

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

IN THE MATTER OF:

United Medical Design Builders, LLC

SBA No. VET-197

Appellant

Decided: June 24, 2010

Solicitation No. VA-776-10-RA-0070  
Department of Veterans Affairs  
National Energy Business Center  
Seven Hills, Ohio

APPEARANCES

G. Steven Ruprecht, Esq., Brown & Ruprecht, P.C., Kansas City, Missouri, for Appellant.

Christopher R. Clarke, Esq., and 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 Director for Government Contracting made a clear error of fact or law in concluding Appellant's management and day-to-day operations are not controlled by a Service-Disabled Veteran. *See* 13 C.F.R. §§ 125.10, 134.508.

III. Background

A. Facts

1. On January 13, 2010, the Department of Veterans Affairs, National Energy Business Center, in Seven Hills, Ohio (DVA), issued Solicitation No. VA-776-10-RA-0070 (RFP), for the design and construction of a utility metering system. On the RFP's SF 1442, the DVA stated: "IN ACCORDANCE WITH 38 U.S.C. § 8127 (PUBLIC LAW 109-461), THIS

PROJECT IS A COMPETITIVE SERVICE-DISABLED VETERAN OWNED SMALL BUSINESS SET ASIDE”.

By including this statement, the DVA set the procurement aside for Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBCs).

2. On February 17, 2010, United Medical Design Builders, LLC (Appellant) submitted its proposal.

3. On April 14, 2010, the Contracting Officer (CO) protested Appellant’s SDVO SBC status with the Small Business Administration (SBA) Director of Government Contracting (D/GC) in accordance with 13 C.F.R. § 123.25. The CO questioned whether Appellant was owned and controlled by a service-disabled veteran.

4. The CO also protested Appellant’s SDVO SBC status to the DVA’s OSDBU because, he concluded, VAAR 819.307 required such an action. Due to a backlog, the OSDBU has not ruled on this protest.

5. Appellant is a limited liability corporation (LLC) organized under the laws of the State of Kansas. Appellant’s LLC Operating Agreement (OA) provides Appellant will be managed by its members.

6. Mr. David Dial is the 51% owner of Appellant and a service-disabled veteran. According to Appellant’s OA, Mr. Dial is a member of the LLC. Mr. Dial is also Appellant’s President. Mr. Dial became a compensated employee of Appellant on April 14, 2010, after working as an employee for Bart’s Electric (an electrical contractor). The Record contains no evidence that Mr. Dial has any project management responsibilities or other daily operational responsibilities for Appellant.

7. Mr. Troy Bechtel owns 49% of Appellant and is not a service-disabled veteran. Mr. Bechtel is also a member of the LLC and is Appellant’s Chief Executive Officer. Before April 14, 2010, only Mr. Bechtel was a compensated employee of Appellant, and Mr. Bechtel is the only employee of Appellant with any project management responsibilities. In addition, Mr. Bechtel receives a six-figure salary and a substantial bonus from Appellant.

8. The OA lists neither Mr. Dial nor Mr. Bechtel as the LLC’s managing member.

9. Mr. Dial is not mentioned in Appellant’s proposal.

#### B. D/GC Status Determination

On April 20, 2010, the D/GC notified Appellant of the protest and requested Appellant to provide the required information and documents. Appellant responded on April 27, 2010. On May 7 and 11, 2010, the D/GC requested additional information, and Appellant responded to these requests.

On May 11, 2010, the D/GC issued her determination concluding Appellant did not meet the SDVO SBC eligibility requirements as of the date it submitted its proposal under the RFP.

The D/GC first found David Dial is an eligible service-disabled veteran and meets the ownership requirements.

As for control, the D/GC found Mr. Dial did not control Appellant's management and daily business operations as of the date Appellant submitted its proposal as required by 13 C.F.R. § 125.10(a). In support, the D/GC noted that Mr. Dial is not listed as Appellant's manager anywhere in Appellant's 79-page proposal. Instead, Mr. Troy Bechtel, who is also to serve as the Project Manager, signed Appellant's proposal. In addition, Appellant's proposal identifies Mr. Charles Brandon, whom the D/GC was unable to verify is even an employee of Appellant, as Appellant's Project Executive and Overall Project Manager. Moreover, there is evidence that Mr. Brandon is actually a Managing Member of a subcontractor Appellant proposes to use to perform the work required by the RFP. The D/GC concluded these facts show Mr. Brandon would be the daily manager for the project, not Mr. Dial.

