

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

CVE Protest of:

HamHed, LLC,

Protestor,

Re: YUFS, Inc.

Solicitation No. 36C25921Q0024  
U.S. Department of Veterans Affairs

SBA No. CVE-180-P

Decided: March 4, 2021

DECISION<sup>1</sup>

Joshua Schnell, Esq., Laurel Hockey, Esq., Daniel Strouse, Esq., Cordatis LLP,  
Arlington, Virginia, for HamHed, LLC

Dr. Akubum Yufanyiabonge, President, YUFS, Inc., Owings Mills, Maryland

I. Introduction and Jurisdiction

On October 30, 2020, HamHed, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of YUFS, Inc. (YUFS), in connection with U.S. Department of Veterans Affairs (VA) Request for Quotations (RFQ) No. 36C25921Q0024. Protestor alleges that YUFS is not controlled by one or more service-disabled veterans, and that YUFS will be unduly reliant upon a non-SDVOSB subcontractor, [Subcontractor], to perform the instant contract. 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.<sup>2</sup> Protestor filed its protest within five business days after receiving notification

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<sup>1</sup> This decision was originally issued under a protective order. After receiving and considering one or more timely requests for redactions, OHA now issues this redacted decision for public release.

<sup>2</sup> The regulations at 13 C.F.R. part 134 subpart J became effective on October 1, 2018. 83 Fed. Reg. 13,626 (Mar. 30, 2018).

that YUFS was the 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. The RFQ

On October 16, 2020, VA issued RFQ No. 36C25921Q0024, seeking a contractor to provide food service workers for the Montana VA Health Care System. (Case File (CF), Exh. 34, at 1.) The RFQ contemplated the award of a single indefinite-delivery indefinite-quantity (ID/IQ) contract with a three-year duration. (*Id.* at 4.) Work will be performed at VA facilities in Fort Harrison, Montana and Miles City, Montana. (*Id.* at 3-4.)

The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 561990, All Other Support Services, with a corresponding size standard of \$12 million average annual receipts. (*Id.* at 1.) Quotations were due October 22, 2020. (*Id.*) YUFS and Protestor submitted timely quotations.

### B. YUFS's Quotation

YUFS's quotation identified YUFS as the proposed prime contractor, and [Subcontractor] as its sole subcontractor. (Quotation at 2.) According to the quotation, YUFS is an SDVOSB headquartered in Owings Mills, Maryland. (*Id.*) [Subcontractor] is not an SDVOSB. (*Id.*) [XXXXXXXXXXXXXXXXXX] was identified as point-of-contact authorized to negotiate with VA with regard to the quotation. (*Id.*)

Attached to the quotation was a “Contracting Agreement” between YUFS and [Subcontractor], dated July 19, 2020. (*Id.* at 11-13.) The Agreement stated that YUFS, the prime contractor, will perform 51% of contract work, and [Subcontractor], the subcontractor, the remaining 49%. (*Id.* at 11-12.) However, [Subcontractor] will be the “Managing Partner of the Agreement” and will be the party “primarily responsible for Contract oversight.” (*Id.* at 11-12.) A [Subcontractor] employee will serve as “Project Manager of this Agreement” and also will be “responsible for the performance of the Contract” including the “day-to-day management and administration of the Contract.” (*Id.*) Through the Project Manager, [Subcontractor] will be “responsible for negotiating the original Contract, should negotiations be required by the Government and for any other subsequent negotiations.” (*Id.* at 12.) In addition, [Subcontractor] will provide all “[m]ajor equipment, facilities and all other resources.” (*Id.* at 11.)

### C. Protest

On October 27, 2020, the CO informed Protestor that YUFS had been awarded the contract. On October 30, 2020, Protestor timely filed the instant protest. The CO forwarded the protest to OHA for review.

