

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

IN THE MATTER OF:

XtremeConcepts Systems

Appellant,

RE: Ironclad Technology Services, LLC

Solicitation No. N00421-18-R-0039

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

SBA No. VET-273

Decided: August 1, 2018

APPEARANCES

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

Lindsay K. Simmons, Director of Compliance, Ironclad Technology Services, LLC,
Virginia Beach, 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 Ironclad Technology Services, LLC (Ironclad). 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 Ironclad, that had been selected for award. On June 12, 2018, Appellant, a disappointed offeror, protested the SDVO SBC status of three of the five awardees. (Protest File (PF), Exhibit 6, at 3.) Appellant's protest alleged that three of the five awardees are not listed in the U.S. Department of Veterans Affairs (VA) Vendor Information Pages (VIP or VetBiz) database, and therefore is ineligible for award. (*Id.*, at 4.) Appellant subsequently specified that Ironclad was one of the three awardees protested. (PF, Exhibit 3, at 1.) 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. (*Id.*, Exhibit 4, at 2.) 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 1-2, citing *Matter of Savant Services Corporation*, SBA No. VET-154, at 4 (2009).) The AD/GC also noted Ironclad made a representation in the System for Award Management (SAM) as an SDVO SBC when it submitted its initial offer. (*Id.*) The AD/GC dismissed Appellant's protest because Appellant's protest proffered no reason to doubt that Ironclad is an SDVO SBC.

C. Appeal

On July 11, 2018,¹ Appellant filed the instant appeal. Appellant complains that Ironclad “only self-certified” as an SDVO SBC in the System for Award Management (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.*)

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.

Appellant argues that Ironclad should have been disqualified from award based on a conflict of interest, because Ironclad improperly represented itself as an SDVO SBC without VA's authorization. (*Id.*) Further, the owners of Ironclad may have “perjured themselves” through false certification. (*Id.* at 1-2.)

Appellant argues that the term “Service Disabled Veteran Owned Small Business” is a registered trademark owned by VA, and that Ironclad'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, Ironclad was not eligible for award. (*Id.* at 3.) Ironclad'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 rightfully should have been selected for award. (*Id.*)

D. Ironclad's Response

On July 13, 2018, Ironclad briefly responded to the appeal by providing a letter from VA's Center for Verification and Evaluation (CVE). (Ironclad's Response, at 1.) In the letter, VA states Ironclad will remain eligible as a verified SDVO SBC for specific VA contracts for three years, and Ironclad may “use [the SDVO SB logo] on [its] marketing materials and business cards.” (Letter from T. McGrath to W. Townsend (Apr. 21, 2017.)) In addition, the letter references the impact of a negative size determination by SBA on this status. (*Id.*)

E. 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; because the protest presented no factual information to suggest that Ironclad 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 points out 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. Appellant's protest therefore did not allege any valid basis to conclude that Ironclad is not an SDVO SBC. (*Id.*, citing *Matter of Savant Services Corp.*, SBA No. VET-154, at 4 (2009).) Appellant's contention that Ironclad is prohibited from using VA trademarks is similarly immaterial because this allegation has no bearing on whether Ironclad is owned and controlled by one or more service-disabled veterans. (*Id.*) SBA notes that Ironclad properly self-certified as an SDVO SBC in SAM at the time of its initial offer for this procurement. (*Id.* at 4.)

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. *Id.* § 125.30(b). Here, Appellant's protest alleged Ironclad is not an SDVO SBC because Ironclad is not listed in the VIP/VetBiz database of certified companies. *See* 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. VA did not conduct the instant procurement, so Appellant's protest in effect offered no reason at all to believe Ironclad is not an eligible SDVO SBC. Accordingly, the AD/GC correctly dismissed Appellant's protest as non-specific. *See* Section II.B, *supra*. This result is supported by extensive OHA precedent, which has “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 Ironclad is infringing upon VA trademarks, and that Ironclad should have been disqualified from award. These arguments fail for several reasons. First, Appellant's allegations are based on the false premise Ironclad was required to have obtained VA certification in order to participate in the subject procurement. As discussed above, Appellant simply is not correct on this point. Second, 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 U.S. Small Business Administration. 13 C.F.R. § 134.515(a).

CHRISTOPHER HOLLEMAN
Administrative Judge