

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

DECISION FOR PUBLIC RELEASE

IN THE MATTER OF:

VetPride Services, Inc.

Appellant,

RE: LOGMET LLC

Solicitation Nos. M67001-15-T-0014 and
M67001-15-T-0014-0018

SBA No. VET-250

Decided: November 24, 2015

APPEARANCES

Sarah Schaurte, Esq., Legal Meets Practical, LLC, Roswell, Georgia, for Appellant

Hopewell Darneille, Esq., Jackson Kelly, PLLC, Washington, D.C., for Logmet LLC

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

DECISION¹

I. Introduction and Jurisdiction

This is an appeal of a determination by the U.S. Small Business Administration (SBA) Director of Government Contracting (D/GC) finding that LOGMET LLC (LOGMET) is an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC). On appeal, VetPride Services, Inc. (Appellant), who previously protested LOGMET's SDVO SBC status, argues the determination is erroneous and should be reversed or remanded to the D/GC for further consideration. For the reasons discussed *infra*, the appeal is denied.

¹ This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. No redactions were requested, and OHA now publishes a redacted version of the decision for public release.

OHA decides appeals of SDVO SBC status determinations under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 125 and 134. The record reflects that the appeal was received at OHA within ten business days of Appellant's receipt of the D/GC determination, so the appeal is timely. 13 C.F.R. § 134.503. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation, Protest, and Response

On April 16, 2015, the Department of the Navy, United States Marine Corps (Marine Corps) issued Solicitation No. M67001-15-T-0018 for aircraft maintenance services. Five days later, on April 21, 2015, the Marine Corps issued Solicitation No. M67001-15-T-0014, which was also for aircraft maintenance services. The Contracting Officer (CO) set aside both procurements entirely for SDVO SBCs. Appellant and LOGMET submitted timely proposals for both, self-certifying as eligible SDVO SBCs.

On July 7, 2015, the CO announced LOGMET was selected for award of Solicitation No. M67001-15-T-0014. Then, on July 17, 2015, the CO announced that LOGMET was also selected for award of Solicitation No. M67001-15-T-0018. Appellant, an unsuccessful offeror, protested both awards on the grounds that LOGMET was not an eligible SDVO SBC. Appellant alleged it was unclear whether Mr. Wayne C. Rankin, the veteran upon whom LOGMET's eligibility is based, holds the highest officer position at LOGMET. Appellant noted LOGMET's website did not establish that Mr. Rankin is the highest ranked officer because he is listed as Chief Executive Officer (CEO) while his wife is listed as President and Chief Operating Officer (COO). Further, Appellant theorized, Mr. Rankin's wife, Ms. Margaret Rankin, who is not a service-disabled veteran, controls LOGMET's day-to-day operations. To support this allegation, Appellant noted that she signed LOGMET's employee manual.

On August 24 and 25, 2015, LOGMET responded to the protest. LOGMET contended that Mr. Rankin is the sole manager and highest-ranking officer. Under LOGMET's Company Agreement, LOGMET explained, the manager has the power to appoint and remove officers. (Protest Response at 16, citing Company Agreement § 5.1.9.) Mr. Rankin, LOGMET explained, appointed himself as CEO and Ms. Rankin as President. (*Id.*, citing Amendment to Company Agreement). In doing so, he appointed himself as the highest officer. As evidence of his highest position, LOGMET asserted that Mr. Rankin is the highest paid officer. (*Id.*, citing 2014 W2s and 2015 Pay Statements for Mr. and Ms. Rankin.)

