

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

CVE Protest of:

Valiant Construction, LLC,

Protestor,

Re: Eagle Contractors, Inc.

Solicitation No. 36C25021B0036

U.S. Department of Veterans Affairs

SBA No. CVE-205-P

Decided: October 4, 2021

APPEARANCES

Shane McCall, Esq., Nicole D. Pottroff, Esq., Christopher S. Coleman, Esq., John L. Holtz, Esq., Kevon B. Wickliffe, Esq., Koprince Law LLC, Washington, District of Columbia, for Valiant Construction, LLC

Casey C. Cloyd, Esq., Indianapolis, Indiana, for Eagle Contractors

DECISION¹

I. Introduction and Jurisdiction

On June 28, 2021, Valiant Construction, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Eagle Construction, Inc. (ECI) in connection with U.S. Department of Veterans Affairs (VA) Invitation for Bids (IFB) No. 36C25021B0036. Protestor alleges that ECI is not controlled by a veteran and should be excluded from the VA Center for Verification and Evaluation (CVE) database of eligible SDVOSBs. For the reasons discussed *infra*, the protest is denied.

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.² Protestor filed its protest within five business days after receiving notification

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received no requests for redactions. Therefore, I now issue the entire decision for public release.

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

that ECI was the apparent 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. Governing Documents and Case File

On June 10, 2020, ECI was newly incorporated in the State of Indiana. (Case File (CF), Ex. 9.) VA Form 0877 showed that Daniel Hail, the service-disabled veteran, owns 51% of ECI, while Rogelio Mancillas, a non-veteran, owns 49%. (CF, Exs. 39, 46.) On July 7, 2020, ECI certified a corporate resolution in lieu of the initial shareholders' and directors' meetings. The resolution indicated that in accordance with Article II, Section II of its Bylaws, Mr. Hail and Mr. Mancillas are to serve as Directors. (CF, Ex. 11 at 1.) In accordance with Article III, Section II, Mr. Shippy is elected President, while Mr. Hail is elected Secretary and Treasurer. (*Id.*) The resolution further noted that ECI and the officers named above are further authorized to take all appropriate action to engage in the business of all legal purposes and to engage in other related activities necessary for ECI. (*Id.*, at 2.)

According to ECI's Bylaws, annual meetings are held yearly for the election of directors and for the transaction of other business. (*Id.*, Art. I § 1.) Further, special meetings can be requested by the President, the Board of Directors, or the holders of a majority of the outstanding voting shares. (*Id.*, Art. I § 2.) Written notice is required at least 10 days prior to the meeting. (*Id.*, Art. I § 3.)

Under Section 5, ECI establishes Quorum as:

A majority of the outstanding voting shares, whether represented in person or by proxy, shall constitute a quorum at a shareholders' meeting. In the absence of a quorum, a majority of the represented shares may adjourn the meeting to another time without further notice. If a quorum is represented at an adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally scheduled. The shareholders present at a meeting represented by a quorum may continue to transact business until adjournment, even if the withdrawal of some shareholders results in representation of less than a quorum.

(*Id.*, Art. I § 5.)

As for informal action, ECI states that “any action required to be taken, or which may be taken, at a shareholders meeting, may be taken without a meeting and without prior notice if a consent in writing, setting forth the action so taken, is signed by the shareholders who own all of the shares entitled to vote with respect to the subject matter of the vote.” (*Id.*, Art. I § 6.)

The Board of Directors consist of Mr. Hail and Mr. Mancillas. (*Id.*, at 3, Art. II § 1.) A majority of directors constitute a quorum. (*Id.*, Art. II § 3.)

Under Section 7, the Bylaws outline the following procedures:

The vote of a majority of the directors present at a properly called meeting at which a quorum is present shall be the act of the Board of Directors, unless the vote of a greater number is required by law or by these by-laws for a particular resolution. A director of the corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless their dissent shall be entered in the minutes of the meeting. The Board shall keep written minutes of its proceedings in its permanent records.

(Id., Art. II § 7.)

