United States Small Business Administration
Office of Hearings and Appeals

IN THE MATTER OF:	
RUSH-LINK ONE Joint Venture,	SBA No. VET-228
Appellant,	Decided: March 16, 2012
Solicitation No. W912QR-11-R-0047	

APPEARANCES

James E. Krause, Esq., Jacksonville, Florida, for Appellant

Laura M. Foster, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C., for the Agency

DECISION[1]

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 Director for Government Contracting (D/GC) for the U.S. Small Business Administration (SBA) made a clear error of fact or law in determining that LINK Contracting, Inc. (LINK) does not meet the Service-Disabled Veteran Owned Small Business Concern (SDVO SBC) eligibility requirements, and in determining that RUSH-LINK ONE Joint Venture (Appellant) is not an eligible SDVO joint venture. *See* 13 C.F.R. § 134.508.

III. Background

A. Protest and D/GC Determination

The Department of the Army, Louisville District Corps of Engineers, issued Solicitation

[1] This decision was initially issued on March 5, 2012. Pursuant to 13 C.F.R. § 134.205, I afforded each party an opportunity to file a request for redactions if that party desired to have any information withheld from the published decision. OHA received one or more timely requests for redactions and considered those requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

No. W912QR-11-R-0047 as an SDVO SBC set-aside. On August 4, 2011, Appellant submitted its proposal. Appellant is a joint venture between LINK, which holds a 51% interest in the joint venture, and RUSH Construction, Inc. (RUSH), which holds a 49% interest. On November 4, 2011, the Contracting Officer (CO) notified offerors that Appellant was the successful offeror. On November 9, 2011, Blackhawk Venture, LLC (Blackhawk), an unsuccessful offeror, challenged Appellant's SDVO SBC eligibility.

On January 18, 2012, the D/GC determined that Appellant is not an eligible SDVO joint venture. The D/GC concluded that Mr. George A. Carpenter, president and majority owner of LINK, is a service-disabled veteran based on documentation from the U.S. Department of Veterans Affairs. However, the D/GC found LINK to be an ineligible SDVO SBC due to Mr. Carpenter's lack of ownership and control.

The D/GC observed that, although Mr. Carpenter owns 55% percent of LINK's outstanding shares, three individuals hold Secured Promissory Notes which are each secured by one-third of Mr. Carpenter's LINK stock. Based on a review of the Secured Promissory Notes and accompanying Stock Pledge Agreements, the D/GC found that the promissory notes and stock pledge agreements placed impermissible limits on Mr. Carpenter's ownership. The D/GC stated that "paragraph 4(a) of the Stock Pledge Agreements prohibits Mr. Carpenter from selling, transferring, assigning or otherwise disposing of the pledged securities." (Determination at 6.) The D/GC also noted that the Secured Promissory Notes forbid Mr. Carpenter from accepting dividends or other profit distributions from LINK until the obligations to the promissory notes' payees have been satisfied. Furthermore, if a dividend or profit distribution is made to Mr. Carpenter by LINK, Mr. Carpenter is required to assign one-third of the dividend or distribution to each note payee, thereby providing the Secured Promissory Note payees with rights to 100% of Mr. Carpenter's dividends or distributions.

With regard to Mr. Carpenter's control of LINK, the D/GC stated that Mr. Carpenter holds the highest officer position in the firm, has the requisite experience to run LINK, is a member of the board of directors, and controls 55% percent of the voting stock. However, the D/GC found that a separate "Shareholders' Agreement" requires all decisions to be approved by a vote of 70% of the outstanding shares; Mr. Carpenter's 55% interest is insufficient to overcome this supermajority requirement.[2] The D/GC also noted that any attempt by Mr. Carpenter to

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[2] The 70% voting requirement is set forth in ¶ 2.1 of the Shareholders' Agreement, which reads as follows:

