

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

CVE Protest of:

BMK Ventures, Inc,

Protester,

Re: Beacon Point Associates, LLC

Solicitation No. 36C77619Q0219

U.S. Department of Veterans Affairs
Program Contracting Activity Central

SBA No. CVE-144-P

Decided: November 21, 2019

APPEARANCES

Peter D. Campbell, Virginia Beach, Virginia, Chief Executive Officer, BMK Ventures, Inc.

Thomas Jefferson Summerour, Jr., Cape Coral, Florida, President and Chief Executive Officer, Beacon Point Associates, LLC.

DECISION

I. Introduction and Jurisdiction

On October 4, 2019, (Protester) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Beacon Point Associates, LLC (Beacon) in connection with U.S. Department of Veterans Affairs (VA) Request for Quotations (RFQ) No. 36C77619Q0219. Protester alleges that Beacon is not owned and controlled by a service-disabled veteran, and that Beacon therefore should be excluded from the VA Center for Verification and Evaluation (CVE) database of eligible SDVOSBs. For the reasons discussed *infra*, the protest is denied.

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.¹ Protester filed its protest within five business days after receiving notification that

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

Beacon 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 September 16, 2019, CVE informed Beacon that Beacon's application for reverification of its SDVOSB status had been approved after determining that Beacon “is presently, as of the issuance of this notice, in compliance with the regulation.” (Case File (CF), Ex. 248, at 1.) The verification was valid for a period of three years. (*Id.*) Beacon was required to report any changes that might adversely affect its eligibility within 30 days of the change. (*Id.*)

B. Solicitation

On September 20, 2019, the VA issued RFQ No. 36C77619Q0219 for cardiopulmonary resuscitation testing stations. The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 339112, Surgical and Medical Instrument Manufacturing, with a corresponding 1,000 employee size standard. Proposals were due September 25, 2019.

C. Protest

On October 1, 2019, the CO announced that Beacon was the apparent awardee. On October 4, 2019, Protester, an unsuccessful offeror, filed the instant protest, challenging Beacon's SDVOSB status. The CO forwarded the protest to OHA for review.

In its protest, Protestor alleges that Jeff Summerour, the individual upon whom Beacon's SDVOSB status is based, is not a service-disabled veteran. (Protest at 2.) Protestor refers to the information provided on Beacon's website that refers to Jeff Summerour as the President and sole officer of the concern. Protestor also points to Beacon's System for Award Management (SAM) profile which lists Jeff Summerour as the sole point of contact for Beacon. Protestor also highlights that Jeff Summerour's LinkedIn profile states that Mr. Summerour served a 20-year career in the Navy, and his Facebook profile lists Mr. Summerour as the President of Beacon, but on neither site does Mr. Summerour claim he was disabled during his military service. (*Id.*)

Protestor contends the only individual listed on Beacon's corporation records and on its website is Thomas J. Summerour, Jr. Protestor further states, “[I]t is possible that he is a service-disabled veteran.” (*Id.*) Protestor asserts that Florida's corporation records list a “Tomas J. Summerour, Jr.” as holding the title of manager at Beacon, and Tom Summerour is listed on the concern's website as a Government Account Manager at Beacon, but not a chief executive.

Protestor argues “if he is the individual upon which [Beacon] is basing its claim to SDVOSB status, that claim cannot be sustained.” (*Id.*)

Protestor also alleges that Thomas Summerour appears to be operating and managing another business, Beacon Point Properties, LLC (BPP) and is presumed not to control Beacon under 13 C.F.R. § 125.13(k). (*Id.*)

D. Beacon's Response

On October 21, 2019, Beacon responded to the protest. Beacon argues that Protestor's allegations are “baseless and without merit” and the relief requested should be denied. (Response at 1-2.)

Beacon states it was first verified by the CVE on March 11, 2013, listing Thomas Jefferson Summerour, Jr., as the sole owner of the concern. Since then, Beacon has undergone three reverifications and three on-site examinations, where Mr. Summerour was present for each unannounced site visit. Beacon also points out that the CVE recently reverified Beacon on September 16, 2019. During the reverification, Beacon addressed issues pertaining to Mr. Summerour's hours and days worked at Beacon and BPP, the relationship between Beacon and BPP, and Mr. Summerour's legal name. (*Id.*)

Beacon explained that Mr. Thomas Jefferson Summerour, Jr., the individual upon which Beacon's SDVOSB status is based, typically goes by the name “Jeff Summerour.” (*Id.*) It was further clarified that Mr. Summerour's son, Thomas Jefferson Summerour, III (Tom) works at Beacon as a Government Account Manager. (*Id.*) Beacon also provided a letter of explanation to the CVE in response to Mr. Summerour's legal name.

Beacon contends Protestor “cites social media sources as if they were official sources and seems to question or ignore the findings of the relevant official sources such as [SAM] or the [VA]/Office of Small and Disadvantaged Business Utilization Vendor Information Pages []. He also appears to believe that users of social media platforms are required to list personal information such as whether they have received a disability rating from the VA.” (*Id.* at 1-2.) Beacon maintains that Mr. Summerour is service-disabled which is documented with the VA and included in the most recent reverification of Beacon as an SDVOSB.

