United States Small Business Administration
Office of Hearings and Appeals

VSBC Appeal of: Stripes Global, Inc., Appellant Re: RCG of North Carolina, LLC	SBA No. VSBC-438-A (PFR) Decided: August 7, 2025

APPEARANCES

Nicole D. Pottroff, Esq., Shane J. McCall, Esq., John L. Holtz, Esq., Gregory P. Weber, Esq., Stephanie L. Ellis, Esq., Annie E. Birney, Esq., Counsel for Appellant

Koprince McCall Pottroff LLC, Lawrence, Kansas, Alan Grayson, Esq., Counsel for RCG of North Carolina LLC, Indialantic, Florida.

ORDER DENYING PETITION FOR RECONSIDERATION

I. Background

A. Prior Proceedings

On July 15, 2025, Stripes Global, Inc. (Petitioner) filed the instant Petition for Reconsideration (PFR) of the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decision in *VSBC Protest of Stripes Global LLC*, SBA No. VSBC-434-P (2025). ("*Stripes Global I*"). I herewith incorporate the factual discussion in *Stripes Global I* into this decision. In that case, OHA denied the protest of a decision by the U.S. Small Business Administration (SBA) Director of Government Contracting (D/GC), acting through the Director of the Veteran Small Business Certification Program (D/VSBC), which had granted RCG of North Carolina, LLC's (RCG) status as a certified Service-Disabled Veteran-Owned Small Business (SDVOSB).

B. PFR

On July 15, 2025, Petitioner filed the instant PFR, requesting that I reconsider and reverse the decision in *Stripes Global I*. Petitioner argues that OHA committed several errors in its *Stripes Global I* decision.

Petitioner first contends OHA's decision focused solely on legal noncompliance grounds that were originally meant to be Petitioner's size protest allegations, since the initial status protest was initially filed with OHA and SBA as a "Size and Status Protest," representing both sets of protest grounds combined. (PFR at 1-2.) According to Petitioner, OHA's decision instead reframes the argument as merely an ostensible subcontractor issue, which it dismisses immediately as inapplicable to a supplies contract, and then says, "[i]nstead, the non-manufacturer rule applies which the area office will address, along with the affiliation issue, in making the size determination." (*Id.* at 2.) Petitioner argues OHA's decision is an unduly dismissive reading of the arguments made by Appellant in both its original and supplemental SDVOSB status protests. (*Id.*) Petitioner agrees with OHA that its VSBC Protest and simultaneous Size Protest's allegations are closely related. (*Id.*) However, Petitioner argues that "it is in no way unusual for the service-disabled veteran's lack of control to be the result of inappropriate dependence upon (and ultimately, affiliation with) non-service-disabled and/or other-than small individuals and subcontractors." (*Id.*) Furthermore, Petitioner highlights that legal compliance with performance limitations is often relevant to all such issues—and here—is highly relevant to the discussion of why exactly and how much the challenged concern, RCG, relies on its non-SDVOSB subcontractors. (*Id.*)

Next, Petitioner contends OHA's line of reasoning is circular and results in "incredibly important and widespread government contracting licensing questions remaining truly unconsidered and unanswered by the very bodies who should be answering them." (*Id.*) Petitioner believes that having the government's official statement on the issues, after thorough consideration of all the arguments, truly benefits far more than just Petitioner. (*Id.*) Petitioner also believes that OHA's reliance on a truly dismissive mischaracterization of the allegations as argued would be an unjust outcome for all SDVOSBs. (*Id.*) Additionally, it would result in an "unjust outcome wherein [Appellant] never truly has its 'day in court,' despite ostensibly having received an audience with two arbiters."

Petitioner addresses the issue of control by stating that control through licensure can exist even outside the ostensible subcontractor rule. (*Id.*) Petitioner reasons that simply dismissing this issue as one solely involving the ostensible subcontractor rule or the nonmanufacturer rule ignores the language of 13 C.F.R. § 128.203, which it believes has nothing to do with size and everything to do with control of the company in question. (*Id.*) Furthermore, the fact that it relates to one contract does not intrinsically mean it relates only to that contract. (*Id.*) Petitioner argues that in RCG's line of business, and in the NAICS codes assigned to multiple additional federal contracts RCG has won and performs, the licenses held by Airgas are *fundamental* to its continuing existence. (*Id.*) Petitioner hypothesizes that if Airgas told RCG tomorrow that it had to pay Airgas twice as much from now on or Airgas would cease work on multiple government contracts, "how on earth could RCG say 'no'? If that doesn't go to the crux of SBA's SDVOSB control regulations (as well as those for affiliation—closely related, since the key to affiliation is control)," then, frankly, the rules would be meaningless. (*Id.* at 2-3.) Moreover, Petitioner alleges that per RCG's website, medical gas supply is a core part of its business, and such licenses are crucial to RCG's work. (*Id.* at 3.) OHA should take this into consideration at the absolute minimum in deciding on these concerns and questions with widespread impact and applicability. (*Id.*)

