

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

IN THE MATTER OF:

Castle-Rose, Inc.

Appellant

RE: BCL, JV

Solicitation No. HSCG88-09-R-623066

SBA No. VET-180

Decided: January 29, 2010

APPEARANCES

Jason Smith, Vice President, Castle-Rose, Inc., for Appellant.

Kevin R. Harber, Esq., Office of General Counsel, for the Small Business Administration.

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 Small Business Administration's Acting Director for Government Contracting made a clear error of fact or law in dismissing the protest of Castle-Rose, Inc. for lack of specificity. *See* 13 C.F.R. §§ 125.27(b), 134.508.

III. Background

A. Protest and SDVO SBC Status Determination

On February 19, 2009, the Department of Homeland Security, United States Coast Guard, in Oakland, California (Coast Guard), issued Solicitation No. HSCG88-09-R-623066, for regional multiple award contracts for construction at various facilities. The Coast Guard designated portions of the procurement for Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBCs).

On October 23, 2009, the Coast Guard informed unsuccessful offerors of the identity of 21 apparent successful offerors for two portions of the procurement designated for SDVO SBCs. On October 30, 2009, Castle-Rose, Inc. (Appellant) protested both the SDVO SBC status and the size status of BCL, JV<sup>1</sup> and several other concerns. The part of the protest concerning BCL, JV states:

Based on limited information, the apparent SDVO SBC is Burr Construction. However, no information is given for any of the other venture partners with potential affiliation and size standard violations.

Protest File at 43 (quoting Protest at 2).

On November 25, 2009, the Coast Guard referred the protest to the Small Business Administration (SBA). On December 16, 2009, the SBA's Acting Director of the Office of Government Contracting (AD/GC) dismissed Appellant's SDVO SBC protest for lack of specificity pursuant to 13 C.F.R. § 125.25(b).

#### B. Appeal Petition

On December 31, 2009, Appellant filed the instant appeal with the SBA Office of Hearings and Appeals (OHA). Appellant asserts it is

admittedly not privy to information provided to government in the BCL, JV proposal, and therefore may have a baseless allegation. However, the BCL, JV exposes a serious flaw in the self-certification process that in effect creates a shield against protests. . . . The SBA decision to dismiss this protest due to lack of specific allegations reinforces this legal loophole.

Appeal Petition at 3.

#### C. Response to the Appeal

On January 14, 2010, SBA filed its response to the appeal. SBA contends that the AD/GC's dismissal of Appellant's protest was not based on a clear error of fact or law and should be upheld. SBA cites two previous OHA decisions for the proposition that a protestor must do more than simply point to a lack of available information in order to satisfy the protest specificity requirement.

### IV. Analysis

#### 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

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<sup>1</sup> Appellant refers to BCL, JV as Burr construction in its protest.

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). The SBA's AD/GC must dismiss a non-specific protest. 13 C.F.R. § 125.27(b).

As to a particular concern, the AD/GC may only consider a protest that “presents specific allegations supporting the contention that the owner(s) cannot provide documentation . . . 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. Where the offeror is a joint venture rather than a single concern, as here, control over the joint venture is another issue for protest. *See* 13 C.F.R. § 125.15(b); *Matter of C3T Construction Company, Inc.*, SBA No. VET-157, at 3 (2009). Thus, a protest against a joint venture offeror also must contain specific allegations or SBA will dismiss it pursuant to 13 C.F.R. § 125.27(b).

Appellant's protest merely alleges that: “Based upon limited information the apparent SDVO SBC is Burr Construction. However, no information is given for any of the other venture partners with potential affiliation and size standard violations.” A specific protest requires a protestor do more than state the protestor is ignorant as to whether a firm is an eligible SDVO SBC or not. In this instance, Appellant's allegation fail to comply with 13 C.F.R. § 125.25(b)'s requirement that a protest specify the grounds of the protest, because Appellant specified no grounds for its protest. In addition, I note that Appellant's protest also falls far short of complying with 13 C.F.R. § 125.26(a) or (b), since Appellant made no allegation addressing either BCL, JV's service-disabled status or whether BCL, JV was 51% owned and controlled by a SDVO.

Appellant's SDVO SBC protest against BCL, JV did not specify any grounds for Appellant's protest and thus was not sufficiently specific under 13 C.F.R. § 125.25(b) or 13 C.F.R. § 125.26. Hence, Appellant cannot show the AD/GC based its dismissal of Appellant's protest on any clear error of fact or law. 13 C.F.R. § 125.27(b)

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).

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THOMAS B. PENDER  
Administrative Judge