Further, a director is subject to removal, with or without cause, at a meeting of the shareholders called for that purpose. *(Id., Art. II § 9.)* Any vacancy that occurs on the Board of Directors may be filled by the remaining directors. A director elected to fill a vacancy shall serve the remaining term of his predecessor, or until a successor has been elected and qualified. *(Id.)*

Additionally, the officers of ECI are identified as the President, the Treasurer, and the Secretary. *(Id., Art. III § 1.)* One of the duties of the President is to be the chief executive officer (CEO) and carry out the day-to-day operations of the corporation, as may be prescribed by the Board of Directors. *(Id.)* Finally, ECI's Bylaws “may be amended, altered, or repealed by the Board of Directors or the shareholders by a majority of a quorum vote at any regular or special meeting; provided however, that the shareholders may from time to time specify particular provisions of the bylaws which shall not be amended or repealed by the Board of Directors.” *(Id., Art. V.)*

On November 16, 2020, ECI held a corporate meeting amongst Mr. Hail, Mr. Mancillas and Mr. Shippy. ECI amended Article 3 Section 1 of its Bylaws and Company Resolution to be more specific on Titles and Responsibilities. (CF, Ex. 74.) Particularly, Mr. Hail is the CEO and has the final decision and approval to accept or deny ECI's action. Mr. Mancillas acts as the Chief Operating Officer (COO) reporting to the CEO. Both CEO and COO work together on formulating ideas, forecasting, and decision making; however, the CEO has authority to override COO at any time. Lastly, Mr. Shippy is the President, reporting to the COO and if the COO is not available, to the CEO. The President reports all aspects of the Field Operations, Contracts, Subcontractors, and everything within ECI's operation to COO and CEO. All final decision goes to COO for CEO's final approval. *(Id.)*

B. CVE Verification

On November 30, 2020, the VA's CVE verified ECI as an SDVOSB and included it in the Vendor Information Pages (VIP) database of eligible firms, effective for three years. (CF, Ex. 81.) The verification letter stated that ECI “is presently, as of the issuance of this notice, in compliance with the regulation.” *(Id., at 1.)* ECI was required to report any changes that might adversely affect its eligibility within 30 days of the change. *(Id.)*

C. Solicitation

On April 28, 2021, the VA issued IFB No. 36C25021B0036 for the renovation and relocation of the Department of Nuclear Medicine at the Richard L. Roudebush VA Medical Center in Indianapolis, Indiana. (Solicitation, at 5-6.)

The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs and designated North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding \$39.5 million annual receipts size standard, as the appropriate code. Bids were extended to June 23, 2021. (Amendment A00006, at 1.) On June 23, 2021, ECI submitted its sealed bid. On the same day, the CO announced that ECI was the awardee.

D. The Protest

On June 28, 2021, Protestor filed the instant protest. Protestor alleges that Mr. Hail, the service-disabled veteran upon whom ECI's claim of eligibility was based, has only nominal control over the concern. (Protest, at 1.) Protestor maintains that Mr. Hail performed subcontracting work for Protestor in the past, and that Mr. Hail and Protestor's President, Patrick Broderick, had a working relationship. Protestor then alleges that Mr. Hail informed Mr. Broderick that he was stepping back from his business at Eagle Mechanical, Inc. (EMI) and moving toward retirement. Mr. Broderick understood that Mr. Hail sold EMI and was no longer involved in any businesses. (*Id.*, at 3.)

First, Protestor asserts Mr. Hail and Mr. Mancillas are Incorporators and Chairmen of ECI listed in the Secretary of State's certificate of incorporation. On November 30, 2020, the CVE verified ECI as an SDVOSB under NAICS code 238220 with only one veteran employee. (*Id.*) ECI is located at 920 Tomahawk Trail address and lists Rogelio A. Alvarez as the registered agent and the contact email as r.alvarez@eaglemechanicalinc.net. (*Id.*) Further, Mr. Hail took ownership and control of EMI in July 2009. EMI is co-located with ECI, and its registered agent is also Mr. Alvarez, identified with the same contact email information. On April 1, 2021, Mr. Mancillas filed a Change of Officer notice listing himself as the CEO of EMI. (*Id.*) Protestor indicates Mr. Mancillas remains the registered agent and Mr. Alvarez the CEO. Another business, Morningstar [*sic*] Group, Inc. (Morningside), formed on September 30, 2010, by Mr. Mancillas, is presently co-located with ECI and EMI. The business entity report lists Mr. Alvarez as the Chief Financial Officer (CFO) for Morningside. (*Id.*)

Protestor then alleges that ECI is not controlled by one or more service-disabled veterans. While Mr. Hail holds himself out as the service-disabled majority owner and president of ECI, he does not in fact control ECI. Rather, ECI is controlled by other individuals who are not service-disabled veterans. Mr. Hail apparently owns 51% of ECI, while Jeff Shippy, a non-service-disabled veteran owns 49%. Protestor further alleges that on April 1, 2021, Mr. Hail was replaced as CEO of EMI while Mr. Mancillas, the CEO of Morningstar [*sic*], became the new CEO of EMI. Protestors takes note that ECI, EMI, and Morningstar [*sic*] all operate out of the same small building in Indianapolis, Indiana, and Mr. Alvarez is the Financial Controller of ECI, EMI, and Morningside. (*Id.*, at 4.)

