

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

IN THE MATTER OF:

Wood Consulting Services, Inc.,

Appellant

RE: Lufburrow and Company, Inc.

Solicitation No. H98230-21-R-0130

U.S. Department of Defense

National Security Agency

SBA No. WOSB-119

Decided: November 30, 2023

APPEARANCES

Nicole D. Pottroff, Esq., Shane J. McCall, Esq., John L. Holtz, Esq., Stephanie L. Ellis, Esq., Greg P. Weber, Esq., Koprince McCall Pottroff LLC, Lawrence, Kansas, for Appellant

Joshua A. Mullen, Esq., Joshua R. Funderburke, Esq., Womble Bond Dickinson LLP, Washington, D.C., for Lufburrow and Company, Inc.

Kate DePriest, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C.

DECISION¹

I. Introduction and Jurisdiction

This appeal arises from a determination by the U.S. Small Business Administration (SBA) Director of Government Contracting (D/GC) that Lufburrow and Company, Inc. (LufCo) is an eligible Women-Owned Small Business (WOSB) for the subject procurement. WOOD Consulting Services, Inc. (Appellant), which had previously protested LufCo's status, maintains that the D/GC's determination is clearly erroneous and requests that SBA's Office of Hearings

¹ This decision was originally issued under a protective order. After receiving and considering one or more timely requests for redactions, OHA now issues this redacted decision for public release.

and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is denied, and the D/GC's determination is affirmed.

OHA decides WOSB appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 127 and 134. Appellant filed its appeal within 10 business days after receiving the D/GC's determination, so the appeal is timely. 13 C.F.R. § 134.703. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation and Protest

On June 2, 2021, the U.S. Department of Defense, National Security Agency (NSA) issued Request for Proposals (RFP) No. H98230-21-R-0130 for cybersecurity services. The Contracting Officer (CO) set aside the procurement entirely for WOSBs, and assigned North American Industry Classification System (NAICS) code 541512, Computer Systems Design Services, which at that time had a corresponding size standard of \$30 million average annual receipts. LufCo submitted its initial offer including price on July 16, 2021.

On March 24, 2023, the CO informed Appellant, an unsuccessful offeror, that LufCo was the apparent awardee. On March 27, 2023, Appellant filed a protest challenging LufCo's WOSB status. Appellant alleged that LufCo's highest officer, Mrs. Heather Couvillon Lufburrow, has other employment that interferes with her ability to control LufCo, in contravention of 13 C.F.R. § 127.202(c). (Protest File (PF), Exh. 1 at 2.)

B. The D/GC's First Determination

The CO forwarded Appellant's protest to the D/GC for review. On May 4, 2023, the D/GC determined that LufCo is not an eligible WOSB. (PF, Exh. 2.) The D/GC concluded that one or more women do not fully control LufCo's day-to-day business operations, based on LufCo's corporate Bylaws. (*Id.* at 8.)

The D/GC found that Mrs. Lufburrow owns 51% of LufCo and is LufCo's President while her husband, Mr. Andrew Lufburrow, owns the remaining 49% and is Vice President. (*Id.* at 5, 7.) According to Article IV, Section 5 of LufCo's Bylaws, however, the Vice President “[i]n the absence of the President or in the event of his or her inability or refusal to act . . . shall perform the duties of the President, and when so acting, shall have the powers of and be subject to all the restrictions upon the President.” (*Id.* at 7.) The D/GC understood this provision to mean that the Vice President would have “the authority to override the President, in the event the President does not want to take a certain action, enter into a particular contract or engage in a particular line of business.” (*Id.* at 8.) As a result, the D/GC determined, Mrs. Lufburrow does not fully control LufCo. (*Id.*) In light of this conclusion, it was unnecessary to consider the question of Mrs. Lufburrow's outside employment raised in Appellant's protest. (*Id.*)

LufCo timely appealed the D/GC's determination to OHA. (PF, Exh. 3.) LufCo contended that the D/GC's determination was flawed because it was unrelated to the allegations

raised in Appellant's protest. (*Id.* at 6.) Furthermore, LufCo's Bylaws previously had been reviewed and accepted by SBA without issue. (*Id.* at 13.)

