

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

IN THE MATTER OF:

SDVE, LLC,

Appellant,

Solicitation No. FA9101-19-R-0001

U.S. Air Force

Arnold Air Force Base, Tennessee

SBA No. VET-283

Decided: February 6, 2020

APPEARANCES

Rebecca L. Chambliss, Esq., Chambliss Consulting, Montgomery, Alabama, for Appellant

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) Director of Government Contracting (D/GC) concluding that SDVE, LLC (Appellant) is not an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC). The D/GC specifically found that Appellant did not demonstrate that it is owned and fully controlled by one or more service-disabled veterans. On appeal, Appellant contends that the D/GC's determination is clearly erroneous and should be reversed. For the reasons discussed *infra*, the appeal is denied and the D/GC's determination is affirmed.

The Office of Hearings and Appeals (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 within 10 business days of receiving the D/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 March 7, 2019, the U.S. Department of the Air Force issued Request for Proposals (RFP) No. FA9101-19-R-0001 for Simplified Acquisition of Base Engineering support at Arnold Air Force Base, Tennessee. The Contracting Officer (CO) set aside the procurement entirely for SDVO SBCs, and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction. Proposals were due April 9, 2019. Appellant and H&H Builders (“H&H”) submitted timely offers.

On August 30, 2019, the CO announced that Appellant was the apparent awardee. (Protest File (PF) at 29.) On September 6, 2019, H&H filed a protest challenging Appellant's SDVO SBC status. H&H alleged that Mr. Vernell Craig, the service-disabled veteran upon whom Appellant's SDVO SBC status was based, died September 10, 2018. (*Id.* at 62-63.) Therefore, H&H contended, Appellant is not an eligible SDVO SBC. (*Id.*) H&H further maintained that Appellant is “just a front/pass through entity” for McClain Contracting Company, Inc. (McClain Contracting), which is not an SDVO SBC. (*Id.*) H&H highlighted that Appellant's two remaining officers are married to the principals of McClain Contracting. Specifically, Appellant's Vice President, Mr. William J. McClain, is the husband of Mrs. Barbara L. McClain, President of McClain Contracting. (*Id.* at 58.) Appellant's Secretary/Treasurer, Mrs. Angie K. McClain, is the wife of Mr. Timothy “Kevin” McClain, Vice President of McClain Contracting. (*Id.* at 59.) Thus, H&H concluded, “everyone involved with [Appellant] is actually a McClain.” (*Id.* at 63.) H&H alleged that Appellant and McClain Contracting share employees and other resources, and operate from the same address.¹ (*Id.*) The CO forwarded the protest to the D/GC for review.

B. D/GC's Investigation

On September 23, 2019, the D/GC notified Appellant of the protest and requested a response to the protest allegations and various supporting documents. (PF at 67-71.) The D/GC cautioned that “all information you provide in response to this request will be a material element of this protest and [] failure to provide information and supporting documentation in response to the protest and this letter may result in an adverse inference.” (*Id.* at 71.)

Appellant responded on October 2, 2019, asserting that it is currently 51% owned by Mr. Christopher S. Salter, a service-disabled veteran. (*Id.* at 74.) William McClain and Angie

¹ Under 13 C.F.R. § 125.13(i)(4), there is a rebuttable presumption that non-service disabled veterans or entities control a concern “[i]n circumstances where the concern shares employees, resources, equipment, or any type of services, whether by oral or written agreement with another firm in the same or similar line of business, and that firm or an owner, director, officer, or manager, or a direct relative of an owner, director, officer, or manager of that firm owns an equity interest in the concern.” Although H&H alleged facts to suggest that this presumption could apply here, H&H did not specifically reference 13 C.F.R. § 125.13(i)(4) and the D/GC did not reach the issue in his determination.

