

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

CVE Protest of:

U.S. Department of Veterans Affairs,

Protester

RE: Tekton C.C., LLC

Contract No. 36C24420Q0307

U.S. Department of Veterans Affairs  
Network Contracting Office 4

SBA No. CVE-153-P

Decided: June 15, 2020

ORDER DISMISSING PROTEST<sup>1</sup>

I. Background

On February 12, 2020, the U.S. Department of Veterans Affairs (VA) issued Request for Quotations No. 36C24420Q0307 for Plumbing, Heating, and Air-Conditioning Contractors. The Contracting Officer (CO) set aside the procurement entirely for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Proposals were due February 21, 2020. On May 1, 2020, the CO informed unsuccessful offerors that Tekton, C. C., LLC (Tekton), was the apparent awardee.

On May 12, 2020, the CO filed the instant CVE protest with the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). The CO alleges that Tekton is overly reliant on a subcontractor to perform the vital and primary requirements of the procurement, and without the subcontractor, Tekton may not be able to provide a technically valid quote. On June 4, 2020, Tekton questioned the ability of the CO to protest its status, because it had not been awarded the contract.

OHA ordered the CO to show cause why the protest should not be dismissed as without jurisdiction. On June 8, 2020, the CO responded to OHA's order, stating that Tekton "is the apparent awardee of [solicitation] 36C24420Q0307. In accordance with FAR 19.307(h)(i), the contracting officer, Amanda Saunders, is withholding the award pending the outcome of the status protest submitted on [May 12, 2020]." The CO attached notices it had sent to the unsuccessful offerors, identifying Tekton as the apparent successful offeror. However, the CO

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<sup>1</sup> OHA adjudicates SDVOSB status protests pursuant to 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. part 134 subpart J.

not only never made award of the contract, but also never notified Tekton it was the apparent successful offeror.

On June 9, 2020, OHA requested further information from the CO and specifically asked to provide documentation that Tekton was notified that it was the apparent awardee. The CO failed to respond. On June 10, 2020, Tekton disputed the CO's ability to protest its status, because it had not been awarded the contract, citing 13 C.F.R. § 134.1002(b).

## II. Discussion

OHA's rules of procedure provide that a CO may file a CVE protest “in the case of a small business that is awarded a contract for a VA procurement. . . .” 13 C.F.R. § 134.1002(b). Where the CVE Protest is in connection with a VA procurement, “a [CO] may file the CVE Protest at any time during the life of the VA contract.” *Id.* § 134.1004(a)(2)(ii). An untimely protest must be dismissed. *Id.* § 134.1004(a)(4). In the instant case, the CO did not award the contract either prior to or subsequent to the protest, therefore, the “life of the contract” has not yet commenced.

The CO argues that FAR 19.307(h)(i) allows the CO to withhold the award pending the outcome of the status protest. However, this regulation applies to SDVOSB contract status determinations made by SBA's Director/Government Contracting (D/GC) protests involving non-VA procurements, rather than CVE Protests adjudicated by OHA. It is not applicable here. *See* 13 C.F.R. §§ 134.501 *et seq.*

The regulations do imply that a protest may commence before the award of the contract, providing that a CO “may award a contract during the period between the date he/she receives a protest and the date the Judge issues a decision only if the [CO] determines that an award must be made to protect the public interest and notifies the Judge in writing of any such determination.” 13 C.F.R. § 134.1007(h). However, this refers to protests received by contracting officers from unsuccessful offerors, and not protests filed by them. Here, Tekton was not notified it was the apparent successful offeror, was not on notice of its status, and thus, was not aware it may be the subject of a protest.

I thus conclude that where a contracting officer has not made an award and fails to notify the challenged concern that it is the apparent successful offeror, he or she may not file a CVE Protest. I therefore must dismiss this appeal without prejudice. Should the CO make an award to Tekton, she may refile a protest against it.

## III. Conclusion

For the above reasons, the protest is DISMISSED. 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(b).

CHRISTOPHER HOLLEMAN  
Administrative Judge