While the appeal was pending, SBA moved to vacate the D/GC's determination and remand the matter for further review. (PF, Exh. 4.) SBA agreed with LufCo that the D/GC did not afford LufCo adequate “notice and [an] opportunity to respond” to the D/GC's concerns. (*Id.* at 3.) On June 2, 2023, OHA issued its decision in *Matter of Lufburrow and Company, Inc.*, SBA No. WOSB-118 (2023), granting the motion. (PF, Exh. 5.)

C. The Instant Determination

Following remand, on July 20, 2023, the D/GC determined that LufCo is an eligible WOSB. (Determination at 1.) With regard to the earlier finding that Mr. Lufburrow, as Vice President, could control LufCo, the D/GC observed that, under LufCo's Bylaws, the Vice President “shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer (CEO) may from time to time prescribe.” (*Id.* at 5.) Because Mrs. Lufburrow controls the Board of Directors and is CEO, Mr. Lufburrow exerts control only to the extent permitted by Mrs. Lufburrow. (*Id.*) Mrs. Lufburrow, therefore, controls the company. (*Id.*)

With regard to Mrs. Lufburrow's other employment, the D/GC reviewed information submitted by LufCo in response to the protest, including “full-time devotion” letter from Mrs. Lufburrow. (*Id.* at 6.) Mrs. Lufburrow explained that she works for LufCo 35-50 hours per week, between the hours of 7:30 a.m. to 3:30 p.m., Monday through Friday. (*Id.*) Although she also is concurrently employed as CEO and President of Hythe Research LLC (Hythe), this work does not interfere with her control of LufCo. At Hythe, Mrs. Lufburrow works 30-40 hours per week, between the hours of 3:30 p.m. to 5:30 p.m. and 7:30 p.m. to 10:00 p.m., Monday through Friday, and 8:00 a.m. to 4:00 p.m., Saturday and Sunday. (*Id.*) The D/GC concluded that Mrs. Lufburrow's work for Hythe “does not conflict with the full-time devotion and normal working hours of [LufCo].” (*Id.*)

D. The Instant Appeal

On August 2, 2023, Appellant filed the instant appeal. Appellant argues that the D/GC erroneously found that Mrs. Lufburrow controls LufCo. (Appeal at 1.) Accordingly, the D/GC's determination should be reversed. (*Id.* at 2.)

Appellant maintains that Mrs. Lufburrow does not control LufCo under 13 C.F.R. § 127.202(c) (2021) due to her outside employment at Hythe. (*Id.* at 7.) SBA amended this regulation in 2023, but the instant RFP was issued in 2021. (*Id.* at 8.) Appellant urges that the version of the regulation in effect at the time the RFP was issued should control. (*Id.*, citing *Size Appeal of Johnson Dev., LLC*, SBA No. SIZ-5863 (2017).) The current version of § 127.202(c) creates a rebuttable presumption on the issue of outside employment. (*Id.*) Because the prior iteration of the rule did not, however, Appellant contends that any finding of conflict due to outside employment is not rebuttable. (*Id.*)

When analyzing comparable requirements applicable to the 8(a) Business Development (BD) program, OHA has considered “(1) the amount of time devoted to the applicant concern; (2) the amount of time devoted to outside employment and interests; and (3) the potential for conflicts between an applicant concern schedule and time spent in outside pursuits.” (*Id.*, citing *Matter of Raintree Advanced Mgmt. Corp.*, SBA No. BDPE-407, at 10 (2011).) In other words, the individual upon whom an applicant bases its status “should work [for the applicant] during the normal business week schedule, generally acknowledged to be ‘the hours of 8 a.m. or 9 a.m. to 4 p.m. or 5 p.m. on Mondays through Fridays’D”. (*Id.* at 8-9, citing *Raintree*, SBA No. BDPE-407, at 7.)