> 2.1 Shareholders and Board of Directors. The business and affairs of the Corporation and all corporate powers shall be exercised and managed by and under the direction of the Board of Directors consisting of four members, who shall initially be George A. Carpenter, [XXXXXXXX], [XXXXXXXX], and [XXXXXXXX], who shall be permitted to serve as members of the Board of Directors for as long as they own stock in the Corporation. If and when each of these four shareholders' stock is fully transferred, the successor owners of their shares shall have a right to appoint a board member as a successor to fill the vacancy left on the board. This provision shall supersede any contrary [*cont.*]

unilaterally take key actions (such as selling or disposing of LINK's assets, dissolving, liquidating, or merging LINK with another business, or increasing officer compensation) could be blocked by other shareholders who are not service-disabled veterans because the Shareholders' Agreement requires approval of three of the four board members for such actions. Additionally, the D/GC stated that LINK's non-service-disabled board members [XXXXXX XXXXXXXXXXXXXX], and the loans provided by LINK's non-service-disabled veteran board members constitute critical financing or impermissible loan arrangements prohibited under 13 C.F.R. § 124.106(g)(2) and (3). (Determination at 8.)

Having concluded that LINK is not an eligible SDVO SBC, the D/GC went on to analyze Appellant's joint venture status. Appellant is not an eligible SDVO joint venture because LINK does not satisfy the SDVO SBC eligibility requirements. (*Id.*) In addition, the D/GC noted concerns with Appellant's project manager. Under 13 C.F.R. § 125.15(b)(2)(ii), an employee of the SDVO SBC must serve as the project manager for a joint venture to bid on an SDVO SBC contract. The D/GC stated that, although Appellant's joint venture agreement does indicate that a LINK employee would serve as project manager for the procurement in question, Appellant's proposal names a RUSH employee as project manager in violation the requirements for SDVO SBC joint ventures.

B. Appeal Petition

On February 1, 2012, Appellant appealed the D/GC's determination. Appellant contends that the D/GC erred in numerous respects.

Appellant argues that the terms of the three promissory notes, which the D/GC found to restrict Mr. Carpenter's ownership, are standard commercial terms. Appellant states there have been no violations of the terms of the promissory notes and Mr. Carpenter remains in complete control of LINK. Appellant argues the D/GC's decision conflicts with 13 C.F.R. § 124.3, which specifically states that a pledge or encumbrance of stock does not affect unconditional ownership if the terms follow normal commercial practices. In addition to being inconsistent with the regulation, Appellant argues that the D/GC's determination would make it virtually impossible for an SDVO SBC or minority business to obtain routine business financing. Similarly, Appellant states that the promissory notes payees' rights to 100% of any dividends or distributions made to Mr. Carpenter does not create an impermissible condition on Mr. Carpenter's ownership under 13 C.F.R. § 124.105(f), but are common commercially reasonable

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> provision of the Corporation's bylaws or Articles of Incorporation (as they stand now or may subsequently be amended). Except as otherwise provided herein or in the Corporation's bylaws, all decisions of the Shareholders shall be made by a majority vote of the outstanding stock of the Corporation. For purposes of this Agreement, unless otherwise indicated, a "majority vote" of the shareholders or of the outstanding stock or capital stock shall be a vote in which seventy percent (70%) of the issued shares of the Corporation vote to pass the issue or matter brought to vote.

Administrative Record, Exhibit J, Tab 11 at 3.

terms to protect lenders. Appellant states the limitations are normal and encourage prudent repayment of the loan and do not deny Mr. Carpenter wages or his proportionate share of distributions. (Appeal at 5.)

Appellant argues the D/GC also made a clear error of law and fact by finding that the Shareholders' Agreement supersedes LINK's articles of incorporation and bylaws. Appellant asserts that the Shareholders' Agreement itself indicates that the bylaws have priority, and that the D/GC incorrectly relied on the Shareholders' Agreement to conclude that Mr. Carpenter's 55% ownership is insufficient. Appellant states the D/GC misread ¶ 2.1 of the Shareholders' Agreement. Appellant states the 70% voting requirement is applicable only to the Shareholders' Agreement and the D/GC ignored language indicating that "[e]xcept as otherwise provided herein or in the Corporation's bylaws, all decisions of the Shareholders shall be made by a majority vote of the outstanding stock of the Corporation." (Appeal at 7, quoting the Shareholders' Agreement). Appellant reiterates that the bylaws require simple majority vote, not a 70% supermajority. Appellant argues a clear reading of the Shareholders' Agreement and bylaws demonstrates that Mr. Carpenter controls LINK. Appellant also disputes the D/GC's conclusion that the promissory notes are improper by citing 13 C.F.R. § 124.106(g)(1), which states that a commercially reasonable loan guarantee, alone, does not give the power to control a firm.

