

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

IN THE MATTER OF:

SDV Solutions, Inc.

Appellant

RE: Kelco Computing Solutions

Solicitation No. AG-3144-S-10-0002

SBA No. VET-185 (PFR)  
No. VET-176

Decided: March 8, 2010

APPEARANCES

Robert E. Korroch, Esq., Williams Mullen P.C., Newport News, VA, for Appellant.

Christopher Roberts, President, Kelco Computing Solutions.

ORDER GRANTING PETITION FOR RECONSIDERATION  
AND AFFIRMING ORIGINAL DENIAL OF APPEAL<sup>1</sup>

I. Background

On January 11, 2010, I issued the decision in *Matter of SDV Solutions, Inc.*, SBA No. VET-176 (2010). There, I affirmed the U.S. Small Business Administration's (SBA) Acting Director of Government Contracting (AD/GC) determination letter. That letter concluded the protest filed by SDV Solutions, Inc. (Appellant) against Kelco Computing Solutions (Kelco) lacked specificity, and dismissed the protest.

On January 22, 2010, Appellant filed a Petition For Reconsideration (PFR) of my original decision. Appellant asserts my original decision contains errors of fact and law. First, Appellant asserts Kelco's listing on the Vet Biz Registry lacks the emblem indicating a verified Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC). Thus, I committed an error of fact in concluding Kelco is a verified SDVO SBC. Second, Appellant asserts that my decision improperly distinguished *Matter of Robra Construction, Inc.*, SBA No. VET-160 (2009). Thus, I committed an error of law in not remanding the matter to the AD/GC for an SDVO SBC status determination. Appellant asserts these errors are material and require my granting this PFR.

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<sup>1</sup> 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.

On January 23, 2010, Kelco filed a response to the PFR. On January 25, 2010, Appellant filed a motion to strike Kelco's response.

## II. Analysis

SBA's regulations provide that OHA may grant a petition for reconsideration upon a clear showing of an error of fact or law material to the decision. 13 C.F.R. § 134.515(b). This is a rigorous standard. The moving party's argument must leave the Administrative Judge with the definite and firm conviction that key findings of fact or conclusions of law of the earlier decision were mistaken.<sup>2</sup>

Appellant filed its PFR within 20 days of the issuance of my decision, and thus filed timely. 13 C.F.R. § 134.515(b).

To understand what caused Appellant's PFR, we must first examine Appellant's original protest. In that protest, Appellant stated: "Kelco Computing Solutions' [sic] has not been verified as a SDVO SBC according to the Center for Veteran Enterprises and is not owned nor controlled by Service connected Disabled Veteran per 13 C.F.R. 125.9 and 13 C.F.R. 125.10. (See attachment #3, Kelco VetBiz Registration)" Thus, while Appellant's protest alleged Kelco was not verified, Appellant did not explain what verification meant nor why verification might be relevant. Similarly, Appellant's Appeal Petition also did not explain what verification meant. Hence, there was nothing in the Record explaining what verification means.<sup>3</sup>

Appellant's PFR is different. For the first time, Appellant explained that verification is a process managed by the Department of Veterans Affairs pursuant to 38 C.F.R. § 74.1 *et seq.* and even provided a copy of the relevant part of the Federal Register containing 38 C.F.R. Part 74. Thus, Appellant explained, for the first time, what Appellant meant by its reference to verification in its protest.

Plainly, before Appellant's filing of its PFR, neither the undersigned nor the AD/GC understood Appellant's reference to verification in its protest might refer to something other than merely being listed on the VA CVE database. Moreover, because the VA's verification program is administered by the VA, it is not something SBA has to consider and to my knowledge has never been considered by SBA to date. Hence, the basis of Appellant's protest was not obvious or clear and thus cannot have been specific or clear absent the kind of references and explanation Appellant finally provided with its PFR. Consequently, it is impossible for me to discern how the AD/GC could have made an error in finding a lack of specificity or contradictions in Appellant's protest allegation concerning verification.

Even if Appellant's reference to verification had been clear, I would still decline to

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<sup>2</sup> For a discussion of the "clear error" standard, see *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11-12 (2006).

<sup>3</sup> Per 13 C.F.R. § 134.512, Appellant's explanation of the verification process must come with its protest.

extend specificity in this context beyond what we have already recognized. To date, we have only found that an allegation alleging complete absence from the CVE database is specific. *Matter of Robra Construction, Inc.*, SBA No. VET-160 (2009)<sup>4</sup>; *Matter of Veteran Construction Services, LLC*, SBA No. VET-103 (formerly SDV-103) (2005). We have not ruled that anything less than a firm's total absence from the CVE database is specific and will not. Therefore, absent regulatory authority, we decline to extend our definition of specificity and note that VA's verification process applies only to that agency's own set-aside program.

### III. Conclusion

I have considered the Record and the Appellant's arguments. I find Appellant has not made a clear showing of an error of fact or law material to the *Matter of SDV Solutions, Inc.*, SBA No. VET-176 (January 11, 2010) decision. Accordingly, I DENY Appellant's Petition for Reconsideration.<sup>5</sup>

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THOMAS B. PENDER  
Administrative Judge

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<sup>4</sup> Appellant's citation to this case in its protest only furthered the lack of specificity inherent in its unexplained use of the word verification, for this case applies to the CVE, not the verification process.

<sup>5</sup> Because of the disposition of this PFR, I need not consider Appellant's Motion to Strike.