Petitioner maintains that its protest specifically alleged general control of RCG by Airgas as opposed to control regarding this specific procurement, but OHA failed to address these allegations in its original decisions. (*Id.*) Petitioner asserts that the California statute was addressed in a narrow manner, but the North Carolina laws were not. (*Id.*) Neither were any of the legal requirements' interactions addressed, nor what any of that means for SDVOSB control issues. (*Id.*) Petitioner believes that as such, respectfully, the decision is simply incomplete. (*Id.*) Petitioner contends that if its allegations are correct, which it believes to be the case, RCG is controlled by its relationship with Airgas due to Airgas' licenses. (*Id.*) Additionally, Airgas has critical influence, which RCG must follow or risk incredible economic loss, loss of multiple contracts, federal terminations for default/cause, and thus, the likely inability to even continue with the work it is doing (or as a company at all). (*Id.*) Petitioner alleges that RCG is not controlled by a service-disabled veteran and is both ineligible for the SDVOSB program and for the procurement in question. (*Id.*)

Petitioner explains that were there an option to pursue both size and status protest in one setting, that would be the natural path for Petitioner to take—given the close relatedness of the issues of control and affiliation OHA itself has built the foundation for. (*Id.* 3-4) With the division between the two existing as it does, it is imperative that the presence of facts that support one argument not be used to invalidate the other. (*Id.* at 4.) Petitioner opines that the nonmanufacturer rule argument remains valid—and at least relevant to affiliation and control to some extent. (*Id.*) Additionally, Petitioner states that the requirement of the rule that RCG cannot satisfy also cannot be ignored in both the SDVOSB protest and size protest, a fact that goes unaddressed in both SBA's and OHA's decisions. (*Id.*) But the fact that it exists in Petitioner's protest does not mean the rest of the protest can be waved off or ignored. (*Id.*)

Petitioner respectfully asserts that there remains a credible basis for finding RCG is not controlled by a service-disabled veteran due to the nature of its dependence on its subcontractor. (*Id.*) Petitioner believes this is true without having to be overtly construed as an inapplicable ostensible contractor or nonmanufacturer rule issue. (*Id.*) Also, it is true even though it goes to the argument that RCG is not an eligible small business regarding the protested award. (*Id.*)

Protestor requests OHA reconsider its decision, affirm its protest, and grant any additional relief OHA deems just and equitable. (*Id.*)

C. RCG's Opposition to PFR

On July 21, 2025, RCG filed its Opposition to Petitioner's PFR, requesting that I deny the PFR. RCG contends Petitioner has failed to articulate any error of fact or law (much less a "manifest" error) regarding OHA's ruling.

RCG notes Petitioner has argued that RCG is not controlled by a SDVOSB due to a lack of licensure, and that OHA did find this argument "unpersuasive," for several reasons. (Opp. to PFR at 2.) RCG asserts these reasons are: (1) there is no licensure necessary for this requirement; and (2) if there were a licensing requirement, Petitioner failed to show that it would allow Airgas to influence or control RCG's business decisions, and RCG demonstrated that it would not. (*Id.*) RCG further states that the uncontroverted record shows that Airgas does not have such

influence or control of RCG's business decisions. (*Id.*) RCG asserts Petitioner wrongly argues that "OHA's Decision instead reframes the argument as merely an ostensible subcontractor issue." (*Id.*) RCG maintains "OHA's Decision did not reframe anything as anything." (*Id.*) As OHA's decision expressly states, OHA considered and rejected the only status argument that Petitioner made, *i.e.*, that RCG "is not controlled by a service-disabled veteran due to a lack of licensure." (*Id.*)