With regard to the D/GC's finding that a RUSH employee would be serving as project manager for the procurement in question, Appellant acknowledges that its proposal mistakenly named a RUSH employee in this role, although the joint venture agreement indicated that the project manager will be a LINK employee. Appellant suggests that it could now substitute a LINK employee in lieu of the RUSH employee identified in the proposal.

Appellant argues that, due to the D/GC's legal and factual errors, OHA should reverse the determination and find that Mr. Carpenter owns and controls LINK and that Appellant is an eligible SDVO joint venture.

C. SBA's Response to the Appeal

On February 13, 2012, SBA responded to the appeal. SBA argues that the D/GC correctly determined that LINK is not unconditionally owned and controlled by a service-disabled veteran. Because LINK is not an eligible SDVO SBC, and Appellant's proposal designated a non-SDVO SBC employee as project manager, SBA maintains that the D/GC's determination that Appellant is ineligible to submit an offer for an SDVO SBC set-aside should be affirmed.

SBA asserts that the D/GC correctly found Mr. Carpenter does not unconditionally own LINK. SBA states that although 13 C.F.R. § 124.3 provides that a pledge of stock alone does not affect unconditional ownership, 13 C.F.R. § 124.105(f) places further limitations, specifically requiring the individual upon whom eligibility is based be entitled to receive at least 51% of dividends paid on stock. SBA states that the D/GC had no objection to Mr. Carpenter pledging his shares in exchange for financing; the D/GC's concerns were with the specific terms of the promissory notes and stock pledge agreements, which place impermissible restrictions on Mr. Carpenter's right to dispose of his shares and receive dividends.

SBA also argues that OHA should uphold the D/GC's determination regarding Mr. Carpenter's lack of control due to inability to overcome the supermajority voting requirement in the Shareholders' Agreement. SBA disputes Appellant's contention that LINK's bylaws are superior to the Shareholders' Agreement. SBA quotes ¶ 2.1 of the Shareholders' Agreement which specifically states, "This provision shall supersede any contrary provision of the Corporation's bylaws or Articles of Incorporation (as they stand now or may subsequently be amended)." SBA argues that based on the language of the Shareholders' Agreement, the D/GC properly concluded that ¶ 2.1 of the Shareholders' Agreement supersedes any contrary provisions in LINK's bylaws or articles of incorporation and Mr. Carpenter does not control LINK.

With regard to the joint venture, SBA states that 13 C.F.R. § 125.15(b)(2) requires an SDVO joint venture to establish an SDVO SBC as the managing venturer and designate an employee of the managing venturer as the project manager. SBA asserts that the D/GC correctly concluded that Appellant is not an eligible SDVO joint venture because LINK is not an eligible SDVO SBC and because Appellant did not designate an employee of the managing venturer, LINK, as project manager. SBA emphasizes that Appellant concedes that a RUSH employee was identified as the project manager. Furthermore, asserts SBA, Appellant cannot now substitute an LINK employee as project manager. SBA complains that Appellant did not notify SBA of the error during the review process, and maintains that the D/GC reasonably relied on Appellant's proposal. Moreover, SBA argues that the D/GC determines a firm's eligibility at the time of its offer pursuant to 13 C.F.R. § 125.15.

IV. Discussion

A. Jurisdiction and Standard of Review

SDVO SBC status appeals are decided by OHA pursuant to the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 125 and 134. Appellant filed the instant appeal within ten business days of receiving the D/GC's determination, so the appeal is timely. 13 C.F.R. § 134.503. Accordingly, this matter is properly before OHA for decision.

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, OHA will overturn the D/GC's determination only if Appellant proves that the D/GC made a patent error based on the record before him.

B. Analysis

For a small business concern to qualify as an eligible SDVO SBC, a service-disabled veteran must directly and unconditionally own at least 51% of the firm. 13 C.F.R. § 125.9. The service-disabled veteran also must control both the long-term decision-making and the day-today management of the firm. 13 C.F.R. § 125.10(a). In the case of a joint venture to perform an SDVO contract, the joint venture agreement must contain a provision designating an SDVO SBC as the managing venturer, and designating an employee of the managing venturer as the project

manager. 13 C.F.R. § 125.15(b)(2)(ii).

