

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

CVE PROTEST OF:

Veterans Contracting, Inc.,

Protester,

RE: CR Nationwide, LLC – Trumble  
Construction, Inc. JV1

IFB No. 36C25019B0001

U.S. Department of Veterans Affairs  
VA Healthcare System

SBA No. CVE-107

Decided: April 10, 2019

APPEARANCES

Stephen K. Foreman, President, Veterans Contracting, Inc., Cleveland, Ohio

Christopher D. Perry, President, CR Nationwide, LLC - Trumble Construction, Inc. JV1,  
Pittsburg, Texas

DECISION

I. Introduction and Jurisdiction

On March 8, 2019, Veterans Contracting, Inc. (Protester) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of CR Nationwide, LLC - Trumble Construction, Inc. JV1 (CRNTC) in connection with U.S. Department of Veterans Affairs (VA) Invitation for Bids (IFB) No. 36C25019B0001. CRNTC is a joint venture between CR Nationwide, LLC (CRN) and Trumble Construction, Inc. (TCI). For the reasons discussed *infra*, the protest is sustained.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates SDVOSB status protests pursuant to 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. part 134 subpart J.<sup>1</sup> Protester filed its protest within five business days after receiving notification that

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<sup>1</sup> The regulations at 13 C.F.R. part 134 subpart J became effective on October 1, 2018. 83 Fed. Reg. 13,626 (Mar. 30, 2018).

CRNTC was the apparent awardee, so the protest is timely. 13 C.F.R. § 134.1004(a)(2)(i). Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. CVE Verification

On June 19, 2018, the VA's Center for Verification and Evaluation (CVE) informed CRNTC that CVE had approved CRNTC's application for verification of its SDVOSB status, after determining that CRNTC "is presently, as of the issuance of this notice, in compliance with the regulation." (Case File (CF), Exh. 36, at 1.) The verification was valid for a period of three years. (*Id.*) CRNTC was required to report any changes that might adversely affect its eligibility within 60 days of the change. (*Id.* at 1-2.)

### B. Solicitation

On November 20, 2018, the VA issued IFB No. 36C25019B0001 for a construction project at the Louis Stokes Cleveland VA Medical Center in Cleveland, Ohio. The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding size standard of \$36.5 million average annual receipts. Bids were due December 20, 2018.

### C. Protest

On March 8, 2019, the CO announced that CRNTC was the apparent awardee. That same day, Protester, an unsuccessful bidder, filed the instant protest with the CO, challenging CRNTC's SDVOSB status. Protester alleged that CRNTC impermissibly shares employees, office space, and other resources with non-SDVOSBs. (Protest at 1-2.) The CO forwarded the protest to OHA for review.

### D. Joint Venture Agreement

The Case File includes CRNTC's Third Amended Joint Venture Agreement (JVA), dated June 14, 2018. (CF, Exh. 30.) According to the JVA, CRN is CRNTC's majority owner and TCI is its minority owner. (*Id.* § 2.07.) CRN is an SDVOSB and serves as Managing Venturer of CRNTC. (*Id.* §§ 1.05 and 3.04.)

The JVA contains no discussion of the instant procurement. Rather, the JVA states that:

For each [SDVOSB] contract, the Joint Venturers, after determining the scope of the work for said contract, shall prepare and submit to the contracting authority a jointly executed statement:

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(a) Itemizing all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a defined scope of work is made publicly available; and

(b) Specifying the responsibilities of the parties with regard to [negotiation] of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in [13 C.F.R. § 125.18(b)(3)], where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in [13 C.F.R. § 125.18(b)(3)], or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available[.]

(*Id.* § 4.02.)

#### E. CRNTC's Response

On March 20, 2019, CRNTC responded to the protest. CRNTC highlights that CRN is an SDVOSB, and that CRN is the majority owner and Managing Venturer of CRNTC. (Response at 1.) With its Response, CRNTC attached a copy of its JVA “that we issue for any joint projects that [CRN] and [TCI] enter into.” (*Id.*)

#### F. OHA's Order

On April 3, 2019, OHA issued an Order reopening the record and requesting additional information.<sup>2</sup> OHA directed CRNTC to submit evidence that CRN is an SDVOSB. (Order at 1.) In addition, OHA explained, neither the Case File nor CRNTC's Response included a jointly-executed statement detailing the respective contributions of the joint venture partners for the

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<sup>2</sup> In resolving a CVE protest, OHA “may investigate issues beyond those raised in the protest and may use other information or make requests for additional information to the protester, the protested concern, or VA.” 13 C.F.R. § 134.1007(g).

instant procurement, as contemplated by § 4.02 of the JVA. OHA instructed the CO to provide this information, or if the CO was not in possession of such a statement, to notify OHA of its absence. (*Id.* at 2-3.)

