

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

IN THE MATTER OF:

Southern Contracting Solutions III, LLC,

Appellant,

Solicitation No. N9450-18-R-1735

U.S. Department of the Navy
Naval Facilities Engineering Command
Southeast
Jacksonville, Florida

SBA No. VET-279

Decided: October 31, 2018

APPEARANCES

Steven Koprince, Esq., Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., Shane J. McCall, Esq., of Koprince Law, LLC, Lawrence, Kansas, for Appellant

Peter B. Ford, Esq., Patrick T. Rothwell, Esq., Michelle E. Litteken, Esq., Meghan F. Leemon, Esq., Timothy F. Valley, Esq., of PilieroMazza PLLC, Washington, District of Columbia, for Government Contracting Resources, Inc.

DECISION¹

I. Introduction

This appeal arises from the determination by the U.S. Small Business Administration (SBA) Acting Director of Government Contracting (AD/GC) which concluded that Southern Contracting Solutions III, LLC (Appellant), is not an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC). Government Contracting Resources, Inc. (GCR) protested Appellant's status as an SDVO SBC. For the reasons discussed *infra*, I am affirming the determination and denying the appeal.

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. Appellant filed the appeal

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. OHA did not receive any requests for redactions, and now issues the decision for public release.

within 10 business days of receiving the determination, so the appeal is timely. 13 C.F.R. § 134.503. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Appellant's Initial SBA Proceedings

On January 19, 2018, the United States Department of the Navy, Naval Facilities Engineering Command Southeast, Jacksonville, FL (Navy) issued Request for Proposals (RFP) No. N69450-18-R-1735 for multi-function support services for facility investment, pest control, integrated solid waste management, grounds maintenance, landscaping, and environmental services. The Navy planned to award a single Indefinite Delivery/Indefinite Quantity (ID/IQ) contract under the RFP. The Contracting Officer (CO) set the procurement aside entirely for Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBCs) and assigned North American Industry Classification System (NAICS) code 561210 Facilities Support Services, with a corresponding \$38.5 million annual receipts size standard. Proposals were due on February 23, 2018.

On April 19, 2018, the CO notified unsuccessful offerors that the apparent successful offeror was Appellant - a joint venture between Emerald Resource, LLC (Emerald) and Electronic Metrology Laboratory, LLC (EML). Emerald is an SDVO SBC and has a 51% ownership interest in Appellant. EML has a 49% ownership interest in Appellant.

On April 26, 2018, GCR filed a size and status protest alleging Appellant is not a small business, and, therefore, does not qualify as an SDVO SBC. On June 1, 2018, the SBA Office of Government Contracting, Area III (Area Office) issued Size Determination No. 3-2018-047.

The Area Office found that EML is an other than small business. Accordingly, the exception to affiliation among joint venturers under 13 C.F.R. § 121.103(h)(3)(i) does not apply, and Appellant is not a small business.

On July 9, 2018, the AD/GC found Appellant is not an eligible SDVO SBC for the instant procurement because the Area Office determined it is other than small, although Emerald, the entity upon which SDVO SBC status is based, would otherwise qualify. Appellant does not meet the requirement under 13 C.F.R. § 125.18(b)(1)(i) where each member of a joint venture must be small according to the designated size standard. Therefore, Appellant “is not eligible to receive the award of a contract pursuant to the subject solicitation or to submit offers on any future SDVO SBC procurements.” (AD/GC Determination, at 8.)

B. Status Appeal

On July 23, 2018, Appellant filed an appeal arguing the AD/GC “acted in clear error because size and [SDVO SBC] status are separate determinations.” (Appeal, at 1.) Appellant contends the AD/GC's determination is “based solely on a faulty size determination that is currently under appeal and not yet resolved, is redundant, and therefore should have not been made.” (*Id.* at 2.) Appellant also requests OHA to resolve the instant appeal with the size appeal

“because both are solely concerned with the size of [Appellant] and EML.” (Appeal, at 4.) Appellant stresses the separateness of size and status determinations arguing, “the jurisdiction to make formal size determinations belongs exclusively to the Area Office.” (*Id.* at 5.) Appellant believes the size determination should have “no bearing” on its SDVO SBC status. (*Id.* at 7.)

On July 25, 2018, I stayed the instant appeal, pending a resolution of the size appeal.

C. OHA Size Decision and Remand

On August 30, 2018, OHA issued its decision in *Size Appeal of Southern Contracting Solutions III, LLC*, SBA No. SIZ-5956 (2018) remanding the matter to the Area Office for a new size determination. On October 3, 2018, the Area Office issued Size Determination No. 3-2018-075, once again finding EML was other than small, and therefore concluding that Appellant was other than small. Appellant has not appealed the size determination.

III. Analysis

A joint venture comprised of at least one SDVO SBC and another business concern may submit an offer as a small business for an SDVO SBC procurement “so long as each concern is small under the size standard corresponding to the NAICS code assigned to the procurement. . . .” 13 C.F.R. § 125.18(b)(1)(i). The Area Office determined that EML, one of the two concerns which form Appellant, was other than small under the size standard for the instant procurement. Therefore, Appellant may not submit an offer for this SDVO SBC procurement because each concern in the joint venture is not small under the size standard assigned to the procurement.

Appellant's argument that the size determination should have no bearing on its status determination is without merit. The regulation explicitly requires that both members of the joint venture, the SDVO SBC and the concern which has joined with it, must be small under the designated size standard. Size is always an issue in SBA programs. In order to be an eligible SDVO SBC, a concern must be a small business. 13 C.F.R. § 125.11(g)(3).

Appellant confuses the AG/DC's reliance on the Area Office's size determination with the AG/DC making a size determination of its own. Although the Area Office's initial size determination was vacated, the AG/DC did not err in relying on the size determination in its status determination. Furthermore, as the remanded size determination was issued on October 3, 2018, Appellant's time to appeal the determination has lapsed. (*See* 13 C.F.R. § 134.304, requiring an appeal of a size determination to be filed within 15 days of receipt of the size determination.) Therefore, SBA's size determination finding Appellant other than small is binding. 13 C.F.R. § 121.403.

IV. Conclusion

Appellant has failed to establish that the AD/GC's determination was based on a clear error of fact or law. 13 C.F.R. § 134.508. Accordingly, the AD/GC's determination is AFFIRMED, and the appeal is DENIED.

This is the final decision of the Small Business Administration. 13 C.F.R § 134.515(a).

CHRISTOPHER HOLLEMAN
Administrative Judge