The D/GC also found there is no other evidence that indicates Mr. Dial is managing Appellant's daily business operations. The D/GC noted Mr. Dial's resume makes no mention of his role in managing Appellant. Rather, the resume mentions Mr. Dial teamed with Mr. Bechtel to "launch" Appellant. The D/GC also noted that even after SBA requested more detailed information from Mr. Dial and Mr. Bechtel, Mr. Dial failed to list project management as a responsibility, whereas Mr. Bechtel's information did list project management. Instead, Mr. Dial listed "marketing, public relations, estimating and now the implementation of the developed business and operations plans" as his responsibilities for Appellant. The D/GC also noted that only Mr. Bechtel has experience as a project manager for a previously secured contract.

The D/GC further found that Mr. Dial only became a full time, compensated employee of Appellant on April 14, 2010, a date several months after Appellant submitted its proposal. The D/GC noted this does not help Appellant because Appellant's eligibility is determined when it submitted its proposal. In addition, Mr. Dial worked for another concern even after Appellant submitted its proposal, while Mr. Bechtel was a compensated employee of Appellant since September 1, 2009.

The D/GC also found that Mr. Dial's position, as Appellant's president did not necessarily equate to being a higher office than Mr. Bechtel's role as CEO. The D/GC explained that there was nothing in the OA defining the roles of president and CEO. Thus, she could not conclude Mr. Dial held Appellant's highest office at the time Appellant submitted its offer.

The D/GC also found Mr. Dial lacked the requisite experience needed to manage Appellant because he lacked any management experience. The D/GC explained that Mr. Dial's resume identified no managerial positions or responsibilities. Instead, Mr. Dial's resume indicated he oversaw daily quality control and safety issues for multiple, concurrent projects located across the nation without explaining how many individuals this might require him to manage. This combined with the fact that Appellant did not assign Mr. Dial any management role in its proposal, suggests he lacked the experience necessary to run a \$2 to \$5 million design-build construction contract involving multiple subcontractors.

The D/GC contrasted Mr. Dial's experience with Mr. Bechtel's. Based upon the information Appellant provided about Mr. Bechtel, it was apparent Mr. Bechtel did have the requisite experience to run Appellant, whereas Appellant had failed to provide sufficient

information to prove Mr. Dial had such experience.

The D/GC next discussed the regulatory requirement that a managing member who is a service-disabled veteran must control an LLC (13 C.F.R. § 125.10(d)). The D/GC concluded that because neither Mr. Dial nor Mr. Bechtel is named as the managing member in Appellant's OA, that a service-disabled veteran is not a managing member as required by 13 C.F.R. § 125.10(d). The D/GC thus concluded that Appellant is not an eligible SDVO SBC.

### C. Appeal Petition

On May 24, 2010, Appellant filed the instant appeal of the D/GC's determination with the SBA Office of Hearings and Appeals (OHA). Appellant also submitted further evidence in an attempt to supplement the Record on May 28, 2010. That is, Appellant filed additional material relating to Appellant's physical location and to Appellant's operation. This new material, which was not in the Protest File that was before the D/GC at the time she rendered her determination, includes photographs showing building and door signage and an organizational chart for Appellant's business operations, as well as Mr. Dial's cover letter to the Appeal Petition.

Appellant asserts a service-disabled veteran controls it. Specifically, it Appellant claims it does not matter that Mr. Dial's name did not appear on Appellant's proposal, that he did not sign the proposal, or that he was not designated as project manager for the work. First, Appellant alleges there is no requirement that the service-disabled veteran's name appear on the proposal, that he sign it, or that he be named as a project manager, especially since construction contractors will often have several project managers.

Appellant also asserts that it is the classic construction industry business model to outsource work. Thus, it reflects favorably upon Appellant's planning and ability to perform the work that it has hired others to perform the work. In fact, Appellant asserts that without significant assistance from others, it is unlikely that an SDVO SBC could perform significant work, including the work required by the RFP. That is why Appellant entered into multiple teaming agreements with other concerns and all of these agreements were signed by Mr. Dial.