McClain each own 24.5% of Appellant. (*Id.* at 106.) Neither William McClain nor Angie McClain is a service-disabled veteran. (*Id.* at 112.) Appellant maintained that “Mr. Salter purchased 51% of [Appellant's] shares on February 19, 2019, and was unanimously elected among the firm's members to be [Appellant's] manager and President.” (*Id.* at 74.) Appellant provided a document entitled “Minutes of Stockholder Special Meeting,” which described a February 19, 2019 meeting called by Mr. Salter, as President, in which he announced that “he had purchased 51% of [Appellant's] stock,” and requested that William McClain remain as Vice President and that Angie McClain remain as Secretary/Treasurer. (*Id.* at 113.)

Appellant provided the D/GC a document entitled “Stock Transfer & Issuance Ledger.” (*Id.* at 111.) According to the ledger, Mr. Craig had previously held 51 shares (51%) of Appellant, but those shares transferred to Appellant on September 10, 2018. (*Id.*) The 51 shares then were “Reissue[d]” on November 10, 2018 to William McClain, who subsequently transferred them to Mr. Salter on January 1, 2019. (*Id.*)

Appellant submitted a copy of its Operating Agreement, dated June 28, 2007. (*Id.* at 84-105.) Article VI of the Operating Agreement stated that “[t]he powers of the Company shall be exercised by and under the authority of the Members and the business and affairs of the Company shall be managed by the Members.” (*Id.* at 92.) Article VI described various powers that could be exercised by the Members, including “entering into, making, and performing contracts”; “opening and maintaining bank and investment accounts”; “acquiring, utilizing for Company purposes, and disposing of any asset of the Company”; “borrowing money”; “selecting, removing and changing the authority and responsibility of lawyers, accountants, and other advisors and consultants”; “obtaining insurance”; and “determining distributions of Company cash and other property.” (*Id.* at 92-93.) William McClain and Angie McClain were identified in the Operating Agreement as two of Appellant's three Members. (*Id.* at 87, 105.) The Operating Agreement further stipulated that “[f]or purposes of voting, each member shall have one vote.” (*Id.* at 85.)

Article XII of the Operating Agreement stated that, in the event of the death of a Member, “the company shall have the right to purchase the deceased members interest as set out hereinabove for withdrawal of a member.” (*Id.* at 101.) Article XI of the Operating Agreement provided that, when a Member withdraws, “[t]he withdrawing Member or Holder shall be entitled to receive the fair market value of its financial rights.” (*Id.* at 100.) If there were disagreement as to the fair market value, an independent appraiser would be engaged to determine fair market value. (*Id.*)

Appellant provided the D/GC two amendments to the Operating Agreement. The first amendment was dated July 12, 2007. (*Id.* at 345-47.) The second amendment was dated November 4, 2014. (*Id.* at 353.) Neither amendment made any change to Article VI or to Article XI.

Appellant submitted a copy of its Articles of Organization, dated June 28, 2007. (*Id.* at 81-82.) Item 8 of the Articles of Organization stated that “[t]he Company shall be managed by a Members/Managers,” and identified William McClain and Angie McClain as two of Appellant's three Members/Managers. (*Id.* at 82.) Appellant also provided the D/GC an amendment to the

Articles of Organization, dated February 19, 2019. (*Id.* at 964.) The amendment revised Item 8 of the Articles of Organization to state that “[t]he Company shall be managed by a manager. The initial manager is Christopher S. Salter.” (*Id.*) The amendment did not purport to make any change to Appellant's Operating Agreement. (*Id.*)

Appellant provided the D/GC a copy of Mr. Salter's resume. (*Id.* at 374-75.) The resume listed Mr. Salter's current position as President/Owner of Appellant where he began working in February 2019. (*Id.* at 374.) From March 2016 to November 2018, Mr. Salter was President/Owner of Salter Contracting, where he “overs[aw] all company aspects including contracts with customers, subcontractors, in-house crews, invoicing, etc.” (*Id.*) From June 2014 to March 2016, Mr. Salter was a Project Manager at Caldwell Banker/1st Choice Real Estate, where he managed projects ranging from “small tasks such as installing entrance doors” to “additions and complex renovations.” (*Id.*) Mr. Salter was employed as a fleet mechanic at Coca-Cola from February 2008 until June 2014. (*Id.*) From June 2006 to February 2008, Mr. Salter worked for the Alabama Army National Guard as a mechanic. (*Id.* at 375.) From March 2004 to June 2006, Mr. Salter “owned and operated a tire and mechanic shop.” (*Id.*) From March 2003 to March 2004, he served as a heavy equipment mechanic while deployed in the Middle East, and from March 1997 to October 2002, he worked for Diamond Offshore as a motorman/mechanic. (*Id.*)

