

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

IN THE MATTER OF:

Gonneville, Inc.

Appellant

RE: A1-Veterans Imaging Supplies

Solicitation No. AG-645S-P-08-0018
Department of Agriculture
Farm and Foreign Agricultural Services
Kansas City, Missouri

SBA No. VET-125

Decided: March 5, 2008

APPEARANCES

Don Gonneville, President, Gonneville, Inc., San Juan Capistrano, California, for Appellant.

Harold Meeks, Managing Director of A1-Veterans Imaging Supplies, Sherman Oaks, California, for A1-Veterans Imaging Supplies.

Sam Q. Le, Esq., Office of General Counsel, Small Business Administration, Washington, D.C., for the Agency.

DECISION

PENDER, 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 Director for Government Contracting for the U.S. Small Business Administration made a clear error of fact or law in dismissing Appellant's protest for lack of specificity. *See* 13 C.F.R. §§ 125.27(b), 134.508.

III. Background

A. Protest and Director for Government Contracting Determination

On January 22, 2008, the U.S. Department of Agriculture, Farm and Foreign Agricultural Services, Kansas City, Missouri, issued Solicitation No. AG-645S-P-08-0018 as a total Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside. On February 4, 2008, the Contracting Officer (CO) notified unsuccessful offerors that A1-Veterans Imaging Supplies (A-1) was the successful offeror.

On February 4, 2008, Gonneville, Inc. (Appellant) filed a protest stating “there is reason to believe that [A-1] is in fact not a service-disabled veteran-owned business, as defined in 38 U.S.C. 101(2), 38 U.S.C. 101(16), and FAR 52-219-1(c).” Appellant stated that A-1 was not certified as a SDVO SBC by the California Department of General Services and its website does not mention its disabled-veteran status. Appellant then requested confirmation of A-1’s status as a SDVO SBC before final award of the contract.

On February 5, 2008, the CO forwarded Appellant’s protest to the Small Business Administration’s (SBA) Director for Government Contracting (D/GC).

On February 12, 2008, the D/GC dismissed Appellant’s protest for lack of specificity because Appellant’s protest did not allege specific facts showing A-1 did not qualify as a SDVO SBC, in accordance with 13 C.F.R. § 125.27(b).

B. Appeal Petition

On February 19, 2008, Appellant filed the instant appeal of the D/GC’s dismissal with the SBA Office of Hearings and Appeals (OHA). Appellant asserts 13 C.F.R. § 125.27(b) allows a non-specific protest to “be accepted if the protest contains protestable allegations.” Appellant then reiterates its protest allegations and adds that A-1 has not registered for any California Disabled Veteran Business Alliance events.

C. A-1 Response

On February 22, 2008, A-1 filed its Response. A-1 disputes Appellant’s protest allegations by noting that it is not mandatory for A-1 to (1) be certified by the California Department of General Services; (2) be listed as an SDVO SBC on its website; or (3) attend or participate in California Disabled Veteran Business Alliance events. A-1 argues the protest is baseless and urges OHA to affirm the D/GC’s dismissal.

On February 26, 2008, Appellant filed a reply. I cannot consider Appellant’s reply since I must decide SDVO SBC appeals “solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.” 13 C.F.R. § 134.512.

D. SBA Response

On February 28, 2008, SBA filed its Response to the Appeal. SBA contends the D/GC's dismissal was not based on a clear error of fact or law and should be upheld. SBA asserts that Appellant's allegations were non-protestable. Specifically, neither state certification nor business website advertising is a requirement of SDVO SBC status. SBA contends Appellant's protest was silent on the protestable issues of A-1's ownership, control, and ownership's disabled-veteran status. Given the lack of protestable allegations, SBA asserts the D/GC was required to dismiss the protest.

IV. Discussion

A. Timeliness and Standard of Review

Appellant filed its Appeal Petition within 10 business days of receiving the D/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 D/GC's determination was based on clear error of fact or law. 13 C.F.R. § 134.508. 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 D/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 in the context of a size appeal). Consequently, I will disturb the D/GC's determination only if I have a definite and firm conviction the D/GC erred in making a key finding of law or fact.

B. Protest Specificity

A 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 D/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.

Appellant's protest fails to comply with 13 C.F.R. § 125.26. Appellant failed to: (1) Make any allegations concerning A-1's disabled veteran's status; or (2) Present credible evidence that A-1 is not owned or controlled by a service-disabled veteran.

Instead, Appellant's protest alleged A-1 lacked state certification and did not advertise its SDVO SBC status on its website. However, neither state certification nor website advertising is an eligibility requirement for the SDVO SBC Program. *See* 13 C.F.R. §§ 125.9, 125.10. Accordingly, Appellant's allegations are irrelevant and insufficient to constitute a specific

protest.

Based upon the foregoing, I conclude 13 C.F.R. § 125.27(b) compelled the D/GC to dismiss Appellant's protest for lack of specificity.

V. Conclusion

After reviewing the record, I hold the written protest file supports the D/GC's dismissal of Appellant's protest. Therefore, Appellant has failed to establish any clear error of fact or law in the D/GC's decision. Accordingly, I must DENY the instant Appeal and AFFIRM the D/GC's dismissal of Appellant's protest.

The D/GC's determination 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).

THOMAS B. PENDER
Administrative Judge