LOGMET argued further that Mr. Rankin has full control over LOGMET. According to LOGMET's Company Agreement, “[t]he business and affairs of the Company shall be managed by its designated Manager” who has “full, exclusive and complete discretion to manage and control the business and affairs of the Company, and to take all such actions as [he] deem[s] necessary or expedient to accomplish the affairs of the Company.” (*Id.* at 17, quoting Company Agreement § 5.1.1.) As sole manager, then, Mr. Rankin has control over LOGMET's affairs. LOGMET argued that the employee manual referenced by Appellant does not contradict this fact

because the manual is outdated. In 2010, as part of LOGMET's restructuring, the manual was replaced by a new manual signed by Mr. Rankin as CEO. (*Id.*)

Accompanying its response, LOGMET submitted a declaration from Mr. Rankin. Mr. Rankin explains that LOGMET used to be a Woman-Owned Small Business (WOSB), with Ms. Rankin owning 51% and Mr. Rankin owning 49%. (Decl. at ¶ 4.) Under this ownership and control structure, LOGMET was admitted into SBA's 8(a) Business Development Program in 2005. (*Id.* at ¶ 5.) Beginning in 2009, LOGMET worked with the SBA District Office to restructure itself into an SDVO SBC. (*Id.* at ¶ 6.) Under this new arrangement, Mr. Rankin became the 51% owner, his wife's interest was reduced to 49%, and Mr. Rankin became the sole manager and CEO. (*Id.* at 7.) Significantly, his "wife remained as President, but now was only the second highest company officer in light of [his] elevation to CEO." (*Id.*) SBA approved the restructuring on June 24, 2010. (*Id.* at ¶ 8.)

Mr. Rankin declared further that he controls the day-to-day operations at LOGMET. In addition to his role as CEO, he prepares and prices all proposals submitted by LOGMET. (*Id.* ¶ 16.)

B. D/GC Determination

On September 28, 2015, the D/GC dismissed Appellant's protests against LOGMET and concluded LOGMET is an eligible SDVO SBC.

The D/GC first explained that Mr. Rankin is a service-disabled veteran who unconditionally owns at least 51% of LOGMET. Therefore, LOGMET satisfies the disability and ownership requirements for SDVO SBC eligibility, 13 C.F.R. §§ 125.8 and 125.9(d). (Determination at 3.)

The D/GC next explained that to be an eligible SDVO SBC, one or more service-disabled veterans also must hold the highest officer position, possess the necessary managerial experience, and control the concern's management and daily operations. 13 C.F.R. § 125.10(a) and (b). The D/GC explained that Mr. Rankin is LOGMET's CEO and sole manager. His wife, the President, reports to him and is not a manager. Mr. Rankin, then, controls LOGMET's daily operations.

Mr. Rankin also has 30 years of experience, ten of which was "in the private sector for several companies with varying levels of management and supervision." (Determination at 4.) He therefore has the managerial experience of the extent and complexity necessary to run LOGMET.

C. Appeal

On October 7, 2015, Appellant filed an appeal of the D/GC's decision with SBA's Office of Hearings and Appeals (OHA). Appellant argues the determination is erroneous because "it does not use factual information to support its conclusion" that Mr. Rankin is LOGMET's highest officer and that he controls LOGMET's day-to-day operations. (Appeal at 3, 4.)

Appellant argues the D/GC “conducted a clear error of fact” in determining that Mr. Rankin is the highest officer. (*Id.* at 4.) Appellant concedes Mr. Rankin is the CEO. Appellant stresses, though, that “*the question at hand is whether the CEO is the highest ranked officer.*” (*Id.*, emphasis Appellant’s). The D/GC did not explain how it determined that Mr. Rankin’s status as CEO renders him the highest-ranked officer. Appellant restated its protest allegation that it is unclear from LOGMET’s website that Mr. Rankin is the highest ranked officer because he is listed as CEO while his wife is listed as President.

Further, the D/GC “conducted a clear error of fact” in determining that Mr. Rankin controls LOGMET’s day-to-day operations. (*Id.* at 5.) According to LOGMET’s employee manual, the President—in addition to the CEO—has the authority to enter into employee agreements. The D/GC did not address these issues, but stated merely that Ms. Rankin is a minority owner and not a manager. Appellant contends, “it is still possible for M[s]. Rankin to be conducting the day-to-day operations based on the information provided.” (*Id.*)

D. Motion to Dismiss

On October 26, 2015, LOGMET moved to dismiss the appeal. LOGMET contends the appeal does not allege facts that, if proven to be true, warrant reversal or modification of the D/GC’s determination. (Motion at 10, citing 13 C.F.R. § 134.509).