Protestor claims that “[w]hile Mr. Hail is moving into retirement, Mr. Mancillas has seized control of a web of affiliated entities capitalizing on the [service-disabled veteran] status of Mr. Hail.” Thus, Mr. Hail is only a nominal Chairman of ECI, “casting a thin veil of [service-disabled veteran] ownership which, upon looking closer, shows Mr. Mancillas and Mr. Alvarez controlling nearly all aspects of ECI business.” (*Id.*) Protestor also claims that Mr. Mancillas, Mr. Alvarez, and Mr. Shippy have a corporate web between Morningside, EMI, and ECI, because all three entities share the same CEO, CFO, location address, points of contact, and email addresses. (*Id.*) Protestor then, asserts that Mr. Hail does not and cannot control ECI when ECI is merely another affiliate under the control of Mr. Mancillas, Mr. Alvarez, and Morningside. Further, based on ECI's affiliation and control by non- service-disabled veterans and entities, ECI is not a small business. (*Id.*)

Relying on SDVOSB regulations, Protestor claims that Mr. Hail does not hold the highest officer position in ECI and does not work full-time for the concern. (*Id.*, at 5.) Particularly, Mr. Hail has an equal role with Mr. Mancillas. In addition, Mr. Hail has stepped away from EMI and was moving toward retirement. (*Id.*) Protestor explains that construction companies typically work during the day on weekdays and thus, Mr. Hail cannot work full- time during the daily business hours of a construction company while stepping back from EMI, selling the company, and then moving toward retirement. (*Id.*) Therefore, Mr. Hail no longer controls ECI.

Next, Protestor claims that ECI is controlled by affiliated corporations under Morningside, because EMI's own filings with the Secretary of State show Mr. Mancillas is the CEO as of March 31, 2021. (*Id.*, at 6.) Mr. Mancillas is also the owner and CEO of Morningside, who is not a verified SDVOSB, nor does Morningside represent itself as an SDVOSB. (*Id.*) Morningside also maintains office space at the same address as EMI and ECI.

Protestor's President, Mr. Broderick, asserts that Mr. Hail indicated on multiple occasions that he was retiring and selling his businesses. Protestor maintains that it is widely known within the local construction industry that Mr. Hail takes no active role in his businesses. Rather, Mr. Shippy visits the job sites, makes biddings on Solicitation, and oversees the contract performance, while Mr. Mancillas makes the long-term decisions, and Mr. Alvarez controls the financial decisions. Protestor asserts that Morningside is likely controlling ECI and EMI, and Mr. Shippy presumably controls the day-to-day on-site functions of ECI. However, neither Morningside nor EMI can satisfy the SDVOSB requirements set forth in the Solicitation. (*Id.*)

Finally, Protestor requests a comprehensive investigation into ECI's ownership and control—and all related entities—to ensure compliance with the VA's regulations governing control. (*Id.*, at 7.)

With its Protest, Protestor submits Exhibits A through S, consisting of the Solicitation, the sworn Declaration of Mr. Broderick, ECI's business entity information from inbiz.in.gov, ECI's Certificate of Incorporation, ECI's vetbiz.va.gov profile, ECI's Sam.gov profile, EMI's Certificate of Incorporation, EMI's notice of change of registered agent, EMI's business entity reports, Morningside's certificate of organization, Morningside's business entity reports, a photo of EMI and Morningside's office, Morningside's website, EMI's vetbiz.va.gov profile,

Morningside's business entity information from inbiz.in.gov, EMI's Sam.gov profile, and a site visit sign-in sheet showing Mr. Shippy and Lily Benitez as visitors for ECI.

Mr. Broderick's sworn declaration states that its President, Mr. Broderick subcontracted work to Mr. Hail, who at the time owned EMI and asserted that he would never compete with Protestor. Yet, EMI began competing against Protestor for procurements. (Protestor's Ex. B.) Mr. Broderick then ceased subcontracting any work to EMI and has had no business dealings with ECI. Mr. Broderick further states that Mr. Hail assured him that he would not compete with Protestor as part of their prior business dealings. During a telephone conversation in 2020, Mr. Broderick states that Mr. Hail made it clear that he was stepping back from EMI and moving into retirement. Further, Mr. Broderick became aware that Mr. Hail sold EMI on June 23, 2021, and in another telephone conversation, Mr. Hail relayed that he recently started ECI with Mr. Shippy. Lastly, Mr. Broderick states that “[i]t is widely known that Mr. Hail is moving toward retirement and does not take an active role in ECI. Mr. Shippy handles all the on-site day-to-day operations of ECI.” (*Id.*)