RCG contends it is undisputed that Petitioner failed to comply with FAR 19.307(c). (*Id.* at 3.) As OHA noted, this led to Stripes attempting to "conflate" RCG's size status and SDVOSB status in its SDVOSB status. (*Id.*) Petitioner 's motion for reconsideration simply is more conflation. (*Id.*) RCG argues that Petitioner unfortunately continues to try to substitute self-righteous nonsense in place of admissible evidence or valid argument; including a flight of fancy that Petitioner characterizes as "a very pretty thought," but it fails as even a *prima facie* argument that RCG "is not controlled by a service-disabled veteran." (*Id.*) Additionally, Petitioner appears to believe that it can prove things merely by repeating them. *Id.* For instance, Petitioner's reference in its motion for reconsideration to 13 C.F.R. § 128.203(h)(4), follows Petitioner quoting the whole regulation earlier in Petitioner's Supplemental Protest at 3-6. (*Id.*) In RCG's view, repetition is not an argument in support of reconsideration. (*Id.*)

RCG's asserts parts of Petitioner's PFR seem written by someone who never read OHA's decision. (*Id.*) For instance, when Petitioner stated, "Such licenses are crucial to RCG's work." RCG questioned which licenses, rhetorically asking "the licenses that OHA has ruled are not required?" (*Id.* at 3-4.) RCG believes that despite OHA's clear, unequivocal and definitive ruling in *Stripes Global I* Petitioner persists in arguing that Airgas provides RCG with a "critical license," when in fact Airgas' licenses are unnecessary and superfluous — as *Stripes Global I* recognized. (*Id.* at 4.) Airgas' licenses are not required by anyone selling to a hospital or an end-user, *i.e.*, they are not required in this field. (*Id.*) RCG states, "*A fortiori*, they are not 'critical.' 83 Fed. Reg. 4005-4011 (Jan. 29, 2018). And even if the Airgas licenses were necessary, RCG's oversight of the requirement would pass muster as long as 'the qualifying veteran can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.'" (*Id.*) In RCG's view, the record reflects that RCG does have such "ultimate managerial and supervisory control" — which Petitioner ignores. (*Id.*) Indeed, OHA specifically ruled that: "RCG could be considered to control Airgas through its subcontracting agreement. If RCG experiences difficulties controlling Airgas, RCG would be free to subcontract with a different manufacturer." (*Id.*) RCG asserts that Petitioner ignores this OHA ruling, as well. (*Id.*)

RCG opines that to try to prolong its specious non-argument, Petitioner refers to a North Carolina Statute — the wrong North Carolina statute. (*Id.* at 5.) RCG states that the correct statute, N.C. Stat. 106-145.2(10) & (11), has the same exemptions as the federal statute and regulation cited by RCG and OHA. (*Id.*) Specifically, the correct North Carolina statute excludes from the license requirement: (a) distribution to the consumer (which is VA), and (b) distribution to a hospital or other healthcare entity. (*Id.*) RCG observes that "What seems to be happening here is that [Petitioner] has convinced itself — but no one else — that 'RCG's actions are entirely at the whim of Airgas if it wants to continue as a going concern."' (*Id.*) This Stripes argument is not based upon the record; and it shows no regard for the "Basis for decision" in an OHA case.

(*Id*, citing 13 C.F.R. § 134.1112.) Finally, RCG asserts that, "whatever other law the Stripes Request for Reconsideration violates, it also violates the Ninth Commandment." (*Id.*)

II. Discussion

A. Jurisdiction and Standard of Review

A party seeking reconsideration of an OHA decision on a SDVOSB protest must file its PFR within 20 calendar days after issuance of the decision. 13 C.F.R. § 134.1112(g). OHA issued the *Stripes Global I* decision on June 25, 2025, and Petitioner filed the instant PFR exactly 20 calendar days thereafter, so the PFR is timely. To prevail in a PFR, the petitioner must make "a clear showing of an error of fact or law material to the decision." *Id.* This is a rigorous standard. A PFR must arise from a "manifest error of law or mistake of fact" and is not intended to provide an additional opportunity for an unsuccessful party to reargue its case before OHA. *CVE Appeal of Joseph M. Walls d/b/a Jailhouse Lawyers Ass'n*, SBA No. CVE-217-A, at 2 (2022) (PFR); *CVE Appeal of Optimum Low Voltage, LLC*, SBA No. CVE-196-A, at 3 (2021) (PFR).