The D/GC asked Appellant to clarify how Mr. Craig's ownership interest in Appellant was acquired by Mr. Salter. Appellant responded that, in 2014, each of Appellant's three Members (Mr. Craig, William McClain, and Angie McClain) had executed a “Buy-Sell Agreement” whereby, in the event of the death of the Member, the Member's surviving spouse would receive a payment of \$10,000 and the Member's ownership interest would revert to Appellant. (*Id.* at 473, 476-479.) When Mr. Craig died, his widow was issued a payment of \$10,051, and his ownership interest transferred to Appellant as per the Buy-Sell Agreement. (*Id.* at 473, 476-477.) Appellant stated that, in February 2019, William McClain and Angie McClain voted to admit Mr. Salter as a new Member of Appellant, and William McClain then transferred 51 shares (51% ownership) to Mr. Salter, in exchange for an initial capital contribution of \$51. (*Id.* at 474, 502.) Appellant maintained that these transactions were consistent with Appellant's Operating Agreement, and attached another copy of the Operating Agreement dated June 28, 2007. (*Id.* at 472-474, 480-501.)

C. D/GC's Determination

On December 11, 2019, the D/GC issued his decision sustaining H&H's protest. (PF at 6-13.) The D/GC found that Mr. Salter is a service-disabled veteran, based on documentation from the U.S. Department of Veterans Affairs. (*Id.* at 7-8.) However, the D/GC was not persuaded that Mr. Salter owns or fully controls Appellant.

The D/GC questioned the legitimacy of Mr. Salter's ownership interest. (*Id.* at 8-9.) Appellant had asserted that, upon Mr. Craig's death, his widow was paid \$10,051 in exchange for his ownership interest in Appellant. Appellant's Operating Agreement, though, indicates that a deceased or withdrawing Member should be entitled to the “fair market value” of his or her interest. (*Id.* at 8.) “While it's clear that the three members of [Appellant] agreed to \$10,000 per

member prior to death, [Appellant] provided no valuation for the members' financial rights in 2014 or justification for the preexisting agreement as fair market value upon the death of Mr. Craig in 2018.” (*Id.* at 9.) In addition, Appellant did not explain why the surviving spouse of each Member could appropriately receive the same \$10,000 payment, given that Mr. Craig's ownership interest was more than twice as large as that of William McClain or Angie McClain. (*Id.*)

The D/GC next examined the issue of control of Appellant, focusing on the inexperience of Mr. Salter and deficiencies in Appellant's Operating Agreement. (*Id.* at 9-11.) The D/GC noted that, to be an eligible SDVO SBC, a service-disabled veteran must hold the concern's highest officer position; must have managerial experience of the extent and complexity needed to run the concern; and must be responsible for conducting the day-to-day management and administration of the firm's business operations. (*Id.* at 9, citing 13 C.F.R. § 125.13.) When the firm is an LLC, one or more service-disabled veterans must serve as the managing members, with control over all decisions of the LLC. (*Id.*)

After reviewing Mr. Salter's resume, the D/GC found that Mr. Salter had “significant experience as a mechanic” and substantial military experience. (*Id.*) However, Appellant did not “explain how this military experience is relevant to the construction industry,” Appellant's primary industry. (*Id.* at 9-10.) Further, although Mr. Salter's resume listed four years of construction industry experience involving such work as the renovation of residential apartment units, he had no apparent experience “managing construction projects similar to the scope and magnitude of the subject contract,” and no construction experience at all prior to 2014. (*Id.* at 10.) The D/GC additionally noted a discrepancy between Mr. Salter's resume, which stated that he stopped working for Coca-Cola in June 2014, and his tax returns, which indicated that he continued to work for Coca-Cola until at least 2018. The D/GC concluded that Appellant did not establish that Mr. Salter has managerial experience of the extent and complexity necessary to run Appellant. (*Id.*)

