

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

IN THE MATTER OF:

A1 Procurement JVD

Appellant

RE: Bizser Group, Inc.

Solicitation No. W911SA-11-T-0024

U.S. Department of the Army

USAR Contracting Center

Fort McCoy, Wisconsin

SBA No. VET-210

Decided: February 2, 2011

APPEARANCES

Derrick Storms, Esq., Storms and Associates, P.A., Miami, Florida, 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 SBA's Director for Government Contracting made a clear error of fact or law in dismissing the Appellant's protest 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 November 5, 2010, the U.S. Department of the Army, USAR Contracting Center, at Fort McCoy, Wisconsin (Army), issued Solicitation No. W911SA-11-T-0024 for custodial services. The Contracting Officer (CO) set the procurement aside for Service-Disabled Veteran-

Owned Small Business Concerns (SDVO SBCs). Offers were due on November 24, 2010. On December 6, 2010, the CO informed offerors through the Internet that she had made award to Bizser Group, Inc. (Bizser). On December 7, 2010, A1 Procurement JVD (Appellant), protested Bizser's claimed SDVO SBC status to the CO. The protest stated:

A1 Procurement JVD is challenging the Bizser Group, Inc's Service-Disabled Veteran-Owned Small Business (SDVOSB) Status. We have substantial evidence suggesting that the Bizser Group, Inc is not a valid SDVOSB, because it is not 51% owned and controlled by a service disabled veteran.

We offer the following as initial proof:

1. A representative from the Bizser Group, Inc did not state the company was an SDVOSB.

2. The Bizser Group, Inc is not verified under the Center for Veterans Enterprises as an SDVOSB.

1.[sic] Through diligent research we have found no evidence that the Bizser Group, Inc is a valid SDVOSB.

We request that a Small Business Administration (SBA) determination be conducted on the Bizser Group, Inc's SDVOSB status, and in the event the SBA determines the Bizser Group, Inc is not a valid SDVOSB, we request that their bid be disqualified.

Protest File, Tab 2 at 1.

On December 15, 2010, the CO referred the protest to the Small Business Administration (SBA). Attached to the CO's cover memo, along with the protest, were three documents downloaded from the Internet on December 8, 2010. First was Bizser's Central Contractor Registration (CCR) listing wherein Bizser is identified under "Business Types" as "QF - Service Disabled Veteran Owned Business." Protest File, Tab 2 at 10. Second was Bizser's SBA Profile, identifying Bizser, under "Organization, Ownership and Certifications," as "Service-Disabled Veteran, Veteran." *Id.* at 13. Third was Bizser's VetBiz Registry listing, which identified Bizser as a Service-Disabled Veteran-Owned Small Business Concern. *Id.* at 9.

On January 11, 2011, the SBA's Acting 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: "Your protest lacks the specificity required by SBA's regulations because it merely makes statements asserting that BIZSER may not be a qualified SDVO SBC without articulating any underlying factual basis for the statements." Protest File, Tab 1 at 1.

B. Appeal Petition

On January 14, 2011, Appellant filed the instant appeal with the SBA Office of Hearings and Appeals (OHA). Appellant asserts that it had filed a specific protest and that the SBA erred

in finding it non-specific. Appeal Petition at 4. Appellant asserts it had made three specific statements supporting that Bizser was not an SDVOSB concern, to-wit:

1. Bizser is not owned or controlled by a Service-Disabled Veteran;
2. Bizser is not verified by the Center for Veterans Enterprises (CVE); and
3. A Bizser representative stated that Bizser was not a SDVOSB concern.

Id.

Appellant emphasizes that these statements are factual statements and not allegations. Further, with respect to the second statement, Appellant cites *Matter of Veteran Construction Services, LLC*, SBA No. VET-103 (2005) for the proposition that a protest stating that a firm has not been verified by CVE is sufficient to require an SBA investigation into its SDVOSB status.

As relief, Appellant requests that OHA overturn the D/GC's determination and order SBA to investigate Bizser's SDVOSB status.¹

C. Response to the Appeal

On January 31, 2011, SBA responded 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. As to Appellant's three statements, SBA asserts, first, that a protestor must do more than just point to a lack of available information in order to satisfy protest specificity.

Second, SBA cites *Matter of Savant Services Corporation*, SBA No. VET-154 (2009) for the proposition that lack of CVE verification does not state a specific protest because SBA regulations do not require such verification. Only the Department of Veteran Affairs (DVA) requires it only for its own contractors. Finally, SBA asserts that Appellant's third statement is different from Appellant's original allegation, and that in any event is new evidence that should be excluded from the appeal.

Bizser did not respond to the appeal.

IV. Discussion

A. Timeliness and 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

¹ Appellant also requests costs and attorney fees. I am not authorized to award costs and attorney fees.

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 him.

Appellant attempts to submit new evidence on appeal. Specifically, Appellant attempts to recast the statement allegedly made by an unidentified Bizser representative from a failure to state that Bizser is an SDVO SBC to a statement where the unidentified Bizser representative affirmatively states that Bizser is not an SDVO SBC. Evidence beyond the written protest file may not be considered in SDVO SBC appeals. 13 C.F.R. § 134.512; *Matter of Markon, Inc.*, SBA No. VET-158 (2009). This is especially true when the evidence has been in Appellant’s possession all along, and yet it failed to submit it to the D/GC. *Matter of DAV Prime/Vantex Service Joint Venture*, SBA No. VET-138, at 4 (2008). Here, the information in question was in Appellant’s possession at the time it made its protest, but Appellant did not submit it. The revised statement Appellant submits with its appeal is thus EXCLUDED from consideration here.

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 “it is our understanding” that an offeror does not qualify. *Matter of Service Disabled Veteran Manufacturing & ZAMS, Inc.*, SBA No. VET-122 (2007) (*ZAMS*). 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*). Here, Appellant’s first allegation, “Bizser is not owned or controlled by a Service-Disabled Veteran”, is nothing more than a statement of what Appellant wishes to prove, with no substantive factual content suggesting why Bizser is not eligible.

Appellant’s second allegation is that Bizser lacks CVE verification. However, the instant solicitation, unlike the one in Appellant’s cited case, was issued by the Army, not the DVA, so CVE verification is not required. Therefore, the allegation that a firm lacks CVE verification is not a specific allegation. *Matter of VETcorp, Inc.*, SBA No. VET-205 (2010).

Appellant’s third protest allegation was that an unidentified representative from Bizser “did not state the company was an SDVOSB.” This allegation is insufficiently specific, because

it still provides no more facts than did the protests in *One Step* and *ZAMS*, protests that merited dismissal because they made no specific facts or allegations.

Appellant's SDVO SBC protest against Bizser did not specify any factual basis for the allegation that Bizser is not an SDVO SBC. Thus, the protest was not sufficiently specific under 13 C.F.R. §§ 125.25(b), 125.26(a). Therefore, Appellant cannot show the D/GC based his 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