

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

IN THE MATTER OF:

One Step Ahead Enterprises, LLC

Appellant

RE: MB Transportation d/b/a/ MLB

Solicitation No. VA-247-09-RP-0181

SBA No. VET-155

Decided: August 24, 2009

APPEARANCES

A.L. Lamb, President and Chief Executive Officer, One Step Ahead Enterprises, LLC, Decatur, Georgia, for Appellant.

Kevin R. Harber, Office of General Counsel, Small Business Administration, Washington, D.C., for the Agency.

DECISION

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 dismissing One Step Ahead Enterprises, LLC's protest for lack of specificity. *See* 13 C.F.R. §§ 125.27(b), 134.508.

III. Background

A. Protest and Acting Director for Government Contracting Determination

On March 27, 2009, the U.S. Department of Veterans Affairs (VA), Augusta, Georgia, issued Solicitation No. VA-247-09-RP-0181 as a total Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside. On June 22, 2009, the Contracting Officer (CO) notified unsuccessful offerors that MB Transportation d/b/a/ MLB (MLB) was the successful offeror.

On June 25, 2009, One Step Ahead Enterprises, LLC (Appellant) filed an SDVO SBC status protest of MLB. Appellant outlined the elements that were the basis of its protest: (1) that the person upon whom eligibility is based must have been determined by the Department of Veterans Affairs or Department of Defense to have a service-connected disability; (2) that the person upon whom eligibility is based must hold the highest officer position; and (3) that the person upon whom eligibility is based must own 51% of the SDVO SBC. Appellant stated:

We note that the solicitation allowed for self-certification and did not request confirmation. We DO note that the company did NOT represent itself as service disabled veteran EXCEPT AFTER the original solicitation was cancelled and the new one issued as a set aside for Service Disabled Veteran. It is our belief that the principal of the firm awarded the contract is NOT a service disabled veteran based upon the above stated elements. We would urge that the contracting officer request proof of service disabled veteran status, AND that that individual holds the highest position within the company as demonstrated through human resource records and policies, corporate resolutions, business cards, and representation to the public.

Protest, at 6.

Appellant also alleged:

We protest the “unconditional” controlling interest of the company by the service disabled veteran. We would urge the contracting officer to review corporate records, public records, capital contributions, owner equity, stock ledgers, corporate resolutions etc. to substantiate the “unconditional” ownership.

Id.

On July 1, 2009, the CO forwarded Appellant’s protest to the Small Business Administration (SBA) Office of Government Contracting.

On July 28, 2009, the Acting Director for the Office of Government Contracting (AD/GC) dismissed Appellant’s protest for lack of specificity. The AD/GC stated Appellant’s protest lacked specificity because it states that MLB is not a qualified SDVO SBC without articulating any underlying factual basis for that statement, in accordance with 13 C.F.R. § 125.27(b).

B. Appeal Petition

On August 7, 2009, Appellant filed the instant appeal of the AD/GC’s dismissal with the SBA Office of Hearings and Appeals (OHA). Appellant cites 13 C.F.R. § 125.25(b), 38 U.S.C § 101 (16), 13 C.F.R. § 125.9, Department of Veterans Affairs Verification Guidelines, and 13 C.F.R. § 125.25(h). Appellant argues its protest specified the grounds on which the protest was based: “51% ownership, and ‘unconditional control’ by a service disabled veteran owned individual or group of individuals.” Appellant states its protest is an allegation and meets the

requirements of 13 C.F.R. § 125.25(b). Appellant also argues the inconsistency in MLB's ownership, as listed on Vet Biz Registry and in correspondence issued by the Office of Government Contracting, indicates ownership is not unconditional.

C. SBA Response

On August 18, 2009, SBA filed its response to the appeal. SBA contends the AD/GC's dismissal was not based on a clear error of fact or law and should be upheld. SBA asserts that Appellant provided no factual basis for its belief that MLB was not a qualified SDVO SBC. SBA argues Appellant was protesting that the VA allowed for self-certification and did not require MLB to prove its SDVO SBC claim prior to award of the contract. SBA cites *Matter of JDDA/HBS Joint Venture*, SBA No. VET-121 (2007), and *Matter of Allied-Energy Global*, SBA No. VET-107 (2006), to support its arguments that mere displeasure over the fact that a bidder was not required to prove its SDVO SBC eligibility before award is insufficient to support an SDVO SBC protest. SBA asserts a protestor must be able to present specific factual allegations with regard to one or more elements of the protested concern's SDVO SBC eligibility before the protested concern is subjected to an SBA examination into every aspect of its SDVO SBC eligibility. SBA argues 13 C.F.R. § 125.25(b) specifically states that a protest that fails to provide any basis for its allegations is insufficient.

IV. 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 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 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. Protest Specificity

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 AD/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. First, Appellant’s protest concerning the “unconditional” controlling interest by a service-disabled veteran is merely a request that SBA investigate the ownership of MLB, not a specific protest. Second, Appellant failed to present credible evidence that MLB is not owned or controlled by a service-disabled veteran. Appellant did not submit any evidence or provide specific facts to support its assertion that MLB is not an eligible SDVO SBC. Instead, Appellant argued since MLB’s SDVO SBC status was not reviewed during the procurement process, Appellant can only assume that MLB’s veteran status was not reviewed. Appellant’s unsupported and vague assertion is not sufficiently specific to sustain a protest. 13 C.F.R. § 125.25(b).

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

V. Conclusion

After reviewing the record, I hold the written protest file supports the AD/GC’s dismissal of Appellant’s protest. 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 and AFFIRM the AD/GC’s dismissal of Appellant’s protest.

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