Appellant also criticizes the D/GC for relying upon Mr. Dial's resume, which it asserts was intended to give only a brief one or two paragraph overview of his experience and background. Appellant asserts Mr. Dial is an experienced contractor and that cannot be denied from the documentation submitted.<sup>1</sup>

Appellant alleges the OA is clear that Mr. Dial is Appellant's President. Appellant argues the meaning of President is clear he controls the concern. Appellant asserts that because Mr. Dial owns 51% of Appellant and because Appellant can do nothing without Mr. Dial's consent as the majority owner, he unquestionably controls Appellant.

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<sup>1</sup> Appellant does not identify to what documentation it refers. It may be referring to the cover letter to the Appeal Petition, which did not exist as part of the Record before the D/GC and which, therefore, cannot be considered as part of the Record. *See infra* part IV.C.

Appellant also alleges that, in addition to having the power to control Appellant, Mr. Dial does control Appellant on a daily basis. The fact that Mr. Dial worked for Bart's Electric until recently, "did not diminish his lack of managerial control." (Appeal Petition at 5). Because Appellant did not have much work in the preceding nine months, there was no reason he could not work for another concern and there is no prohibition against working for another concern. Thus, SBA is not entitled to a negative control inference based upon the service-disabled veteran doing something that is permitted by the law. 38 C.F.R. § 74.4(c)(1). That is, the service-disabled veteran is only required to show sustained and significant time invested in the business. Moreover, SBA was wrong to find Mr. Dial could not possibly have invested significant time in the business because there are no facts to support such a conclusion, which makes its conclusion clearly erroneous.

Appellant asserts the D/GC ignored certain facts, *e.g.*, Mr. Dial founded Appellant, Mr. Dial owns 51% of Appellant and controls Appellant, Mr. Dial is Appellant's president, Mr. Dial's resume shows he runs Appellant through marketing, public relations, estimating and preparation and implementation of business and operational plans, Mr. Dial signed Appellant's 2009 tax return as Member Manager, Mr. Dial is a very experienced member of the construction industry, and Mr. Dial has direct experience working as a Special Operations Manager for his former employer.

Appellant also contends the D/GC focused on daily management operations, but essentially ignored strategic policy setting. The D/GC based her adverse decision not on operative facts, but opinions, conclusions, speculation, and negative inferences, all the while ignoring that competing positive inferences could be drawn from the same facts. Thus, Appellant asserts SBA made its decision not on specific facts demonstrating lack of management by Mr. Dial, but rather upon the totality of the circumstances, a basis prohibited by *Matter of AWG Services, LLC*, SBA No. VET-163 (2009), citing *Matter of DooleyMack Government Contracting, LLC*, SBA No. VET-159 (2009).<sup>2</sup>

Appellant disputes the D/GC's conclusion that Mr. Dial does not hold Appellant's highest officer position, noting that the OA indicates that Mr. Dial is President. According to Appellant, the D/GC made a "definite leap in logic" when she concluded that because the duties of the President are not set forth in writing, Mr. Dial does not perform the usual and ordinary duties of a president and is not the highest officer. (Appeal Petition 7.) Appellant argues there was no factual basis for such an inference because Mr. Dial signs all critical company documents and performs the duties of his position as President.

Furthermore, Appellant argues that Mr. Dial possesses the requisite experience required to manage Appellant's operations. Mr. Dial is a Certified Master Electrician and served as an on-site construction foreman for more than ten years, in addition to participating in continuing education opportunities. Appellant notes that because Mr. Dial's experience is field-based, he contracted with an outside firm for Appellant's administrative needs. Appellant emphasizes that 13 C.F.R. § 125.10(b) requires that the service-disabled veteran control the ultimate management of the company, not the minute details on which Appellant claims the D/GC improperly focused. Appellant contrasts this case, where Mr. Dial has much relevant experience, with other cases in which the service-disabled veteran had no relevant experience. *See Matter of Corners Constr.*,

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<sup>2</sup> I find no such finding or suggestion of such a finding in the D/GC's determination.

SBA No. VET-190 (2010); *Matter of KDV, Inc.*, SBA No. VET-189 (2010).

