

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

CVE Appeal of:

Supreme Cleaning, Inc.,

Appellant,

SBA No. CVE-114

Decided: April 25, 2019

APPEARANCE

Charles E. Lewis, President/CEO, Supreme Cleaning, Inc., Montgomery, AL. for Appellant

DECISION

I. Introduction and Jurisdiction

On March 18, 2019, Supreme Cleaning, Inc. (Appellant) appealed the decision of the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) denying Appellant's recertification in the Vendor Information Pages (VIP) database of eligible Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Appellant maintains that the denial 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 XXXX.

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.

II. Background

A. Notice of Denial

On March 13, 2019, the CVE notified Appellant that their recertification for inclusion in the VA's VIP database as a SDVOSB had been denied. The CVE noted that Appellant's primary NAICS code was for janitorial services, yet Appellant's VIP profile included an engineering and an architectural services NAICS code also.

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).

The CVE explained that under SBA regulation, an applicant must show that the service-disabled veteran has the ultimate managerial and supervisory control over those who have the technical expertise. (Determination Letter, at 2.) This supervisory control is shown when the service-disabled veteran is able to observe and direct engineering and architectural services work. Under Alabama law, where Appellant is incorporated, those who supervise engineering and architectural services must be licensed or registered with their respective Boards. (*Id.*; citing AL Code § 34-11-9 and § 34-2-34.)

CVE explains that here, the service-disabled veteran, Mr. Charles E. Lewis has not provided any documentation that he has any technical licenses or registrations that demonstrate he is able to manage and supervise engineering or architectural services, as required by Alabama law. (*Id.*) Thus, CVE must deny Appellant's application to the VIP database as Appellant has failed to meet the requirements of 13 C.F.R. § 125.13(b).

B. Appeal

On March 18, 2019, Appellant filed the instant appeal. Appellant contends that the CVE's denial is in error and should be reversed.

Appellant asserts it had been certified by CVE for six years before the denial letter was issued. Appellant explains that it had previously certified under the engineering and architectural NAICS codes but had been teaming with a licensed architectural company. (Appeal, at 1.) Once that teaming arrangement ended, Appellant notes that it removed the engineering and architectural NAICS codes from Appellant's System for Award Management (SAM) profile before the denial letter was issued.

Appellant notes that Mr. Lewis has been the sole owner of Appellant since its inception and questions the CVE's determination that Mr. Lewis lacks the power to manage and supervise Appellant.

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

As of October 1, 2018, OHA has jurisdiction over all CVE appeals regarding denials and cancellations of inclusion in the CVE database. *See* 13 C.F.R. § 134.102(v). Under these new regulations, the “standard of review is whether the [CVE] denial or cancellation was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.” 13 C.F.R. § 134.1111.

An eligible SDVOSB must be controlled by a one or more service-disabled veterans. Control means that the concern's management and daily business operations are controlled by one or more service-disabled veterans. 13 C.F.R. § 125.13(a). A service-disabled veteran must be in the highest officer position and have the managerial experience of the extent and complexity required to run the concern. 13 C.F.R. § 125.13(b). The regulation requires that the service-disabled veteran need not possess a required license if they can demonstrate they have ultimate managerial and supervisory control over those who possess a required license. *Id.* However, Appellant is incorporated in the state of Alabama, which requires managers who supervise engineering and architectural services to be registered with their respective Boards. *See supra.*

Here, the CVE denied Appellant's recertification after it found that Appellant's VIP profile included both an engineering and architectural services NAICS code. Because Appellant included these codes in its profile Mr. Lewis, the individual upon whom Appellant's claim of eligibility was based, was required under Alabama law to be licensed or registered with the respective engineering and architectural Boards, in order to exercise supervisory or managerial control. Nevertheless, Mr. Lewis' never provided documentation that he possessed such a license or registration.

On appeal, Appellant argues that it removed the NAICS codes from its SAM profile, thus CVE erred in denying Appellant's recertification. However, the issue here is with Appellant's CVE VIP profile, not Appellant's SAM profile. The architectural and engineering codes were present on Appellant's VIP profile at the time the recertification analysis took place. Appellant had the burden of proving that CVE committed an error of fact or law when it found that Appellant failed to show Mr. Lewis had managerial and supervisory control based on the presence of the engineering and architectural services NAICS codes. Under Alabama law, Mr. Lewis must possess these licenses in order to supervise work Appellant's VIP registration states it will be performing. Appellant does not explain how CVE erred in applying the supervisory requirements of Alabama law regarding the requirements for architectural or engineering licenses. I find that it was reasonable for CVE to conclude that Mr. Lewis could not legally supervise the work Appellant's registration stated it would perform. Therefore, I must find that Appellant has failed to meet its burden of establishing clear error in the CVE decision, and I must deny the appeal.

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).

CHRISTOPHER HOLLEMAN
Administrative Judge