E. Letter of Explanation

On September 10, 2019, CVE requested an explanation of (1) the typical hours of operation for Beacon; (2) Mr. Summerour's work hours and responsibilities at Beacon; (3) BPP's relationship with Beacon; and (4) discrepancies pertaining to the legal name of the owner of Beacon. (CF, Ex. 233, at 1-2.)

On September 12, 2019, Beacon provided a letter of explanation to the CVE. Beacon explained that its operating hours are from 8AM to 5PM, Monday through Friday. Mr. Summerour works all operating hours at Beacon, typically arriving 30 minutes prior to opening and departing 30 minutes after closing time. (*Id.*, Ex. 237, at 1.) Mr. Summerour addressed the question regarding BPP by explaining that he does not devote any time to the operations of BPP, because the entity is a real estate holding company with a single commercial rental property

owned and leased to Beacon. Beacon also explained that it does not share any resources with BPP. Beacon is a lessee and BPP is the lessor of the property. (*Id.*)

With regards to Mr. Summerour's legal name, he explained that the following names are variations of his legal name, Thomas Jefferson Summerour, Jr.: Thomas Jefferson Summerour, Jr.; Thomas J. Summerour, Jr.; Thomas J. Summerour; Thomas Summerour; and Jeff Summerour. (*Id.*, at 2.) Mr. Summerour's eldest son is Thomas Jefferson Summerour III, and he goes by Tom Summerour. He has no ownership interest in Beacon. (*Id.*)

III. Discussion

A. Burden of Proof

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

B. Analysis

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). As discussed below, Beacon has persuasively demonstrated that it meets these requirements. In reviewing the protest in light of the record, I find Protestor's allegations to be speculative and without a legal or factual basis. Therefore, this protest must be denied.

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, September 25, 2019, and October 4, 2019, the date the protest was filed. Therefore, I must determine Beacon's eligibility as of both dates. Since the two dates are so close in time, and the record reflects no change in Beacon's status in the intervening time, I will determine Beacon's eligibility relying upon the same documents for both dates.

The Protest fails to meet the requirements of the regulation, that it allege that the owner(s) of a challenged concern could not provide documentation from the VA, Department of Defense, or the National Archives and Records Administration that they meet the definition of a service-disabled veteran. 13 C.F.R. § 134.1003(a). Protestor's claim that Mr. Summerour is not a service-disabled veteran because he did not so indicate on his personal social media accounts is completely without merit, and fails to meet the requirement of the regulation for a protest of the service-disabled veteran status of the owner of a challenged concern. The fact that Mr. Summerour does not disclose his personal information regarding his disability status on public platforms, like LinkedIn and Facebook, is not grounds which can sustain a protest. I may therefore not consider it. *Id.*

Concerning with the question of ownership, a concern must be “at least 51% unconditionally and directly owned by one or more service-disabled veterans.” 13 C.F.R. § 125.12. Considering Beacon's explanation of Mr. Summerour's legal name provided in response to the protest and its letter of explanation to CVE, it is clear that Mr. Summerour is a service-disabled veteran with 100% ownership of Beacon. Beacon's most recent VA Form 877, dated September 4, 2019, establishes that Mr. Summerour is a service-disabled veteran and that he owns 100% of Beacon. CF, Ex. 205. Further, on September 16, 2019, just days before Protestor filed its protest, the CVE recertified Beacon's SDVOSB status in light of Mr. Summerour's continued eligibility as a service-disabled veteran. CF, Ex. 248. It is clear from the record that Thomas Jefferson Summerour, Jr. also referred to as Jeff Summerour, is a service-disabled veteran and the sole owner of Beacon.

I now consider Protestor's allegations that Mr. Summerour does not control Beacon because of his ownership of BPP. There is a rebuttable presumption that a service-disabled veteran does not control the concern if they are not able to work for the firm during normal business hours. *See* 13 C.F.R. 125.13(k). Here, Beacon explained that Mr. Summerour works for the concern approximately from 7:30AM to 5:30PM, Monday through Friday, which are normal business hours. Further, Mr. Summerour does not devote any time to managing the operations of BPP, a real estate holding company which owns one property, Beacon's place of business. Therefore, there is nothing to support Protestor's allegation that Mr. Summerour does not work for Beacon during normal business hours, and therefore, none to support its contention that Mr. Summerour does not control Beacon.

In contrast, Beacon's Articles of Organization, VA Form 0877s, and its letters of explanation all establish that Mr. Summerour, a service-disabled veteran, owns and controls Beacon. CF, Exhs. 3, 24, 29, 80, 88, 132, 205, 211, 237, 248.

IV. Conclusion

Beacon has proven its eligibility as an SDVOSB by a preponderance of the evidence. The protest therefore is DENIED. 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).

CHRISTOPHER HOLLEMAN
Administrative Judge