Here, Appellant highlights, LufCo states that Mrs. Lufburrow works for LufCo from 7:30 a.m. to 3:30 p.m., Monday through Friday. (*Id.* at 9.) She works for Hythe from 3:30 p.m. to 5:30 p.m., Monday through Friday. (*Id.*) Because Mrs. Lufburrow spends at least one hour of the standard business day at Hythe, Appellant argues, she does not comply with the strict language of 13 C.F.R. § 127.202(c) (2021). (*Id.* at 10.) OHA previously has found a company ineligible for the 8(a) program when the manager's outside employment directly conflicted with the company's operating hours. (*Id.* at 10-11, citing *Matter of Sonoran Constr. Group*, SBA No. BDPT-581 (2020).) Appellant notes that LufCo's primary NAICS code is 541511, Custom Computer Programming Services. (*Id.* at 3.)

Appellant also questions the credibility of evidence submitted by LufCo. (*Id.* at 13.) LufCo claims that Mrs. Lufburrow works 12.5 hours every weekday and 8 hours on both Saturdays and Sundays. (*Id.* at 12.) Excessive hours worked may suggest that an individual does not properly control a protested concern. (*Id.*, citing *Matter of MSC Electric*, SBA No. 442, at 2 (1993).) Regardless, OHA should be skeptical of “self-serving statements” made by LufCo. (*Id.* at 13.) Appellant's doubts stem from the fact that LufCo's and Hythe's applications for WOSB certification were approved around the same time. (*Id.* at 14.) Since Hythe's application was approved first, and the hours Mrs. Lufburrow claims to devote to Hythe are well outside of normal business hours, Appellant speculates that Hythe and/or Mrs. Lufburrow might have misrepresented her full-time devotion to Hythe on its WOSB application. (*Id.* at 15.)

E. LufCo's Response

On August 14, 2023, LufCo responded to the appeal. LufCo argues that Appellant has not shown clear error on the part of the D/GC. (LufCo Response at 6.) The appeal therefore should be denied.

LufCo maintains that Mrs. Lufburrow's employment complies with 13 C.F.R. § 127.202. (*Id.* at 7.) Under OHA precedent, the mere fact that Mrs. Lufburrow owns another company or has other employment is not sufficient to establish that she does not control LufCo. (*Id.*, citing *Matter of Oak Hill Rehab. Specialists, Inc.*, SBA No. BDP-154, at 5 (2001) and *Matter of BDS Protective Servs., LLC*, SBA No. BDP-433, at 8-11 (2012).) SBA regulations do not require any specific schedule of work and the issue therefore must be examined on a case-by-case basis. (*Id.* at 8-9, citing *BDS*, SBA No. BDP-433, at 10 and *Matter of Minority Temp. Agency, Inc.*, SBA No. SDPA-166, at 12 (2006), *vacated on recons.*, SBA No. SDPA-169 (2006) (PFR).) OHA's decision should turn only upon “how much time [Mrs.] Lufburrow devotes to LufCo, how much

time she devotes to [Hythe], and whether her time working at [Hythe] conflicts with “her management’ of LufCo.” (*Id.* at 9, citing *Oak Hill*, SBA No. BDP-154, at 5.)

Here, Mrs. Lufburrow's declaration shows that her time at Hythe does not conflict with her duties at LufCo. (*Id.* at 9.) She manages LufCo from 7:30 a.m. to 3:30 p.m., Monday through Friday, which are the core hours for LufCo's line of business. (*Id.* at 10.) She is also available to take calls and handle issues throughout the week. (*Id.*) LufCo Board member Patricia (Beth) Dixon submitted a declaration attesting that Mrs. Lufburrow has final authority over LufCo and that her outside employment does not interfere with her duties. (*Id.* at 11-12.) Mr. Lufburrow similarly confirmed that Mrs. Lufburrow acts as the final authority. (*Id.* at 12.) While Mrs. Lufburrow also spends 30-40 hours per week working at Hythe, these hours do not conflict with her time managing LufCo. (*Id.* at 13.)