The D/GC in this case determined that Appellant — a joint venture between LINK (a purported SDVO SBC) and RUSH — did not comply with these regulatory requirements. First, although Mr. Carpenter is a service-disabled veteran and owns 55% of LINK's stock, his ownership is not unconditional due to restrictions imposed by three Secured Promissory Notes and accompanying Stock Pledge Agreements. Second, Mr. Carpenter does not control LINK's board of directors because his 55% interest is insufficient to overcome supermajority voting requirements. Third, Appellant's joint venture agreement is flawed, because a RUSH employee was proposed as Appellant's project manager for the procurement in question.

Appellant disputes each of these rationales, but any one of the grounds cited by the D/GC is a proper basis to conclude that Appellant is not an eligible SDVO joint venture. For the reasons discussed *infra*, I find that Appellant has not established material error of fact or law in the D/GC's decision. As a result, the D/GC's determination may not be disturbed.

1. Ownership of LINK

The D/GC first determined that Mr. Carpenter does not unconditionally own LINK. The D/GC recognized that Mr. Carpenter is a service-disabled veteran who owns 55% of LINK's stock. (Determination at 4-5.) However, three other individuals, who are not service-disabled veterans, hold Secured Promissory Notes, each of which is secured by one-third of Mr. Carpenter's interest in LINK.[3] The Stock Pledge Agreements accompanying these notes prohibit Mr. Carpenter from selling, transferring, assigning, or otherwise disposing of the pledged securities without the consent of the note holders. The D/GC found these restrictions problematic because "such an impediment to the exercise of Mr. Carpenter's ownership rights places an impermissible condition on his ownership." (*Id.* at 6.) In addition, the Secured Promissory Notes indicate that Mr. Carpenter may accept no dividend or profit distribution from LINK until the obligations to the note holders are satisfied. In the event that Mr. Carpenter nevertheless does receive dividends or profit distributions, he must assign those payments to the note holders. The D/GC observed that, under analogous regulations applicable to the 8(a) programs, disadvantaged individuals must be entitled to receive at least 51% of annual dividends.[4] The D/GC concluded that "[c]ollectively, the three Secured Promissory Notes provide the Payees with rights to 100

[3] All three note holders — [XXXXXXXX], [XXXXXXXX], and [XXXXXXXX] — are 15% owners and board members of LINK. The D/GC also found that these three individuals "XXXXXXXXXXXXXXXXXXXXX." (Determination at 8.)

[4] *See* 13 C.F.R. § 124.105(f). OHA has long recognized that the regulations regarding control of 8(a) program participants can provide guidance in interpreting the control requirement of SDVO SBC eligibility. *E.g., Matter of Eason Enterprises OKC LLC, et al.*, SBA No. VET-102 (2005). Furthermore, "SBA may apply the regulations and case law from [the 8(a)] programs to analyze the issue of control in SDVO SBC programs." *Matter of Chevron Construction Services, LLC*, SBA No. VET-183, at 4 (2010).

percent of any dividends or distributions made to Mr. Carpenter. This also places an impermissible condition on Mr. Carpenter's ownership under 13 C.F.R. § 124.105(f)." (Determination at 6.)

Appellant counters that, under the regulatory definition of "unconditional ownership" applicable to the 8(a) programs, SBA stated that "[t]he pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of the ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms." 13 C.F.R. § 124.3. Appellant contends that, in light of this provision (which the D/GC himself cited in his determination), the D/GC erred in concluding that Mr. Carpenter does not unconditionally own LINK. Similarly, with regard to the restrictions on Mr. Carpenter's acceptance of dividends and profit distributions, Appellant maintains that such restrictions are routine and indispensable to protect the interests of lenders. Appellant insists that "if the D/GC's interpretation becomes precedent, it will have a chilling effect on the willingness of lenders to provide loans giving small business Federal contractors like Mr. Carpenter the working capital they need to get into business." (Appeal at 5.)

