

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

CVE Protest of:

Advanced Management Strategies Group,
LLC/Reefpoint Group, LLC

Protestor,

Re: Atlas Research, LLC

Solicitation No. VA119A-17-Q-0413
U.S. Department of Veterans Affairs
Strategic Acquisition Center-Frederick

SBA No. CVE-120-P

Decided: May 30, 2019

APPEARANCES

Craig Holman, Esq., Nathaniel Castellano, Esq., Carroll Kinsey, Esq., Arnold & Porter
Kaye Scholer LLP, Washington, DC, for Protestors

Devon Hewitt, Esq., Bret Marfut, Esq., Protora Law, LLC, Tysons, Virginia, for Atlas
Research, LLC

Allen Smith, Contracting Officer, United States Department of Veterans Affairs, Office
of Acquisition Operations, Frederick, MD

DECISION¹

I. **Introduction and Jurisdiction**

On March 14, 2019, Advanced Management Strategies Group, Inc./ReefPoint Group
(Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of
Atlas Research, LLC (Atlas) in connection with U.S. Department of Veterans Affairs (VA)

¹ This decision was originally issued under a protective order. OHA received one or more requests for redactions and considered any requests in redacting the decision. OHA also corrected typographical errors in the original decision. OHA now publishes a redacted and corrected version of the decision for public release.

Solicitation No. VA119A-17-Q-0413. On March 15, 2019, the Small Business Administration (SBA) Office of Hearings & Appeals (OHA) received the protest.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates SDVOSB protests under the authority of 38 U.S.C. § 8127, and 13 C.F.R. § 134.102(u).²

II. Background

A. Solicitation

On September 28, 2017, the Department of Veterans Affairs (VA) Strategic Acquisition Center-Frederick, issued Request for Quote (RFQ) No. VA-119A-17-Q-0413, a Blanket Purchase Agreement seeking VA Modernization and Commercial Health Care Consulting. (RFQ, at 1.) The RFQ was 100 % set aside for Service-Disabled Veteran Owned Small Business (SDVOSB) concerns. (*Id.*) The Contracting Officer (CO) assigned the RFQ North American Industrial Classification System Code 541611, Administrative Management and General Consulting Services, with a corresponding size standard of \$15 million in average annual receipts. (*Id.*) The RFQ was open to holders of the General Services Administration (GSA) Federal Supply Schedule (FSS) contract of integrated consulting services. Offers were due October 23, 2017, later extended to November 6, 2017. On February 1, 2018, the VA notified offerors, including Protestor, Electronic Resource Performance, Inc. (ERPi) was the apparent awardee.

Protestor filed a size protest against ERPi with the SBA's Area Office, but the size protest was dismissed as untimely. (SBA Size Determination No. 02-2018-224.) Protestor then appealed that decision to OHA, but OHA affirmed the Area Office's dismissal. *Size Appeal of Advanced Management Strategies Group, Inc./ReefPoint Group, LLC*, SBA No. SIZ-5905 (2018). On March 2, 2018, Protestor filed a suit in the United States Court of Federal Claims (Court of Federal Claims) arguing the VA arbitrarily inflated the awardee's rating for one of the two most important evaluation factors. *Advanced Mgmt. Strategies Grp., Inc./Reefpoint Grp., LLC v. United States*, 139 Fed. Cl. 404 (No. 18-326C) (Aug. 2018). The Court of Federal Claims ruled the award should be set aside, finding the VA was arbitrary and capricious in its evaluation of offers. (*Id.*) The VA reevaluated the offers and established a Blanket Purchase Agreement (BPA) with Atlas on March 7, 2019. On March 14, 2019, VA sent a formal notice to unsuccessful offerors, including Protestor, that Atlas was the awardee. On March 14, 2019, Protestor timely filed a protest with the CO, who forwarded it to OHA.

B. Protest and Supplemental Protest

Protestor stated VA Acquisition Regulation (VAAR) 852.219-10 mandates when making a BAP or Order award under a contract entirely set aside for SDVOSB's the VA's CO must confirm the awardee is registered in VIP, and is an eligible SDVOSB for the assigned NAICS

² 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).

code when the offer is submitted and at the time of contract award. (Protest, at 3-4, citing VAAR 852.219-10).

The protestor argued Atlas was ineligible for award because it was not registered in the VIP database as the time of award. (*Id.*, at 6.) Protestor asserts Atlas was not listed in the VIP database on the date it filed the protest and “almost certainly was not in VIP at the time of award, announced just five business days prior to this filing.” (*Id.*) The RFQ, Protestor insists, stated offers received from concerns not verified as SDVOSB concerns would not be considered, and that CVE verification would be confirmed at the time of quote receipt and at the time of award. (*Id.*, at 7, citing RFQ at 46, RFQ Q&A No. 84, at 14.)