LufCo asserts that the evidence it submitted was, and remains, credible. (*Id.* at 14.) OHA must attach greater weight to sworn statements and specific factual evidence than to unsupported allegations or opinions. (*Id.* at 15, citing *CVE Protest of Veterans Command, LLC*, SBA No. CVE-191-P, at 4 (2021) and 13 C.F.R. § 134.1011.) In the instant case, Appellant's arguments against credibility are wholly speculative and lack any direct support or evidence. (*Id.*)

Lastly, LufCo suggests that Appellant may have lacked standing to protest LufCo's award in the first instance. (*Id.* at 16.) In order to submit an offer for a WOSB set-aside procurement, an offeror either must be WOSB-certified or must represent that it has submitted a complete application. (*Id.*, citing 13 C.F.R. § 127.504(a).) Here, Appellant concedes that it was not WOSB-certified until January 14, 2022. (*Id.*) Initial offers were due July 16, 2021. (*Id.*) Because Appellant was not yet certified, and does not claim to have applied for certification, as of July 16, 2021, Appellant may have been ineligible for award and thus may not have had standing to protest. (*Id.*)

F. SBA's Response

On September 8, 2023, SBA responded to the appeal. SBA argues that the D/GC did not err in finding that LufCo is an eligible WOSB. (SBA Response at 4.)

According to SBA, the D/GC properly and thoroughly considered Mrs. Lufburrow's outside employment. (*Id.*) Furthermore, the D/GC applied the 2021 version of 13 C.F.R. § 127.202(c) when concluding that Mrs. Lufburrow's outside employment was not problematic. (*Id.* at 5.) SBA further contends that the evidence relied upon by the D/GC was credible. (*Id.*) Although Appellant speculates that LufCo may have submitted inaccurate or misleading information, Appellant has not demonstrated why the documents LufCo provided should not have been taken at face value. (*Id.* at 6.)

G. Protest File

Also on September 8, 2023, SBA transmitted the complete Protest File (PF) to OHA. The PF contains all documents relied upon by the D/GC when finding that LufCo is an eligible WOSB.

The PF indicates that Mrs. Lufburrow owns 51% of LufCo. (PF at 70.) LufCo's Board is comprised of three directors: Mrs. Lufburrow, Mr. Lufburrow, and Ms. Dixon. (PF at 106.) According to her sworn declaration and full-time devotion letter, Mrs. Lufburrow's "core business hours [at LufCo] are 7:30-3:30 Monday through Friday." (*Id.* at 65, 76.) She further states that her "core hours [at Hythe] are 3:30-5:30, 7:30-10:00 Monday through Friday and 8:00-4:00 Saturday, Sunday." (*Id.*) Mr. Lufburrow, LufCo's minority owner and Vice President, provided a sworn declaration that Mrs. Lufburrow "is actively involved in the day-to-day management and long-term decision making of LufCo." (*Id.* at 110.) Ms. Dixon, a Principal and Director of LufCo, provided a sworn declaration further attesting to Mrs. Lufburrow's control of the company. (*Id.* at 113-14.)

The PF contains a copy of LufCo's Bylaws. (PF at 85-104.) The Bylaws contain the following provisions pertinent to this appeal:

Article III Directors

...

Section 4. Resignation and Removal. Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation at its principal place of business or to the Chief Executive Officer or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of Directors, unless otherwise specified by law, the Certificate of Incorporation or a written agreement entered among the stockholders of the Corporation.

...

Section 13. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the Directors of the Corporation. The board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the resolution of the Board of Directors, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (a) adopting, amending or repealing the By-Laws of the Corporation or any of them or (b) approving or adopting, or recommending to the stockholders any action or matter expressly required by law to be submitted to stockholders for approval. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and make

such reports to the Board of Directors as the Board of Directors may request. Except as the Board of Directors may otherwise determine, any committee may make rules for the conduct of its business, but unless otherwise provided by the Directors or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-Laws for the conduct of its business by the Board of Directors. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(*Id.* at 92-93.)

