

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

IN THE MATTER OF:

CE Green, Inc.,

Appellant,

RE: American Classic Construction, Inc.

Solicitation No. 03152018  
U.S. Department of the Army  
National Guard Bureau  
Buckhannon, West Virginia

SBA No. WOSB-111

Decided: June 18, 2018

ORDER GRANTING MOTION TO DISMISS<sup>1</sup>

I. Background

On March 15, 2018, the U.S. Department of the Army, National Guard Bureau issued Solicitation No. 03152018 for lumber products. The Contracting Officer (CO) set aside the procurement entirely for Women-Owned Small Businesses (WOSBs). On March 22, 2018, the CO informed unsuccessful offerors that American Classic Construction, Inc. (ACC) was the apparent awardee.

On April 18, 2018, CE Green, Inc. (Appellant) filed a status protest against ACC. The protest alleged that ACC is not owned and controlled by one or more women because, based on publicly-available information, ACC's president is a man “and he appears to exercise control of the company.” (Protest, at 1.) The CO forwarded the protest to the U.S. Small Business Administration (SBA) Acting Director of Government Contracting (AD/GC) for review.

On May 2, 2018, the AD/GC dismissed Appellant's protest for lack of standing and as untimely. (*Id.*) The AD/GC explained that Appellant does not qualify as an “interested party” under 13 C.F.R. § 127.102 because Appellant did not submit an offer on the subject procurement. (Determination at 1.) The AD/GC noted that the CO had contacted Appellant to inquire whether it had submitted an offer under a different name, but had received no response. (*Id.*) The AD/GC added that, even if Appellant had standing, the protest was filed more than five

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<sup>1</sup> This appeal is decided under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 127 and 134.

business days after award notification, and was therefore untimely. (*Id.*, citing 13 C.F.R. § 127.603(c).)

On May 15, 2018, Appellant filed the instant appeal with SBA's Office of Hearings and Appeals (OHA).<sup>2</sup> In its appeal, Appellant asserts that, contrary to the AD/GC's determination, Appellant did respond to the CO's inquiry concerning standing. (Appeal, at 1.) Specifically, Appellant informed the CO that it is a WOSB and that its president, Ms. Carole E. Green, is a member of Women Construction Owners and Executives (WCOE), a trade organization which assists woman-owned businesses and women executives. The appeal petition continues:

The purpose of my protest letter was to call attention to the reality that the [[WOSB] program is not being administered properly .... Awarding a WOSB set-aside contract to an ineligible company increases the underrepresentation of WOSBs. It undermines the purpose of the program: to offer legitimate WOSBs the benefit of a smaller competitive pool and the result is that dollars which should go to WOSB firms, go to firms that are ineligible.

(Appeal, at 1.)

On May 18, 2018, SBA moved to dismiss the appeal. SBA observes that Appellant does not claim to have submitted an offer for the instant procurement, and that Appellant does not challenge the AD/GC's determination that Appellant is not an interested party. (Motion, at 1-2.) On May 29, 2018, Appellant opposed the motion. Appellant maintains that “[w]ith the focus centered on [Appellant's] status as an ‘interested party’, the real issue is being overlooked.” (Opp., at 1.) In particular, SBA should be concerned that only eligible firms are awarded contracts intended for WOSBs. (*Id.*) Appellant adds that “[Ms. Green] individually and [WCOE] as an organization are extremely interested in the success of the [WOSB] program.” (*Id.*) Also on May 29, 2018, ACC responded to SBA's motion, concurring in full with the motion and urging that the appeal be dismissed for the reasons stated therein. (ACC's Response, at 1.)

## II. Discussion

I agree with SBA and ACC that the instant appeal is defective and must be dismissed.

SBA regulations provide that, on a competitive WOSB set-aside, only “[a]n interested party may protest the apparent successful offeror's” WOSB status. 13 C.F.R. § 127.600(b). The regulations further explain that:

*Interested party* means any concern that submits an offer for a specific EDWOSB or WOSB requirement (including Multiple Award Contracts), any concern that submitted an offer in a full and open competition and its opportunity for award

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<sup>2</sup> Appellant transmitted its appeal by e-mail at 5:43 p.m. eastern time on Monday, May 14, 2018. SBA regulations stipulate that “[a]ny submission received at OHA after 5 p.m. eastern time is considered filed the next business day.” 13 C.F.R. § 134.204(b)(2). Accordingly, the appeal is deemed to have been filed on Tuesday, May 15, 2018.

will be affected by a reserve of an award given a WOSB or EDWOSB, the contracting activity's contracting officer, or SBA.

*Id.* § 127.102. Here, Appellant has not claimed, either in response to the protest or on appeal, that it submitted an offer for the subject procurement. *See* Section I, *supra*. Instead, Appellant argues that it is an interested party because it is a WOSB and because its president is a member of WCOE. Under SBA regulations, though, neither Appellant's WOSB status alone, nor membership in a trade association related to WOSBs, provides it with standing to file a protest on the instant procurement. Accordingly, the AD/GC correctly determined that Appellant lacked standing to protest ACC's status.

The fact that Appellant is not a valid protester also renders its appeal defective. Pursuant to 13 C.F.R. § 134.702, an appeal of a WOSB status determination may only be brought by the challenged firm, a protester, or the contracting officer responsible for the procurement affected by the status determination. Appellant does not fall within any of these categories, and therefore lacks standing to appeal. Moreover, a proper WOSB appeal must include “[a] full and specific statement as to why the [status] determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation”. 13 C.F.R. § 134.705(a)(3). Such information is essential because the appellant bears the burden of proving that the status determination was clearly erroneous. *Id.* § 134.708. Here, the appeal petition does not allege that the AD/GC erred in finding that Appellant lacked standing to protest under SBA regulations. Nor does Appellant dispute the AD/GC's conclusion that the protest was untimely. As a result, the appeal petition does not allege any valid grounds to disturb the AD/GC's determination.

Lastly, I find no merit to the notion that dismissing this appeal may undermine oversight of the WOSB program. As noted above, SBA regulations permit a status protest to be filed by the CO or by SBA itself, and further stipulate that there is no time limit on such a protest. 13 C.F.R. § 127.603(c)(3). Thus, Appellant, or any private party that is unable to bring its own status protest, could prevail upon the CO or SBA to adopt its protest, or to initiate a new protest.

### III. Conclusion

For the above reasons, SBA's motion to dismiss is GRANTED, and the appeal is DISMISSED. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.227(b)(5).

KENNETH M. HYDE  
Administrative Judge