

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

IN THE MATTER OF:

XtremeConcepts Systems,

Appellant,

RE: Tekla Research, Inc.

Solicitation No. N00421-18-R-0039

U.S. Department of the Navy
Naval Air Warfare Center Aircraft Division
Patuxent River, Maryland

SBA No. VET-272

Decided: July 31, 2018

APPEARANCES

Carmelo R. Alasagas, President/CEO, XtremeConcepts Systems, Arlington, Virginia

Edmund M. Bender, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION

I. Introduction and Jurisdiction

This appeal arises from a determination by the U.S. Small Business Administration (SBA) Acting Director of Government Contracting (AD/GC) dismissing a status protest filed by XtremeConcepts Systems (Appellant) against Tekla Research, Inc. (Tekla). The AD/GC concluded that Appellant's protest was not sufficiently specific. On appeal, Appellant maintains that the AD/GC incorrectly dismissed its protest. For the reasons discussed *infra*, the appeal is denied and the AD/GC's determination is affirmed.

OHA decides appeals of Service-Disabled Veteran-Owned Small Business Concern (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. Appellant filed the appeal within 10 business days of receiving the AD/GC's 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 and Protest

On October 23, 2017, the U.S. Department of the Navy, Naval Air Warfare Center Aircraft Division, issued Request for Proposals (RFP) No. N00421-18-R-0039 for program management contractor support services. The RFP contemplated the award of multiple indefinite-delivery/indefinite-quantity (ID/IQ) contracts. The Contracting Officer (CO) set aside the procurement entirely for small businesses, and assigned North American Industry Classification System (NAICS) code 541330, Engineering Services, with a corresponding \$15 million annual receipts size standard. The RFP stated that task orders could be restricted to contractors that are SDVO SBCs. (RFP at §§ A.1.2. & H.2.1.)

On June 6, 2018, the CO published a list of 21 companies, including Tekla, that had been selected for award. On June 12, 2018, Appellant, a disappointed offeror, protested Tekla's status as an SDVO SBC. Appellant's protest alleged that Tekla and two other contractors are not listed in the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE) Vendor Information Pages (VIP or VetBiz) database, and therefore are ineligible for award. (Protest File (PF), Exhs. 3 & 6.) Appellant also alleged misuse of the VA's trademarked logo. (*Id.*) The CO forwarded Appellant's protest to the AD/GC for review.

B. AD/GC's Determination

On July 2, 2018, the AD/GC dismissed Appellant's protest as insufficiently specific. (PF, Exh. 4, at 1.) The AD/GC explained that SBA's SDVO SBC Program is a self-certification program, and that “a firm is not required to be registered in VetBiz.gov to bid as a[n] SDVO SBC on non-VA procurements.” (*Id.* at 2, citing *Matter of Savant Services Corporation*, SBA No. VET-154, at 4 (2009).) Because Appellant's protest offered no reason to doubt that Tekla is an SDVO SBC, the AD/GC dismissed Appellant's protest. (*Id.*) The AD/GC also noted Tekla made a representation in the System for Award Management (SAM) as an SDVO SBC when it submitted its initial offer. (*Id.*)

C. Appeal

On July 11, 2018,¹ Appellant filed the instant appeal. Appellant complains that Tekla “only self-certified” as an SDVO SBC in the SAM, but did not authenticate this status by obtaining VA certification. (Appeal at 1.) According to Appellant, the RFP did not state that mere self-certification in SAM would suffice to establish SDVO SBC eligibility. (*Id.*)

Appellant argues that Tekla should have been disqualified from award based on a conflict of interest, because Tekla improperly represented itself as an SDVO SBC without VA's authorization. (*Id.*) Appellant argues that the term “Service Disabled Veteran Owned Small

¹ OHA received the appeal by e-mail on Tuesday, July 10, 2018 at 5:50 p.m. eastern time. Pursuant to 13 C.F.R. § 134.204(b)(2), any submission received by OHA after 5:00 p.m. eastern time is deemed to have been filed the next business day.

