

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

IN THE MATTER OF:

Research Solutions Group, Inc.

Appellant,

RE: DJR Supply, LLC

Solicitation No. SPE8E9-17-V-1052

SBA No. VET-266

Decided: October 11, 2017

DECISION

I. Background

A. Solicitation and Protests

On June 30, 2017, the Defense Logistics Agency (DLA) awarded Solicitation No. SPE8E9-17-V-1052 to DJR Supply, LLC (DJR) for 1,076 gallons of paint thinner product. (Letter from T. Marcus to J. Acres (July 27, 2017).) This purchase order was made against Request for Quotations No. SPE8E9-17-T-2092, which was issued on June 7, 2017. (*Id.*) The Contracting Officer (CO) set aside the procurement entirely for small business concerns, and designating the highest order of set-aside precedence to Service-Disabled Veteran Owned Small Business Concerns (SDVO SBCs). (*Id.*, citing Defense Logistics Acquisition Directive (DLAD) 52.219-9013.)

On July 6, 2017, Research Solutions Group, Inc. (Appellant) filed a protest with the CO, “protest[ing] the award . . . to DJR on June 30, 2017.” (*Id.*) In its protest, Appellant asserted it should have received the award because it quoted a lower unit price than DJR. (*Id.*) The CO denied Appellant's protest on July 27, 2017, stating “DJR quoted as an [SDVO SBC] at a fair market price” and properly received higher priority than Appellant, which quoted as a small business concern. (*Id.*)

On July 27, 2017, Appellant filed a status protest with the CO, alleging DJR is not an eligible SDVO SBC. (Letter from S. Crean to J. Acres (Sept. 21, 2017).) The CO referred Appellant's status protest to the U.S. Small Business Administration's (SBA) Director of Government Contracting (D/GC) on August 31, 2017. (*Id.*)

B. D/GC's Determination

On September 21, 2017, the SBA's D/GC dismissed Appellant's SDVO SBC status protest as untimely. (*Id.*) The D/GC determined the CO notified unsuccessful offerors that DJR was the apparent successful offeror on June 30, 2017, and Appellant's protest of DJR's SDVO SBC status was filed on July 27, 2017, according to the CO. (*Id.*) The D/GC concluded Appellant's status protest was not filed within five business days of the CO's notice and was, therefore, “not filed in a timely manner and must be dismissed” (*Id.*, citing 13 C.F.R. § 125.28(d).)

C. Appeal

On September 28, 2017, Appellant filed the above-captioned appeal with the SBA Office of Hearings and Appeals (OHA), asserting that SBA's D/GC erred in dismissing Appellant's SDVO SBC status protest against DJR as untimely. (Appeal, at 1.) In its appeal, Appellant asserts it timely filed its status protest with the CO on July 6, 2017, rather than July 27, 2017 as stated by the D/GC in his letter dismissing the status protest. (*Id.*)

D. OHA's Order

On September 28, 2017, OHA ordered Appellant to show cause, no later than October 6, 2017, “that Appellant challenged DJR's SDVO SBC status in its July 6, 2017 protest.” (OHA's Order, at 2.) Appellant was served with OHA's order via e-mail at the address used to file the instant appeal. (E-mail from P. Lee to J. Acres (Sept. 28, 2017).)

As of the date of this Decision, Appellant has not responded to OHA's Order.

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 (2009) (discussing the clear error standard that is applicable both in size appeals and SDVO SBC appeals). Thus, OHA may overturn the D/GC's decision only if Appellant proves the D/GC made a patent error based on the record before him.

B. Analysis

Appellant timely filed the instant appeal within ten (10) days of receiving the D/GC's determination, so the appeal is timely. 13 C.F.R. § 134.503. However, OHA has consistently held a timely appeal cannot cure an untimely protest. *In the Matter of Brandt Group, Inc.*, SBA No. VET-249 (2015); *In the Matter of Major Contracting Services*, SBA No. SDV-226 (2012).

I find Appellant fails to show the D/GC erred in dismissing Appellant's status protest as untimely. SBA regulations dictate "an interested party must submit its protest by close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror" for negotiated acquisitions. 13 C.F.R. § 125.28(d)(1). SBA regulations mandate that "[a]ny protest submitted after the time limits is untimely, unless it is from SBA or the CO." *Id.*, at § 125.28(d)(3). Here, Appellant filed a protest with the CO on July 6, 2017, within five business days of the CO's notification that DJR was the apparent successful offeror. *See* Section I.A, *supra*. However, there is no evidence in the administrative record indicating Appellant challenged DJR's status as an SDVO SBC in the July 6 protest. *See id.*

My Order of September 28th directed Appellant to submit evidence supporting its contention that its July 6th protest challenged DJR's SDVO SBC status, but Appellant squandered this opportunity by failing to respond. *See* Section I.C, *supra*. Further, the CO's dismissal of Appellant's July 6th protest does not analyze, dismiss, or otherwise mention any allegations regarding DJR's status. *See* Section I.A, *supra*. In fact, SBA regulations on SDVO SBC protests state "[t]he contracting officer must forward to SBA any non-premature protest received, notwithstanding whether he or she believes it is sufficiently specific or timely." 13 C.F.R. § 125.28(e). Specifically, the CO "must send all protests . . . directly to the [D/GC]." *Id.* Here, the CO did not forward the July 6th protest to the D/GC, but did forward the July 27th protest as a challenge to DJR's SDVO SBC status. *See* Section I.A, *supra*.

The CO's non-referral of the July 6th protest further suggests Appellant did not challenge DJR's status in its initial protest and waited until July 27, 2017 to do so. Therefore, Appellant's protest against DJR's SDVO SBC status was filed eighteen business days after the CO's notification of the apparent successful offeror, and was, thus, untimely filed. *See In the Matter of Excelsior Defense, Inc.*, SBA No. VET-191, at 2 (2010) (finding an appellant did not challenge SDVO SBC status in its initial e-mail to the CO, but filed an untimely status protest after five business days).

III. Conclusion

For the above reasons, I find Appellant has failed to show the D/GC erred in dismissing its status protest against DJR as untimely filed. Accordingly, the instant appeal is DENIED and the D/GC's determination is AFFIRMED. This is the final decision of the U.S. Small Business Administration. *See* 13 C.F.R. § 134.316(d).

CHRISTOPHER HOLLEMAN
Administrative Judge