

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

VSBC Appeal of:

Datawize Technologies LLC,

Appellant

SBA No. VSBC-458-A

Decided: January 12, 2026

APPEARANCE

Ana A. Garcia, President, Datawize Technologies, Great Falls, Virginia

DECISION

I. Introduction and Jurisdiction

On October 8, 2025, Datawize Technologies LLC (Appellant) appealed a decision of the U.S. Small Business Administration's (SBA) Acting Deputy Associate Administrator of the Office of Certification and Eligibility, acting for the Director of Government Contracting (D/GC), denying Appellant's application for certification as a Service-Disabled Veteran-Owned Small Business (SDVOSB) or Veteran Owned Small Business (VOSB). SBA found that Appellant did not establish that one or more service-disabled veterans controls Appellant. On appeal, Appellant maintains that the denial decision was erroneous, and requests that SBA's Office of Hearings and Appeals (OHA) reverse. For the reasons discussed *infra*, the appeal is GRANTED.

OHA adjudicates SDVOSB status appeals pursuant to the Small Business Act of 1958, 15 U.S.C. §§ 631 *et seq.*, and 13 C.F.R. parts 128 and 134 subpart K. Appellant filed the appeal within 10 business days after receiving the denial notice on September 30, 2025. 13 C.F.R. § 134.1104(a). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Case File

Appellant is a Virginia Limited Liability Company (LLC) located in Great Falls, Virginia. The President, Qualifying Veteran and 51% majority owner is Ana A. Garcia, a Service-Disabled Veteran. Sandeep Yadav is the 49% minority owner, and Ms. Garcia's spouse. (Case File (CF), Exh. 4, 13, 18.) Appellant's current Operating Agreement was adopted and executed September 22, 2025. (CF, Exh. 34, 35.) The Operating Agreement designates Ms.

Garcia as Presiding Member and Mr. Yadav as a Member. Management is exclusively vested in the Presiding Member, who shall direct and supervise the operations of the Company.

Under the Operating Agreement: “The Members may from time to time unanimously declare, and the company may distribute, accumulated profits agreed not necessary for the cash needs of the company's business. All distributions shall be in the ratio of ownership. . . .”

The Operating Agreement may be altered, amended, restated, or repealed and a new Operating Agreement may be adopted by action of the Presiding Member, after notice and opportunity for discussion of the proposed amendment.

B. Denial

On October 7, 2025, the D/GC declined Appellant's application, based upon a thorough review of the submitted documentation and publicly available information. The D/GC noted that a concern's Qualifying Veteran must be able to meet all supermajority voting requirements regarding the management and daily business operations of the firm under 13 C.F.R. § 128.203(f). The D/GC further noted that supermajority voting provisions are allowed under a limited number of exceptions enumerated at 13 C.F.R. § 128.203(j). However:

The Distribution of Profits section of the applicant's Operating Agreement requires unanimous consent of both Members to declare a distribution of profits. The unanimous provision identified fall [sic] outside of the exceptions listed in 13 CFR § 128.203(j). Consequently, as the applicant's Operating Agreement includes unanimous provisions that fall outside of the allowable exceptions, it cannot be concluded that the control provisions of 13 CFR § 128.203 are satisfied.

(CF, Exh, 32, Decline Letter, at 2.)

C. Appeal

On October 8, 2025, Appellant filed the instant appeal. Appellant argues the D/GC's conclusion misapplies the regulation, overlooks other controlling provisions in the Operating Agreement that explicitly establish majority control by the Qualifying Veteran, and failed to consider the intent and structure of the LLC's governance as a whole. (Appeal at 2.)

Appellant argues the clause on profit distribution addresses that issue alone, and not the day-to-day management or control of Appellant, and so is not a supermajority requirement affecting veteran control. The Operating Agreement still provides that the Qualifying Veteran retains the exclusive authority to bind the company in contracts and is the primary management authority. (*Id.*)

Appellant argues its unanimous consent provision applies only to extraordinary matters, such as amending the Operating Agreement, dissolving the company, merging or selling substantially all assets, all of which are permitted by 13 C.F.R. § 128.203(j). Appellant further argues the D/GC overlooked substantial evidence of veteran control and daily management. The

record clearly demonstrates that Ms. Garcia, the SDV, is the majority shareholder, holds majority voting rights and exercises daily operational control, including authority over hirings and terminations, oversight of financial operations, authority to bind the company contractually, and decision-making control over business direction and client relationships. (*Id.*)

Appellant argues the D/GC failed to apply the totality of the circumstances test required by 13 C.F.R. § 128.203(a). The review was focused on a single clause, rather than an evaluation of the overall control framework. (*Id.*).

Appellant further asserts it worked with SBA during the application process, and had included the Operating Agreement with its submissions, and tried to respond to SBA's comments. Appellant suggests the “publicly available information” may be outdated or superseded records and not reflect the updated Operating Agreement submitted with the application. Appellant points out it has been certified in the state of Virginia as an SDVOSB under that state's requirements. In other states, Appellant has been certified as a Women-Owned, Minority-Owned, or Disadvantaged-Owned business enterprise, using criteria similar to SBA's. In all cases Ms. Garcia was found to have full control over Appellant. (*Id.*, at 3.)

