

This decision is not to be cited as precedent.

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

IN THE MATTER OF:

SDV Solutions, Inc.

Appellant

RE: Four Points Technology, LLC

Solicitation No. 193895(v0321)
U.S. Department of the Treasury
Financial Management Service
Washington, D.C.

SBA No. VET-119

Decided: July 24, 2007

APPEARANCES

Mark R. Dycio, Esq., T. Wayne Biggs, Esq., and Derek L. Burrows, Esq., Law Offices of Mark R. Dycio, P.C., Fairfax, Virginia, for Four Points Technology, LLC.

Sarah T. Zaffina, Esq., Albo & Oblon, LLP, Arlington, Virginia, for SDV Solutions, Inc.

Kevin R. Harber, Esq., Office of General Counsel, Washington, D.C., for the U.S. Small Business Administration.

James Harden, Contracting Officer, and Rachel Howard, Esq., Washington, D.C., for the U.S. Department of the Treasury, Financial Management Service.

ORDER GRANTING APPEAL

PENDER, Administrative Judge:

I. Introduction and Jurisdiction

On June 29, 2007, I issued *Matter of SDV Solutions, Inc.*, SBA No. VET-116 (2007) (*SDV Solutions I*), wherein I granted the appeal of SDV Solutions, Inc. (SDV Solutions or Appellant), and reversed the May 30, 2007 Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC) status determination issued by the U.S. Small Business Administration (SBA) Director for Government Contracting (DGC), who had concluded Four Points Technology, LLC (Four Points) is an eligible SDVO SBC for the subject solicitation. On July 9, 2007, the DGC issued another SDVO SBC status determination, again concluding Four Points is an eligible SDVO SBC for the subject solicitation. On July 19, 2007, Appellant filed an appeal

of the July 9, 2007 SDVO SBC status determination with the SBA Office of Hearings and Appeals (OHA). *See* 13 C.F.R. § 125.28.

OHA decides SDVO SBC appeals under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. Parts 125 and 134. Accordingly, this matter is properly before OHA for decision.

II. The Telephone Conference

On Monday, July 23, 2007, at 10:00 a.m., I conducted a telephone conference regarding this matter with representatives for all of the parties. I noted that Appellant's counsel had represented she served the appeal upon SBA, the Contracting Officer and Four Points, and that the appeal also included a copy of the SBA DGC's July 9, 2007 SDVO SBC status determination on Four Points.

Based on the dates of the determination and the filing of the appeal petition, I held the appeal is TIMELY as a matter of law pursuant to 13 C.F.R. § 134.503, since July 19, 2007 is within 10 business days of July 9, 2007, regardless of when Appellant received the determination.

I stated my presumption that all conferees were familiar with *SDV Solutions I*, wherein I granted the appeal of SDV Solutions and reversed the May 30, 2007 the DGC's SDVO SBC status determination which had concluded Four Points is an eligible SDVO SBC for the subject solicitation. Next, I read the Conclusion from *SDV Solutions I*:

Four Points failed to provide evidence critical to a finding of control of it by an SDV as required by 13 C.F.R. § 125.10(b). Specifically, Four Points failed to provide evidence, as required by SBA, of the experience of its management. Hence, Four Points failed to establish that its SDV manager had management experience of the extent and complexity needed to run Four Points. Accordingly, it is both an error of law and fact for the DGC to have found that Four Points is controlled by an SDV. Therefore, pursuant to 13 C.F.R. § 125.27(g), the FMS CO may not count award of the contract arising from the solicitation to an SDVO SBC and Four Points cannot submit another offer as an SDVO SBC on a future SDVO SBC procurement unless it can prove it is controlled by an SDV as required by 13 C.F.R. § 125.10(b).

Appellant's Appeal is GRANTED. The DGC's May 30, 2007 SDVO SBC determination finding Four Points to be an eligible SDVO SBC concern is REVERSED.

Then I explained that, as stated in *SDV Solutions I*, that decision was issued as a final decision although, as Four Points' counsel pointed out in its July 19, 2007, Petition for Reconsideration (PFR), I inadvertently used an incorrect citation in the original decision, but have since corrected that error. Nevertheless, *SDV Solutions I* was a final decision of the SBA. Moreover, the fact it was a final decision of the SBA was understood by Four Points, since it

filed its PFR pursuant to 13 C.F.R. § 134.515. I then clarified that I would rule on that PFR in due course.

I noted to the conferees that 13 C.F.R. § 134.512 limits my review to the evidence in the Protest File relied upon by the DGC to render his SDVO SBC status determination. I also explained that 13 C.F.R. § 134.515(c) provides that I may remand a SDVO SBC determination if the DGC fails to discuss issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence relied upon. I then differentiated *SDV Solutions I*, which was a reversal because there was insufficient evidence in the Protest File to support *any* finding of qualification—no resume, etc., and thus there could be no control. Thus, I lacked the power to remand to the DGC the SDVO SBC status determination underlying that appeal.

Nevertheless, I reiterated that I called the conference because of the DGC's July 9, 2007 SDVO SBC determination, which references the same solicitation as the June 29, 2007 decision and concludes by stating:

Based on the totality of the evidence submitted by Four Points, SBA has determined that Mr. Gilchrist, a service-disabled veteran does own and control the protested concern. Therefore, Four Points does meet the eligibility requirements for an SDVO SBC as established by 15 U.S.C. § 632(q) and 13 C.F.R. § 125.8 et seq. Four Points was thus eligible to receive an award under the subject solicitation and effective immediately, four points may submit offers on future SDVO SBC procurements.

I then announced, because the DGC did not have the authority to issue the July 9th determination relating to this solicitation (because the matter had already been adjudicated), that I had no choice but to vacate and reverse the DGC's July 9, 2007 SDVO SBC status protest determination, and to grant summarily the appeal of SDV Solutions, Inc. Moreover, the CO may not count the award to Four Points as one to an SDVO SBC.

In light of the fact the DGC's July 9th determination had both a retroactive (regarding the subject solicitation) and a prospective (future) component, I clarified that I vacated the DGC's July 9th determination in its entirety and that Four Points would have to approach SBA to cure its ineligibility for future SDVO SBC procurements (unrelated to the subject solicitation).

As a further clarification, I stated I do not hold that the DGC could not have determined that Four Points to be a qualified SDVO SBC as of July 9, 2007; rather, I hold only that the DGC lacked the power to determine that Four Points was eligible to receive an award *under the subject solicitation*. Moreover, there should be no reference to the subject solicitation in any subsequent SDVO SBC determination.

III. Conclusion

Accordingly, because the DGC lacked the authority to issue an SDVO SBC status protest determination on Four Points Technology, LLC, to affect the subject solicitation following my

June 29, 2007 decision, the DGC's July 9, 2007 SDVO SBC status protest determination on is REVERSED and VACATED. The appeal of SDV Solutions, Inc. is summarily GRANTED. For the purposes of the subject solicitation only, Four Points Technology, LLC, is not and may not subsequently be determined to be a qualified SDVO SBC.

This decision is nonprecedential.

This is the final decision of the Small Business Administration. *See* 13 C.F.R. § 134.515(a).

THOMAS B. PENDER
Administrative Judge