The D/GC contrasted Mr. Salter's limited experience with that of William McClain and Angie McClain. (*Id.*) William McClain is a licensed Professional Engineer with more than 50 years of experience as an engineer on construction projects. (*Id.*) He also signed Appellant's proposal for the instant procurement. (*Id.*) Angie McClain has 27 years of experience in office management, including 11 years as Appellant's Secretary/Treasurer. (*Id.*) According to her resume, she has experience “managing all phases of financial and administrative duties concerning State and Federal Contracts.” (*Id.*)

The D/GC next discussed deficiencies within Appellant's Operating Agreement, dated June 28, 2007. (*Id.*) Article VI, section 6.01(a) of the Operating Agreement stated that the “powers of the Company shall be exercised by or under the authority of the Members and the business and affairs of the Company shall be managed by the Members.” (*Id.*) The Operating Agreement specified numerous functions that could be controlled equally by all Members, including:

- entering into, making, and performing contracts;
- opening and maintaining bank and investment accounts;
- acquiring, utilizing, and disposing of company assets;
- borrowing money;
- selecting, removing and changing the authority/responsibility of lawyers, accountants, and other advisors and consultants;
- obtaining insurance; and
- determining distributions of cash and other property.

(*Id.* at 10-11.) The Operating Agreement further stated that “[f]or purposes of voting, each member shall have one vote.” (*Id.* at 11.) As a result, the D/GC concluded, Mr. Salter does not fully control Appellant because he “shares any of the decisions detailed by Section 6.01(a) with non-[service-disabled veterans], [and] may be outvoted by a majority of non-[service-disabled veteran] members.” (*Id.*)

The D/GC noted that Article VII, section 7.01 of the Operating Agreement provided that “[a] quorum shall be present at a meeting of members if fifty percent of the Members are represented at the meeting in person or by proxy.” (*Id.*) This provision also undermines Mr. Salter's control, as a quorum could occur without Mr. Salter's knowledge or consent. (*Id.*)

D. Appeal

On December 20, 2019, Appellant filed the instant appeal. Appellant maintains that the D/GC's determination should be reversed as it was “based on an incomplete review of the documentation and record evidence.” (Appeal at 2.)

Appellant argues that it submitted ample evidence, including stock certificates, meeting minutes, and other documents, to show that Mr. Salter acquired a 51% interest in Appellant in February 2019. (*Id.* at 7.) Although the D/GC apparently was troubled by the “Buy-Sell Agreement” signed by Mr. Craig in 2014, this arrangement has no bearing on whether Mr. Salter currently owns at least 51% of Appellant. The D/GC should have focused on Appellant's eligibility as of the date of its self-certification for the instant procurement. (*Id.* at 7-8, citing 13 C.F.R. § 134.1003(c)(1).)

Appellant next argues that the D/GC clearly erred in finding that Mr. Salter does not fully control Appellant. Contrary to the D/GC's determination, Mr. Salter does control the daily and long-term aspects of Appellant. (*Id.* at 8.) With regard to Article VI of the Operating Agreement, Appellant asserts that a “February 19, 2019 Amendment of this Article is controlling.” (*Id.* at 6.) As a result of this amendment, Appellant contends, Article VI of the Operating Agreement now

states that “[t]he Company shall be managed by a manager” and designates Mr. Salter as the sole manager. (*Id.* at 6, 8, 10.)

The D/GC's finding with regard to quorum also was incorrect. The quorum provisions were revised by the July 12, 2007 amendment to the Operating Agreement. (*Id.* at 6.) The D/GC failed to consider this amendment in reaching his decision. (*Id.* at 8, 10.)