B. Analysis

Petitioner has failed to make a clear showing of any error of fact or law material to the decision. The instant PFR is unpersuasive for several reasons. First, in its protest, Petitioner alleged that RCG cannot comply with the nonmanufacturer rule and so should otherwise be found affiliated with its subcontractor. *Stripes Global I*. Petitioner also alleged RCG lacks the license needed to perform the contract, which is required to operate in the concern's line of business. *Id.* Petitioner further stated that in both California (location of procurement) and North Carolina (the state where RCG is incorporated), a license is required to distribute medical gases. *Id.* In its PFR, Petitioner contends that OHA reframed its argument as merely an allegation of an ostensible subcontractor rule violation, and that its protest should not have been dismissed for simply mentioning the terms "ostensible subcontractor" or "nonmanufacturer rule." Section I.B., *supra*. It is nonsensical for Petitioner to argue that OHA should not have based its decision on the arguments set forth in Petitioner's protest. OHA's decision must be based solely upon the record before it, including those arguments a protestor makes on the record. It is clear that Petitioner made every argument possible, with the hopes that one would land and be sufficient to convince OHA to grant its protest. However, Petitioner's protest simply hinges on the argument that RCG cannot comply with the nonmanufacturer rule and thus lacks the necessary license(s) to fulfill the procurement.

Petitioner faults OHA for being dismissive in its reading of Petitioner's arguments, and for treating its argument as one based upon the ostensible subcontractor rule, when it is a control issue. Section I.B., *supra*. As mentioned in *Stripes Global I*, there are four grounds for a valid SDVOSB protest: (1) challenging the service-disabled veteran's status, (2) arguing the lack of service-disable veteran ownership and control, (3) alleging a violation of the ostensible subcontractor rule, and (4) contesting an ineligible joint venture. 13 C.F.R. § 134.1003. In its protest, Petitioner fails to challenge RCG's veteran status, and ownership. *Stripes Global I*.

Again, as discussed in *Stripes Global I*, a violation of the ostensible subcontracting rule is not present here because the instant procurement is a supply contract. *VSBC Protest of Anderson Boneless Beef Holdings, LLC*, SBA No. VSBC-409-P, at 6 (2024). On the issue of control, Petitioner argues that RCG is not controlled by its veteran owners because of its reliance on Airgas' license to conduct its business. As noted previously in *Stripes Global I* both the California and North Carolina statutes require companies to have a license for wholesale distribution of drugs and criminalizes the possession of nitrous oxide for non-medical purposes. Here, the procurement is for the sale of gases to a medical center (hospital), which is not considered "wholesale distribution," and so the statutes are inapplicable. *Stripes Global I*, at 7-8. More importantly, the instant solicitation does not require the contractor to possess a license, and so that issue is irrelevant for this procurement.

In its PFR, Petitioner argues that its protest specifically alleges general control of RCG by Airgas as opposed to control regarding the specific procurement. Section I.B., *supra*. The regulation specifically contemplates that the qualifying veteran need not possess a required license as long as that veteran has managerial and supervisory control over those who possess the licenses. 13 C.F.R. § 128.203(b). Here, the qualifying veterans clearly have managerial and supervisory control over the company. Further, the fact that RCG is an authorized dealer in Airgas's products is not grounds for finding control of RCG by Airgas. *Size Appeal of Bukkehave, Inc.*, SBA No. SIZ-5981, at 8 (2019). RCG can replace Airgas as a supplier if it chooses. The relationship between the concerns is not one indicative of economic dependence by RCG upon Airgas. Petitioner has failed to show that OHA was in error to find Airgas does not control RCG. As RCG note, Petitioner appears to rely upon repetition of assertions rather than argument.

Accordingly, the instant PFR has failed to establish that there was a clear error of fact or law material to the decision in *Stripes Global I*. Appellant's PFR does not meet the rigorous standard required to overturn the prior *Stripes Global I* decision.

III. Conclusion

To prevail on a PFR, a petitioner must clearly show an error of fact or law material to the decision. 13 C.F.R. § 134.1112(g). Appellant has demonstrated no such error in *Stripes Global I*. I therefore DENY the PFR and AFFIRM the decision in *VSBC Protest of Stripes Global LLC*, SBA No. VSBC-434-P (2025). This is the final agency action of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(A); 13 C.F.R. § 134.1112(d).

CHRISTOPHER HOLLEMAN
Administrative Judge