

UNITED STATES OF AMERICA
SMALL BUSINESS ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS
WASHINGTON, D.C.

_____)	
IN THE MATTER OF:)	
)	
Meadowgate Technologies, LLC)	Docket No. VET-2007-04-11-02 ¹
)	
Appellant)	Decided: May 1, 2007
)	
Solicitation No. AG-3144-S-07-0010)	
U.S. Department of Agriculture)	
ITS Contracting Team)	
Fort Collins, Colorado)	
_____)	

APPEARANCES

Brian Cooleen, Member
for Appellant Meadowgate Technologies, LLC

Kevin R. Harber, Esq.
Office of General Counsel
Small Business Administration
for the Agency

DIGEST

The Small Business Administration is justified in concluding that a firm is not an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) when the firm fails to respond in any way to the notification of an SDVO SBC protest and request for information.

DECISION

HOLLEMAN, Administrative Judge:

Jurisdiction

This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 125 and 134.

¹ This Office now prefaces its Docket and Decision Numbers for Service-Disabled Veteran-Owned Small Business Concern appeals with the prefix “VET” to prevent confusion with other types of SBA appeals.

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I. BACKGROUND

A. Protest

On February 13, 2007, the United States Department of Agriculture issued Solicitation No. AG-3144-S-07-0010 with the objective of awarding a Blanket Purchase Agreement (BPA) for data cartridges and cleaning cartridges. The Contracting Officer (CO) set the solicitation aside for Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBC). Offers were due on February 21, 2007. On March 2, 2007, the CO notified the unsuccessful offerors that Meadowgate Technologies, LLC (Appellant) was the apparent successful offeror.

On March 5, 2007, SDV Solutions, Inc., filed a protest, asserting Appellant was not owned and controlled by a service-disabled veteran.

On March 13, 2007, the Acting Director of the Small Business Administration (SBA or Agency) Office of Government Contracting (AD/GC) informed Appellant of the protest. The AD/GC informed Appellant of the specific protest allegations, and listed the information and documents which Appellant had to provide in order for the AD/GC to handle the protest. Appellant's submission was due on March 20, 2007.

Appellant failed to respond in any way to the AD/GC's letter. On March 29, 2007, the AD/GC issued his determination sustaining the protest, stating that, because Appellant had not responded to the protest, he must conclude Appellant did not meet the SDVO SBC eligibility requirements.

B. Appeal Petition

On April 11, 2007, Appellant filed the instant appeal of the AD/GC's decision with this Office. Appellant proffers information and documentation, in response to the AD/GC's original request. Mr. Brian Cooleen, a Member of Appellant, asserts that he was away from the office on business at the time of receipt of the March 13th letter, and his staff did not inform him of the deadline; otherwise he would have responded on time.²

On April 12, 2007, this Office issued a Notice and Order, directing Appellant to serve SBA and to clarify the timeliness of its appeal, and directing SBA to respond to the appeal and to submit the Protest File. On April 20, 2007, Appellant filed a certificate of service, and a pleading addressing the timeliness of its appeal.

² This statement, without context, led me to believe that the appeal petition itself was untimely. It is clear from the complete record, however, that this statement referred to the Appellant's lack of response to AD/GC's March 13th letter.

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C. SBA Response

On April 19, 2007, SBA responded to the Appeal and filed the Protest File. SBA asserts that the AD/GC's decision was correct and should be affirmed. Appellant failed to provide adequate justification for failure to respond to the protest. The regulation has strict time requirements, and Appellant failed to meet them. Therefore, the Agency argues, the AD/GC's decision was not based on clear error of fact or law.

II. DISCUSSION

A. Timeliness and Standard of Review

Appellant filed its Appeal Petition within 10 business days of receiving the AD/GC's determination, and thus the appeal is timely. 13 C.F.R. § 134.503.

The standard of review for SDVO SBC appeals is whether the AD/GC's protest determination was based on clear error of fact or law. 13 C.F.R. § 134.508; *Matter of Eason Enterprises OKC LLC*, SBA No. SDV-102, at 8 (2005). In determining whether there is a clear error of fact or law, OHA does not evaluate whether a concern met the eligibility requirements of 13 C.F.R. §§ 125.9 and 125.10 *de novo*. Rather, OHA reviews the record to determine whether the AD/GC based his decision upon a clear error of fact or law. 13 C.F.R. § 134.508; *See Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2006) (discussing the clear error standard which is applicable to size appeals and SDVO SBC appeals). Consequently, I will disturb the AD/GC's determination only if I have a definite and firm conviction the AD/GC erred in making a key finding of law or fact.

B. New Evidence

As a threshold matter, I EXCLUDE Appellant's proffered new evidence. The regulations explicitly limit review of an SDVO SBC determination to the written protest file before SBA at the time of the determination, and to the arguments on appeal. 13 C.F.R. § 134.512; *Matter of IITS-Nabholz, LLC*, SBA No. VET-114, at 7 (2007). It cannot be error on the part of the AD/GC to fail to consider a document not presented to him. Appellant's proffered evidence was not presented to the AD/GC in response to the protest and I will not consider it now.

C. Merits of the Appeal

The SDVO SBC protest process has certain specific and short timelines, in order to accommodate the Federal procurement process. If SBA determines that an SDVO SBC protest is timely, specific, and based upon protestable allegations, SBA will notify the protested concern of the protest and its right to submit information responding to the protest within 10 business days from the notice. 13 C.F.R. § 125.27(c). SBA has 15 business days from the receipt of the protest to determine the SDVO SBC status of any protested concern. 13 C.F.R. § 125.27(d).

Here, Appellant completely failed to respond in any way to the March 13th notification of the protest. Appellant did not merely let the 10 business days go by without submitting a timely substantive response, it did not even make any acknowledgement of the notification letter or request additional time to respond.

The AD/GC had no choice but to go forward and make the determination, and, in the absence of any evidence supporting Appellant's claim to be an SDVO SBC, to determine that Appellant was not an SDVO SBC. Appellant's excuse, that its senior manager was absent and the staff did not understand the letter and failed to notify the senior manager, is simply risible. If Appellant is a serious business, even if senior management is not present, it must be able to recognize and deal with important correspondence when it arrives. Otherwise, how could it credibly claim to be able to handle the tasks of contract administration?

Appellant has presented nothing to establish any clear error of fact or law in the AD/GC's determination, and therefore, I must DENY the instant appeal.

III. CONCLUSION

After reviewing the record, I find the written protest file supports the AD/GC's determination.

Appellant has failed to establish any clear error of fact or law in the AD/GC's decision. Accordingly, I must deny the instant Appeal Petition, and affirm the AD/GC's finding.

The AD/GC's determination is AFFIRMED and the appeal of Appellant, Meadowgate Technologies, LLC, is DENIED.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.515(b).

CHRISTOPHER HOLLEMAN
Administrative Judge