Appellant points to revisions in its Operating Agreement, which change the Distribution of Profits clause. This new Agreement is dated October 8, 2025, and is submitted with the Appeal. (*Id.*, at 4.)

III. Discussion

A. Standard of Review

When a concern seeks certification as a VOSB or SDVOSB, SBA regulations provide that:

An Applicant's eligibility will be based on the totality of circumstances, including facts set forth in the application, supporting documentation, any information received in response to any SBA request for clarification, any independent research conducted by SBA, and any changed circumstances. The Applicant bears the burden of proof to demonstrate its eligibility as a VOSB or SDVOSB.

13 C.F.R. § 128.302(d).

On appeal to OHA, Appellant has the burden of proving, by a preponderance of the evidence, that the denial decision is clearly erroneous. 13 C.F.R. § 134.1111.

B. Analysis

An SDVOSB must not be less than 51% owned and controlled by one or more Service-Disabled Veterans. 13 C.F.R. § 128.200(b)(2). The management and daily business operations of the concern must be controlled by one or more service-disabled veterans. 13 C.F.R. § 128.203(a). A qualifying veteran must hold the highest officer position in the concern and must have

managerial experience of the extent and complexity needed to control the concern. 13 C.F.R. § 128.203(b).

Individuals who are not qualifying veterans may be involved in the management of the concern and may be shareholders. 13 C.F.R. § 128.203(h). However, such individuals may not exercise actual control or have the power to control the concern. 13 C.F.R. § 128.203(h)(1). In the case of a limited liability company, one or more qualifying veterans must serve as managing members, with control over all decisions of the limited liability company. 13 C.F.R. § 128.203(d). The terms of a concern's governing documents determine who controls the decisions of the company. *CVE Protest of Alpha4 Solutions, LLC*, SBA No. CVE-175-P (2020). The regulation requires that the Qualifying Veteran be able to meet all the supermajority voting requirements, if not, the concern is not an eligible concern. *Matter of XOTech, LLC*, SBA No. VET-277 (2018) at 7.

OHA has consistently interpreted the “all decisions” language strictly in accordance with its plain meaning and has required that the service-disabled veterans have independent control over all the decisions of the concern. *Matter of Benetech, LLC*, SBA No. VET-225, at 7 (2011). Therefore, “all decisions” means all decisions, and OHA has held that firms are ineligible if their operating agreements (or corporate documents) do not give the service-disabled veteran control over all decisions of the firm. *Matter of Benetech*, at 8 (operating agreement provided that concern was managed equally by its members, only one of whom was a service-disabled veteran). *Matter of XOTech, LLC*, SBA No. VET-277, at 7 (2018).

Here, Appellant's Operating Agreement requires unanimous consent for the distribution of profits, an important decision for the concern. The Qualifying Veteran should have control over this decision. Appellant points to 13 C.F.R. § 128.203(j), which provides that SBA will not find a lack of control exists where the qualifying veteran does not have unilateral authority to make decisions regarding certain enumerated extraordinary circumstances. However, distribution of profits is not one of those enumerated circumstances, and therefore Appellant's reliance on this regulation is misplaced.

Nevertheless, the Operating Agreement also contains a provision empowering the Qualifying Veteran to alter, amend, restate, or repeal the Operating Agreement, or to adopt a whole new Operating Agreement. The Qualifying Veteran need only give notice and opportunity for discussion of the proposed change. Otherwise, she has the sole unchecked power to amend or replace the Operating Agreement. When Qualifying Veteran has the power to remove any obstacles to their control of the subject concern, OHA has found that any negative control is illusory, and that the Qualifying Veteran does control the concern. *CVE Protest of Valiant Construction, LLC*, SBA No. CVE-205-P at 16 (2021) (Qualifying Veteran has power to call special meeting and remove minority directors); *CVE Protest of First Nation Group, LLC*, SBA No. CVE-201-P (2021) (ability to call special meeting at which Qualifying Veteran alone is a quorum and able to take any action constitutes control); *Matter of Alpha Terra Engineering, Inc.*, SBA No. VET-238, at 5 (2013) (Qualifying Veteran's ability to call special meeting to remove and replace any director constitutes control).

Therefore, the Qualifying Veteran here has the power to amend the Operating Agreement and alter or remove the provision on distribution of profits at any time, and thus any negative control by the minority shareholder is illusory. The D/GC was thus in error in finding that the Qualifying Veteran did not control Appellant, and that the control provisions of 13 C.F.R. § 128.203 were not satisfied.

Accordingly, I conclude that D/GC erred in finding Appellant had failed to meet its burden of established that it was owned and controlled by a Service-Disabled Veteran, and therefore I GRANT this appeal.

IV. Conclusion

Appellant has established that the D/GC's denial of its application for SDVOSB certification was in error. I therefore GRANT the instant appeal. The D/GC must immediately include Appellant in the SBA certification database. 13 C.F.R. § 134.1112(f). 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