Protestor observes, first, that YUFS is a new concern, incorporated in Maryland in April 2020, and verified as an SDVOSB by VA's Center for Verification and Evaluation (CVE) in July 2020. (Protest at 2.) YUFS has only one employee, its owner and President, Dr. Akubum Yufanyiabonge. (*Id.*) Further, YUFS apparently has no other federal contracts. (*Id.*) Food services, the type of work called for by the instant RFQ, is not mentioned on YUFS's website as a field in which YUFS operates. (*Id.*) Rather, YUFS describes itself as a provider of technology and management solutions. (*Id.* at 9.)

Protestor alleges that [Subcontractor] and/or [XXXXXXXXXX] “may control YUFS, including its management and daily business operations.” (*Id.* at 3.) Protestor bases this contention on the fact that [XXXXXXXXXX] contacted Protestor by e-mail to request information about staffing on the contract. (*Id.*) According to Protestor, [XXXXXXXXXX] made no mention of YUFS, the purported prime contractor, in his e-mails. (*Id.*) [Subcontractor] is not an SDVOSB. (*Id.*)

Protestor alleges that YUFS will be unusually reliant on [Subcontractor] to perform the instant contract, in contravention of 13 C.F.R. §§ 125.18(f) and 134.1003(c). (*Id.* at 7-8.) In Protestor's estimation, the contract requires at least four employees based on-site in Montana, but “YUFS is a new company, with no prior contracts, and only one employee,” Dr. Yufanyiabonge, who resides in Maryland. (*Id.* at 9, 11.) Nor does YUFS have any experience in the food service industry. (*Id.* at 10.) [Subcontractor], on the other hand, “is an established company with approximately 70 employees,” and it appears that [Subcontractor] — not YUFS — will manage the contract based on [XXXXXXXXXX]'s e-mails to Protestor. (*Id.* at 9.) Protestor asserts that YUFS will rely on [Subcontractor] to furnish all, or nearly all, of the contract workforce, and to manage the contract. (*Id.* at 9-11.)

Finally, Protestor insists that YUFS cannot comply with the limitations on subcontracting requirements. (*Id.* at 11-12.) Because a minimum of four employees are needed to perform the contract work, and YUFS has only a single employee, “at least 75% (if not 100%) of the amount paid by VA will go to [] [Subcontractor].” (*Id.* at 11.)

#### D. YUFS's Response

In an e-mail to OHA, YUFS authorized [XXXXXXXXXX] to respond to the protest on YUFS's behalf. (E-mail from A. Yufanyiabonge (Dec. 5, 2020).) On December 8, 2020, [XXXXXXXXXX] submitted YUFS's response to the protest. YUFS maintains that the protest is “completely void of facts” and relies on “wild speculations and misrepresentations.” (Response at 1.)

YUFS denies that it will be unduly reliant upon [Subcontractor] to perform the instant contract. Protestor's allegations are premised on the notion that YUFS cannot effectively perform the contract because it has been in existence for only seven months. (*Id.*) Such reasoning would mean that “new firms are not allowed to compete for contracts” and therefore should be considered “baseless.” (*Id.*) YUFS highlights that “age of the firm” was not among the evaluation criteria stated in the RFQ. (*Id.*)

YUFS disputes the allegation that [Subcontractor], rather than YUFS, will perform the primary and vital contract requirements. Protestor's allegations are speculative and suggest that Protestor “does not understand the scope of work.” (*Id.*) In response to Protestor's arguments that YUFS lacks relevant experience, YUFS contends that “[o]ne will wonder if [Protestor] received federal contracts before its formation.” (*Id.*)

YUFS lastly disputes the allegation that it will not comply with limitations on subcontracting requirements. (*Id.*) Protestor's claims are false because “[i]n fact [YUFS] is providing 100% of the staff.” (*Id.*)

#### E. Case File

On November 23, 2020, CVE transmitted the Case File to OHA. The Case File indicates that YUFS, a management consulting firm, was incorporated in the state of Maryland in April 2020. (CF, Exh. 2.) Dr. Yufanyiabonge is YUFS's sole shareholder and has “elected himself as the president, Director, sec[re]tary, treasurer and all other positions with YUFS.” (CF, Exhs. 15, 18 and 20.) Dr. Yufanyiabonge is a service-disabled veteran. (CF, Exh. 6.)