H. Supplemental Appeal

On September 26, 2023, after its counsel reviewed the PF under the terms of an OHA protective order, Appellant moved to supplement its Appeal. Appellant reiterates its stance that Mrs. Lufburrow's commitment to Hythe interferes with her control of LufCo. (Supp. Appeal at 2.) Appellant additionally alleges that LufCo's Bylaws improperly allow for a situation in which a man could control LufCo. (*Id.*)

Appellant highlights the duties that Mrs. Lufburrow claims to perform on behalf of Hythe. (*Id.* at 4.) These include “establish[ing] corporate operations and strategic direction,” “lead[ing] proposal development to include technical, staffing and pricing decisions,” and “pursu[ing] [XXXXXXXXXXXXXXXXX].” (*Id.*) Mrs. Lufburrow claims to do all of this work outside of normal business hours. (*Id.*) Appellant considers this to be implausible as Mrs. Lufburrow would need to meet with “employees, contracting officers, planned vendors, planned subcontractors, and sometimes even business development, marketing, or proposal consultants or experts.” (*Id.* at 5.) Such meetings must sometimes be conducted during normal business hours, which would interfere with Mrs. Lufburrow's commitment to LufCo. (*Id.*) Were Mrs. Lufburrow not to attend these meetings, she would be heavily reliant on the individual that did. (*Id.* at 6.) This reliance would show that she does not control Hythe. (*Id.*) Mrs. Lufburrow also claims to have overseen Hythe while it grew from one to 13 employees. (*Id.* at 7.) According to Appellant, this creates even more doubt that Mrs. Lufburrow truly splits her time between Hythe and LufCo to be considered controlling both. (*Id.* at 8.)

Appellant argues that LufCo's Bylaws potentially allow for a man to control the company through a committee. (*Id.* at 10.) According to the Bylaws, LufCo's Board of Directors may establish a committee of one director with as much power as the entire Board. (*Id.*) In addition, the Bylaws do not provide for the removal of a committee member or the disestablishment of a committee. (*Id.*) Accordingly, Appellant contends, a committee could be established comprised of Mr. Lufburrow alone. (*Id.* at 11.) Notwithstanding any agreement between the spouses, Mrs. Lufburrow would be unable to control or disband the committee and Mr. Lufburrow therefore would be empowered to act on behalf of the committee. (*Id.*)

I. Supplemental Response

On October 6, 2023, LufCo supplemented its Response to the Appeal. Because the Supplemental Appeal was submitted more than 10 business days after Appellant's counsel received the complete Protest File, LufCo urges OHA to disregard the Supplemental Appeal. (Supp. Response at 2 (citing 13 C.F.R. § 134.703).) Even if OHA accepts the Supplemental Appeal, though, Appellant's additional arguments do not show that the D/GC committed clear error of fact or law. (*Id.* at 1.)

LufCo emphasizes that this dispute concerns its own WOSB eligibility, not Hythe's. (*Id.* at 3.) Appellant argues at length that Mrs. Lufburrow does not fully control Hythe, but her control of Hythe has no bearing on her control of LufCo. (*Id.*) Further, Appellant's arguments attacking Mrs. Lufburrow's control are speculative and unsupported. (*Id.*) LufCo submitted ample evidence, including several sworn declarations, showing that Mrs. Lufburrow does control the day-to-day operations of LufCo. (*Id.* at 4.)

Regarding the committee issue, LufCo observes that Mrs. Lufburrow is the majority shareholder. (*Id.* at 9.) As such, she has the power to remove any director from the Board, with or without cause. (*Id.*) Mrs. Lufburrow could remove Mr. Lufburrow or any other director and, thereby, disband any committee led by that director. (*Id.* at 10.)

III. Discussion

A. Standard of Review

To prevail on a WOSB status appeal, Appellant must show that the D/GC's determination was based on clear error of fact or law. 13 C.F.R. § 134.708; *Matter of SonCoast Procurement, LLC*, SBA No. WOSB-117, at 4 (2022). OHA will disturb the D/GC's determination only if the judge has a definite and firm conviction that the D/GC erred in making a key finding of law or fact.

B. Analysis

Having reviewed the record and the arguments of the parties, I see no basis to conclude that the D/GC's determination clearly erroneous. This appeal must therefore be denied.