After having the opportunity to review the Case File, Protestor filed a timely Supplemental Protest. Protestor points out Atlas was not registered in the VIP database on March 7, 2019, when Atlas was awarded the contract, as Atlas voluntarily withdrew from the VIP database on March 19, 2018. (Supplemental Protest, at 2, citing Case File (CF) Ex. 384.) Protestor also noted Atlas does not satisfy the direct ownership requirements necessary to be qualified as an SDVOSB because 70% of Atlas is owned by an irrevocable [XXXX] trust that was created in [XXXX]. (*Id.* at 2.)

C. Case File

Atlas was initially included in the VIP database on May 4, 2011, after completing the verification process. (Case File (CF) Ex. 65.) The documents included with Atlas's initial application included a business license, meeting minutes, resumes, state and local tax documents, contracts, checks, and a Form 0877. The Form 0877 submitted on for the first verification identified Dr. Ryung Suh, a Service-Disabled Veteran (SDV) as the 100% owner of Atlas. (CF, Ex. 1.) Atlas went through a simplified renewal process in 2013, where once again Atlas filed a Form 0877 stating Atlas was 100% owned by Dr. Suh, an SDV. (CF, Exs. 69, 73.) CVE conducted site visits at various points during Atlas's inclusion in the CVE's VIP database. (CF, Ex. 88.) Atlas passed a 2015 reverification, where for a third time Atlas affirmed the entity was 100% owned by Dr. Suh. (CF, Ex. 89.)

Atlas was slated to apply for reverification in early 2017 and submitted documentation for this reverification, including another Form 0877, signed on January 30, 2017, which listed Dr. Suh as the 100% owner of Atlas. (CF, Exs. 203, 204.) Atlas was notified by CVE that the eligibility period was extended for another year due to a policy change and that Atlas's application would be removed from processing. (CF, Exs. 267, 268.) On May 16, 2017, CVE sent Dr. Suh a Notice of Proposed Cancellation indicating Atlas needed to remove certain NAICS codes from its profile, because Atlas seemed to exceed the average annual receipts for those NAICS codes. (CF, Ex. 292.) Atlas complied with the recommendation and on May 23, 2017, CVE informed Atlas it would remain in the system. (CF, Ex. 295.) In December of 2017, CVE notified Atlas its eligibility would expire in early 2018. (CF, Ex. 295.) On December 1, 2017, Dr. Sun submitted yet another Form 0877, once again stating Dr. Suh was the 100% owner of Atlas. (CF, Ex. 297.) Similarly, Atlas submitted a Re-Verification Affirmation Statement stating there had been no change to Atlas's owners and that Dr. Suh was the 100% owner. (CF, Ex. 300).

Included with the 2017 reverification, were numerous federal and state tax documents for Atlas, including IRS Schedule K-1's for Dr. Suh and the Ryung Suh [XXXX] Trust. On February 9, 2018, CVE contacted Dr. Suh and indicated that based on the tax documents it appeared that 70% of the ownership of Atlas was held by a trust and requested the Trust Agreement from Dr. Suh. (CF, Ex. 377.) Dr. Suh submitted the Trust Agreement for the Ryung Suh [XXXX] Trust (the Trust), which indicated this trust was created on [XXXX]. (CF, Ex. 380.) Dr. Suh is the grantor, and Dr. Sun's wife, Yono Suh, is the trustee and primary beneficiary (during her lifetime). (*Id.*) The trust is irrevocable. (*Id.*)

The Form K-1 for Dr. Suh indicates he holds a 30% ownership interest in Atlas, whereas the Form K-1 for the Trust indicates the Trust owns 70% of Atlas. (CF, Exs. 337, 338.) Various state tax filings for 2016 indicate the same 30/70 ownership interests for Dr. Suh and the Trust, including but not limited to, tax filings for [at least six states]. (CF, Exs. 351, 353, 354, 355, 360, and 376.)

Atlas withdrew from the reverification process and the VIP database. On March 19, 2018, CVE acknowledged Atlas's voluntary withdrawal from the VIP database and indicated that with his request to withdraw Dr. Suh had included the following remark: “[XXXX] therefore I am requesting to withdraw the reverification for Atlas Research.” (CF, Ex. 384.)

