

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

IN THE MATTER OF:

Progressive X-Ray, Inc.,

Protestor,

Solicitation No. 36C24818Q9790
U.S. Department of Veterans Affairs
Veterans Integrated Service Network

SBA No. CVE-101-P

Decided: February 8, 2019

APPEARANCE

Michael A. Persaud, President, Progressive X-Ray, Inc., Pompano Beach, FL, for
Protestor

DECISION

I. Introduction and Jurisdiction

On December 24, 2018, Progressive X-Ray, Inc. (Protestor) filed a protest with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) regarding Solicitation No. 36C24818Q9790, issued by the U.S. Department of Veterans Affairs (VA).

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates CVE protests under the authority of 38 U.S.C. § 8127, and 13 C.F.R. § 134.102(u).¹

II. Background

On December 24, 2018, Protestor filed the instant protest alleging the VA “failed to evaluate in accordance with FAR Provision 52.212-2 — Evaluation — Commercial Items (JAN 1999)”. (Protest, at 1.) Protestor also alleged the VA failed to properly evaluate the technical capabilities of other offerors.

On January 29, 2019, OHA issued an Order to Show Cause instructing Protestor to show why the instant protest should not be dismissed due to lack of jurisdiction. Specifically, OHA

¹ On October 1, 2018, 13 C.F.R. § 134.102(u) took effect, establishing OHA's jurisdiction over protests of eligibility for inclusion in the Department of Veterans Affairs Center for Verification and Evaluation (CVE) database. 83 Fed. Reg. 13626, 13628 (Mar. 30, 2018).

instructed Protestor to explain how the protest meets the jurisdictional requirements of 13 C.F.R. § 134.1003.

Protestor failed to respond to OHA's order to show cause as to why the protest should not be dismissed for lack of jurisdiction.

III. Discussion

B. Analysis

As of October 1, 2018, OHA has jurisdiction over all CVE protests pertaining to issues of ownership and control. *See* 13 C.F.R. § 134.102(u). Under these new regulations, OHA has jurisdiction only over CVE protests alleging that the owner of the challenged concern cannot meet the definition of service-disabled veteran, or service-disabled veteran with a permanent and severe disability or presenting credible evidence that the concern is not 51% owned and controlled by one or more veterans or service-disabled veterans. 13 C.F.R. § 134.1003(a) & (b).

Here, the protest does not allege that the apparent awardee is not owned or controlled by a service-disabled veteran, nor does it challenge the service-disabled status of the apparent awardee's owner. Rather, it challenges the VA evaluation process for this procurement. SBA OHA has no jurisdiction over the evaluation process. Therefore, I must dismiss the protest for lack of jurisdiction because it raises no issue over which OHA has jurisdiction.

IV. Conclusion

I find that OHA has no jurisdiction to consider this protest. I therefore DISMISS the instant protest. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127; 13 C.F.R. § 134.1007(i).

CHRISTOPHER HOLLEMAN
Administrative Judge