

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

VSBC Protest of:

Aldevra LLC,

Protestor,

Re: Chef's Depot, Inc.

Solicitation No. SPE3SE-24-Q-0129

Defense Logistics Agency

SBA No. VSBC-348-P

Decided: April 9, 2024

ORDER GRANTING MOTION TO DISMISS

I. Background

On January 15, 2024, Aldevra LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Chef's Depot, Inc. (Chef's Depot), in conjunction with Defense Logistics Agency (DLA) Request for Quotations (RFQ) No. SPE3SE-24-Q-0129. The Contracting Officer (CO) forwarded the protest to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) for review.

On March 14, 2024, Chef's Depot moved to dismiss the protest. Chef's Depot states that it is not, and "does not claim to be," an SDVOSB. (Motion at 1.) However, because the RFQ was set aside only for small businesses, not for SDVOSBs, Chef's Depot's status as an SDVOSB is irrelevant. (*Id.*)

Protestor opposes the motion. Protestor contends that the "plain language" of the RFQ supports the conclusion that the RFQ was an SDVOSB set-aside. (Opp. at 4, citing *Banknote Corp. of Am., Inc. v. United States*, 365 F.3d 1345, 1353 (Fed. Cir. 2004).) Protestor highlights that the RFQ twice referenced Federal Acquisition Regulation (FAR) clause 52.219-27 "Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (OCT 2022)." (*Id.* at 4.) That clause, in turn, "plainly solicits offers 'only from [SDVOSBs]'" (*Id.* at 5.) Furthermore, the RFQ included a definition of SDVOSB, which in Protestor's view "makes sense for a procurement that is an SDVOSB set aside." (*Id.*) Protestor acknowledges that the cover page of the RFQ (Standard Form 18) stated that the RFQ was a small business set-aside. (*Id.*) However, according to Protestor, the small business set-aside box is "always checked for solicitations of SDVOSB set asides". (*Id.*) Protestor urges that OHA should consider the RFQ "as a whole, interpreting it in a

manner that harmonizes and gives reasonable meaning to all of its provisions.” (*Id.*, quoting *Safeguard Base Ops., LLC v. United States*, 144 Fed. Cl. 304, 334 (2019).)

Protestor observes that DLA does not dispute that FAR clause 52.219-27 was twice referenced in the RFQ. (*Id.*) DLA, though, construes these references as “simple administrative error[.]” (*Id.* at 6.) Protestor asserts that DLA’s “intent (whatever it may have been) has no bearing on interpreting the Solicitation.” (*Id.*) Rather, Protestor contends, the RFQ remained an SDVOSB set-aside absent a formal amendment. (*Id.*)

Protestor disputes Chef’s Depot’s claim that the RFQ was a small business set-aside, rather than an SDVOSB set-aside. (*Id.* at 7.) By Chef’s Depot’s own admission, Chef’s Depot is not an SDVOSB. (*Id.* at 8.) Because DLA improperly awarded an SDVOSB set-aside contract to a non-SDVOSB, OHA should deny the motion to dismiss, and sustain the protest. (*Id.*)

On March 27, 2024, Chef’s Depot replied to Protestor’s Opposition. According to Chef’s Depot, Protestor “concedes that the solicitation was not intended to be [an] SDVOSB set aside.” (Reply at 1.) Furthermore, Protestor ignores that the Standard Form 18 stated that the RFQ was a small business set aside. (*Id.*) Additionally, Protestor does not address that the DLA submission portal identified the RFQ as a small business set-aside. (*Id.*) The DLA e-mails proffered by Protestor make clear that “the SDVOSB [clause] was included in error and the solicitation was intended to be a total small business set aside.” (*Id.*) Chef’s Depot also maintains that dismissal is proper because Protestor has not shown that Protestor would have been chosen for award but for DLA’s mistakenly having referenced FAR clause 52.219-27 in the RFQ. (*Id.* at 2, citing *Alfa Laval Separation, Inc. v United States*, 175 F.3d 1365, 1367 (Fed Cir 1999).)

On March 27, 2024, DLA replied to Protestor’s Opposition. DLA reiterates its position that the RFQ was a “100% total small business set aside,” not an SDVOSB set-aside. (DLA Reply at 1.) FAR clause 52.219-27 was “erroneously referenced” in the RFQ. (*Id.*) OHA should dismiss the protest because Chef’s Depot “was not required to be [an] SDVOSB to be eligible” for award of the subject procurement. (*Id.*)

II. Analysis

The record reflects, and all parties agree, that Chef’s Depot is not an SDVOSB. Indeed, Chef’s Depot concedes that it is not, and does not “claim to be,” an SDVOSB. Section I, *supra*. Nor did Chef’s Depot expressly represent itself as an SDVOSB in its quotation for this procurement. *Id.*

The key issue presented here, then, is whether the underlying RFQ was set-aside for SDVOSBs, such that SDVOSB status was necessary in order to submit a quotation and to be eligible for award. Section I, *supra*. In arguing that the RFQ was an SDVOSB set-aside, Protestor highlights that the RFQ twice referenced FAR clause 52.219-27, a clause associated with SDVOSB set-asides. *Id.* In addition, Protestor observes, DLA never amended the RFQ to remove the references to this clause. *Id.* DLA and Chef’s Depot maintain that FAR clause 52.219-27 was mistakenly included in the RFQ due to an administrative error, and insist that the RFQ elsewhere made clear that the procurement was set aside only for small businesses, not for SDVOSBs. *Id.*

I agree with DLA and Chef's Depot that the RFQ is most reasonably understood as a small business set-aside. DLA confirms that its intention was to conduct a small business set-aside, and the cover page of the RFQ (Standard Form 18) clearly stated that the RFQ was a small business set-aside. Section I, *supra*. While it is true that the RFQ twice referenced FAR clause 52.219-27, the RFQ did not set forth the full text of this clause, nor include other specific language or instructions requiring that offerors must be certified SDVOSBs. Instead, FAR clause 52.219-27 was merely one of many standard FAR clauses listed in the RFQ. *Id*. An additional consideration is that, insofar as Protestor believed the RFQ to be ambiguous as to whether a small business set-aside or an SDVOSB set-aside was intended, Protestor may have been expected, as a matter of contract law, to inquire about the issue prior to the deadline for submission of quotations. *E.g.*, *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302. There is no indication here, though, that Protestor did voice concerns about the RFQ until after receiving notification that Chef's Depot was the apparent awardee. Section I, *supra*.

III. Conclusion

For the above reasons, Chef's Depot's motion to dismiss is **GRANTED** and the protest is **DISMISSED**. Although Chef's Depot plainly is not a SDVOSB, such status was not required in order for Chef's Depot to compete for, and be awarded, this procurement. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.1007(b).

KENNETH M. HYDE
Administrative Judge