Appellant, LOGMET argues, does not allege facts contradicting the determination that Mr. Rankin holds the highest officer position. To the contrary, Appellant acknowledges that Mr. Rankin is the CEO. (*Id.* at 11, citing Appeal at 4.) Appellant’s argument regarding the website’s lack of clarity with respect to the hierarchy of positions, in LOGMET’s view, is also insufficient. Appellant does not point to any specific language on the website suggesting the CEO is subordinate to the President. Citing Wikipedia, LOGMET argues the converse is true—that the CEO is generally understood as being higher ranked than the President. Moreover, it is the organizational documents, and not a website, that determine whether Mr. Rankin holds the highest officer position, so Appellant’s argument lacks evidentiary support.

Appellant’s argument is further undermined by 13 C.F.R. § 125.10(d), which states that “[i]n 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 of the company.” This regulations, LOGMET argues, makes clear that, as sole manager, Mr. Rankin holds the highest officer position.

LOGMET next addresses Appellant’s argument that “even if Mr. Rankin is the sole manager, it is still possible for Ms. Rankin to be conducting the day-to-day operations,” given that she signed the employee manual and wrote the welcome letter to employees. This allegation, LOGMET argues, is insufficient on its face. Writing a welcome message is not the same thing as controlling the day-to-day operations. Mr. Rankin does not have to do everything himself to retain control of the company; he can delegate certain tasks. Further, the employee manual Appellant cites is outdated and has been superseded by a new manual with a different letter to employees from Mr. Rankin as CEO. (Appeal at 13 n.12)

E. Response to Motion to Dismiss

On November 10, 2015, Appellant responded to the motion to dismiss. Appellant argues it alleged facts that, if true, warrant reversal or modification of the D/GC's determination. Therefore, OHA should deny the motion to dismiss.

Appellant argues the D/GC was required to properly consider available and relevant facts, evaluate the arguments of the parties, and correctly apply the regulations and law to the relevant facts in making the status determination. (Response at 5, citing *Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 11 (2009). Under 13 C.F.R. § 125.10(b), a service-disabled veteran . . . must occupy the highest officer position in the concern (usually President or Chief Executive Officer).” This requirement, Appellant notes, is separate from the requirement that he also be the managing member. *Compare* 13 C.F.R. § 125.10(b) *with* 125.10(d). As a result, LOGMET argues unpersuasively that Mr. Rankin satisfies the highest officer requirement by being the sole managing member.

Appellant points out that in its protest, Appellant averred Mr. Rankin is the CEO, and his wife, Ms. Rankin, is President. Therefore, the question for the D/GC was: Which is LOGMET's highest-ranked position, the CEO or the President? Appellant argues the D/GC did not explain how Mr. Rankin's status as CEO renders him the highest ranking officer. This failure, Appellant argues, constitutes clear legal error because the D/GC's conclusion lacks supporting facts.

LOGMET's contention that it is generally understood that the CEO outranks the President is unpersuasive because a business's officers are appointed based on their governing documents. 3 Tex. Bus. Org. Code § 101.052. LOGMET's citation to Wikipedia, then, does not establish that Mr. Rankin is the highest officer simply because he is CEO.

F. Agency Response

On October 26, 2015, SBA responded to the appeal and submitted the appeal file underlying the D/GC determination. SBA contends the D/GC correctly found that LOGMET is controlled by a service-disabled veteran, so OHA should affirm the determination.

SBA argues that LOGMET's corporate documents show that Mr. Rankin is LOGMET's sole managing member and CEO. LOGMET's Amended Company Agreement shows the manager and officers of LOGMET. Mr. Rankin's resume shows he has the experience necessary to run LOGMET. Accordingly, Mr. Rankin is the highest officer and has control over the day-to-day management of LOGMET. (SBA Response at 4).

G. LOGMET Response

With its motion to dismiss, LOGMET also responded to the merits of the appeal. If OHA does not dismiss the appeal, LOGMET argues, OHA should deny it because the record supports the determination, and Appellant has not demonstrated that the determination is clearly erroneous.

