

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

IN THE MATTER OF:

Savant Services Corporation

Appellant

RE: Teracore, Inc.

Solicitation No. HSHQDC-08-R-00038
Department of Homeland Security

SBA No. VET-154

Decided: August 6, 2009

APPEARANCES

Edward J. Ziek, President, Savant Services Corporation, for Appellant.

Christopher R. Clarke, Esq., Office of General Counsel, Small Business Administration.

Janine S. Benton, Esq., Kathy C. Potter, Esq., Benton Potter & Murdock, P.C., Falls Church, Virginia, for Teracore, Inc.

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 SBA's Director for Government Contracting made a clear error of fact or law in dismissing Appellant's protest for lack of specificity.

III. Background

A. Protest and Protest Determination

The Department of Homeland Security (DHS) set aside Solicitation No. HSHQDC-08-R-00038 (the RFP) for Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBCs). On June 19, 2009, the Contracting Officer (CO) for DHS gave notice that the apparent successful offeror for the RFP was Teracore, Inc. (Teracore).

On June 26, 2009, Savant Services Corporation (Appellant) filed a protest with the CO alleging that Teracore was not an eligible SDVO SBC at the time Teracore submitted its offer. Appellant asserts Teracore was not registered on the Department of Veterans Affairs (VA) website for SDVO SBCs. Appellant asserts this is the only public source for information as to which firms are eligible SDVO SBCs. Accordingly, Appellant asserted Teracore cannot be an SDVO SBC, as it is not listed on VA's website.

On June 29, 2009, the CO forwarded the protest to the Small Business Administration (SBA) Director for Government Contracting (D/GC).

On July 7, 2009, the D/GC dismissed Appellant's protest for lack of specificity. The D/GC noted that the instant solicitation is not a VA solicitation, and while firms may need to be registered in the VA database to bid on VA procurements, there is no similar requirement that they register to bid on other agencies' procurements.

On July 8, 2009, Appellant received the determination dismissing its protest, and on July 13, 2009, Appellant filed the instant appeal.

B. The Appeal

Appellant asserts this procurement is set aside for SDVO SBCs and that it is vital that only eligible firms receive awards. Appellant quotes a letter from a previous SBA Administrator which states that SBA is coordinating with the VA to develop a process to validate the service-connected disability status of self-certified service-disabled veterans. Appellant asserts that the VA's VetBiz database represents the only public source of SBVO SBCs which is not self-certified. Appellant relies on *Matter of Veterans Construction Services, LLC*, SBA No. SDV-103 (2005) (*Veteran Construction*) in support of its argument that a statement that a firm is not on VetBiz is sufficiently specific to support a protest.

Appellant further asserts that a review of Teracore reveals a discrepancy between the listed owner of the concern on VetBiz and the listed owner of the concern on the Teracore website and Georgia state records. Appellant presents this, and other new evidence for consideration in support of its appeal.

C. SBA's Response to the Appeal

On July 22, 2009, 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 argues that for a protest to be sufficiently specific, it must specify all the grounds on which a protest is based and contain information and allegations as to whether the challenged firm is eligible. SBA argues that *Veteran Construction* is inapposite, because it dealt specifically with a VA procurement and emphasized the benefits granted to businesses that contract with the VA if they were registered in the database at that time. These issues are not present in this case.

SBA requests OHA take judicial notice of the VetBiz database. The database contains information on two discrete groups of SDVO SBCs. These firms self-certify their status. The VA does not require any additional information from these firms and does not verify the information they submit. The other group is firms certified by VA pursuant to 38 C.F.R. Part 74. These firms are eligible for special contracting opportunities granted to VA. These opportunities are not available at any other Federal agencies. While firms may need to be registered to be eligible to bid on certain set-asides for VA procurements, there is no such requirement for procurements issued by other Federal agencies.

SBA argues that finding Appellant's protest specific would create a new requirement for the SDVO program, without having properly issued a regulation to establish that rule.

SBA asserts there is no requirement to register on the VA database to be eligible for SDVO procurements. That requirement is only for VA's special contracting opportunities. Therefore, an allegation Teracore is not registered does not raise an issue as to the firm's eligibility. SBA further asserts that Appellant's new evidence and allegations must be excluded.

D. Teracore's Response to the Appeal

On July 22, 2009, Teracore responded to the appeal. Teracore argues that registering with the VA's VetBiz site is completely voluntary, and thus failure to register does not support an allegation a concern is ineligible. Further, the database also includes self-certified firms and thus is not limited to firms certified by the VA. Teracore also argues *Veteran Construction* is inapposite because it dealt with a VA procurement. Teracore further asserts that Appellant's new evidence and allegations must be excluded.

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; *Matter of Eason Enterprises OKC LLC*, SBA No. SDV-102, at 8 (2005) (*Eason*). 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 which is applicable to size appeals and SDVO SBC appeals). 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. New Evidence

The new evidence Appellant seeks to submit is EXCLUDED. Evidence beyond the written protest file may not be considered in SDVO SBC appeals. *Matter of Nelco Diversified, Inc.*, SBA No. VET-140 (2008); 13 C.F.R. § 134.512.

C. 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, Department of Defense, 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.

Here, Appellant argues that stating that Teracore was not listed on the VA's website meets the requirements. Appellant relies on *Veteran Construction* to support this argument. However, that case is inapposite here. *Veteran Construction* concerned one of VA's own procurements. It also predated the passage of Public Law 109-461 in 2006. Pub. L. 109-461, 120 Stat. 3431. This statute changed the nature of VetBiz. The statute creates special contracting opportunities for SDVO SBCs, and provides that concerns may receive award under the statute *only* if they are registered on the VetBiz database. 38 U.S.C. § 8127. However, the instant procurement is a Department of Homeland Security procurement, and thus registration on VetBiz is not required. The VetBiz list is not, and is not meant to be, an exhaustive list of SDVO SBCs. While being present on the VA's website register is evidence that a firm is an eligible SDVO SBC, its absence from the list is no evidence that it is ineligible, merely that it has registered on this particular list. Therefore, Appellant's being unable to locate Teracore on the list is not evidence that the firm is ineligible.

To find that Appellant's protest was sufficiently specific, based merely upon an allegation that Teracore was not registered on VetBiz, would be to in effect impose a new requirement not enumerated in the regulation. There is no authority to support this.

Appellant's protest merely stated that Teracore was not listed on VetBiz. This, in itself, does nothing to establish that the firm is in any way not owned and controlled by a service-disabled veteran, and thus an ineligible SDVO SBC. 13 C.F.R. § 125.26. Accordingly, the D/CG properly dismissed the protest as insufficiently specific. 13 C.F.R. § 125.27(b).

Appellant has failed to meet its burden of proof, and I must dismiss its appeal. *Matter of Gonneville, Inc.*, SBA No. VET-125 (2008).

V. Conclusion

After reviewing the record, I conclude 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).

CHRISTOPHER HOLLEMAN
Administrative Judge