Cite as: *Matter of Singleton Enterprises-GMT Mechanical, A Joint Venture,* SBA No. VET-133 (2008)

United States Small Business Administration
Office of Hearings and Appeals

IN THE MATTER OF:	
Singleton Enterprises-GMT Mechanical, A Joint Venture	SBA No. VET-133 (PFR) No. VET-130
Appellant	Decided: May 5, 2008
Petition for Reconsideration of SBA No. VET-130 Solicitation No. VA-249-07-IB-0058 Department of Veterans Affairs Medical Center Lexington, Kentucky	

ORDER DENYING PETITION FOR RECONSIDERATION[1]

I. Background

On August 21, 2007, the U.S. Department of Veterans Affairs (VA) issued invitation for bids (IFB) No. VA-249-07-IB-0058. The IFB was issued as a total Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside. On September 25, 2007, Singleton Enterprises-GMT Mechanical, A Joint Venture (Appellant) submitted its bid.

Appellant is a joint venture established on June 11, 2007. Appellant is composed of two sole proprietorships: GMT Mechanical (GMT), an alleged SDVO SBC, and Singleton Enterprises (Singleton), a non-SDVO SBC. Gary Thompson, a service disabled veteran, is the owner of GMT and Arthur Singleton, a non-service disabled veteran, is the owner of Singleton. Appellant is fifty-one percent owned by Mr. Thompson and forty-nine percent owned by Mr. Singleton.

On January 25, 2008, the VA Contracting Officer (CO) protested Appellant's SDVO SBC status with the Small Business Administration's (SBA) Director for Government Contracting (D/GC). On February 20, 2008, the D/GC issued a determination finding that both GMT and Appellant failed to meet the SDVO SBC eligibility requirements at the time of offer for the instant solicitation.

[1] 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.

The D/GC first examined GMT's SDVO SBC eligibility. The D/GC found GMT complied with 13 C.F.R. §§ 125.8 and 125.9 as Mr. Thompson is a service-disabled veteran and GMT's owner. However, the D/GC found GMT failed to comply with 13 C.F.R. § 125.10 because Mr. Thompson does not control GMT. Specifically, the D/GC found GMT was "wholly reliant upon its joint venture with Singleton Enterprises and that firm's principal, Mr. Singleton." Determination, at 4. Thus, Mr. Thompson cannot exercise independent business judgment over GMT without great economic risk because a non-service disabled veteran, Mr. Singleton, has the power to control GMT. The D/GC found GMT reliant on Singleton because (1) Appellant and Singleton share office space, a telephone number, and a fax number; (2) Mr. Singleton possesses more than thirty years of construction experience while Mr. Thompson possesses no construction experience; (3) GMT does not conduct any business or receive any revenue as an independent concern; and (4) Mr. Singleton prepared and submitted all of Appellant's (the joint venture) bids.

The D/GC then examined Appellant's SDVO SBC eligibility as a joint venture. First, the D/GC found Appellant failed to meet the joint venture eligibility requirement imposed by 13 C.F.R. § 121.103(h) by submitting more than three offers as a joint venture over a two year period.

The D/GC then found Appellant did not qualify as a joint venture under 13 C.F.R. § 125.15(b) because GMT failed to satisfy all the SDVO SBC eligibility requirements and Singleton is admittedly not a SDVO SBC. The D/GC then discussed the requirement in 13 C.F.R. § 125.15(b)(2)(ii) that an SDVO SBC serve as the managing venturer and an employee of an SDVO SBC serve as the project manager. Appellant's August 13, 2007 joint venture agreement lists GMT as the managing venturer but lists Mr. Singleton, who is not an employee of GMT, as a potential project manager. Accordingly, the D/GC found Appellant failed to satisfy the joint venture eligibility requirements in 13 C.F.R. § 125.15(b)(2)(ii).

Thus, the D/GC found that both GMT and Appellant failed to meet the SDVO SBC requirements established by 13 C.F.R. § 125.8 *et seq*., and Appellant was ineligible to receive an award under the subject solicitation. Further, the D/GC stated that both GMT and Appellant were prohibited from submitting offers on future SDVO SBC procurements unless the determination is overturned on appeal or relief is granted under 13 C.F.R. § 125.27(g).

On March 5, 2008, Appellant appealed the D/GC's determination with the SBA Office of Hearings and Appeals (OHA).