LOGMET addresses Appellant's contention the determination lacks adequate explanation. To LOGMET, this complaint does not establish clear error for two reasons. First, it “does not identify any specific legal deficiency or short-coming.” (LOGMET Response at 14.) Second, the D/GC is not required to elaborate with “greater specificity” the reasons for his conclusions, because these reasons reflect confidential business information. LOGMET points out that if a party wishes to review the material underlying the determination, its outside counsel may request that OHA issue a protective order, which Appellant's counsel did not do.²

The record supports the determination that Mr. Rankin is the highest officer. LOGMET emphasizes that the D/GC determined Mr. Rankin is the CEO, and highlights that Appellant concedes as much in the appeal. Further, Mr. Rankin is the managing member, whom LOGMET contends, is the key position given LOGMET is an LLC. Further, LOGMET's Company Agreement makes clear the President reports to the CEO. Confirming this arrangement, the CEO receives more pay than the President.

Appellant's arguments based on the website fail, LOGMET argues, because there is no requirement that a website detail respective duties of its officers. In any event, it is the company's organizational documents, and not a website, that are determinative of this issue.

In LOGMET's view, Appellant argues unconvincingly that Mr. Rankin does not control LOGMET's daily business operations, for two reasons. First, the manual Appellant relies on for this point is outdated. Second, the Company Agreement specifically states that Mr. Rankin, as sole manager, has “full, exclusive and complete discretion to manage and control the business and affairs of the Company, and to take all such actions as [he] deem[s] necessary or expedient to accomplish the affairs of the Company.” (Company Agreement § 5.1.2.) This control, moreover, is not just theoretical—Mr. Rankin actually controls LOGMET's daily affairs. For example, he prepares proposals; manages contract phase-in, start-up, and closeout; manages performance; addresses operating issues; negotiates collective bargaining agreements; and arranges and guarantees financing.

H. Reply

In responding to the motion to dismiss, Appellant also replied to LOGMET's response. On November 12, 2011, LOGMET objected to the admission of the reply. SBA regulations are clear that “[a] reply to a response is not permitted unless the Judge, upon motion or on his or her own initiative, orders a reply to be filed and served.” 13 C.F.R. § 134.206(e). No such direction

² As of the date of LOGMET's response, Appellant's counsel had not requested that OHA issue a protective order. On October 27, 2015, when the record was open for the sole purpose of allowing Appellant the opportunity to respond to the motion to dismiss, Appellant's counsel requested a protective order and was admitted the next day. In issuing the protective order, I stated that, because the record was open only so that Appellant could respond to the motion to dismiss, Appellant could “not present new argument regarding the propriety of the D/GC determination.” (Order at 1.)

occurred here, so the reply is EXCLUDED from the record. *Cf. Matter of Precise Sys., Inc.*, SBA No. VET-243, at 8 n.4 (2014) (admitting reply when OHA directed it.)

III. 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 him.

B. Motion to Dismiss

LOGMET urges OHA to dismiss the appeal. For appeals of SDVO SBC status determinations, SBA regulations provide that, "[t]he Judge selected to preside over a protest appeal shall dismiss the appeal, if . . . [it] does not, on its face, allege facts that if proven to be true, warrant reversal or modification of the determination." 13 C.F.R. § 134.509(a)(1). In this case, Appellant has alleged sufficient facts to survive a motion to dismiss.

According to SBA regulations, for the D/GC to find a firm to be an eligible SDVO SBC, the D/GC must determine that a service-disabled veteran holds the highest officer position of the concern. *See* 13 C.F.R. § 125.10(b) ("A service-disabled veteran . . . must hold the highest officer position."). The regulation specifies that the highest officer is "usually President or Chief Executive Officer." *See id.* In this case, although the D/GC determined that a service-disabled veteran is the CEO of LOGMET, the D/GC did not determine that CEO is the highest officer. This omission is significant given that a non-service-disabled veteran is President and could plausibly be the highest officer. Further, this omission constitutes a patent error in the D/GC determination because, although the CEO could be the highest officer, the D/GC made no such finding, which he was required by regulation to do. The motion to dismiss is therefore DENIED.