I agree with Appellant that, according to 13 C.F.R. § 124.3, the pledging of stock as collateral for a loan is permitted and "does not affect the unconditional nature of the ownership." As a result, the ordinary terms of such loans — which may include restrictions on a borrower's ability to dispose of collateral without the lender's approval, and limitations on the borrower's payment of dividends while the loans remain outstanding — should not be grounds to find that a veteran does not unconditionally own a concern, unless there were evidence that the loans deviated from "normal commercial practices." In the instant case, however, Appellant overlooks the fact that the D/GC did in fact find the three loans in question to be commercially irregular. (Determination at 8.) Specifically, the D/GC observed that the three note holders are not banks or other commercial lenders, but rather are themselves minority owners and board members of LINK. The D/GC further indicated that the three individuals are not service-disabled veterans and "[XXXXXXXXXXXXXXXXXXXXXX]." (*Id.*) The D/GC concluded that the notes amount to "impermissible loan arrangements" or "critical financing" which would enable non-service disabled veterans to improperly influence Appellant's business decisions, in violation of SBA regulations. (*Id.*, citing 13 C.F.R. § 124.106(g)(2) and (3).) Appellant has not identified any error in the D/GC's determination that the loans are improper under 13 C.F.R. § 124.106(g)(2)and (3).

Accordingly, Appellant's reliance upon 13 C.F.R. § 124.3 is misplaced. The loans in question were not made by commercial lenders, and the D/GC determined that the loans themselves were improper due to non-compliance with13 C.F.R. § 124.106(g)(2) and (3). Appellant has not established that the loans adhere to "normal commercial practices" as contemplated by 13 C.F.R. § 124.3. As a result, the D/GC reasonably concluded that the terms of the Secured Promissory Notes and Stock Pledge Agreements imposed impermissible restrictions on Mr. Carpenter's ownership.

2. Control of LINK's Board of Directors

SBA regulations stipulate that, in order for a corporation to qualify as an SDVO SBC,

one or more service-disabled veterans must control the firm's board of directors. 13 C.F.R. § 125.10(e). Control over a corporation's board may be established when at least 51% of the voting stock is held by service-disabled veterans, and those veterans are members of the board and have a large enough percentage of stock to overcome any supermajority voting requirements. *Id.*

Applying these provisions, the D/GC determined that Mr. Carpenter does not control LINK's board of directors. Mr. Carpenter owns 55% of LINK, and is one of four members of the board. However, the D/GC observed that LINK and its shareholders have executed a formal "Shareholders' Agreement" stating that "[e]xcept as otherwise provided herein or in [LINK's] bylaws, all decisions of the Shareholders shall be made by a majority vote," and defining a "majority vote" as one in which "seventy percent (70%) of the issued shares of the Corporation vote to pass the issue or matter." (Shareholders' Agreement ¶ 2.1.) The same paragraph of the Shareholders' Agreement indicates that "[t]his provision shall supersede any contrary provision of [LINK's] bylaws or Articles of Incorporation (as they stand now or may subsequently be amended)." (*Id.*) The D/GC concluded that Mr. Carpenter does not control LINK's board because his "55 percent ownership is insufficient to overcome [the 70%] super majority voting requirement" set forth in the Shareholders' Agreement. (Determination at 7.)

Appellant does not dispute that the Shareholders' Agreement sets forth a supermajority voting requirement. However, Appellant emphasizes that LINK's bylaws contain no such requirement, and that "the Bylaws take priority over the Shareholders' Agreement." (Appeal at 7.) Appellant observes that the supermajority voting requirement in the Shareholders' Agreement is immediately prefaced by the phrase "[e]xcept as otherwise provided herein or in [LINK's] bylaws." (*Id.*, quoting Shareholders' Agreement ¶ 2.1.) Appellant insists that "the D/GC made a clear error of fact and law in his improper determination that LINK's Shareholders' Agreement superseded/controlled LINK's Articles of Incorporation and LINK's Bylaws." (*Id.* at 6.)

