

In The News: Special Edition

SBA's SDVOSBC Ineligibility Determination Remained Effective for Another Procurement

The Department of Veterans Affairs properly rejected a joint venture's bid based on the Small Business Administration's determination, made in regard to another solicitation, that the joint venture did not qualify as a service-disabled veteran-owned small business concern (SDVOSBC), the Government Accountability Office decided April 23 (*Singleton Enterprises-GMT Mechanical, A Joint Venture*, GAO, B-311343, 04/23/08).

SBA's determination expressly stated that it was effective immediately and was "final" unless overturned on appeal or unless SBA granted relief, neither of which occurred here, GAO said.

Accordingly, GAO dismissed the protest by Singleton Enterprises-GMT Mechanical, A Joint Venture, of the VA's rejection of its bid to perform certain renovation work at a VA facility in Jackson, Miss., under a total SDVOSBC set-aside.

Determination Made in Earlier Procurement

The VA issued the solicitation for the Jackson, Miss., work Jan. 15, 2008, with bids due Feb. 14.

Meanwhile, the VA Jan. 22 filed a protest with SBA challenging Singleton-GMT's status as an SDVOSBC for purposes of a bid for VA work in Lexington, Ky. SBA sustained the VA's protest Feb. 20, finding that Singleton-GMT was not eligible to represent itself as an SDVOSBC for purposes of federal procurement.

The VA rejected Singleton-GMT's bid for the Mississippi work Feb. 27, based on SBA's Feb. 20 determination in the Kentucky procurement.

Singleton-GMT JV filed an appeal to SBA's Office of Hearings and Appeals (OHA) March 4, and filed its protest of the VA's rejection of its bid for the Mississippi work March 11. On March 27, OHA affirmed SBA's determination that Singleton-GMT did not qualify as an SDVOSBC.

The VA then asked GAO to dismiss Singleton-GMT's protest because its rejection of the JV's bid for the Mississippi work was mandated by SBA's determination that the JV was not an SDVOSBC.

Meanwhile, earlier this year, GAO sustained a protest by Singleton-GMT involving the Kentucky procurement, finding that the VA's determination that the JV was not a proper SDVOSBC "could not be made by the agency because it was subject to determination by the SBA".

Singleton-GMT subsequently complained that the VA unduly delayed taking corrective action in that protest, but GAO disagreed and denied the JV reimbursement of its protest costs.

GAO Defers to SBA's Interpretation of Rules

In rejecting this latest protest, GAO deferred to what it said was SBA's reasonable interpretation of the agency's own regulations. GAO noted that both the Federal Acquisition Regulation and SBA regulations provide for SBA resolution of questions of SDVOSBC status and for a procedure allowing an agency to protest a firm's SDVOSBC status to SBA.

GAO also said that consistent with SBA regulations, SBA's determination that Singleton-GMT was not an SDVOSBC expressly stated that the determination was effective "immediately" and was "final" unless overturned on appeal or unless relief was granted under SBA regulations (e.g., due to a change in ownership to satisfy the SDVOSBC definition), and that because of this determination the JV was ineligible to bid on or receive any SDVOSBC contract awards.

Given that the OHA affirmed SBA's determination, GAO said, before Singleton-GMT could bid on or receive SDVOSBC contracts, the JV had to request that SBA grant it relief and to establish that it merited relief by documenting the actions it had taken to address the eligibility problems identified by SBA. However, GAO said, Singleton-GMT had not requested, and SBA had not granted, such relief.

Had Singleton-GMT successfully pursued such a request and SBA agreed that the JV satisfied SDVOSBC eligibility, then SBA would have granted relief in accordance with its regulations and issued a new determination letter to Singleton-GMT stating its eligibility as an SDVOSBC.

OHA Rulings Are Final Immediately

Singleton-GMT also contended that the VA could not rely upon the SBA and OHA determinations to reject its bid, on the ground that the determination was only an initial decision and could not be final for 30 days.

However, GAO said that "OHA's rulings on appeal are effective immediately, and are final, unless or until the judge chooses to reconsider the ruling" GAO further noted that the OHA decision states that it is a "final decision" of the SBA. For these reasons, GAO dismissed Singleton's protest.

Wayne Singleton and Gary Michael Thompson represented Singleton-GMT. Natica L. Chapman of the VA and Kevin R. Harber of SBA represented the government. Katherine I. Riback and James A. Spangenberg of GAO participated in the preparation of the decision.