Business” is a registered trademark owned by VA, and that Tekla's use of that term without receiving the VA's permission “constitutes criminal trademark infringement.” (*Id.* at 2, 4.) Appellant further insists that “[w]ithout legal VA SDVOSB certification and membership” in the VetBiz database, Tekla was not eligible for award. (*Id.* at 3.) Tekla's self-certification as an SDVO SBC also violates the “Fairness Act Law” because it “[c]onstitutes [] discriminatory and preferential treatment against” true SDVOSBs who “painstakingly certified and registered themselves” with VA. (*Id.* at 4.) Appellant asserts that, as a certified SDVOSB, Appellant itself “rightfully deserved to receive” a contract under this RFP. (*Id.*)

D. SBA's Response

On July 20, 2018, SBA responded to the appeal. SBA maintains that the AD/GC correctly dismissed Appellant's protest for lack of specificity, as the protest presented no factual information to suggest that Tekla is not an SDVO SBC. (SBA Response at 1-2.) Further, on appeal, Appellant has not proven, or even alleged, any error by the AD/GC. (*Id.* at 2.)

SBA highlights that the VIP database “is used to verify eligibility for VA procurements only.” (*Id.* at 3.) The instant procurement was not conducted by VA, so there is no requirement that an offeror be listed in the database. (*Id.*) Appellant's protest therefore did not allege any valid basis to conclude that Tekla is not an SDVO SBC. (*Id.*, citing *Matter of Savant Services Corp.*, SBA No. VET-154, at 4 (2009).) Appellant's contention that Tekla is prohibited from using VA trademarks is similarly immaterial because this allegation has no bearing on whether Tekla is owned and controlled by one or more service-disabled veterans. (*Id.*) SBA notes that Tekla properly self-certified as an SDVO SBC in SAM at the time of its initial offer for this procurement. (*Id.* at 4.)

Tekla did not respond to the appeal.

III. Discussion

A. Standard of Review

OHA reviews the AD/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 AD/GC's determination only if Appellant proves that the AD/GC made a patent error based on the record before him.

B. Analysis

SBA regulations require that an SDVO SBC status protest must be specific, and “[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. § 125.28(b). A non-specific protest must be dismissed. 13 C.F.R. § 125.30(b). Here, Appellant's protest alleged that Tekla is not an SDVO SBC because Tekla is not listed in the VIP/VetBiz database of certified companies. Section II.A, *supra*. As the AD/GC correctly recognized, though, only firms competing for VA

contracts must be registered in this database. For non-VA procurements, registration in the database, or receipt of any VA certification, is not required. The instant procurement was not conducted by VA, so Appellant's protest in effect offered no reason at all to believe that Tekla is not an eligible SDVO SBC. Accordingly, the AD/GC correctly dismissed Appellant's protest as non-specific. This result is supported by numerous OHA case decisions, which have “consistently held that a protest which merely states that a challenged firm is not listed on VetBiz.gov is insufficiently specific, and must be dismissed.” *Matter of Frontline Support Solutions, LLC*, SBA No. VET-244, at 3 (2014); *see also, e.g., Matter of VETcorp, Inc.*, SBA No. VET-205, at 3 (2010) (“Because this is not a VA procurement, [the challenged firm] need not be on the VetBiz list, and thus its absence is no evidence of ineligibility”).

On appeal, Appellant contends that Tekla is infringing upon VA trademarks, and that Tekla should have been disqualified from award. These arguments fail because OHA is not the proper forum to adjudicate these questions, which appear to be in the nature of trademark disputes or bid protest allegations, and thus are beyond OHA's subject matter jurisdiction. *See generally* 13 C.F.R. § 134.102. Rather, OHA's review is limited to whether the AD/GC committed clear error of fact or law in his determination. 13 C.F.R. § 134.508. Because Appellant has failed to show any error in the AD/GC's decision, this appeal must be denied.

IV. Conclusion

Appellant has not proven that the AD/GC clearly erred in dismissing Appellant's protest. The appeal therefore is DENIED and the AD/GC's determination is AFFIRMED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.515(a).

CHRISTOPHER HOLLEMAN
Administrative Judge