Appellant next contends the D/GC made another improper negative inference when it found that Mr. Dial is not Appellant's manager because he is not listed as a "managing member" in the OA. Appellant argues the D/GC must look beyond formalities to how the business is actually run, and highlights the fact that Mr. Dial signed Appellant's 2009 tax return as the managing member. Appellant also emphasizes that Mr. Dial unconditionally owns 51% of Appellant and therefore has the right to change management, hire and fire personnel, and take any measure necessary to run a firm in the short and long term without any restrictions, in contrast with other recent cases. See *Matter of Piedmont Contracting and Design, Inc.*, SBA No. VET-168 (2009); *Matter of Firewatch Contracting of Fl., LLC*, SBA No. VET-137 (2008).

Appellant also claims "[t]here is absolutely no evidence in this record that indicates Mr. Dial did not make all the decisions for [Appellant] from its inception," as required by 13 C.F.R. § 125.10(d). Again, Appellant asserts that the D/GC has simply made numerous inappropriate negative inferences while ignoring the facts that point to Mr. Dial's authority over Appellant, such as his signing the tax return. Additionally, Appellant disputes the D/GC's observation that it may be financially dependent upon a subcontractor. Appellant contends this observation is nothing more than a possibility and is not a proper basis for a finding of lack of control. See *Matter of DooleyMack Government Contracting, LLC*, SBA No. VET-159 (2009) (holding that influence on business operations does not amount to control). Appellant argues it has presented sufficient evidence to demonstrate that he controls Appellant, and the D/GC's conclusion to the contrary is erroneous.

#### D. Response to the Appeal

On June 3, 2010, SBA filed its response to the appeal. SBA contends that the D/GC's determination was not based on a clear error of fact or law and should be upheld. First, SBA contends that the D/GC was correct in finding that Mr. Dial does not hold Appellant's highest officer position. SBA argues that based on the language of Appellant's OA, both members, Mr. Dial and Mr. Bechtel, have the same level of control over Appellant because both are listed as members and no specific duties are assigned to either the office of President (held by Mr. Dial) or the office of Chief Executive Officer (held by Mr. Bechtel).

Next, SBA contends the D/GC correctly determined that Mr. Dial does not possess the necessary managerial experience necessary to run the firm. SBA points out that even after being given a chance to submit an updated and more detailed resume, Mr. Dial's resume still reflected little to no management experience and no management experience with complex construction projects similar to the one at issue. In contrast, Mr. Bechtel's resume reflected significant relevant management experience. SBA claims that if Appellant wanted the D/GC to consider other information about Mr. Dial's qualifications, it should have submitted that information. Appellant failed to do so at its own peril.

SBA also asserts that the D/GC's determination that Mr. Dial does not control the management and daily business operations of Appellant is correct. SBA claims the evidence in the record demonstrates that Mr. Dial was not an employee of Appellant at the time its proposal was submitted, Mr. Bechtel was paid a salary but Mr. Dial was not, Mr. Dial is not mentioned in the proposal and apparently will have no involvement with the project, and it is Mr. Bechtel who

will manage the project. When considering this multitude of evidence against the scant evidence Appellant emphasizes—that Mr. Dial signed a number of forms on behalf of Appellant—it was not erroneous for the D/GC to conclude that Mr. Dial is not involved with the daily management of the company. Additionally, SBA points out that ownership is different from control, and the fact that Mr. Dial owns 51% of Appellant does not compel the conclusion that he controls it.

SBA argues the D/GC correctly found that Mr. Dial is not a managing member of Appellant. Appellant's OA provides that it will be managed by its members. "As such, [Appellant] has not designated a managing member, and under the terms of the Operating Agreement and according to the laws of Kansas each member as equal ability to manage the affairs of the company." (Response 17.) Thus, Appellant does not meet the requirement that a service-disabled veteran be the managing member of the firm. 13 C.F.R. § 125.10(d).

Finally, SBA contends that the new documents Appellant submitted on appeal are inadmissible. 13 C.F.R. § 134.512. SBA argues that, based on the record before her, the D/GC properly concluded that Appellant is not an eligible SDVO SBC because it is not controlled by a service-disabled veteran.

