

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

IN THE MATTER OF:

Telic Corporation

Appellant

Solicitation No. N62473-09-R-0203

SBA No. VET-177

Decided: January 12, 2010

APPEARANCES

Frank G. Minton, President, for Appellant.

Christopher R. Clarke, Esq., Office of General Counsel, Small Business Administration, Washington, DC, for the Agency.

ORDER DISMISSING APPEAL

On December 17, 2009, the U.S. Small Business Administration's (SBA) Acting Director of the Office of Government Contracting (AD/GC) dismissed Telic Corporation's (Appellant) protest, which challenged the U.S. Department of the Navy, Naval Facilities Engineering Command Southwest's nonacceptance of Appellant's offer under Request for Quote (RFQ) 400923/Solicitation No. N62473-09-R-0203. Specifically, the AD/GC dismissed Appellant's protest because it was based on non-protestable allegations: "[t]he subject solicitation was an order competed under the General Services Administration's Federal Supply Schedule Program and was not issued as an SDVO SBC [service-disabled veteran-owned small business concern] set-aside."

On December 29, 2009, the SBA Office of Hearings and Appeals (OHA) received from the SBA Office of General Counsel (OGC) a copy of Appellant's appeal petition. OHA will treat this appeal as timely because OHA received the appeal petition within ten business days of Appellant's receipt of the AD/GC's determination. 13 C.F.R. § 134.503. Appellant contends that the RFQ at issue was indeed a SDVO SBC set-aside, as indicated by the solicitation documents themselves.

On January 8, 2009, SBA filed its response to the appeal petition. The Agency contends this solicitation was cancelled by the Contracting Officer on September 14, 2009. Therefore, the Agency asserts this appeal should be dismissed as moot because there is no live controversy to be decided, and any OHA decision could not have future applicability.

SBA is correct that this appeal is moot. Because the RFQ has been cancelled, deciding whether the AD/GC erroneously dismissed Appellant's protest can afford Appellant no meaningful relief. When Appellant filed this appeal, it sought to obtain this contract. It is impossible at this juncture to achieve that result because there is no longer an active solicitation. Whether the Area Office erred in dismissing Appellant's protest can have no effect on the result Appellant sought. Therefore, no live controversy remains to be decided, and this appeal must be dismissed as moot.

Furthermore, 13 C.F.R. § 125.24(b) provides that for competitive set-asides,¹ "[a]ny interested party may protest the apparent successful offeror's SDVO SBC status." Here, Appellant attempted to protest the CO's lack of acceptance of its offer. This is not a protestable allegation under this program, and neither the AD/GC nor OHA has jurisdiction over such a claim. The SDVO DBC protest process is meant to offer a forum for protesting a firm's SDVO SBC eligibility, and neither Appellant's protest nor its appeal was based on such an allegation.

Accordingly, this appeal is DISMISSED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.515(a).

CHRISTOPHER HOLLEMAN
Administrative Judge

¹ I do not decide here whether this solicitation was an SDVO SBC set-aside under the applicable SBA regulations.