III. Discussion

A. Burden of Proof

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

B. Analysis

As a preliminary matter, I note that as of October 1, 2018, OHA has jurisdiction over all SDVOSB protests pertaining to issues of ownership and control. 13 C.F.R. § 134.102(u); 13 C.F.R. § 134.1003. SBA has also issued substantive rules that, among other things, now address the issue of ownership and control for both SDVOSBs that have been certified in the VA's CVE and Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBCs) that self-certify for procurements other than those issued by the VA. *See* 83 FR 48909 (September 28, 2018), to be codified at 13 C.F.R. part 125.

A CVE protest must contain specific allegations supported by credible evidence that the concern does not meet the eligibility requirements for inclusion in the CVE database. (13 C.F.R. § 134.1005(a)(2).) In ownership and control protests, as here, “the Judge will consider a protest only if the protester presents 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(b).)

In a CVE protest concerning a procurement, the dates for determining the eligibility of the protested concern are (1) the date of the bid or initial offer that included price, and (2) the

date the CVE protest was filed. 13 C.F.R. § 134.1003(c)(1); *CVE Protest of Alpha4 Solutions, LLC d/b/a Alpha Transcription*, SBA No. CVE-103-P (2019). For the case at hand the relevant dates are the date offers were submitted, November 6, 2017, and March 14, 2019, the date the protest was filed. Therefore, I must determine Atlas's eligibility as of November 6, 2017 under the substantive rules that were in effect at the time that address ownership and control for SDVOSBs, 38 C.F.R. part 74. I must also determine Atlas's eligibility as of the date of the protest (March 14, 2019) under the rules addressing ownership and control in effect at that time, i.e. 13 C.F.R. part 125, as amended.³

VA was required to check the VIP status upon submission of an offer (November 6, 2017), and March 7, 2019, the date of award.

Protestor initially alleged that Atlas was not eligible for the procurement because Atlas was not included in the VIP database at the time of award nor at the time the protest was filed. Upon its review of the Case File, Protestor raised the issue that Atlas is not eligible for the contract because Atlas does not meet the regulatory requirements for ownership. Protestor has thus raised an issue within OHA's jurisdiction, whether the challenged concern is owned and controlled by one or more service-disabled veterans.

To be considered an eligible SDVOSB, a concern must be a small business that is unconditionally owned and controlled by one or more service-disabled veterans. 38 C.F.R. § 74.2(a); 13 C.F.R. §§ 125.12 and 125.13; *CVE Protest of Blue Cord Design and Constr., LLC*, SBA No. CVE-100-P (2018). An SDVOSB must be at least 51% owned by one or more service-disabled veterans. See 38 C.F.R. § 74.3; 13 C.F.R. §§ 125.11, 125.12. Further, ownership by a service-disabled veteran must be direct ownership. 38 C.F.R. § 74.3(a); 13 C.F.R. § 125.12(a). The regulations state “[a]n applicant or participant owned principally by another business entity or by a trust. . .that is in turn owned by one or more Service-Disabled Veterans does not meet this requirement.” 38 C.F.R. § 74.3(a). Ownership by trust is only treated as ownership by a Service-Disabled Veteran where the trust is revocable, and the veteran is the grantor, a trustee, and the sole current beneficiary of the trust. 38 C.F.R. § 74.3(a); 13 C.F.R. § 125.12(a).

Here it is apparent Dr. Suh does not own 100%, or even 51%, of Atlas, despite Atlas's repeated representations to CVE which stated that he did. Atlas's 2016 Federal tax returns and various state tax documents indicate the Ryung Suh [XXXX] Trust owns 70% of Atlas, far beyond the 49% that would be acceptable under the applicable regulations. Moreover, the Trust, which holds 70% ownership, in no way meets the requirements set forth in 38 C.F.R. § 74.3(a) and 13 C.F.R. § 125.12(a) for a trust to be an acceptable owner of an SDVOSB. The Trust is irrevocable, and Dr. Suh, the eligible veteran is only the grantor, not a trustee or sole beneficiary. The sole beneficiary is Ms. Suh, and that makes the trust unqualified to be the majority owner of an SDVSB.

³ Citations to 38 C.F.R. part 74 are to the regulations in effect as of June 20, 2018, the date CPS submitted its proposal for the instant procurement. Citations to 13 C.F.R. are to the regulations in effect on March 14, 2019, the date Protestor filed its protest.

For this reason, I find Atlas does not meet the ownership requirements to be an SDVOSB for the instant procurement, nor does Atlas meet the requirements of inclusion in the CVE VIP database.

To date, Atlas has not responded to the Protestor's allegations despite being served the supplemental protest. On that basis, and the clear evidence in the record before me, I conclude that Atlas has failed to establish by a preponderance of the evidence that it is an eligible SDVOSB for the instant solicitation.

IV. Conclusion

For the above reasons, I grant the protest and find Atlas is not an SDVOSB for purposes of the instant procurement. 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