

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

CVE Protest of:

Veterans Command, LLC,

Protestor,

Re: Genesis Government Solutions, inc.

Solicitation No. 36C24121F0135  
U.S. Department of Veterans Affairs

SBA No. CVE-191-P

Decided: May 20, 2021

APPEARANCES

David A. Turner, Jr., CEO, Veterans Command, LLC

Shane J. McCall, Esq., Nicole D. Pottroff, Esq., Christopher S. Coleman, Esq., John L. Holtz, Esq., Koprince Law, LLC, for Genesis Government Solutions, Inc.

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On April 7, 2021, Veterans Command, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Genesis Government Solutions, Inc. (Genesis) in connection with the U.S. Department of Veterans Affairs (VA) Solicitation No. 36C24121F0135. Protestor contends that Genesis is not eligible for the subject SDVOSB set aside because Genesis is overly reliant on subcontractors, and therefore, is not controlled by a service-disabled veteran (SDV). On April 9, 2021, the Contracting Officer (CO) for the subject procurement forwarded the status protest to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA). For the reasons discussed *infra*, certain of Protestor's allegations are DISMISSED and the remainder of the protest is otherwise DENIED.

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<sup>1</sup> This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA received one or more requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

The 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> Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. Solicitation

The instant solicitation was issued as a SDVOSB, VOSB, cascading set aside for Document Preparation Services, under North American Industry Classification System (NAICS) code 561410, Document Preparation Services, with a corresponding \$16.5 million annual receipts size standard. (Solicitation, at 2.) More specifically, the awardee was to provide medical transcription services in the disciplines of outpatient clinics, emergency rooms, radiology, behavior health, acute care, and long-term care. (Performance Statement of Work, at 5.) The selected firm is expected to provide such services over a five-year period at various VISN 1 Medical Centers in Vermont, Massachusetts, New York, New Hampshire, Rhode Island, and Connecticut. (*Id.*)

The Solicitation provided that evaluations would be made using a cascading approach, providing a preference for SDVOSB concerns, then veteran-owned small business concerns. (Solicitation, at 2.) Offers were due on March 12, 2021. The VA received a total of four proposals: three SDVOSBs proposals and one small business proposal. The small business was not considered because it did not meet the requirements of the set?aside. On March 31, 2021, the CO awarded the contract to Genesis.

### B. Protest

On April 7, 2021, Protestor filed the instant protest with the CO. The protest asserts that the Genesis is not an eligible SDVOSB because it is “in violation of the 51% rule regarding subcontracting” and “is overly reliant on subcontractors and thus not controlled by a veteran.” (Protest, at 1.) More specifically, the Protestor believes Genesis is largely a pass-through entity where most labor costs are absorbed by subcontractors. Protestor also attached a spreadsheet to demonstrate that over \$2.2 million has been obligated by the VA to Genesis for service contracts since 2018. (*Id.*) Protestor does not believe that Genesis is a valid SDVOSB as it does not comply with the 51% rule. (*Id.*)

Protestor requests that OHA obtain evidence of Genesis's reliance on subcontractors, specifically its IRS Form W3s for the last three years. (*Id.*)

### C. Genesis's Response

On May 4, 2021, Genesis responded to the instant protest. Genesis first argues that the protest should be dismissed for failing to allege specific and sufficient grounds to protest. (Response, at 3-4.)

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<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).

Genesis asserts it is unconditionally and directly majority owned and controlled by a SDV. More specifically, Genesis submits evidence to demonstrate it complies with the two eligibility requirements: (1) that a SDV must unconditionally own at least 51% of the company, and (2) that a SDV must control the company. (*Id.*, at 4; citing 13 C.F.R. §§ 125.11-125.13.)

First, Genesis submits a declaration by Mr. Stephen Wilkinson that he is a SDV. (*Id.*, at 4; citing Response Ex. A.) Second, Genesis submits a shareholder agreement to demonstrate that Mr. Wilkinson owns a majority of the company's stock. (*Id.*, at 4; citing Response Ex. A-B.) Additionally, Genesis states that its shareholder interests are compliant with the percentages and ownership requirements in SBA's regulations because Mr. Wilkinson's ownership exceeds 51% of all outstanding stock and exceeds 51% of all voting stock. (*Id.*, at 5; citing 13 C.F.R. § 125.12.)

