted that, in July 2018, Appellant apprised CVE of a change in name and address. As a result, in August 2018, CVE instructed Appellant to provide documents and information to demonstrate its continuing eligibility, specifically:

A detailed letter of explanation identifying all changes requested to the VIP profile of [Appellant]; [t]he best contact telephone number for [Appellant's owners]; all current business license(s), issued by the City, County, and State, as required, to operate [Appellant]—if none are required, please provide an explanation stating as such; signed Business License Declaration page; [a]ll current technical licenses and any other applicable certifications, as required, to operate [Appellant]—if none are required, please provide an explanation stating as such; Certificate of Good Standing or active status issued by the State of Delaware; [l]ease agreement for [Appellant's] office [and] and copies of the three (3) most recent rental payments—if this location is the personal residence of an owner of the concern, please provide a letter of explanation indicating as such; and original Articles of Organization and any amendments filed with the Secretary of State.

(CF, Exh. 4, at 2.) Appellant did not produce any of these materials, all of which CVE considered “necessary in the determination of continued verification eligibility.” (*Id.*) Appellant therefore did not comply with 38 C.F.R. § 74.21(d)(5).

The NOPC also stated that, among other requested documents, Appellant did not provide “confirmation of [Appellant's] good standing in the State of Delaware or the licenses and certificates required for the operation of [Appellant].” (*Id.*) Consequently, CVE could not ascertain whether Appellant had maintained all necessary licenses and permits, as required by 38 C.F.R. § 74.21(d)(9) and 13 C.F.R. § 125.13(g). (*Id.*)

The NOPC allowed Appellant 30 days to respond with evidence that might cause CVE to retract the proposed cancellation.

C. Response to the NOPC

On October 27, 2018, Appellant submitted a one-page letter in response to the NOPC. (CF, Exh. 5.) Appellant asserted that, although Appellant did change its name and address in July 2018 after “[bringing] on board another team member,” Appellant nevertheless “is continuing to operate as it was prior to the name and address change.” (*Id.*) Appellant urged CVE to “cease and desist with the proposal to cancel [Appellant's] verified status.” (*Id.*) Appellant did not provide the documents requested by CVE.

D. Notice of Verified Status Cancellation

On December 6, 2018, CVE issued a Notice of Verified Status Cancellation (NOVSC), formally cancelling Appellant's status as a verified SDVOSB. CVE found that Appellant's response to the NOPC was “not adequate to justify overturning all of the findings listed in the NOPC.” (CF, Exh. 6, at 1.)

The NOVSC explained that, on July 18, 2018, Appellant informed CVE that Appellant had changed its name and address. CVE then instructed Appellant to provide additional documentation in order for CVE to approve the change, but Appellant did not do so. Although Appellant did submit a one-page letter in response to the NOPC, no other documents were provided. (*Id.* at 2.) Thus, “CVE has not received the telephone contact numbers for [Appellant's owners]; confirmation of good standing or active status from the State of Delaware for [Appellant]; or any business amendments filed with the Secretary of State of the [Appellant's] state of organization confirming the changes in [Appellant's] name and address.” (*Id.*) Because Appellant did not respond to CVE's explicit requests for information, Appellant did not comply with 38 C.F.R. § 74.21(d)(5).

The NOVSC further stated that, under 38 C.F.R. § 74.21(d)(9), CVE may remove a concern from the VIP database if the concern fails to obtain, or maintain, required permits and licenses. (*Id.*) Here, although Appellant previously provided documents of good standing in the state of Delaware under its prior name, Appellant did not produce such documents after its change of name. (*Id.* at 2-3.) CVE therefore could not determine whether Appellant has maintained required licenses.

E. Appeal

On December 14, 2018, Appellant filed the instant appeal. Appellant contends that the NOVSC is flawed and should be reversed.

Appellant asserts that the NOPC was “somewhat confusing and unclear” as to what information CVE expected, so Appellant contacted CVE for additional guidance and clarification. (Appeal at 1.) When no such clarification was forthcoming, Appellant submitted a response to the NOPC “answering [CVE's] concerns based on our best interpretation of what [CVE] w[as] looking for without having received any response or additional guidance.” (*Id.*) The ensuing NOVSC was “a bit clearer” regarding the necessary documentation, and Appellant attempted, at that time, to upload the requested materials, but was informed that the case had been closed. (*Id.*)

Appellant acknowledges that it “did not initially provide [CVE] with all of the documentation that [CVE] initially requested.” (*Id.*) This failure is excusable, however, because the “initial data request was unclear,” and because CVE “provided no opportunity to gain additional guidance.” (*Id.* at 1-2.) With its appeal, Appellant offers new evidence, which, in Appellant's view, is sufficient to resolve CVE's requests for additional information.

III. Discussion

A. Standard of Review

Appellant has the burden of proving, by a preponderance of the evidence, that the cancellation was based upon clear error of fact or law. 13 C.F.R. § 134.1111.

B. Analysis

VA regulations make clear that CVE may remove a concern from the VIP database if the concern “[f]ail[s] to make required submissions or responses to CVE or its agents, including a failure to make available financial statements, requested tax returns, reports, information requested by CVE or VA's Office of Inspector General, or other requested information or data within 30 days of the date of request.” 38 C.F.R. § 74.21(d)(5). In the instant case, it is undisputed that Appellant did not produce the documents requested in CVE's e-mail of August 6, 2018. Section II.A, *supra*. CVE then requested the materials for a second time in the October 23, 2018 NOPC, and Appellant, again, failed to produce the information. Sections II.B and II.C, *supra*. On this record, then, I see no basis to conclude that CVE improperly removed Appellant from the VIP database. Appellant twice failed to comply with CVE's requests for information, in contravention of 38 C.F.R. § 74.21(d)(5).

Appellant maintains that cancellation was unwarranted because CVE did not adequately describe the information CVE expected Appellant to produce. This argument is unpersuasive for two reasons. First, contrary to Appellant's contentions, both of the CVE requests did specifically identify documents needed in order to approve Appellant's change of name and address. Section II.A and II.B, *supra*. Second, the record contains no contemporaneous evidence that Appellant considered CVE's requests to be unclear. On the contrary, Appellant's only response to either of the CVE requests was its one-page letter of October 27, 2018. Section II.C, *supra*. Rather than argue that Appellant did not understand what documents were being requested, the response instead suggested that no additional documentation should be necessary because Appellant “is continuing to operate as it was prior to the name and address change.” *Id.*

In its appeal, Appellant also complains that CVE did not provide additional guidance on how to address the NOPC. Appellant, though, points to no authority for the proposition that CVE was required to offer Appellant additional guidance. Further, the NOPC gave Appellant 30 days to produce the requested information, yet Appellant responded to the NOPC after only 4 days. Sections II.B and II.C, *supra*. Thus, the record does not support the conclusion that Appellant was awaiting additional guidance from CVE.

Lastly, OHA cannot consider the new evidence accompanying the appeal. Pursuant to 13 C.F.R. § 134.1110, evidence beyond the Case File is admissible only if good cause is shown, and Appellant here has not explained why good cause exists to supplement the record. Section II.E, *supra*. Moreover, even if OHA were to consider the new information, this still would not demonstrate that CVE erred in its cancellation decision, because, at the time of the cancellation, Appellant had not responded to CVE's requests for information.

IV. Conclusion

For the above reasons, the appeal is DENIED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(A); 13 C.F.R. § 134.1112(d); 38 C.F.R. § 74.22(e).

KENNETH M. HYDE
Administrative Judge