

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

CVE Protest of:

Esterhill Boat Services Corporation,

Protestor,

Re: Dublin | EDT JV, LLC

Solicitation No. 36C24119R0099  
U.S. Department of Veterans Affairs

SBA No. CVE-194-P

Decided: June 3, 2021

**ORDER DISMISSING PROTEST**<sup>1</sup>

**I. Background**

On May 19, 2021, the Contracting Officer (CO) for the subject procurement forwarded to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) a protest filed by Esterhill Boat Services Corporation (Protestor) against Dublin | EDT JV, LLC (DE JV), the apparent awardee of U.S. Department of Veterans Affairs (VA) Request for Lease Proposals (RLP) No. 36C24119R0099. The RLP called for the lease of medical office space in Rumford, Maine for use as a Community Based Outpatient Clinic. The RLP was not set-aside for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) or for Veteran-Owned Small Businesses (VOSBs).

In its protest, Protestor alleged that DE JV functions as “a pass-thru firm.” (Protest at 1.) In support, Protestor claimed that “Mr. Ted O’Shea,” who Protestor asserted is the “service disabled veteran upon whom the firm’s qualification as a [SDVOSB] rested at the time of the bid,” is Vice President of a large business, ABM Industries, Inc. (*Id.*) Protestor maintained that, although DE JV now has obtained authorization from the Town of Rumford to proceed with the instant project, DE JV “did not have permission at the time of the bid.” (*Id.* at 1-2.) Protestor additionally contended that “the site for the award is located within a thousand feet of a chemical processing lagoon for a paper mill [which] puts [at risk] the health and safety of not only veterans but the staff at the clinic — staff who must spend eight hours a day in the proposed location.” (*Id.* at 2.)

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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.

The protest did not reference any of the grounds for an SDVOSB status protest at 13 C.F.R. § 134.1003, nor allege that DE JV fails to meet any SDVOSB eligibility criteria, as set forth at 13 C.F.R. part 125. The protest did not explain why DE JV would have needed to comply with SDVOSB eligibility criteria, given that the underlying procurement was not restricted to SDVOSBs. Further, the protest contained no evidence or factual support to demonstrate a connection between Mr. Ted O'Shea and DE JV. Protestor attached to its protest a portion of a Linked-In profile of "Ted O'Shea," but the profile described employment only with ABM Industries, Inc., and made no mention of DE JV or any other concern.

In his letter referring the protest to OHA, the CO stated that Protestor submitted a timely proposal, but was excluded from the competitive range approximately eight months ago, on September 16, 2020. Protestor previously filed a bid protest with the U.S. Government Accountability Office (GAO) contending that the RLP should have been restricted to SDVOSBs or VOSBs, and GAO denied that protest. *Matter of Esterhill Boat Servs. Corp.*, B-418356, B-418356.2, Mar. 20, 2020, 2020 CPD ¶ 109.

Because the instant protest appeared to be deficient, OHA ordered Protestor show cause why the protest should not be dismissed as nonspecific and/or for lack of standing. Protestor responded on May 25, 2021. Protestor argues that "13CFR § 121.103 forbids the employee of another company from claiming SDVO[S]B status when that individual is a full-time employee of another company." (Response to Show Cause Order, at 1 (emphasis Protestor's).) Protestor reiterates its view that OHA should examine Ted O'Shea's employment "in determining whether affiliation exists." (*Id.*)

## II. Discussion

The instant protest is deficient and must be dismissed. Although styled as an SDVOSB status protest, the bulk of Protestor's allegations express disagreement with the manner in which the procurement was conducted, rather than disputing the SDVOSB status of the apparent awardee, DE JV. Protestor contends, for example, that the location chosen for the lease is unsuitable, and that DE JV did not obtain advance authorization from the Town of Rumford prior to submitting its proposal. Section I, *supra*. Even if true, though, such allegations have no bearing on SDVOSB status and therefore are beyond OHA's jurisdiction. OHA's rules of procedure at 13 C.F.R. § 134.1003 describe the permissible grounds for an SDVOSB status protest, and Protestor has not attempted to explain how the instant allegations fall within the scope of the rule. Pursuant to 13 C.F.R. § 134.1007(b), OHA must dismiss a purported status protest that is "based on non-protestable allegations." *CVE Protest of Progressive X-Ray, Inc.*, SBA No. CVE-101-P, at 1-2 (2019) (dismissing status protest that did not "allege that the apparent awardee is not owned or controlled by a service-disabled veteran, nor d[id] it challenge the service-disabled status of the apparent awardee's owner").

The only protest allegation that conceivably might relate to SDVOSB status is Protestor's contention concerning the outside employment of "Mr. Ted O'Shea." Section I, *supra*. Protestor overlooks, however, that the underlying procurement was not restricted to SDVOSBs. *Id.* It therefore is not evident that the challenged concern, DE JV, was required to be, or ever claimed to be, an SDVOSB. Moreover, even assuming that DE JV's status as an SDVOSB somehow was

relevant to this acquisition, Protestor has not presented any clear facts or evidence that would cast doubt on whether DE JV actually held such status. Although Protestor asserts that Mr. Ted O'Shea is, or was, Vice President of a large business, Protestor has not shown how this employment would have been significant to the SDVOSB status of DE JV. Accordingly, Protestor's allegations with regard to the employment of Mr. Ted O'Shea are not sufficiently specific and must be dismissed. *See* 13 C.F.R. § 134.1005(a)(2) (a proper status protest must contain “[s]pecific allegations supported by credible evidence that the concern does not meet [SDVOSB] eligibility requirements”).

### 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).

KENNETH M. HYDE  
Administrative Judge