Appellant argues that the D/GC improperly found that Mr. Salter lacks sufficient experience to manage Appellant. (*Id.* at 9.) Although Mr. Salter is not a licensed Professional Engineer, Appellant's business operations “are not limited to activities that require a professional engineering license.” (*Id.*) Furthermore, Alabama state law does not bar non-engineers from controlling the long-term and day-to-day decisions of an LLC. (*Id.*) Appellant insists that Mr. Salter “has significant management and construction experience gained through his prior careers in both the military and construction industries.” (*Id.* at 10.)

E. SBA's Response

On January 10, 2020, SBA responded to the appeal. SBA maintains that the appeal has no merit and should be denied.

SBA first argues that the D/GC correctly found that Mr. Salter does not possess the construction expertise needed to run Appellant. (Response at 3.) Mr. Salter's resume showed that he had experience from 2014 to 2016 as a Project Manager for Caldwell Banker “where he managed projects such as installing entrance doors, maintenance, and renovations,” and from 2016 to 2018 as President/Owner of Salter Contracting. (*Id.* at 4.) The resume offered no specific details about the work Mr. Salter performed at Salter Contracting, and his work at Caldwell Banker did not involve large-scale construction. (*Id.*) Given the information provided, the D/GC reasonably concluded that Mr. Salter “simply does not have” the experience necessary to manage a firm engaged in large construction projects, nor could Mr. Salter have gained the necessary experience “as a mechanic in the military and his short time working smaller jobs such as maintenance and installing doors.” (*Id.*)

SBA contends that the D/GC appropriately contrasted Mr. Salter's experience with that of William McClain and Angie McClain. (*Id.*) William McClain has more than five decades of construction experience and holds professional engineering licenses in two states. (*Id.* at 4-5.) Further, Appellant's proposal for the instant procurement discussed William McClain's experience in detail yet made “no mention of Mr. Salter or his construction experience.” (*Id.* at 5.) Angie McClain is Appellant's office manager and is responsible for “all phases of financial and administrative duties concerning State and Federal Contracts.” (*Id.*) Mr. Salter's resume again shows little, if any, experience with such work. (*Id.*)

SBA argues that the D/GC correctly determined that Appellant's Operating Agreement gives control to non-service-disabled veteran Members. (*Id.* at 6.) Appellant provided the D/GC a copy of its Operating Agreement, dated June 28, 2007, and two amendments dated July 12, 2007 and November 4, 2014 respectively. (*Id.*) On appeal, Appellant relies upon a February 19, 2019 amendment to its Operating Agreement, but no such document was ever made available to

the D/GC. (*Id.*) SBA posits that Appellant may be referring a new version of its Operating Agreement, dated February 19, 2019, which Appellant provided to the D/GC in response to an earlier protest. (*Id.*) SBA offers a copy of the February 19, 2019 version of the Operating Agreement. Even under the February 19, 2019 version of the Operating Agreement, though, most of the deficiencies identified by the D/GC remain, including the problematic language of Article VI. (*Id.* at 6-8.) SBA reiterates that, contrary to Appellant's assertions on appeal, Appellant did not produce any document “which amends Section 6.01 [of the Operating Agreement] to name Christopher Salter as manager and authorizes Mr. Salter to conduct the day to day operation of the company.” (*Id.* at 8-9.)

SBA acknowledges that the D/GC's finding with regard to quorum was erroneous based on the July 12, 2007 amendment to Appellant's Operating Agreement. (*Id.* at 6-7.) Therefore, the “D/GC's finding of ineligibility based on quorum requirements is removed.” (*Id.* at 7.)

Finally, SBA argues that the D/GC reasonably concluded that there was insufficient evidence to prove that Mr. Salter owns at least 51% of Appellant. (*Id.* at 9-10.) In particular, Appellant did not adequately explain how Mr. Salter came to acquire the interest previously held by Mr. Craig.

F. Reply and Sur-Reply

On January 14, 2020, Appellant requested leave to reply to SBA's Response and submitted its proposed Reply. A reply is warranted, Appellant argues, to address SBA's claim that certain documents were never provided to the D/GC. (Motion at 1.) Accordingly, for good cause shown, Appellant's motion to reply is GRANTED.

