

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

IN THE MATTER OF:

JDDA/HBS Joint Venture

Appellant

Re: Diversified Ventures-SDV

Solicitation No. GS-06P-07-GXD-0004
General Services Administration
Office of Business & Support Services
Kansas City, Missouri

SBA No. VET-121

Decided: August 23, 2007

APPEARANCES

Terry L. Christopher, President, JDDA Facility Group, Inc., for Appellant.

Andrew P. Hallowell, Esq., Pargament & Hallowell, PLLC, Washington, D.C., for
Diversified Ventures-SDV.

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

DECISION

HOLLEMAN, Administrative Judge:

I. 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.

II. Issue

Whether the AA/GC's dismissal of an SDVO SBC protest for lack of specificity was
based on clear error of fact or law. *See* 13 C.F.R. § 134.508.

III. Background

A. Protest and the AA/GC Dismissal

On April 30, 2007, the General Services Administration (GSA) issued Solicitation No. GS-06P-07-GXD-0004 as a 100% Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside. The Contracting Officer (CO) designated North American Industry Classification System (NAICS) code 561720 (Janitorial Services) as the applicable NAICS code for this procurement, with a corresponding \$15 million size standard. On June 28, 2007, the CO notified unsuccessful offerors that the apparent successful offeror was Diversified Ventures-SDV (DV-SDV).

On July 5, 2007, JDDA/HBS Joint Venture (Appellant) filed a protest requesting “GSA to clarify how they determined DV-SDV’s status as a Service Disabled Veteran Owned Business and what relationship if any, does DV-SDV has [sic] with Tri-Ark Services.” Protest File, at 20. Appellant also protested other issues relating to contract performance and the process by which DV-SDV prepared its bid. On July 18, 2007, the CO forwarded Appellant’s protest to the Small Business Administration (SBA) Office of Government Contracting - Area II (Area Office) in Philadelphia, Pennsylvania and the SBA Associate Administrator for Government Contracting (AA/GC).

On August 6, 2007, the AA/GC dismissed the SDVO SBC portion of Appellant’s protest for lack of specificity. *See* 13 C.F.R. § 125.25(b).

B. Appeal Petition

On August 8, 2007, Appellant filed the instant appeal of the AA/GC’s dismissal of its protest with the Office of Hearings and Appeals (OHA). Appellant asserts that it is “appealing your [the AA/GC] decision to dismiss the protest as [Appellant] awaits the outcome of SBA Area 2 finding in regard to Diversified Ventures-SDV set-a-side [sic] status and company size.” Appellant contends that it “should have been notified of SBA’s findings and status of Diversified Ventures-SDV before you [AA/GC] dismissed the protest.”

C. SBA Response

On August 17, 2007, SBA responded to the Appeal. SBA asserts that the AA/GC was obligated to dismiss the protest under 13 C.F.R. § 125.27(b) because Appellant’s protest “did not present any specific information or allegations or provide any credible evidence regarding the SDVO SBC eligibility” of DV-SDV. Instead, Appellant’s protest merely requested clarification as to the manner in which the CO determined that DV-SDV was eligible to represent itself as an SDVO SBC. Further, SBA asserts that the Government Accountability Office is the more proper forum for Appellant’s protest allegations concerning bid preparation and contract performance. Accordingly, the SBA requests that the AA/GC’s dismissal of the protest be affirmed.

D. DV-SDV Response

On August 22, 2007, DV-SDV filed its Response. DV-SDV urges OHA to dismiss the appeal for three reasons. First, DV-SDV alleges that the Appeal is deficient under 13 C.F.R. § 134.505 because it fails to contain (a) the CO's contact information; (b) the date Appellant received the AA/GC determination; (c) a full and specific statement of clear error; and (d) Appellant's contact information, and instead only supplies Appellant's joint venture partner's contact information.

Second, DV-SDV contends the Appeal must be dismissed under 13 C.F.R. § 134.502 because it was not filed by the protestor, JDDA/HBS, but by the protestor's partner, JDDA Facility Group, Inc. Third, DV-SDV argues the Appeal fails to identify a clear error of law by alleging only that the AA/GC dismissed the protest before the Area Office issued its size determination; however, DV-SDV argues the AA/GC is under no obligation to await the outcome of the Area Office's size determination before issuing his determination.

IV. Discussion

A. Timeliness and Standard of Review

Appellant filed its Appeal Petition within 10 business days of receiving the AA/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 AA/GC's 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 AA/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 AA/GC's determination only if I have a definite and firm conviction the AA/GC erred in making a key finding of law or fact.

B. Merits of Appeal

As an initial matter, I note that many of the procedural service defects of the Appeal were corrected by a certificate of service filed pursuant to my August 10, 2007, Notice and Order. I also find DV-SDV's assertion that the Appeal must be dismissed under 13 C.F.R. § 134.502 because it was not filed by the protestor, JDDA/HBS, but by the protestor's partner, JDDA Facility Group, Inc., to be without merit. The Protest and Appeal were both filed by Mr. Christopher, President of JDDA Facility Group, Inc., on behalf of JDDA/HBS Joint Venture; accordingly, the Appeal was properly filed by the protestor under 13 C.F.R. § 134.502. I also note that while the Appeal Petition itself is not a model of specificity, its clarity defects do not rise to the level of a dismissal. Accordingly, I now turn to whether the AA/GC's dismissal of Appellant's protest for lack of specificity was based on a clear error of fact or law.

An SDVO SBC protest must be specific and a “protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations is insufficient.” 13 C.F.R. § 125.25(b). In addition, the AA/GC may only consider a protest that “presents specific allegations supporting the contention that the owner(s) cannot provide documentation from the VA, DoD, or the U.S. National Archives and Records Administration to show that they meet the definition of service disabled veteran...” and/or “presents credible evidence that the concern is not 51% owned and controlled by one or more service-disabled veterans.” 13 C.F.R. § 125.26.

In this case, Appellant’s protest regarding SDVO status merely asked “GSA to clarify how they determined DV-SDV’s status as a Service Disabled Veteran Owned Business and what relationship if any, does DV-SDV has [sic] with Tri-Ark Services.” Protest File, at 20. Appellant did not assert any specific facts but merely questioned the procuring agency on how it determined DV-SDV’s SDVO status. This unsupported query is not sufficiently specific to sustain a protest. 13 C.F.R. § 125.25(b).

Appellant also misunderstands the SDVO SBC appeal process. Appellant’s contention that the AA/GC should have awaited the outcome of the Area Office size determination before issuing his decision is meritless. Under 13 C.F.R. § 125.25(a), “If a protestor protests both the size of the SDVO SBC and whether the concern meets the SDVO SBC requirements set forth in § 125.15(a), SBA will process each protest concurrently, under the procedures set forth in part 121 of this chapter and this part [125].” Therefore, the regulations envision that the size and SDVO status determinations operate concurrently, or simultaneously; there is no requirement that the AA/GC issue his decision only after the Area Office issues its size determination. Indeed, the AA/GC’s analysis of whether a concern is more than 51% owned and controlled by a service-disabled veteran or whether the owner can provide documentation that he/she is a service-disabled veteran is a separate and independent issue from whether the concern is small. Further, only the SBA Government Contracting Area Director may issue a formal size determination. *See* 13 C.F.R. § 121.1002; 125.11(b). Accordingly, the AA/GC was under no obligation to await the Area Office’s size determination before issuing his dismissal.

V. Conclusion

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

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

The AA/GC’s dismissal of Appellant’s protest for lack of specificity is **AFFIRMED** and the Appeal is **DENIED**.

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

CHRISTOPHER HOLLEMAN
Administrative Judge