

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

CVE Appeal of:

Secure2ware, Inc.,

Protestor

SBA No. CVE-111-A

Decided: April 18, 2019

APPEARANCE

Keith A. Ware, CEO, Secure2ware, Inc., Valrico, FL, for Protestor

DECISION

I. Introduction and Jurisdiction

On February 27, 2019, Secure2ware, Inc. (Appellant) 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).<sup>1</sup>

II. Background

On February 13, 2019, the VA Center for Verification and Evaluation (CVE) notified Appellant that their application for inclusion in the VA's Vendor Information Pages (VIP) as a service-disabled veteran-owned small business (SDVOSB) had been denied.

The CVE explained that it could not verify that Mr. Walter J. Kasm Jr., a non-veteran, does not control Appellant. (Determination Letter, at 2.) Mr. Kasm, a 10% owner of Appellant, receives a fee for the use of his electrical contractor license. Appellant failed to provide documentation regarding the amount of this fee, as thus was unable to verify whether Mr. Keith A. Ware, a service-disabled veteran and majority owner of Appellant, is the highest compensated

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<sup>1</sup> 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).

employee of Appellant, as required by SBA regulations. (*Id.* at 1-2; citing 13 C.F.R. § 125.13.) CVE explained that while Appellant provided information regarding the fee for the electrical contractor license paid to Mr. Kasm for 2019, Appellant failed to provide any information regarding the amount paid for 2017 and 2018. Appellant also failed to provide the amount of compensation paid to Mr. Ware in 2018, thus CVE was unable to verify that Appellant met the requirements of 13 C.F.R. § 125.13(i)(2).

CVE explains that § 125.13(i)(6) includes a rebuttable presumption that a non-veteran controls, or has the power to control, a business concern if the non-veteran holds a critical license. Here, CVE determined that because Mr. Kasm holds the required electrical contractor license, it was unable to determine whether Mr. Kasm controls, or has the power to control, Appellant, per SBA regulations. (*Id.* at 3.) Under Florida law, where Appellant is registered, a qualifying agent is responsible for business operations. Thus, CVE found that Mr. Kasm has the power to control Appellant. (*Id.*)

On February 27, 2019, Appellant filed the instant appeal. In its submission, Appellant only stated that it did “not agree with the final decision,” thus the reason for the appeal. (Appeal, at 1.) The appeal did not contain any other information.

### III. Discussion

#### B. Analysis

As of October 1, 2018, OHA has jurisdiction over all CVE appeals regarding denials and cancellations of inclusion in the CVE database. *See* 13 C.F.R. § 134.102(v). Under these new regulations, an appeal must contain a “statement of why the cancellation or denial is in error.” 13 C.F.R. § 134.1105(a)(2). Furthermore, the “standard of review is whether the [CVE] denial or cancellation was based on clear error of fact or law. The appellant has the burden of proof, by a preponderance of the evidence.” 13 C.F.R. § 134.1111.

Here, Appellant does not include any statements, arguments, or evidence as to why the CVE's determination was based on clear error of fact or law. The appeal consists of a single sentence in which Appellant expresses disagreement with the CVE's determination, yet Appellant failed to provide any further information as to why the CVE determination was in error. Therefore, I must deny the appeal, as it fails to meet the required burden of proof, as required by SBA regulations.

### IV. Conclusion

I find that Appellant has failed to meet the required standard of review. I therefore DENY the instant appeal. 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