Genesis further asserts it is unconditionally controlled by a SDV. Under the regulations, the management and daily business operations of the concern must be controlled by one or more SDVs. (*Id.*; citing 13 C.F.R. § 125.13(a).) Additionally, a SDV owner must hold the highest officer position and must have managerial experience of the extent and complexity needed to run the concern. (*Id.*; citing 13 C.F.R. § 125.13(b).) The SDV, however, “need not have the technical expertise or possess the required license to be found to control the concern” so long as he or she can demonstrate “ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.” (*Id.*)

Genesis further asserts that its business and affairs are managed by a Board of Directors. (*Id.*; citing Response Ex. B.) While Genesis has shareholder votes, a quorum only exists when the holder or holders of a majority of the shares are present, and furthermore a majority of the quorum is needed for approval of a decision. (*Id.*; citing Response Ex. C.) Mr. Wilkinson owns the majority of the shares, and he therefore must be present for the shareholders to vote, and his vote would be the deciding vote in all situations. (*Id.*) Moreover, Mr. Wilkinson is Chairman of the Board and President/CEO and is therefore Genesis' highest-ranking officer. (*Id.*; citing Response Ex. B.) As a vote by a director owning the majority of the voting shares in the business controls board decisions and Mr. Wilkson alone owns the majority of voting shares, he has complete control over the Board. (*Id.*; citing Response Ex. A-B.) Additionally, Mr. Wilkinson works, on average, 15 to 16 hours a day, managing the company in its day-to-day affairs, preparing proposals, leading negotiations, and other duties one would expect of the president of a government contractor. (*Id.*, at 5-6; citing Response Ex. A.)

Genesis then asserts it is not reliant on subcontractors and that Protestor's allegations are speculative and incorrect. (*Id.*, at 6.) More specifically, for the work performed under the Solicitation, Genesis proposes to utilize the services of [numerous] individual medical transcriptionists who share approximately the same amount of work. (*Id.*; citing Response Ex. A.) Additionally, [the majority of] individuals are W-2 employees of Genesis, meaning that at least [a majority], and possibly more, of the work is being directly performed by Genesis. (*Id.*)

Furthermore, Genesis points out Protestor has only offered a spreadsheet listing the contracts that have been awarded to Genesis as evidence. As such, Protestor's allegations are

unsupported by evidence. (*Id.*) Genesis then argues that OHA should give greater weight to signed, sworn submissions by a challenged concern than to the unsupported allegations of the protestor. (*Id.*; citing *Glob. Native Servs., Inc.*, SBA No. SIZ-5865 (2017) and *Stellar Innovations and Solutions, Inc.*, SBA No. SIZ-5851 (2017).) As shown in Mr. Wilkinson's Declaration, [a majority] of the individuals working on the Contract are W-2 employees of Genesis, therefore Genesis meets the limitations on subcontractors and there is no ostensible subcontractor affiliation. (*Id.*; citing *RC Consol. Servs., Inc.*, SBA No. CVE-154, 2020 (July 8, 2020).)

Genesis also objects to Protestor's request for its IRS Form W3s because there is no discovery in CVE protests. (*Id.*, at 6-7; citing 13 C.F.R. § 134.1008.)

### III. Discussion

#### A. Burden of Proof and Discovery

As the protested concern, Genesis has the burden of proving eligibility by the preponderance of the evidence. 13 C.F.R. § 134.1010. Protestor's request that OHA obtain Genesis's IRS Form W3s is DENIED, because discovery is not permitted in CVE Protest proceedings. 13 C.F.R. § 134.1008.

#### 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). The control requirements for SDVOSBs are found at 13 C.F.R. part 125. *See* 38 C.F.R. § 74.4, “[c]ontrol is determined in accordance with 13 CFR part 125. However, where 13 CFR part 125 is limited to [Service-Disabled] VOSBs, CVE applies the same control criteria to firms seeking verified VOSB status.” As discussed below, Genesis has persuasively demonstrated that it meets these requirements. In reviewing the protest in light of the record and Genesis's responses, I find Protestor's allegations to be speculative and without a legal or factual basis. Therefore, I must deny this protest.

