

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

IN THE MATTER OF:

MJL Enterprises, LLC,

Appellant,

Solicitation No. SPE4A6-13-R-0338

U.S. Defense Logistics Agency

SBA No. VET-240

Decided: November 6, 2013

APPEARANCES

Dale Vernon Berning, Esq., Berning Law Group, Virginia Beach, Virginia, for Appellant

Chad Perrin, Vice President of Operations, Janel's Industries, Inc., Cassopolis, Michigan

Christopher R. Clarke, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION

I. Background

A. Solicitation and Protests

On January 2, 2013, the Contracting Officer (CO) for the U.S. Defense Logistics Agency (DLA) issued Request for Proposals (RFP) No. SPE4A6-13-R-0338 as a competitive Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) set-aside. The RFP indicated that DLA planned to award multiple indefinite delivery/indefinite quantity contracts for electrical lighting equipment. The CO assigned North American Industry Classification System (NAICS) code 335110, Electric Lamp Bulb and Part Manufacturing, with a corresponding size standard of 1,000 employees. Proposals were due July 3, 2013.

On August 16, 2013, the CO announced that the apparent awardees were Gulf Geoexchange & Consulting Services, Inc. (Gulf), Janel's Industries, Inc. (Janel's), and SDV Recon, Inc. (SRI). On August 21, 2013, MJL Enterprises, LLC (Appellant), a disappointed offeror, protested the SDVO SBC eligibility of the apparent awardees. Appellant's protests recited the full text of Federal Acquisition Regulation (FAR) 19.1403, and stated that “[Appellant] is protesting the [awardees'] claims and eligibility as Service Disabled Veteran Owned Small Businesses.” The protests provided no supporting facts, explanation, or

documentation to demonstrate that the awardees were not eligible SDVO SBCs. The CO forwarded Appellant's protests to the U.S. Small Business Administration (SBA) for consideration.

#### B. D/GC's Determinations

On September 18, 2013, the Director of SBA's Office of Government Contracting (D/GC) dismissed Appellant's protests as insufficiently specific. (Protest File (PF), Tab 1.) The D/GC explained that, under 13 C.F.R. § 125.25(b), “[a] protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations, is insufficient.” (*Id.*) In this case, the D/GC found that Appellant's protests lacked any specific facts or allegations; rather, Appellant simply quoted FAR 19.1403 and stated that Gulf, Janel's, and SRI are not eligible SDVO SBCs. Because the protests did not articulate any basis to question the SDVO SBC eligibility of Gulf, Janel's, or SRI, the D/GC dismissed the protests.

#### C. Appeal Petitions

On September 30, 2013, Appellant filed the instant appeals with the SBA Office of Hearings and Appeals (OHA).<sup>1</sup> On October 21, 2013, OHA consolidated the three appeals into a single proceeding.

In its appeals, Appellant argues that the D/GC erred in rejecting Appellant's protests for lack of specificity. Appellant maintains that the D/GC improperly relied upon the self-certifications from Gulf, Janel's, and SRI, without questioning whether those self-certifications were accurate. (Appeals at 4-5.) Appellant further contends that the three awardees are not registered in the U.S. Department of Veterans Affairs (VA) VetBiz database. Appellant reiterates its protest assertion that Gulf, Janel's, and SRI are not eligible SDVO SBCs, and insists that “[t]here is no factual evidence to the contrary” except for the awardees' own self-serving representations. (*Id.* at 5.)

Attached to its appeals, Appellant provides a letter confirming that Appellant is registered in the VetBiz database. (*Id.*, Attachment B.)

#### D. Janel's Response

On October 23, 2013, Janel's responded to the appeals. Janel's maintains it is currently an SDVO SBC and has been so for eleven years. Janel's states that it supports a protester's right to challenge the SDVO SBC eligibility of competitors, and volunteers to provide evidence of eligibility upon request.

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<sup>1</sup> Appellant filed its appeals within ten business days of receiving the D/GC's dismissals, so the appeals are timely. 13 C.F.R. § 134.503.