On April 3, 2019, CRNTC forwarded to OHA a copy of a CVE letter approving CRN's application for verification of its SDVOSB status. On April 4, 2019, CRNTC forwarded an unsigned and undated document entitled "Breakdown for SOL. 36C25019B0001." On April 5, 2019, the CO notified OHA that she had not received any jointly-executed statement describing the respective contributions of CRN and TCI for the instant procurement.

### III. Discussion

#### A. Burden of Proof

As the protested firm, CRNTC has the burden of proving its eligibility as an SDVOSB by a preponderance of the evidence. 13 C.F.R. § 134.1010.

#### B. Dates to Determine Eligibility

In a CVE Protest pertaining to a procurement, OHA determines the eligibility of the protested concern as of two dates: (1) the date of the bid or initial offer including price, and (2) the date the CVE Protest was filed. *See* 13 C.F.R. § 134.1003(c)(1). Here, CRNTC submitted its bid on December 20, 2018, and the instant protest was filed on March 8, 2019. Sections II.B and II.C, *supra*. Thus, OHA must examine CRNTC's eligibility as of these dates.

Effective October 1, 2018, SBA issued new ownership and control regulations at 13 C.F.R. part 125, which also apply to SDVOSB procurements conducted by VA. 83 Fed. Reg. 48,908 (Sept. 28, 2018). In this case, both the date of the bid and the date of the CVE Protest are after the effective date of the new ownership and control regulations and, therefore, these new regulations apply to the substantive issues in this case.

#### C. Analysis

The instant case is analogous to OHA's decision in *Matter of ASIRTek Federal Services, LLC*, SBA No. VET-269 (2018). In *ASIRTek*, the challenged firm was a joint venture competing for an SDVO set-aside. The challenged firm's JVA, though, was silent as to the procurement in question, and thus did not meet SBA regulatory requirements, such as the requirement to specify the responsibilities of the joint venture partners with regard to contract performance, source of labor, and negotiation of the contract. *ASIRTek*, SBA No. VET-269, at 7-8. Further, although the challenged firm later prepared an addendum to its JVA in an attempt to cure these deficiencies, OHA ruled that this addendum could not be considered, because the addendum did not exist as of the relevant date for determining eligibility. *Id.* at 9. OHA therefore affirmed a determination that the joint venture was not eligible for the SDVO contract.

Similar to the situation seen in *ASIRTek*, CRNTC's JVA did not address, or even mention, the instant procurement. Section II.D, *supra*. Indeed, the JVA was created in June 2018, months

before the IFB was issued. Sections II.B and II.D, *supra*. As a result, the JVA fails to meet SBA requirements, because the JVA did not “[i]temiz[e] all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each,” nor did the JVA “[s]pecify[] the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance.” 13 C.F.R. § 125.18(b)(2)(vi) and (vii). Although the JVA states that CRNTC would separately furnish this information for each SDVO procurement by submitting a “jointly-executed statement” to the procuring activity, no such statement was actually prepared in the instant case. Sections II.D and II.F, *supra*. Thus, CRNTC's JVA plainly is deficient.<sup>3</sup>

CRNTC's JVA also does not comply with 13 C.F.R. § 125.18(b)(3). Under that rule, in order to be considered an eligible joint venture, the SDVOSB partner(s) to the joint venture must perform at least 40% of the work, and such work must consist of more than administrative or ministerial functions. Because CRNTC's JVA does not delineate the respective contributions of CRN and TCI, and because no jointly-executed statement to this effect was submitted to the CO as of December 20, 2018 and March 8, 2019, CRNTC has not provided the evidence required for OHA to determine that CRNTC meets the requirements to be an eligible joint venture for this SDVOSB procurement.

Lastly, OHA cannot consider the “Breakdown for SOL. 36C25019B0001” submitted by CRNTC on April 4, 2019. Section II.F, *supra*. As discussed above, CRNTC's eligibility is determined as of December 20, 2018 and March 8, 2019. Section III.B, *supra*. The “Breakdown for SOL. 36C25019B0001” appears to have been created in response to OHA's Order of April 3, 2019, and thus has no bearing on whether CRNTC was an eligible SDVO joint venture as of December 20, 2018 and March 8, 2019.

#### IV. Conclusion

CRNTC has not shown that it is an eligible joint venture for the instant procurement. The protest therefore is SUSTAINED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(B); 13 C.F.R. § 134.1007(i).

KENNETH M. HYDE  
Administrative Judge

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<sup>3</sup> It is immaterial that Protester did not specifically raise the question of CRNTC's non-compliance with 13 C.F.R. § 125.18 in its initial protest. As noted in Section II.F *supra*, OHA raised this issue in its Order of April 3, 2019.