

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

IN THE MATTER OF:

Cambridge Federal Solutions, LLC

Appellant

Solicitation No. FA3047-07-R-0030

U.S. Department of the Air Force
Lackland Air Force Base, Texas

SBA No. VET-135

Decided: June 2, 2008

APPEARANCES

Andrew P. Hallowell, Esq., Pargament & Hallowell, PLLC, Washington, D.C., for Appellant.

Sam Q. Le, Esq., U.S. Small Business Administration, Office of General Counsel, 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 Acting Director for Government Contracting for the U.S. Small Business Administration made a clear error of fact or law in determining that Cambridge Federal Solutions, LLC is an ineligible Service-Disabled Veteran-Owned Small Business Concern. *See* 13 C.F.R. § 134.508.

III. Background

On June 15, 2007, the U.S. Department of the Air Force, Lackland Air Force Base, issued Request for Proposals No. FA3047-07-R-0030 (RFP) as a total Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside. On December 14, 2007, Cambridge Federal

Solutions, LLC (Appellant) submitted its offer. Protest File (PF), Tab 16, at 1.

On March 5, 2008, the Contracting Officer (CO) notified unsuccessful offerors that the apparent successful offeror was Appellant. PF, Tab 16, at 1. On March 11, 2008, Catalyst Professional Services, Inc. protested both Appellant's size and SDVO status with the CO. PF, Tab 15, at 1. On March 11, 2008, Angel Staffing protested Appellant's size and SDVO status with the CO. PF, Tab 16, at 3. On March 12, 2008, the CO forwarded the SDVO protests to the Small Business Administration's (SBA) Office of Government Contracting. PF, Tab 16, at 1.

On March 17, 2008, the Acting Director for Government Contracting (AD/GC) notified Appellant of both protests. PF, Tabs 12, 13. The AD/GC requested documents from Appellant demonstrating that it was 51% unconditionally and directly owned and controlled by one or more service-disabled veterans at the time of Appellant's offer. *Id.* The AD/GC instructed Appellant to provide these documents within five business days from receipt of SBA's letter. PF, Tab 12, at 2; Tab 13, at 2. The AD/GC also notified Appellant that any response to the protests must be received by the SBA no later than the close of business on March 21, 2008. PF, Tab 12, at 4; Tab 13, at 4.

On April 2, 2008, the AD/GC issued a determination finding Appellant failed to meet the SDVO SBC eligibility requirements at the time of offer for the instant solicitation. PF, Tab 4. The AD/GC found that Appellant did not submit the documentation that would establish its SDVO SBC eligibility within the ten business day period (by March 31, 2008) provided in 13 C.F.R. § 125.27(c)(1). PF, Tab 4, at 4. Accordingly, the AD/GC found Appellant an ineligible SDVO SBC.

On April 4, 2008, Appellant filed an appeal of the AD/GC's determination with the SBA Office of Hearings and Appeals (OHA). Appellant asserted that the AD/GC's determination was based on a clear error of fact because Appellant submitted the documentation referenced in the determination via email on March 28, 2008, and again on April 1, 2008.

On April 18, 2008, I found Appellant submitted the documentation within ten business days from notice of the protest as required by 13 C.F.R. § 125.27(c)(1) and remanded the case to the AD/GC for a new SDVO SBC determination on the merits. I ordered the AD/GC to allow Appellant to resubmit any missing documentation. *See Matter of Cambridge Federal Solutions, LLC*, SBA No. VET-131 (2008).

On April 24, 2008, Appellant submitted the following documents to the AD/GC: (1) Mr. Jones's (Appellant's principal) VA Disability Approval Letter; (2) Appellant's Operating Agreement (effective date January 1, 2005); (3) Appellant's Sublease Agreement; (4) Appellant's Virginia business license application; and (5) Mr. Jones's resume. PF, Tab 3.

IV. AD/GC Determination on Remand

On April 29, 2008, the AD/GC issued a determination on remand finding Appellant was not controlled by a service-disabled veteran at the time of offer, and therefore was not an eligible SDVO SBC. PF, Tab 1. The AD/GC found that Appellant's Operating Agreement (Sections

3.3.1 and 6.1) granted Cambridge Systems, Inc. (Cambridge) and its President, Mr. Suresh Doki, the power to manage Appellant's day-to-day business operations, and thus control Appellant. Therefore, because Mr. Jones is the only service-disabled veteran listed in Appellant's filings, the AD/GC found Appellant violated 13 C.F.R. § 125.10, which requires that a service-disabled veteran conduct the day-to-day management and administration of a SDVO SBC's business operations.

