

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

VSBC Appeal of:

CPMC, LLC,

Appellant

SBA No. VSBC-387-A

Decided: August 29, 2024

APPEARANCE

Jim Stevens, President, CPMC, LLC, Vienna, Virginia

DECISION

I. Introduction and Jurisdiction

On June 24, 2024, CPMC, LLC (Appellant) appealed a decision of the U.S. Small Business Administration (SBA), decertifying Appellant as a Service-Disabled Veteran-Owned Small Business (SDVOSB). SBA found that Appellant failed to cooperate with a program examination initiated by SBA. On appeal, Appellant maintains that the decertification decision was erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse or remand. For the reasons discussed *infra*, the appeal is granted, and the matter is remanded to SBA for further review.

OHA adjudicates SDVOSB status appeals pursuant to the Small Business Act of 1958, 15 U.S.C. §§ 631 *et seq.*, and 13 C.F.R. parts 128 and 134 subpart K. Appellant timely filed the appeal within 10 business days after receiving the decertification notice on June 14, 2024. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

Appellant is a limited liability company established in Virginia in January 2016. (Case File (CF), Exh. 28.) Appellant is 51% owned by Mr. Jim Stevens, a service-disabled veteran. (CF, Exh. 80.) On February 1, 2023, SBA certified Appellant as an SDVOSB for a period of three years. (CF, Exh. 24.) In the letter approving Appellant's certification, the Director of SBA's Office of Government Contracting (D/GC) noted that "SBA may conduct a program examination at your office or work site during your certification period to verify the accuracy of your certification." (*Id.* at 1.)

### B. Decertification

On June 14, 2024, the D/GC decertified Appellant on the grounds that Appellant did not cooperate with a program examination initiated by SBA. (CF, Exh. 109.) According to the decertification decision, SBA previously issued a Notice of Proposed Decertification (NOPD) to Appellant on May 9, 2024. (*Id.* at 1.) “The reasons for proposed decertification and instructions for submitting a response were outlined in the NOPD.” (*Id.*)

The Case File does not contain a copy of any NOPD issued to Appellant, nor is there any indication in the Case File that Appellant actually received the NOPD.

### C. Appeal

On June 24, 2024, Appellant appealed the decertification decision to OHA. (Appeal at 1.) Appellant contends that it did not receive the NOPD or other communications relating to the program examination:

The rationale for the appeal is that [Appellant] was not aware of any request from the SBA regarding additional information related to our certification. . . . Upon receipt of the [decertification] letter from SBA, I immediately contacted the Ombudsman via email because I felt that a mistake had been made in this process since [Appellant] had not received any requests for information or were even aware that SBA was trying to contact us. . . . Unbeknownst to me, and apparently a lot of people who call the Helpline, there is a folder for Closed Messages [in the certification portal] that is not immediately visible on the Home Page of the website. . . . It was only at this time that it became apparent that there were messages sent to us, but . . . those messages were in the Closed Messages folder instead of the Open Messages folder. As you can tell from the [attached screenshot], none of those four messages have been Read [by Appellant] because [Appellant] simply did not know they were there.

(*Id.* at 1-3.)

Accompanying its appeal, Appellant offers a copy of responses it would have submitted to the program examination inquiries, had Appellant known of SBA's requests for information. (*Id.*, Attach. 1.)

On July 25, 2024, Appellant objected to the Case File as incomplete. Appellant observes that no NOPD is included the Case File, and renews its claim that Appellant did not receive the NOPD or other SBA communications related to the program examination. Although SBA apparently attempted to transmit these documents to Appellant via the certification portal, Appellant did not actually receive them, perhaps because SBA or the portal mistakenly designated each of the messages as “Closed”. (Obj. at 1-4.)

### III. Discussion

#### A. Standard of Review

SBA regulations governing decertification provide that:

If SBA has information indicating that a [certified SDVOSB] may not meet the eligibility requirements of [13 C.F.R. part 128], SBA may propose decertification of the concern. The [NOPD] will notify the concern that it has 30 calendar days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify decertification. SBA will consider that written notice was provided if SBA sends the [NOPD] to the concern at an email address in the Participant's certification database profile.

13 C.F.R. § 128.310(a). Before proceeding with decertification, SBA must “review the response [to the NOPD] and determine whether the Participant remains eligible.” 13 C.F.R. § 128.310(c).

On appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the decertification is clearly erroneous. 13 C.F.R. § 134.1111.

#### B. Analysis

I agree with Appellant that it is appropriate to remand this matter for further review. SBA regulations are clear that, prior to decertifying a concern as an SDVOSB, SBA first must issue a Notice of Proposed Decertification (NOPD) explaining the reasons why SBA believes decertification is warranted, and affording the concern an opportunity to respond. 13 C.F.R. § 128.310(a).

Here, although the decertification decision letter states that SBA previously issued a NOPD to Appellant on May 9, 2024, no such NOPD is in the Case File. Section II.B, *supra*. Nor does the Case File contain any indication that Appellant actually received the NOPD. *Id.* Appellant insists that it did not receive the NOPD, and posits that the NOPD and other communications may have been mistakenly designated as “Closed” in the certification portal. Section II.C, *supra*. In any event, absent an NOPD, the record does not establish that SBA followed the requisite procedures set forth at 13 C.F.R. § 128.310(a), by issuing a NOPD to Appellant and affording Appellant fair opportunity to respond. Furthermore, failure to adhere to 13 C.F.R. § 128.310(a) was prejudicial to Appellant here, because Appellant, on appeal, offers copies of responses it could have submitted, had Appellant known of SBA's concerns. Section II.C, *supra*. Additional review therefore is appropriate.

### IV. Conclusion

For the above reasons, the appeal is GRANTED; the decertification decision dated June 14, 2024 is VACATED; and the matter is REMANDED to the D/GC for further review. In

accordance with 13 C.F.R. § 128.310(a), if SBA wishes to proceed with decertification, SBA should issue a new NOPD to Appellant.

KENNETH M. HYDE  
Administrative Judge