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 Genesis's offer was submitted, March 11, 2021, and April 7, 2021, the date the protest was filed.

Beginning with the question of ownership, an eligible SDVOSB must be at least 51% directly and unconditionally owned by one or more SDVs. 13 C.F.R. § 125.12. Here, there is no dispute that Mr. Wilkinson is a SDV with majority ownership in Genesis, which is confirmed by Genesis's VA Form 0877. Accordingly, Genesis meets the requirement that it be at least 51%

unconditionally and directly owned by one or more SDVs. (Response, Ex. A-B; Case File (CF) Exs. 1, 342.)

Turning to the question of control, to be an eligible SDVOSB, one or more SDVs must control both the long-term decision-making and the day-to-day management of the concern. 13 C.F.R. § 125.13(a). In addition, a SDV must hold the highest officer position in the concern and must have managerial experience to the extent and complexity needed to run the concern. 13 C.F.R. § 125.13(b).

As the Chairman of the Board, President/ CEO, and deciding shareholder vote in all decisions, I find that Mr. Wilkinson clearly controls Genesis as required under 13 C.F.R. § 125.13. In addition to his majority ownership and numerous titles, Mr. Wilkinson also works on average 15 to 16 hours a day managing the company and its day-to-day operations. (Response, Ex. A.) Mr. Wilkinson's resume demonstrates that early in his career he served in various military medical centers. (CF, Ex. 18.) Additionally, Mr. Wilkinson has years of experience in healthcare administration, healthcare related consulting, and as a business owner. (*Id.*) In addition to his experience, with a master's degree in healthcare administration and a master's degree in management, Mr. Wilkinson clearly has the managerial experience to the extent and complexity needed to run Genesis. (*Id.*)

OHA has held repeatedly that it gives greater weight to sworn statements and documentary evidence than unsupported assertions, as required by the regulation. 13 C.F.R. § 134.1011; *See, e.g., Petition for Reconsideration of CVE Protest of Alpha4Solutions LLC*, SBA No. CVE-137-P, at 4 (2019); *Size Appeal of Costar Services, Inc.*, SBA No. SIZ-5745, at 8 (2016).

Protestor has submitted no evidence that a non-SDV controls Genesis. Protestor's whole case relies upon a spreadsheet detailing the amount the Department of Veterans Affairs has obligated to Genesis for service contracts since 2018. This spreadsheet is irrelevant to the allegations and matter before us.

In contrast, Mr. Wilkinson's affidavit clearly states that he is in actual control of Genesis and is responsible for the preparation of the instant proposal. Genesis also provides a shareholder agreement and a copy of its bylaws. The Case File contains the firm's VA Form 0877, documenting Mr. Wilkinson's ownership. These establish Mr. Wilkinson, a SDV, does in fact own and control Genesis. Accordingly, I find that Genesis has met its burden of proof. 13 C.F.R. § 134.1010.

Protestor alleges Genesis is not in compliance with the 51% rule limiting a prime contractor's reliance on subcontractors. 13 C.F.R. § 125.6. However, this is a matter of contractor responsibility and is outside OHA's jurisdiction. *Size Appeal of Shoreline Services, Inc.*, SBA No. SIZ-5466, at 10 (2013).

Lastly, Protestor argues that Genesis is unduly reliant on subcontractors. I find this argument to be speculative and unsupported by any evidence. Protestor offers no evidence, nor even any specific theory, as to how or why Genesis might be unable to perform the primary and

vital contract requirements or would be unduly reliant upon a non-SDVOSB subcontractor. A proper status protest must contain “[s]pecific allegations supported by credible evidence.” 13 C.F.R. § 134.1005(a)(2). Nonspecific allegations will be dismissed. 13 C.F.R. § 134.1007(b). As Protestor has not advanced a specific allegation supported by credible evidence, this portion of the protest must be dismissed. *CVE Protest of Welch Construction, Inc.*, SBA No. CVE-181-P (2021).

### III. Conclusion

As discussed above, certain of Protestor's allegations are nonspecific, and those allegations are DISMISSED. The protest is otherwise DENIED, because Genesis has proven its status by preponderance of the evidence. 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