

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

IN THE MATTER OF:

Service Disabled Veteran Manufacturing &
ZAMS, Inc.

Appellant

RE: Medicalproducts, Ltd., Inc.

Solicitation No. SPM2DS-07-R-0009
Defense Logistics Agency
Defense Supply Center, Philadelphia

SBA No. VET-122

Decided: October 26, 2007

APPEARANCES

Frank Francois, III, CEO, Service Disabled Veteran Manufacturing & ZAMS, Inc.,
Alexandria, Virginia, for Appellant.

George A.L. Everson, Jr., President, Medicalproducts, Ltd., Inc., Eagle Pass, Texas, for
Medicalproducts, Ltd., Inc.

Kevin R. Harber, Esq., Office of General Counsel, Small Business Administration,
Washington, D.C., 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 Small Business Administration's Director for Government Contracting's
dismissal of a Service-Disabled Veteran-Owned Small Business Concern's 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 Director for Government Contracting's Dismissal

On May 14, 2007, the Defense Logistics Agency (DLA), Defense Supply Center Philadelphia issued Solicitation No. SPM2DS-07-R-0009 as a Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside. On August 29, 2007, an award was made to Medicalproducts, Ltd., Inc. (Medicalproducts). On September 6, 2007, the Contracting Officer (CO) notified unsuccessful offerors about the apparent successful offeror.

On September 6, 2007, Service Disabled Veteran Manufacturing & ZAMS, Inc. (Appellant) filed a protest stating:

It is our understanding that Medicalproducts, Inc., do not qualify as a Service Disabled Veteran Owned Small Business company under the provisions of the Federal Acquisition Regulation and the President's Service Disabled Veteran Executive Order, dated October 21, 2004. We hereby protest this award that was made to the above mentioned firm as they are not in compliance with SDVOSB provisions.

Protest File, at 16.

On September 11, 2007, the CO forwarded Appellant's protest to the Small Business Administration's Director for Government Contracting (DGC).

On September 28, 2007, the DGC dismissed Appellant's SDVO SBC protest for lack of specificity. *See* 13 C.F.R. § 125.25(b).

B. Appeal Petition

On October 12, 2007, Appellant filed the instant appeal of the DGC's dismissal of its SDVO SBC protest with the Office of Hearings and Appeals (OHA). Appellant provides additional information to support its SDVO SBC protest. Appellant states Medicalproducts was a woman-owned company which teamed with a SDVO SBC company to bid on government contracts. Appellant states Medicalproducts should not be awarded an SDVO SBC contract without demonstrating that it is owned and controlled by a person who has a service-connected disability. Specifically, Appellant asserts Medicalproducts must provide evidence the company is 51%, or more, owned and controlled by an individual who has been declared by the Veterans Administration to be a service-disabled veteran with a service-connected disability.

C. Medicalproducts Response

On October 23, 2007, Medicalproducts filed a Response. Medicalproducts represented that it is owned and controlled by a service disabled veteran. Medicalproducts attached documentation to support its assertions, including: a copy of two Veterans Administration compensation award letters and a copy of articles of incorporation for Medicalproducts.

D. SBA Response

On October 23, 2007, SBA responded to the Appeal. SBA asserts that the DGC was obligated to dismiss the protest under 13 C.F.R. § 125.27(b) because Appellant's protest simply stated a belief that Medicalproducts was not an eligible SDVO SBC and Appellant "did not submit any credible evidence or specific facts or allegations in support of this bare assertion." SBA Response, at 5. SBA argues the regulations clearly require Appellant to present specific allegations concerning one or more areas of SDVO SBC eligibility. SBA asserts due to Appellant's failure to meet the minimum requirements of an SDVO SBC protest, the protest is fatally flawed.

Moreover, SBA argues OHA may not consider the new allegations presented by Appellant on appeal. SBA relies on regulation and case law to assert that OHA's review of the DGC's determination is limited to the evidence before the DGC at the time he dismissed the protest. Accordingly, SBA requests the DGC's dismissal of the protest be affirmed.

IV. Discussion

A. Timeliness and Standard of Review

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

B. Merits of Appeal

As an initial matter, I note Appellant corrected the procedural service defects of the Appeal by filing a certificate of service on October 18, 2007, pursuant to my October 16, 2007 Notice and Order. Accordingly, I now turn to whether the DGC'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 DGC 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 merely stated that Medicalproducts does not qualify as a SDVO SBC under the provisions of the Federal Acquisition Regulation and the President’s Service Disabled Veteran Executive Order. Protest File, at 16. Appellant did not assert any specific concerns or facts but merely asserted a protest of Medicalproducts for failure to comply with SDVO SBC provisions. These statements are not sufficiently specific to sustain a protest. 13 C.F.R. § 125.25(b).

Due to the disposition of this case, it is unnecessary to rule on Appellant’s or Medicalproducts proffered new evidence.

V. Conclusion

After reviewing the record, I find the written protest file supports the DGC’s determination.

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

The DGC’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