

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

IN THE MATTER OF:

VETcorp, Inc.

SBA No. VET-205

Appellant

Decided: November 17, 2010

RE: Ferreri & Wilkins, Ltd.

Solicitation No. Q3082100025

APPEARANCES

Peter R. Benoit, President, VETcorp, Inc., for Appellant.

Christopher R. Clarke, 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 dismissing the protest of VETcorp, Inc., for lack of specificity. *See* 13 C.F.R. §§ 125.25(b), 125.26, 125.27(b), 134.508.

III. Background

A. Protest and SDVO SBC Status Determination

On September 10, 2010, the U.S. Department of the Interior (DOI), National Park Service, in Washington, D.C., issued Solicitation No. Q3082100025 for road salt. The Contracting Officer (CO) set the procurement aside for Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBCs).

On October 20, 2010, the CO informed offerors that the apparent successful offeror was Ferreri & Wilkins, Ltd. (F&W). On October 21, 2010, VETcorp, Inc. (Appellant), protested F&W's claimed SDVO SBC status to the CO. The protest stated:

Reason for protest: [F&W] is listed in the CCR as having been in business since 10/23/1997, but still they are not listed, or "verified" with and by www.vetbiz.gov. VETcorp, Inc. formally protest that [F&W] is not a Service Disabled Veteran Owned Small Business and therefore is ineligible for the contract award. VETcorp, Inc. requests that DOI National Park Service staff follow FAR procedures 19.307 in the verification that [F&W] is or is not a "verified" Service Disabled Veteran Owned Small Business.

[F&W] must provide the following: . . .

On October 22, 2010, the CO referred the protest to the Small Business Administration (SBA). On November 1, 2010, the SBA's Director, Office of Government Contracting (D/GC) dismissed Appellant's SDVO SBC protest for lack of specificity pursuant to 13 C.F.R. § 125.25(b). The D/GC stated:

In your protest, you merely state [F&W] is not a SDVO SBC and therefore is ineligible for the contract award. You further state that [F&W] should provide documentation verifying the service connected disability. Your protest lacks specificity because it merely makes statements asserting that [F&W] may not be a qualified SDVO SBC without articulating any underlying factual basis for the statements.

Appellant received the D/GC's dismissal letter on November 1, 2010.

B. Appeal Petition

On November 2, 2010, Appellant filed the instant appeal with the SBA Office of Hearings and Appeals (OHA). Appellant again asserts that F&W is not listed on the VetBiz site, adding that it has had "ample time" to register. Appellant also presents for the first time a sheaf of papers from the State of Maryland and other sources to the effect that F&W is not in good corporate standing with State authorities.

C. Response to the Appeal

On November 10, 2010, SBA filed its response to the appeal. SBA contends that the D/GC's dismissal of Appellant's protest was not based on a clear error of fact or law and should be upheld. SBA asserts that while registration on VetBiz is required for vendors seeking contracts from the Department of Veterans Affairs (DVA), the instant solicitation is not from DVA. Thus, the lack of a VetBiz listing is not evidence of ineligibility. SBA also objects to the admission of Appellant's new evidence.

IV. Discussion

A. Timeliness, Standard of Review, and New Evidence

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.

OHA reviews the D/GC's decision to determine whether it is "based on clear error of fact or law." 13 C.F.R. § 134.508; *see also Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2009) (discussing the clear error standard that is applicable to both size appeals and SDVO SBC appeals). Thus, I may overturn the D/GC's decision only if Appellant proves the D/GC made a patent error based on the record before her.

OHA's regulations prohibit the admission of evidence beyond the written protest file, and require all SDVO SBC appeals to be decided solely on a review of the written protest file and arguments made on appeal. 13 C.F.R. § 134.512. Here, Appellant introduces on appeal new evidence, including various State of Maryland documents, which was not in the written protest file. Because new evidence may not be admitted on appeal, this evidence is EXCLUDED.

B. Protest Specificity

An SDVO SBC protest must be specific. The D/GC will only consider a protest that "presents specific allegations supporting the contention that the owner(s) cannot provide documentation from the VA, DoD, or the U.S. National Archives and Records Administration to show that they meet the definition of service-disabled veteran." 13 C.F.R. § 125.26(a). 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 Federal Acquisition Regulation (FAR) rule similarly provides: "Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient." 48 C.F.R. § 19.307(c). The SBA's D/GC must dismiss a non-specific protest. 13 C.F.R. § 125.27(b).

Under these rules, OHA has affirmed the D/GC's dismissal of a protest alleging only that an offeror does not qualify because it is not listed on www.vetbiz.gov (VetBiz), when the protest was in connection with other than a DVA procurement. *Matter of Savant Services Corporation*, SBA No. VET-154 (2009) (*Savant*). In *Savant* OHA held that the VetBiz list is not, and is not meant to be, an exhaustive list of SDVO SBCs, and that a firm's absence from the list is not evidence that the firm is not an eligible SDVO SBC. Because this is not a VA procurement, F&W need not be on the VetBiz list, and thus its absence is no evidence of ineligibility.

OHA also has affirmed the dismissal of a protest that was nothing more than a request that SBA investigate an offeror. *Matter of One Step Ahead Enterprises, LLC*, SBA No. VET-155 (2009) (*One Step*). A request for an investigation is not the presentation of specific allegations required by the regulation, and thus does not meet the requirement of specificity.

Here, Appellant's protest stated only that F&W is not listed, or "verified" on VetBiz, and requested that DOI National Park Service conduct an investigation on F&W. Appellant's protest provides nothing more than did the protests in *Savant* and *One Step*, protests that merited

dismissal because they made no specific facts or allegations.

A non-specific protest is not saved by the presentation, on appeal, of additional supporting documentation, because OHA must exclude evidence that was not before the D/GC. *Matter of Allied Energy-Global*, SBA No. VET-107 (2006). Here, Appellant's additional documentation was excluded, and so the protest remains non-specific.

Appellant's SDVO SBC protest against F&W did not specify any factual basis for the allegation that F&W is not an SDVO SBC. Thus, the protest was not sufficiently specific under 13 C.F.R. §§ 125.25(b) and 125.26(a). Therefore, Appellant cannot show the D/GC based her dismissal of the protest on any clear error of fact or law. 13 C.F.R. § 125.27(b)

V. Conclusion

Accordingly, the D/GC's dismissal of Appellant's protest was not based upon clear error. The D/GC's dismissal of the protest is AFFIRMED, and the instant appeal is DENIED.

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

CHRISTOPHER HOLLEMAN
Administrative Judge