C. Analysis

Nevertheless, I find the appeal lacks merit. The record confirms that Mr. Rankin is the highest officer, so the D/GC's failure to make such a finding is ultimately harmless error. *E.g., Matter of Corners Constr.*, SBA No. VET-290, at 7 (2010) (finding the D/GC's mistake constituted harmless error because other evidence in the record supported the determination.). As the protest file makes clear, Mr. Rankin, as sole manager, has the ability to appoint and remove officers. As part of Appellant's restructuring into an SDVO SBC, Mr. Rankin appointed himself as CEO and Ms. Rankin as President. Although the Company Agreement does not specifically state that CEO is a higher position than President, the facts suggest that, in actuality, Mr. Rankin holds the higher office, because not only does he retain control of officer appointment, but he is

paid more. *Matter of Office Design Group, Inc.*, SBA No. BDP-355, at 4 (2010) (finding higher pay is probative of a higher position).

Further, although the D/GC erred by not determining that CEO is the highest officer position, Appellant offers no evidence or argument to support a finding that Mr. Rankin's CEO position is not the highest officer position. Significantly, Appellant does not argue, much less prove, that Mr. Rankin's position is inferior to his wife's position as President.

Appellant's argument that Mr. Rankin does not control the day-to-day affairs of LOGMET is feeble. Even though Mr. Rankin is the managing member of LOGMET, Appellant speculates "it is still possible for M[s]. Rankin to be conducting the day-to-day operations." Section II.C., *supra*. To support this theory, Appellant referenced an outdated employee handbook. Such evidence is unpersuasive in light of LOGMET's Company Agreement, which provides that Mr. Rankin, as sole manager, has "full, exclusive and complete discretion . . . to manage and control the business and affairs of the Company, and to take all such actions as [he] deem[s] necessary or expedient to accomplish the affairs of the Company." Section II.A., *supra*. Mr. Rankin's role in proposal preparation and contract management confirms that LOGMET satisfies this requirement. *Id.*

Further, it is important to note that part of the reason Appellant's arguments are so weak is that Appellant forewent the opportunity to gather more information to mount a more robust appeal. SBA regulations provide that "[o]n request, OHA will issue a protective order under which outside counsel for a non-government party in a pending appeal may be admitted, to examine and copy the appeal file (except for tax returns and privileged information)." 13 C.F.R. § 134.205(e). On October 8, 2015, the day after receiving the appeal, OHA issued a Notice and Order. In it, OHA stated that, because counsel for Appellant did not request a protective order in this appeal, it would not be served with a copy of the record underlying the D/GC determination. OHA set the record to close on October 20, 2015, and on SBA's motion, extended the close of record until October 26, 2015.

During this time, despite being on notice it had the opportunity to review the appeal file, Appellant did not request that OHA issue a protective order or otherwise attempt to review the appeal file. Had Appellant done so, it could have supplemented the appeal with more informed arguments, as 13 C.F.R. § 134.207 allows. *E.g.*, *Size Appeal of Crosstown Courier Servs., Inc.*, SBA No. SIZ-5571, at 5-6 (2014) (where, after reviewing the record under the terms of a protective order, both the protester and the challenged firm filed supplemental submissions). The weakness of Appellant's arguments, therefore, is partly due to Appellant's inaction. Nevertheless, because the record supports the D/GC's determination, it is virtually certain that Appellant would not prevail even if it had supplemented its response prior to October 26, 2015.³

³ On November 5, 2015, while the record was reopened for the sole purpose of allowing Appellant the opportunity to respond to the motion to dismiss, Appellant moved to supplement its appeal. The next day, I denied the motion, noting that the arguments Appellant was presenting were outside the narrow scope of subject matter delineated in the order reopening the record. *See* Section II.G n.1., *supra*.

IV. Conclusion

For the above reasons, I DENY the appeal and AFFIRM the D/GC's determination. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.515(a).

CHRISTOPHER HOLLEMAN
Administrative Judge