

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

IN THE MATTER OF:

Ironclad Services, Inc.

Appellant

RE: Legion Construction, Inc.

Solicitation No. VA-241-10-RP-0004

SBA No. VET-186

Decided: April 5, 2010

ORDER DISMISSING APPEAL AS MOOT

On March 8, 2010, Ironclad Services, Inc. (Appellant) filed a protest challenging whether Legion Construction Inc. (Legion) meets the service-disabled veteran-owned small business concern (SDVO SBC) eligibility requirements (set forth at 134 C.F.R. §§ 125.8-.10) for Solicitation No. VA-241-10-RP-0004. Appellant explained that its protest was timely because it received notice of the award to Legion on March 4, 2010. *See* 134 C.F.R. § 125.25(d)(1) (providing that for negotiated procurements, a protest must be filed by close of business on the fifth day after notification of the apparent successful offeror).

On March 19, 2010, the Small Business Administration's (SBA or the Agency) Director of Government Contracting (D/GC) dismissed the protest as untimely. The D/GC found that the solicitation was issued using sealed bid procedures, and notification of the apparent successful bidder was made on December 21, 2009. Thus, the D/GC determined Appellant's protest was untimely pursuant to 134 C.F.R. § 125.25(d)(2) (providing that for sealed bid procurements, a protest must be filed by close of business on the fifth day after bid opening).

On March 23, 2010, Appellant filed the instant appeal with the SBA Office of Hearings and Appeals (OHA). Appellant claims the D/GC erred in identifying the solicitation as a sealed bid acquisition and erred in determining that the notification of apparent successful offeror was made on December 21, 2009. Appellant contends its protest was timely and should have been considered.

On April 5, the SBA filed a Motion for Dismissal. The SBA explains that subsequent to the D/GC's dismissal of Appellant's protest, the Contracting Officer for the solicitation revised the information he had previously provided in connection with Appellant's protest. Accordingly, the SBA reexamined the issue of the timeliness of Appellant's protest, and the D/GC rescinded her dismissal letter. The D/GC also issued a letter accepting Appellant's protest and notifying Legion that it is required to prove its SDVO SBC status. Thus, SBA contends Appellant's appeal is moot because it has already been granted the relief it seeks—consideration of the merits of its protest.

I agree with the Agency that the instant appeal is moot in light of its decision to accept Appellant's protest and decide it on the merits. In the size determination context, the regulations explicitly provide that "[t]he Judge will not decide substantive issues . . . which have been abandoned or become moot." 13 C.F.R. § 134.316(a). There is no equivalent explicit regulation governing SDVO SBC appeals.¹ Nonetheless, I see no reason why OHA should decide moot issues in any context. Appellant has obtained the relief he sought, and OHA can provide him with no further relief. Thus, I will dismiss this appeal as moot.

For the foregoing reasons, the Agency's Motion for Dismissal is GRANTED, and this appeal is DISMISSED AS MOOT.

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

THOMAS B. PENDER
Administrative Judge

¹ The SDVO SBC regulation that comes closest to authorizing dismissal of moot issues is 13 C.F.R. § 134.509(a)(4), which provides: "The Judge selected to preside over a protest appeal shall dismiss the appeal, if . . . [t]he matter has been decided or is the subject of an adjudication before a court of competent jurisdiction over such matters." This does not specifically apply here because the issue, though mooted by SBA's actions, has not been decided by a court of competent jurisdiction.