### E. SBA Response

On October 28, 2013, SBA submitted the protest file and its response to the appeals. SBA maintains that the D/GC correctly dismissed Appellant's protests because the protests provided no supporting evidence or explanation and therefore lacked specificity. (SBA Response at 4-6.) SBA maintains that Appellant's protests merely quoted from FAR 19.1403.

SBA asserts that Attachment B to the appeal petitions is inadmissible, because OHA may only consider evidence in the written protest file. (*Id.* at 3-4.) Furthermore, registration in the VetBiz database is not an eligibility requirement for SBA's SDVO SBC program. SBA observes that OHA has previously upheld the dismissal of a protest as insufficiently specific when the protester stated only that the apparent awardee was not registered in VetBiz. (*Id.* at 6-7 citing *Matter of Savant Services Corp.*, SBA No. VET-154 (2009).)

## II. 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. 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 (2006) (discussing the clear error standard that is applicable to both size appeals and SDVO SBC appeals). 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 her.

### B. Analysis

SBA regulations provide that 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). Similarly, the FAR states that “[a]ssertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, are insufficient.” FAR 19.307(c). The D/GC must dismiss a non-specific protest. 13 C.F.R. § 125.27(b).

In this case, aside from quoting FAR 19.1403, Appellant's protests consisted of a single sentence stating that “[Appellant] is protesting the [awardees'] claims and eligibility as Service Disabled Veteran Owned Small Businesses.” Appellant offered no evidence, information, or argument to support this contention. Accordingly, Appellant's protests did not provide the D/GC with any basis upon which to commence an investigation of Gulf, Janel's, or SRI, and the D/GC correctly concluded that the protests were insufficiently specific. *Matter of Veterans Contractors Group JV, LLC*, SBA No. VET-233, at 3 (2013) (protest that “amounted to no more than bare assertions” was properly dismissed); *Matter of One Step Ahead Enters., LLC*, SBA No. VET-155, at 4 (2009) (affirming dismissal of “unsupported and vague” protest because it merely requested an investigation of the challenged firm).

In its appeals, Appellant contends that the D/GC unreasonably assumed that the awardees' self-certifications were valid, and that the D/GC failed to verify whether the awardees were registered in the VetBiz database. These arguments reflect misunderstanding of the SDVO SBC program. SBA's SDVO SBC program is a self-certification program, so Government officials are expected to rely upon offerors' representations absent some reason to question them. *See generally* 13 C.F.R. § 121.405; FAR 19.301-1. Here, as discussed above, Appellant did not advance any basis to question the self-certifications of Gulf, Janel's, and SRI, and the D/GC therefore properly accepted those representations. The VetBiz database is used to verify eligibility for VA procurements, but for non-VA procurements (such as found here), “[r]egistration on the VetBiz database, or receipt of any VA certification or registration is not an SDVO SBC eligibility requirement.” *Matter of Fidelis Design & Constr., LLC*, SBA No. VET-221, at 4 (2011). Accordingly, whether or not a firm is registered in VetBiz is immaterial to determining eligibility for SBA's SDVO SBC program.<sup>2</sup>

### III. Conclusion

Appellant's protests did not provide specific facts or evidence of ineligibility, so the D/GC properly dismissed those protests. As a result, the appeals are DENIED, and the dismissals are AFFIRMED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.515(a).

KENNETH M. HYDE  
Administrative Judge

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<sup>2</sup> Attached to its appeals, Appellant seeks to introduce a letter confirming that Appellant is registered in the VetBiz database. (Appeals, Attachment B.) As SBA correctly observes, however, OHA may not accept evidence which was not first provided to the D/GC for consideration. 13 C.F.R. § 134.512. Further, Attachment B appears to be irrelevant, as there was no requirement for firms to be registered in VetBiz for this procurement, and Appellant's own eligibility is not under review in any event. For these reasons, Attachment B is EXCLUDED and was not considered for purposes of this decision.