In its Reply, Appellant first objects to the February 19, 2019 version of Appellant's Operating Agreement, which SBA attached to its Response. The document is not admissible because, under 13 C.F.R. § 134.512, “the Judge may not admit evidence beyond the written protest file nor permit any form of discovery.” (Reply at 1.) Further, Appellant asserts, Appellant has “repealed any and all amendments” to its Operating Agreement except those contained in the Protest File. (*Id.* at 4.)

Appellant disputes the notion that Appellant failed to provide the D/GC a copy of the February 19, 2019 amendment of the Operating Agreement. The document in question is included in the Protest File on page 964. (*Id.* at 3-4.) Appellant renews its contention that the D/GC based his decision on an incomplete review of the Operating Agreement. (*Id.* at 4.)

On January 17, 2020, SBA requested leave to sur-reply and submitted its proposed Sur-Reply. SBA argues that a sur-reply is appropriate to permit SBA to respond to arguments raised for the first time in Appellant's Reply. (Motion at 1.) Accordingly, for good cause shown, SBA's motion to sur-reply is GRANTED.

In the Sur-Reply, SBA states that it offered the February 19, 2019 version of Appellant's Operating Agreement to refute Appellant's assertions that the D/GC reviewed the wrong documents. (Sur-Reply at 1.) In particular, the February 19, 2019 version of the Operating

Agreement clearly shows that there was no change to the pertinent provisions of Appellant's Operating Agreement, such as Article VI, discussed in the D/GC's decision. (*Id.* at 2-3.) SBA urges OHA to consider February 19, 2019 version of the Operating Agreement part of SBA's Response rather than new evidence, as “the need for the additional document originated out of the Appellant's Appeal and not the D/GC's determination.” (*Id.* at 1-2.)

SBA insists that the document Appellant references in its Reply — located at page 964 of the Protest File — is not, in fact, an amendment of the Operating Agreement. (*Id.* at 3-4, 6-7.) Rather, this document merely amends Item 8 of Appellant's Articles of Organization, and makes no mention of the Operating Agreement. (*Id.* at 4, 6.)

III. Discussion

A. Standard of Review

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. New Evidence

OHA's rules of procedure provide that, in an appeal of an SDVO SBC status determination, OHA “may not admit evidence beyond the written protest file nor permit any form of discovery. All appeals [of SDVO SBC status determinations] will be decided solely on a review of the evidence in the written protest file, arguments made in the appeal petition and response(s) filed thereto.” 13 C.F.R. § 134.512. Here, the February 19, 2019 version of Appellant's Operating Agreement, which SBA attached to its Response, is not in the Protest File, and thus is new evidence on appeal. OHA has no discretion to consider such information. *E.g.*, *Matter of Veterans Contracting Group, Inc.*, SBA No. VET-265, at 7 (2017); *Matter of Apex Ventures, LLC*, SBA No. VET-219, at 5 (2011). Further, Appellant suggests that the February 19, 2019 version of the Operating Agreement has been “repealed,” so it is not clear that the February 19, 2019 version of the Operating Agreement is relevant to these proceedings. Section II.F, *supra*. Accordingly, the February 19, 2019 version of Appellant's Operating Agreement is EXCLUDED from the record and has not been considered in reaching this decision.

C. Analysis

The instant case turns upon whether the D/GC properly based his decision on Appellant's Operating Agreement dated June 28, 2007, or whether there was a February 19, 2019 amendment to the Operating Agreement that the D/GC also should have considered. The issue is crucial because the D/GC found, and Appellant does not dispute, that Appellant's Operating Agreement dated June 28, 2007 is deficient. In particular, the D/GC determined, Article VI of Appellant's Operating Agreement dated June 28, 2007 granted equal powers to all of Appellant's Members, including Members who are not service-disabled veterans, and enabled Members who

are not service-disabled veterans to override, or circumvent, decisions of service-disabled veteran Members. Sections II.B and II.C, *supra*. It is well-settled that a firm does not qualify as an SDVO SBC when, according to its operating agreement, it is “managed and controlled predominantly by non-service-disabled veterans.” *Matter of Golden Key Group, LLC*, SBA No. VET-236, at 10 (2013).