V. Appeal Petition

On May 13, 2008, Appellant filed the instant appeal at OHA. Appellant contends it did not supply any amendments to its Operating Agreement, which would have established that Mr. Jones (the service-disabled veteran owner) controlled Appellant, because SBA failed to request these documents. Appellant attached a December 1, 2006 Resolution that amends Appellant's Operating Agreement by removing Mr. Doki from his position as Appellant's manager and appointing Mr. Jones as Appellant's manager. Appellant also argues that its initial March 21, 2008 response to the protests "repeatedly emphasized" that Mr. Jones solely managed Appellant's daily business operations. Alternatively, Appellant argues that despite the requirement in Appellant's Operating Agreement that all amendments be in writing, Virginia law allows oral agreements to modify a written contract. Thus, Mr. Jones had the authority to amend the Operating Agreement at any time without a written instrument. Appellant thus maintains that "SBA had no basis on which to require that a *written* document be presented as 'proof' that the Operating Agreement had been amended" and should have relied on statements made in Appellant's March 21, 2008 response to the protests. Appeal Petition, at 8.

VI. SBA Response

On May 22, 2008, the SBA filed its Response and the Protest File. SBA argues the AD/GC's decision should be affirmed because the AD/GC's conclusion that Appellant is not controlled by a service-disabled veteran is supported by the record. SBA asserts it asked for not only Appellant's Operating Agreement, but also for "evidence demonstrating that [the concern] is controlled by one or more [service-disabled veterans]." Response, at 5 (citing PF, Tab 13, at 2-3). Despite this request, Appellant submitted an old version of its Operating Agreement. SBA asserts that "it does not take a law degree to understand that, when SBA asks for documentation to support a firm's status at time of offer, SBA seeks documents that were in effect at that time." Response, at 6.

SBA then asserts that Appellant cannot cure its submission failure to the AD/GC by submitting new evidence at the appeal level. 13 C.F.R. § 134.512. Further, even if Appellant had submitted its most current Operating Agreement to the AD/GC, SBA argues the AD/GC "still may have concluded that [Cambridge] has the power to manage and control Appellant." Response, at 7 (citing PF, Tab 3, at 27; Tab 11, at 29).

Finally, SBA argues that the AD/GC did not commit a clear error of fact or law in believing "that the document Appellant presented as its Operating Agreement was, in fact, the document that governed Appellant's operations at time of offer." Response, at 8.

VII. 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 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 AD/GC based her 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 that 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. Merits of the Appeal

Appellant argues SBA is at fault for Appellant's failure to submit the most current version of its Operating Agreement establishing Appellant's control by a qualified service-disabled veteran because SBA did not make clear it wanted the most current version of Appellant's Operating Agreement. Alternatively, Appellant argues the AD/GC should have ignored the specific terms of Appellant's Operating Agreement and found instead that Mr. Jones, a service-disabled veteran, controlled Appellant as discussed in Appellant's March 21, 2008 response to the protests.

After a protestor presents credible evidence that a concern is not 51% owned and controlled by a service-disabled veteran (13 C.F.R. § 125.26(b)), the concern whose SDVO SBC status is being questioned has to then prove it is indeed at least 51% owned and controlled by one or more service-disabled veterans. The protested concern is the only entity with control over its operating documents and thus the ability to prove its SDVO SBC status. When the SBA asks for evidence from a protested concern to prove ownership and control by a service-disabled veteran, it is only logical that the SBA would rely on whatever evidence the protested concern submits. Consequently, I find the fault for not providing the current Operating Agreement could only have been Appellant's own. It is not clear error for the AD/GC to believe that the document Appellant presented as its Operating Agreement was, in fact, Appellant's Operating Agreement effective at the time of offer. Further, Appellant cannot cure its failure to submit the appropriate document to the AD/GC by submitting it at the appeal level because 13 C.F.R. § 134.512 limits OHA's review to the evidence in the written protest file that was actually before the AD/GC.

I also find problematic Appellant's argument that the AD/GC should accept its March 21, 2008 response as sufficient proof that Mr. Jones controlled Appellant. It would be an abuse of the AD/GC's discretion to find Appellant's assertions in its protest response contradicted the specific terms of its Operating Agreement, especially when the response did not indicate in any

way that it was amending the Operating Agreement.

Accordingly, because the Operating Agreement in the record specifically establishes a person other than a service-disabled veteran manages Appellant, I find that it could not be a clear error for the AD/GC to rely upon it and conclude Appellant was not controlled by a service-disabled veteran as required by 13 C.F.R. § 125.10.

VIII. Conclusion

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