I find no merit in Appellant's arguments. As discussed above, ¶ 2.1 of the Shareholders' Agreement — the exact paragraph which addresses the 70% supermajority voting requirement — expressly states that this provision takes precedence over any contrary language in the bylaws or Articles of Incorporation. Thus, while Appellant may be correct that corporate bylaws ordinarily would control over a supplemental agreement between shareholders, Appellant cannot escape the specific language of ¶ 2.1 which gives priority to the Shareholders' Agreement on this issue. It is also worth noting that the Shareholders' Agreement was executed not only by each of LINK's individual shareholders but also by LINK itself, and repeatedly emphasizes that the parties intended to create a complete, final, and legally-binding arrangement. (Shareholders' Agreement ¶¶ 8.2, 8.3, 8.6.) It is therefore apparent that the supermajority voting requirement has been formally adopted by the corporation and its shareholders. Accordingly, the D/GC properly concluded that Mr. Carpenter does not control LINK's board based on the terms of the Shareholders' Agreement. *E.g., Matter of Firewatch Contracting of Florida, LLC*, SBA No. VET-137, at 6 (2008) (service disabled veteran did not control concern because his 60% ownership interest was insufficient to overcome 67% supermajority threshold required for certain actions).

3. Project Manager

Finally, the D/GC determined that Appellant did not comply with 13 C.F.R. § 125.15(b)(2)(ii), which requires that "[e]very joint venture agreement to perform an SDVO contract must contain a provision ... [d]esignating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the SDVO contract." In this case, Appellant's joint venture agreement indicated that LINK would be the managing venturer, and stated that an unidentified "LINK employee" would serve as project manager. (Joint Venture Agreement ¶¶ 3.1 and 3.2.) However, in its proposal for the procurement in question, Appellant named [XXXXXXXX], an employee of RUSH, as the project manager.

OHA considered a similar case in *Matter of HANA-JV*, SBA No. VET-227 (2012). In that case, the joint venture agreement stated that the project manager "will be an employee" of the SDVO SBC member of the joint venture, but did not identify any specific person as the project manager. The D/GC further determined, and OHA agreed, that no project manager had been named even after performance of the contract had begun, and that, despite the language of the joint venture agreement, an employee of a different firm was serving as *de facto* project manager during the transition phase. *HANA-JV*, SBA No. VET-227, at 7-8. OHA found that "[a] representative of the SDVO SBC should not only have the title of 'project manager,' but also should substantively manage each phase of contract performance." *Id.* at 8. A mere statement in the joint venture agreement that the project manager will be an employee of the managing venturer does not suffice to comply with 13 C.F.R. § 125.15(b)(2)(ii), particularly when there is evidence in the record contradicting this intention.

Likewise, in the instant case, Appellant's joint venture agreement expressed an intent that the project manager would be a LINK employee, but did not name a particular person as project manager. Moreover, the joint venture agreement is contradicted by Appellant's proposal, which identified [XXXXXXXX] as project manager. On these facts, the D/GC correctly determined that Appellant did not comply with 13 C.F.R. § 125.15(b)(2)(ii), because a LINK employee is not actually serving as project manager notwithstanding the statement in Appellant's joint venture agreement. On appeal, Appellant asserts that its proposal mistakenly identified [XXXXXXXX] as the project manager for this procurement, and suggests that Appellant could now substitute "a LINK employee in this position in compliance with the Joint Venture Agreement." (Appeal at 9.) This argument fails, however, because the D/GC must base his determination on documents governing the joint venture at the time Appellant submitted its offer, and not on statements made after the offer. *E.g., Matter of Apex Ventures, LLC*, SBA No. VET-219, at 6 (2011) ("[T]he AD/GC based his determination on [the challenged firm's] status at the time of self-certification. Developments that occurred after the date of self-certification are irrelevant to this analysis."); *Matter of Cedar Electric, Inc./Pride Enters., Inc., JV*, SBA No. VET-129, at 4 (2008) ("[T]he D/GC must determine SDVO SBC eligibility as of the date [the challenged firm] submits its initial offer .... A putative SDVO SBC cannot cure its lack of eligibility after submission of the initial offer."). Accordingly, any recent changes to Appellant's proposal cannot retroactively affect Appellant's eligibility.

V. Conclusion

The record supports the D/GC's determination that Appellant is not an eligible joint venture. Accordingly, the appeal is DENIED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.515(a).

KENNETH M. HYDE
Administrative Judge