During the course of the verification review, YUFS informed CVE that Dr. Yufanyiabonge is employed full-time as an Information Technology Specialist with the U.S. Army Communications-Electronics Command (Army), a position he has held since 2014. (CF, Exhs. 4, 16, and 25.) YUFS stated that Dr. Yufanyiabonge works for the Army Monday through Thursday, 6:00 a.m. to 4:00 p.m. (CF, Exh. 13, at 5-6.)

CVE requested that YUFS “[l]ist the hours of the day and days of the week that [Dr.] Yufanyiabonge currently works for YUFS.” (*Id.*) YUFS responded that Dr. Yufanyiabonge works for YUFS Monday through Thursday from 5:00 p.m. until midnight, and Fridays and Saturdays from 6:00 a.m. to 5:00 p.m. (*Id.*)

CVE observed that Federal Acquisition Regulation (FAR) 3.601 generally prohibits the award of federal contracts to business concerns that are owned or controlled by Government employees. (*Id.* at 4-5.) CVE therefore requested that YUFS clarify whether it “intends to use its verification through CVE to pursue federal contracts.” (*Id.* at 4.) In a letter to CVE dated July 8, 2020, YUFS responded that it is “currently not bidding on Federal contracts.” (CF, Exh. 22.)

On July 13, 2020, CVE verified YUFS as an SDVOSB. (CF, Exh. 29.)

#### F. OHA's Request for Information

On December 14, 2020, OHA issued an Order, pursuant to 13 C.F.R. § 134.1007(g), directing that YUFS produce additional information. OHA noted that 13 C.F.R. § 125.13(k) creates a rebuttable presumption that a service-disabled veteran does not control a concern if “the service-disabled veteran is not able to work for the firm during the normal working hours that businesses in that industry normally work.” (Order at 1-2.) During the verification review, though, YUFS indicated that Dr. Yufanyiabonge works full-time for the Army from 6 a.m. to 4 p.m. Monday through Thursday. (*Id.* at 1.) In light of Dr. Yufanyiabonge's other employment

and the presumption at 13 C.F.R. § 125.13(k), OHA requested that YUFS address whether Dr. Yufanyiabonge controls YUFS. (*Id.* at 1-2.)

OHA also noted that, in response to CVE's concern that YUFS may be ineligible for award of federal prime contracts due to Dr. Yufanyiabonge's employment with the Government, YUFS represented to CVE that YUFS was “currently not bidding on Federal contracts.” (*Id.* at 2, quoting CF, Exh. 22.) OHA requested that YUFS address whether it had undergone “any change of circumstances whereby it has now addressed CVE's concern with regard to FAR 3.601.” (*Id.*)

### G. YUFS's Response to OHA's Order

YUFS did not file a substantive response to OHA's Order. YUFS observed, however, that when a bid protest is filed challenging an award decision, it is the procuring agency, rather than the awardee, that is expected to defend the award decision. (E-mail from A. Yufanyiabonge (Dec. 22, 2020).) In a subsequent correspondence, YUFS added:

[A]ccording to [bid protest procedures], a protest can only be filed against the awarding agency and not the awardee. A vendor cannot protest another vendor/competitor directly, however, a vendor can sue a competitor should they have a reason. [YUFS] recommend[s] [OHA] follow the [bid] protest procedure[s] clearly outline[d] in [VA Acquisition Regulation clauses] 852.233-70-71 of the contract.

(E-mail from A. Yufanyiabonge (Dec. 28, 2020).)

## III. Discussion

### A. Burden of Proof

As the challenged firm, YUFS 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, YUFS submitted its quotation including price on October 20, 2020, and the instant protest was filed on October 30, 2020. Sections II.A and II.C, *supra*. Therefore, OHA must examine YUFS's eligibility as of these dates, using the ownership and control regulations in effect on each date.