#### IV. Analysis

##### A. Timeliness and Standard of Review

Appellant filed its appeal petition within 10 business days of receiving the D/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 D/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 D/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 D/GC's determination only if I have a definite and firm conviction the D/GC erred in making a key finding of law or fact.

##### B. Resolution of the Order to Show Cause

On June 16, 2010, I issued an Order to Show Cause in which I required the parties to explain why I should not vacate the D/GC's eligibility determination because of the provisions of VAAR 819.307 (74 Fed. Reg. 64631(December 8, 2009) (to be codified as 48 C.F.R. § 819.307)). All parties timely responded to the Order. The CO explained that he forwarded the protest to both SBA and DVA's OSDBU because he believed this was required by both 13 C.F.R. § 125.25 and VAAR 819.307. SBA offered that VAAR 819.307 and 13 C.F.R. § 125.25 are potentially in conflict but were not in conflict under the facts of the case. In its response, Appellant stated VAAR 819.307 required the CO to refer the SDVO SBC protest arising under this procurement to DVA's OSDBU for decision. Hence, Appellant argued I should vacate the D/GC's determination since it is without authority.

Pursuant to the statutory authority granted to the SBA by Congress in Small Business Act (15 U.S.C. § 637(m)(5) and 657f<sup>3</sup>) which gives SBA authority to decide “any challenge to the eligibility of a small business concern,” 13 C.F.R. § 125.25 reigns supreme insofar as determining the eligibility of concerns to become SDVO SBCs. Therefore, if a protest is made of a concern’s SDVO SBC status, SBA must decide that protest, as has always been the case.

The part of VAAR 819.307 at issue provides:

(a) All protests relating to whether an eligible VOSB or SDVOSB is a “small” business for the purposes of any Federal program are subject to 13 CFR Part 121 and must be filed in accordance with that part. For acquisitions under the authority of subpart 819.70, upon execution of an interagency agreement between VA and the SBA pursuant to the Economy Act (31 U.S.C. 1535), regarding service-disabled veteran-owned or veteran-owned small business status, contracting officers shall forward all status protests to the Director, Office of Government Contracting (D/GC), U.S. Small Business Administration (ATTN: VAAR Part 819 SDVOSB/VOSB Small Business Status Protests), 409 3rd Street, SW., Washington, DC 20416, for disposition. Except for ownership and control issues to be determined in accordance with 38 CFR Part 74, protests shall follow the procedures set forth in FAR 19.307 for both service-disabled veteran-owned and veteran-owned small business status. However, contracting officers shall be solely responsible for determining VOSB and SDVOSB compliance with VAAR 804.1102.

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(c) *Until execution* of the interagency agreement referenced in subsection (a), for acquisitions under the authority of subpart 819.70, the Executive Director, VA Office of Small and Disadvantaged Business Utilization (OSDBU) shall decide all protests on service-disabled veteran-owned or veteran-owned small business status whether raised by the contracting officer or an offeror. Ownership and control shall be determined in accordance with 38 CFR Part 74. The Executive Director's decision shall be final.

It is simply unclear what this provision means with relation to SBA’s statutory authority to decide SDVO SBC status protests. The responses to my Show Cause Order serve only to illustrate this lack of clarity. Moreover, the VA OSDBU was aware that this protest was filed with the SBA and did not object.

Regardless of what VAAR 819.307 may imply, I hold that there is nothing in the text of 38 U.S.C. 8127 or VAAR 819.307 capable of supplanting SBA’s statutory obligation to decide

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<sup>3</sup> 15 U.S.C. § 657f addresses SBA’s authority with regard to contracts to service-disabled veterans. Section 657f then refers to SBA’s powers as granted in 15 U.S.C. 637(m)(5), which gives SBA the authority to rule on “the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(F)).”

SDVO SBC protests. Hence, I hold the fact that the RFP was issued pursuant to 38 U.S.C. § 8127 has no effect on SBA's authority and mandate to decide SDVO SBC protests. Therefore, because the D/GC had the authority to decide the CO's protest, the CO correctly provided the protest to the D/GC and this matter requires no further discussion.

### C. New Evidence on Appeal

I may not admit evidence beyond the written protest file on appeal. 13 C.F.R. § 134.512. Here, Appellant presents in the May 28, 2010 supplement to its appeal, additional assertions of fact not presented to the D/GC. These additional exhibits/assertions of fact constitute new evidence on appeal. Thus, I EXCLUDE them from the Record and cannot consider any argument based upon evidence not in the protest file when the D/GC issued her determination.

