

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

CVE Protest of:

U.S. Department of Veterans Affairs,

Protester,

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

IFB No. 36C25220B000

SBA No. CVE-148-P

Decided: April 9, 2020

APPEARANCE

Peter John Roskowski, Contracting Officer, U.S. Department of Veterans Affairs,
Milwaukee, Wisconsin

DECISION

I. Introduction and Jurisdiction

On March 5, 2020, the U.S. Department of Veterans Affairs (Protester), acting through the assigned Contracting Officer (CO), protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of CR Nationwide, LLC - Trumble Construction, Inc. JV1 (CRNTC), the apparent awardee of the subject procurement. 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. A protest brought by a contracting officer is timely if filed anytime during the life of the contract. 13 C.F.R. § 134.1004(a)(2)(ii). Accordingly, this matter is properly before OHA for decision.

II. Background

A. CVE Verification

On June 19, 2018, the 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. Prior Proceedings

On April 10, 2019, OHA issued its decision in *CVE Protest of Veterans Contracting, Inc.*, SBA No. CVE-107-P (2019), sustaining a status protest against CRNTC. (CF, Exh. 37.1.) OHA found that CRNTC's Third Amended Joint Venture Agreement (JVA), dated June 14, 2018, did not meet regulatory requirements. Specifically, 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.” (*Id.* at 4-5, citing 13 C.F.R. § 125.18(b)(2)(vi) and (vii).)

Although the JVA stated that CRNTC would separately furnish the missing information for each SDVO procurement by submitting a “jointly-executed statement” to the procuring activity, no such statement was actually prepared. (*Id.* at 5.) OHA further found that CRNTC did not demonstrate compliance with 13 C.F.R. § 125.18(b)(3), because the JVA did not establish that CRN, the SDVOSB member of CRNTC, would perform at least 40% of the work, and that such work would consist of more than administrative or ministerial functions. (*Id.*)

C. Solicitation

On November 15, 2019, the CO issued Invitation for Bids (IFB) No. 36C25220B0008 for a roofing project at the Jesse Brown VA Medical Center in Chicago, Illinois. (CF, Exh. 40.)

The procurement was set aside entirely for SDVOSBs. (*Id.* at 1.) The IFB required that “[i]f submitting as a joint-venture, [the bidder] must include a copy of [its JVA].” (*Id.*)

D. Protest

Bids were opened on January 9, 2020, and CRNTC was determined to be the lowest bidder. On March 5, 2020, the CO filed the instant protest with OHA, challenging CRNTC's SDVOSB status. (CF, Exh. 37.2.) The CO observed that OHA had previously found CRNTC's JVA to be defective. (*Id.* at 1.) CRNTC submitted an updated version of its JVA with its bid, but the updated JVA continues to suffer from the same deficiencies identified by OHA in *CVE Protest of Veterans Contracting, Inc.*, SBA No. CVE-107-P (2019). (*Id.*)

E. Updated JVA and Bid

With the protest, the CO forwarded a copy of CRNTC's updated JVA, dated November 15, 2019. According to the updated JVA, CRN is CRNTC's majority owner and TCI is its minority owner. (Updated JVA § 2.07.) CRN is an SDVOSB and serves as Managing Venturer of CRNTC. (*Id.* §§ 1.05 and 3.04.) With regard to the instant procurement, the updated JVA stated:

The Joint Venturers voluntarily associate themselves together as Joint Venturers for the purpose of operating a construction business for bidding upon that certain Contract Solicitation No. 36C25220B0008 issued by the Department of Veterans Affairs, and if successful in obtaining said contract performing the required work under said Service Disabled Veteran Owned Contracts as defined by applicable federal regulations.

(*Id.* § 1.01.)

The updated JVA made no further reference to the instant procurement. Rather, the updated JVA stated 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:

(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.)

The CO also forwarded a copy of CRNTC's bid for the instant procurement. The bid did not contain any jointly executed statement specifying the responsibilities of CRN and TCI with regard to negotiation of the contract, source of labor, and contract performance, and 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. Page 12 of the bid set forth a table summarizing, in dollar terms, how much CRN and TCI intended to contribute to the effort. (Bid at 12.) According to the table, TCI alone would be responsible for all labor costs. (*Id.*)

F. OHA Proceedings

On March 6, 2020, OHA issued a Notice and Order docketing the protest and directing that any response should be filed by March 27, 2020. CRNTC did not respond to the protest.

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(d)(1). Here, CRNTC submitted its bid on January 9, 2020, and the instant protest was filed on March 5, 2020. Section II.D, *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). 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

I agree with the CO that CRNTC's updated JVA does not meet regulatory requirements. Specifically, the updated version of the JVA does 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,” as is required by 13 C.F.R. § 125.18(b)(2)(vi). Section II.E, *supra*. Nor does the updated JVA “[s]pecify[] the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance,” as required by 13 C.F.R. § 125.18(b)(2)(vii). *Id.* Further, the updated JVA does not demonstrate that CRN, the SDVOSB member of CRNTC, will perform at least 40% of the work, and that such work will consist of more than administrative or ministerial functions, as required by 13 C.F.R. § 125.18(b)(3). *Id.* While the updated JVA provides that CRNTC will separately furnish the above information by

submitting a “jointly executed statement” to the procuring activity, there is no indication that such a statement was ever prepared, or submitted, in the instant case. *Id.* In short, then, the updated version of CRNTC's JVA contains the same defects discussed in *CVE Protest of Veterans Contracting, Inc.*, SBA No. CVE-107-P (2019), where OHA sustained an earlier status protest against CRNTC based on its flawed JVA. Section II.B, *supra*.

It is worth noting that, although CRNTC bears the burden of proving its eligibility by a preponderance of the evidence, CRNTC failed to offer any response to the protest allegations. Sections II.F and III.A, *supra*. Such silence further undermines any basis to conclude that the challenged firm is an eligible SDVOSB. *CVE Protest of Advanced Mgmt. Strategies Group, Inc./ ReefPoint Group*, SBA No. CVE-120-P, at 5 (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