### C. Analysis

Under OHA's rules of procedure, OHA adjudicates SDVOSB status protests based primarily on the Case File and evidence submitted by the parties. 13 C.F.R. § 134.1007(g). However, “the Judge may investigate issues beyond those raised in the protest and may use other

information or make requests for additional information to the protester, the protested concern, or VA.” *Id.* The regulations further provide that “[i]n the case of refusal or failure to furnish requested information within a required time period, the Judge may assume that disclosure would be contrary to the interests of the party failing to make disclosure.” 13 C.F.R. § 134.1011.

In the instant case, OHA issued an Order, pursuant to 13 C.F.R. § 134.1007(g), directing that YUFS produce additional information about Dr. Yufanyiabonge's employment. Section II.F, *supra*. The Order explained that 13 C.F.R. § 125.13(k) establishes a rebuttable presumption that a service-disabled veteran does not control a concern when “the service-disabled veteran is not able to work for the firm during the normal working hours that businesses in that industry normally work.” *Id.* OHA noted that, according to documentation in the Case File, Dr. Yufanyiabonge has other full-time employment. *Id.* Further, although YUFS stated during the verification review that Dr. Yufanyiabonge works for YUFS Monday through Thursday from 5:00 p.m. until midnight, and on Fridays and Saturdays from 6:00 a.m. to 5:00 p.m., YUFS did not attempt to persuade CVE that such hours are typical of businesses in YUFS's industry. *Id.*

YUFS did not offer any substantive response to OHA's Order. Section II.G, *supra*. I must therefore conclude that YUFS has not rebutted the presumption at 13 C.F.R. § 125.13(k). *E.g.*, *CVE Protest of Covenant Constr. Servs.*, SBA No. CVE-152-P, at 3-4 (2020) (sustaining protest when a service-disabled veteran worked “full-time for [another company] during normal business hours, and only part-time for [the challenged firm] on evenings and some weekends”). In addition, because YUFS did not address the questions specifically posed in OHA's Order, OHA may appropriately infer that the missing information would have shown that Dr. Yufanyiabonge does not control YUFS. 13 C.F.R. § 134.1011. Accordingly, YUFS is not an eligible SDVOSB.

In lieu of a substantive response to OHA's Order, YUFS observed that bid protest procedures do not permit an unsuccessful offeror, such as Protestor, to pursue a bid protest directly against the awardee. Section II.G, *supra*. While this is true, the instant case is not a bid protest and such procedures have no bearing here. Contrary to YUFS's suggestions, both the underlying statute and the accompanying regulations expressly permit an SDVOSB status protest to be filed against the awardee by an unsuccessful offeror. *See* 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. § 134.1002(b). Further, as the challenged firm in the proceeding, YUFS has the burden of proving its eligibility as an SDVOSB by a preponderance of the evidence. 13 C.F.R. § 134.1010.

Because YUFS is not an eligible SDVOSB, OHA need not decide whether YUFS also would have been unduly reliant upon its subcontractor, [Subcontractor], to perform the instant contract, as alleged in the initial protest. According to SBA regulations, when OHA sustains an SDVOSB status protest, but the contract has already been awarded, “then the awarded contract shall be deemed void ab initio (invalid from the outset), and the contracting officer shall rescind the contract and award the contract to the next eligible concern in line for the award.” 13 C.F.R. § 134.1007(j)(2). It therefore is immaterial whether YUFS would have been excessively reliant upon [Subcontractor] to perform this contract.

IV. Conclusion

YUFS has not presented evidence to rebut the presumption at 13 C.F.R. § 125.13(k), and has not carried its burden of proving its eligibility as an SDVOSB by a preponderance of the evidence. The protest therefore is SUSTAINED. CVE must remove YUFS from the database of eligible SDVOSBs. 13 C.F.R. § 134.1007(j)(4). 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