As a preliminary matter, I find no merit to LufCo's claim that Appellant may have lacked standing to protest. SBA regulations permit an “interested party” to file a WOSB status protest in connection with a WOSB procurement. 13 C.F.R. § 127.600(b). An “interested party” includes “any concern that submits an offer for a specific EDWOSB or WOSB requirement.” 13 C.F.R. § 127.102. Here, there is no dispute that Appellant did submit a proposal for the instant procurement. Section II.A, *supra*. Although Appellant was not certified as a WOSB at the time proposals were due, Appellant nevertheless could properly submit a proposal by representing that it had submitted a complete WOSB application. 13 C.F.R. § 127.504(a). Appellant, then, was an offeror and an “interested party” with standing to protest.

Turning to the merits of the case, the principal issue presented here is whether the D/GC properly concluded that Mrs. Lufburrow's outside employment does not interfere with her control of LufCo, in accordance with 13 C.F.R. § 127.202(c) (2021).² As of July 16, 2021, the date that LufCo submitted its initial offer including price for the instant procurement, this regulation provided that:

Limitation on outside employment. The woman or economically disadvantaged woman who holds the highest officer position of the concern must manage it on a full-time basis and devote full-time to the business concern during the normal working hours of business concerns in the same or similar line of business. The woman or economically disadvantaged woman who holds the highest officer position may not engage in outside employment that prevents her from devoting sufficient time and attention to the daily affairs of the concern to control its management and daily business operations.

13 C.F.R. § 127.202(c) (2021).

OHA has analyzed this specific provision in only one prior case, holding that volunteering does not constitute “outside employment” within the meaning of the rule. *Matter of PotomacWave Consulting, Inc.*, SBA No. EDWOSB-104, at 7-8 (2014). However, OHA has several times addressed a similar requirement found in SBA's 8(a) program. To be eligible for that program, “[o]ne or more disadvantaged individuals who manage the [8(a) concern] must devote full-time to the business during the normal working hours of firms in the same or similar line of business.” 13 C.F.R. § 124.106(a)(3).

When addressing issues of outside employment in the 8(a) context, OHA has explained that the analysis will turn upon (1) how much time the individual devotes to the concern during the normal working hours for that line of business; (2) how much time the individual devotes to outside employment; and (3) whether the time devoted to outside employment conflicts with the management of the concern. *Matter of Oak Hill Rehab. Specialists, Inc.*, SBA No. BDP-154, at 5 (2001). There generally will be no conflict when the individual is able to devote 40 hours to the concern during the hours of 8:00 a.m. or 9:00 a.m. to 4:00 p.m. or 5:00 p.m., Monday through Friday. *Matter of Sonoran Constr. Group a/k/a Sonoran Equip. Appraisal*, SBA No. BDPT-581, at 13 (2020). The issue will, however, be reviewed on a case-by-case basis. *Matter of R.A. Quarshie and Assocs., Inc.*, SBA No. BDPE-605, at 21 (2022).

² SBA regulations indicate that, by submitting an offer for a WOSB set-aside procurement, a concern represents that it is WOSB-certified or has submitted a complete application for WOSB certification. 13 C.F.R. § 127.504(a). Accordingly, when deciding a WOSB status protest, SBA typically will assess the challenged concern's WOSB status “as of the date a concern certifies its status as an EDWOSB or WOSB as part of its initial offer (or other formal response to a solicitation), which includes price.” 13 C.F.R. § 127.504(d)(1); *Matter of Joint Information Network*, SBA No. WOSB-113 (2021). Here, LufCo submitted its initial offer including price on July 16, 2021, so OHA examines LufCo's WOSB status as of that date, utilizing the version of the WOSB regulations in effect at that time.