In its Appeal and Reply, Appellant characterizes the document at page 964 of the Protest File as an amendment to the Operating Agreement. Sections II.D and II.F, *supra*. As SBA correctly observes, however, this document is not an amendment to the Operating Agreement. Rather, the document revised only Item 8 of the Articles of Organization, and made no mention of the Operating Agreement. Section II.B, *supra*. Appellant's original Articles of Organization are in the record, and the Operating Agreement plainly is not the same as the Articles of Organization. *Id.* Further, the record contains two amendments to Appellant's Operating Agreement — dated July 12, 2007 and November 4, 2014, respectively — and both amendments addressed specific provisions in the Operating Agreement, unlike the document at page 964 of the Protest File, which did not refer to the Operating Agreement at all. *Id.* Accordingly, Appellant has not established that the D/GC committed any error in his review of Appellant's Operating Agreement. The D/GC correctly did not view the document at page 964 of the Protest File as an amendment to the Operating Agreement, and instead based his decision on the Operating Agreement dated June 28, 2007, and the two amendments dated July 12, 2007 and November 4, 2014, respectively.

Appellant also challenges the D/GC's conclusion that Appellant did not establish that Mr. Salter owns at least 51% of Appellant. Appellant highlights that it provided the D/GC documentation, such as stock certificates and meeting minutes, to show that Mr. Salter now holds a 51% interest in Appellant. Such arguments, though, miss the point of the D/GC's analysis. The D/GC expressed concern about whether Appellant had properly repurchased the 51 shares (51% ownership interest) previously held by Mr. Craig. Section II.C, *supra*. In particular, the D/GC found that Appellant's payment of \$10,051 to the widow of Mr. Craig appeared to be inconsistent with provisions of Appellant's Operating Agreement, which indicate that a withdrawing or deceased Member is entitled to the “fair market value” of his or her interest. *Id.* Logically, if Appellant did not properly repurchase Mr. Craig's interest at “fair market value,” Appellant's subsequent attempts to transfer, or sell, that interest to Mr. Salter could also be invalid. The D/GC found that Appellant did not produce evidence that the payment of \$10,051 constituted “fair market value,” and Appellant does not attempt to argue that it did, in fact, address this question. Appellant thus has not shown that the D/GC erred in concluding that Appellant did not demonstrate that Mr. Salter legitimately owns at least 51% of Appellant.

Lastly, Appellant contends that the D/GC erred in concluding that Mr. Salter lacks managerial experience of the extent and complexity needed to run Appellant, as is required by 13 C.F.R. § 125.13(b). The D/GC reached this same conclusion in an earlier determination, which OHA affirmed. *Matter of SDVE, LLC*, SBA No. VET-281 (2019). In the earlier determination, though, Mr. Salter's resume failed to show any experience in construction or construction management. *Id.* Conversely, in the instant case, Appellant submitted an updated resume for Mr. Salter, which in Appellant's view should have sufficed to establish that Mr. Salter does have significant management and construction experience.

I find that the D/GC's decision was reasonable based on the record before him. The updated resume Appellant provided sought to show Mr. Salter's experience in the construction field by noting that he was President/Owner of Salter Contracting from March 2016 to November 2018, and that he was a Project Manager at Caldwell Banker/1st Choice Real Estate from June 2014 to March 2016. Section II.B, *supra*. The updated resume, though, contained no specific details about Mr. Salter's work at Salter Contracting, and it is not even clear from the resume whether this entity was engaged in construction. *Id.* Appellant did offer some additional information about Mr. Salter's work as a Project Manager at Caldwell Banker/1st Choice Real Estate, but the description provided suggests that Mr. Salter's work was in the nature of overseeing repairs, maintenance, and renovations. *Id.* Thus, the D/GC could appropriately conclude that Appellant did not show that Mr. Salter has managerial experience of the extent and complexity needed to oversee to a firm engaged in large-scale construction projects.

IV. Conclusion

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

KENNETH M. HYDE
Administrative Judge