### D. The Merits of the Appeal

#### 1. A Service-Disabled Veteran Did Not Control Appellant's Management and Daily Business Operations

13 C.F.R. § 125.10(a) requires a service-disabled veteran must control a concern's management and daily business operations. For the purpose of this appeal, this means Mr. Dial must have controlled Appellant's daily operations and long-term decision making when Appellant submitted its proposal on February 17, 2010.

The Record establishes Mr. Dial first became a compensated and full time employee of Appellant in April of 2010, almost two months after Appellant submitted its proposal under the RFP. (Facts 2 and 6). Before April of 2010, Mr. Dial worked for an electrical contractor and Mr. Bechtel operated Appellant for a substantial salary. (Facts 6 and 7).

I find no evidence in the Record to support any inference that Mr. Dial managed Appellant's daily operations and long-term decision making before Appellant submitted its proposal. Instead, the only available evidence in the Record shows: (1) Mr. Dial formed Appellant with Mr. Bechtel; (2) Mr. Bechtel operated and managed Appellant while it submitted the proposal under the RFP; (3) Mr. Dial had no apparent role in operating Appellant at the time Appellant submitted its proposal; (4) Mr. Dial was not named as having any role in managing the contract arising out of the RFP; and (5) Mr. Dial only became a compensated employee of Appellant, with no project management responsibilities, after Appellant submitted its proposal. I also find it relevant that the proposal does not even mention Mr. Dial as a part of Appellant's reporting chain or as a member of its management. These omissions are relevant considering Appellant's nascent status and small size.

Based upon the foregoing, I cannot say the D/GC made any clear error in determining Mr. Dial did not control Appellant when it submitted its proposal. Rather, as the D/GC points out in her determination, Appellant provided no information concerning Mr. Dial to show he had any role in operating or managing Appellant, even when given a second chance to do so. In addition, it is important to observe that the real key to this part of the D/GC's determination is not that the D/GC found facts based upon available evidence but that the D/GC could not find facts establishing control because Appellant had failed to provide any evidence showing Mr. Dial exercised control of Appellant.

Appellant's failure to provide evidence of the service-disabled veteran's control is a critical omission, for Appellant is responsible for proving that it is an eligible service-disabled veteran. In noting that Appellant bears the burden to prove its status, I observe that only Appellant is in possession of the facts that can prove its status. Hence, the ability to prove its status is solely within Appellant's control and it bears the risk of non-production.

## 2. Appellant's Managing Member Is Not a Service-Disabled Veteran

Appellant is an LLC organized under the laws of Kansas (Fact 5). Accordingly, 13 C.F.R. § 125.10(d) mandates who controls Appellant: "In the case of a limited liability company, one or more service-disabled veterans . . . must serve as managing members, with control over all decisions of the limited liability company.

Pursuant to Kansas law, all members of an LLC have the same authority to bind the LLC, unless the operating agreement designates a managing member (K.S.A. 17-76,134). This means that unless Appellant's OA names a managing member, all members of the LLC have equal management authority.

Appellant's OA does not designate a managing member. Instead, Appellant's OA names both Mr. Dial and Mr. Bechtel as members of the LLC, which means that under Kansas law Mr. Dial is not Appellant's managing member as required by 13 C.F.R. § 125.10(d). (Facts 5 – 8.) Therefore, regardless of whatever other positions Mr. Dial or Mr. Bechtel may hold in Appellant, Appellant is not in compliance with 13 C.F.R. § 125.10(d), because Mr. Dial is not a managing member. Accordingly, I hold a service-disabled veteran does not control Appellant.

Given the decisive nature in which Appellant has failed to comply with 13 C.F.R. § 125.10(d), I have determined it is unnecessary to discuss the remaining issues.

## V. Conclusion

After reviewing the record, I hold the written protest file supports the D/GC's determination. Therefore, Appellant has failed to establish any clear error of fact or law in the D/GC's decision. Accordingly, I must DENY the instant appeal and AFFIRM the D/GC's determination concluding Appellant is ineligible for an SDVO SBC contract.

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