Here, after considering Mrs. Lufburrow's declaration and full-time devotion letter, as well as supporting declarations from other LufCo personnel, the D/GC reasonably concluded that Mrs. Lufburrow's outside employment does not conflict with her management of LufCo. Section II.C, *supra*. LufCo explained that Mrs. Lufburrow manages LufCo for 35-50 hours a week, from 7:30 a.m. to 3:30 p.m., Monday through Friday. Sections II.C and II.G, *supra*. Further, LufCo's primary NAICS code is 541511, Custom Computer Programming Services, an industry comprised of concerns that are “primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer.” *NAICS Manual*³ at 464. Such work need not necessarily be performed from 8:00 a.m. or 9:00 a.m. to 4:00 p.m. or 5:00 p.m., Monday through Friday. Accordingly, although Mrs. Lufburrow may start and end her workday a half hour earlier than what is considered “standard” for other industries, the D/GC could properly determine that she manages LufCo's day-to-day operations during “the normal working hours of business concerns in the same or similar line of business,” consistent with 13 C.F.R. § 127.202(c) (2021).

With regard to Mrs. Lufburrow's time at Hythe, LufCo explained that Mrs. Lufburrow works from 3:30 p.m. to 5:30 p.m. and 7:30 p.m. to 10:00 p.m., Monday through Friday and 8:00 a.m. to 4:00 p.m. Saturday and Sunday. Sections II.C and II.G, *supra*. There is no direct conflict, then, between the time Mrs. Lufburrow devotes to each employer. While Mrs. Lufburrow's employment with Hythe is a substantial time commitment, an individual may comply with a full-time devotion requirement despite having multiple jobs, or even more than one full-time job. *Matter of BDS Protective Servs., LLC*, SBA No. BDPE-433, at 8 (2012). Appellant has not shown, then, that the D/GC clearly erred in concluding that Mrs. Lufburrow's time at Hythe does not interfere with Mrs. Lufburrow's ability to manage LufCo.⁴

The OHA cases referenced by Appellant do not compel a different result. In *Sonoran Construction*, an 8(a) participant's eligibility was properly terminated because the manager only devoted time to the participant in the evenings and weekends, *i.e.*, outside normal business hours, and worked for another company from 8:00 a.m. to 4:00 p.m., Monday through Friday. *Sonoran Constr.*, SBA No. BDPT-581, at 12-14. Mrs. Lufburrow's situation is the reverse — she works at her other employment in the evenings and weekends. Sections II.C and II.G, *supra*. In *MSC Electric*, OHA found that SBA reasonably was skeptical of an individual's full-time devotion letter, because he claimed to work a schedule in which he “g[o]t by with about three hours sleep four days per week” and could not explain how it was physically possible for him “instantly shift” from one work site to another. *MSC Electric*, SBA No. 442, at 2. Here, although Mrs. Lufburrow asserts that she works a combined total of approximately 12.5 hours each weekday and eight hours each Saturday and Sunday, her schedule is not inherently implausible, and LufCo

³ Executive Office of the President, Office of Management and Budget, *North American Industry Classification System-United States* (2022), available at <http://www.census.gov>.

⁴ In its supplemental appeal, Appellant questions how Hythe could qualify as a certified WOSB, given that Mrs. Lufburrow reportedly manages LufCo for 35-50 hours a week, from 7:30 a.m. to 3:30 p.m., Monday through Friday. Section II.H, *supra*. The instant case, however, involves only the WOSB status of LufCo, not Hythe.

submitted multiple sworn declarations in support. Unlike the situation in *MSC Electric*, the D/GC here appropriately credited LufCo's evidence.

As for Appellant's claim that a man, Mr. Lufburrow, hypothetically could control LufCo through a committee, any potential negative control in this manner is illusory. *E.g.*, *PotomacWave Consulting*, SBA No. EDWOSB-104, at 7 (because a woman had "ultimate control" over the challenged concern, "any control her husband may have is illusory"). Here, LufCo's Bylaws permit that Mrs. Lufburrow, as majority shareholder, could remove any director, such as Mr. Lufburrow, with or without cause. Section II.G, *supra*. Any committee could thus be disbanded if Mrs. Lufburrow were to remove the director(s) who comprise that committee.

IV. Conclusion

For the above reasons, the appeal is DENIED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.714.

KENNETH M. HYDE
Administrative Judge