On March 27, 2008, I issued *Matter of Singleton Enterprises-GMT Mechanical, A Joint Venture*, SBA No. VET-130 (2008), affirming the D/GC's finding that GMT and Appellant are ineligible SDVO SBCs. I also found: (1) the D/GC's finding with regard to Appellant's August 13, 2007 Joint Venture Agreement was clearly in error because a different joint venture agreement was submitted on the instant bid; and (2) the D/GC's discussion of the eligibility of Appellant pursuant to 13 C.F.R. § 121.103(h) was clearly in error because it was outside the D/GC's jurisdiction and I remanded that part of the determination and ordered the D/GC to refer Appellant's compliance with 13 C.F.R. § 121.103(h) to the responsible SBA Government Contracting Area Director.

On April 16, 2008, Appellant filed a petition for reconsideration (PFR) of my decision. Appellant argues I made a clear error of fact and law in affirming the D/GC's determination that GMT is an ineligible SDVO SBC. Appellant argues the CO protested Appellant's SDVO SBC status and not GMT's SDVO SBC status. Therefore, OHA erroneously upheld the D/GC's finding that GMT is an ineligible SDVO SBC when GMT did not submit an offer and was not the protested concern.

II. Timeliness and Standard of Review

Appellant filed its PFR within 20 days of the service of my decision, and thus filed timely. 13 C.F.R. § 134.515(b).

SBA's regulations provide that OHA may grant a petition for reconsideration upon a clear showing of an error of fact or law material to the decision. 13 C.F.R. § 134.515(b). This is a rigorous standard. The moving party's argument must leave the Administrative Judge with the definite and firm conviction that key findings of fact or conclusions of law of the earlier decision were mistaken.[2]

In addition to the regulatory standard, there is a relevant body of decisional law applicable to motions for reconsideration. Such motions must be considered with exceptional care. *Seldovia Native Ass'n, Inc. v. United States*, 36 Fed. Cl. 593, 594 (1996) (quoting *Carter v. United States*, 207 Ct. Cl. 316, 318 (1975)), *aff'd*, 144 F.3d 769 (Fed. Cir. 1998). The decision of whether to grant reconsideration lies largely within the adjudicatory body's discretion. *See Yuba Natural Res., Inc. v. United States*, 904 F.2d 1577, 1583 (Fed. Cir. 1990).

A petition for reconsideration must be based upon manifest error of law, or mistake of fact, and is not intended to give an unhappy litigant an additional chance to sway OHA. *See* 13 C.F.R. § 134.227(c); *see Bishop v. United States*, 26 Cl. Ct. 281, 286 (1992). A petition for reconsideration is appropriate only in limited circumstances, such as situations where OHA has misunderstood a party, or has made a decision outside the adversarial issues presented by the parties. *See Quaker Alloy Casting Co. v. Gulfco Industries, Inc*., 123 F.R.D. 282, 288 (N.D. Ill. 1988) (quoting *Above The Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)).

A movant may not merely recapitulate the cases and arguments OHA considered before rendering its original decision, or attempt a rehearing based upon the evidence previously presented. *Fru-Con Constr. Corp. v. United States*, 44 Fed. Cl. 298, 301 (1999). The purpose of a petition for reconsideration is not to revisit previously considered issues or to rehash original arguments. *Id*.

[2] For a discussion of the "clear error" standard, see *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11-12 (2006).

III. Merits of the PFR

Appellant fails to present any clear error of fact or law in my decision. Instead, Appellant argues that GMT's SDVO SBC status determination should have been reversed because only Appellant's (the joint venture's) SDVO SBC status was challenged.

Appellant's argument, however, misapprehends the law. In order for a joint venture to qualify for an SDVO SBC set-aside, one the joint venture partners must be an eligible SDVO SBC. 13 C.F.R. § 125.15(b). Therefore, Appellant's eligibility necessarily depended upon GMT's eligibility as an SDVO SBC (Singleton is an acknowledged non-SDVO SBC). Accordingly, the D/GC properly evaluated GMT's SDVO SBC status and did not commit a clear error. Thus, my decision upholding the D/GC's determination with regard to GMT's SDVO SBC status was not clearly erroneous.

IV. Conclusion

I find Appellant has not made a clear showing of an error of fact or law material to the *Matter of Singleton Enterprises-GMT Mechanical, A Joint Venture*, SBA No. VET-130 (2008) decision. Accordingly, I DENY Appellant's Petition for Reconsideration.

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THOMAS B. PENDER
Administrative Judge