E. ECI's Response

On August 9, 2021, ECI submitted its response.³ ECI alleges that Mr. Hail is the majority interest holder in ECI with a 51% share, and he works full-time overseeing its business, making long-term decisions about ECI's selection of jobs, bids, and performance and overseeing its day-to-day operations. (Response, at 2, 6, 8.) Mr. Hail is the CEO of ECI, holding the highest position in the corporation. (*Id.*, at 13, citing ECI's Ex. 1.) In its first corporate filing, ECI explains that Mr. Hail and Mr. Mancillas were reported as chairmen, while Mr. Hail held the position of Secretary and Treasurer of ECI. However, ECI amended its Bylaws prior to its SDVOSB certification making Mr. Hail the CEO. (*Id.*, at 2, 5-6, citing CF, Exs. 11, 74.) With respect to Mr. Hail's experience and Bylaws, ECI indicates that Mr. Hail has years of experience in the construction industry, including the type of work that ECI does. (*Id.*, at 11.) Therefore, ECI is owned and controlled by a service-disabled veteran.

Conversely, ECI points that Mr. Hail, individually, was not a previous subcontractor for Protestor and did not have a working relationship with Protestor's President, Mr. Broderick. (*Id.*, at 4.) Mr. Hail did not retire in 2020, but he sold his interest in EMI to begin working full-time for ECI. (*Id.*, at 5.) Here, ECI rebuts Protestor's allegations that Mr. Hail made his retirement clear in 2020, indicating that Protestor proffers unsourced claims while Mr. Broderick's testimony is contradicted by Mr. Hail's. (*Id.*, at 5, 13-14.) Mr. Hail works long hours for ECI at its Indianapolis office and ECI jobsites, and he engages in business development and field estimating. (*Id.*, at 14, citing ECI's Ex. 1). He has no other business interest to occupy his time and he is actively running ECI. (*Id.*, at 6, 14.)

ECI further explains that ECI, EMI and Morningside are located in the same building, under separate offices identified by the exterior signage. (*Id.*, at 6.) ECI rents office space from

³ On July 15, 2021, OHA issued a Notice and Order directing ECI to respond by July 30, 2021. ECI then filed a motion for an extension to submit its response by August 9, 2021. Having found good cause, OHA granted the extension.

Morningside Real Estate, Inc., an entity owned by ECI's minority shareholder, Mr. Mancillas, who owns 49% of ECI and 100% of Morningside and EMI; two latter two entities are in the construction contracting business, although engaging in different types of contracting. (*Id.*, at 12, 15-16, citing ECI's Exs. 1-3; CF, Ex. 34). The proximity of these two construction- contracting businesses does not affect ECI's operations and does not create the web of involvement that Protestor speculates it exists. (*Id.*, at 12, 15-16-, 18, citing ECI's Exs. 1-4.) Its arms-length lease connects it to those other businesses only as a co-tenant. (*Id.*, at 18.)

Additionally, ECI maintains that Mr. Hail and Mr. Mancillas are the two director members of the Board, and the State of Indiana's law permits but does not mandate supermajority voting. Rather, the supermajority voting must be affirmatively created by the corporation's shareholders. (*Id.*, at 11, citing Ind. Code §§ 23-1-39-2, -3.) In this case, ECI asserts that there are no supermajority voting requirements by ECI's shareholders or contained in ECI's Bylaws. (*Id.*, CF, Ex. 11.)

As for Mr. Mancillas, he is EMI's CEO and Morningside's sole owner and president. (*Id.*) ECI asserts that Mr. Mancillas is the minority shareholder of ECI and does not work for this concern. (*Id.*, at 7.) Mr. Mancillas' relationship to ECI is only contractual for his limited accounting services and administrative given that Morningside's employee, Mr. Alvarez, provides services as ECI's registered agent. (*Id.*) Mr. Mancillas is nominally an officer of ECI, but he exercises no operational control over it, because he is running his own separate construction businesses. (*Id.*, at 18.)

With respect to Mr. Alvarez's working as a both registered agent for ECI and EMI, ECI states that Mr. Alvarez has a contractual role, handling accounts payable and receivable. (*Id.*, at 6-7, 12, 15.) Mr. Alvarez is employed by Morningside, and Morningside bills ECI for Mr. Alvarez's services. (*Id.*, at 7, 15.) Mr. Alvarez handles ECI's works under the direction of Mr. Hail or Mr. Shippy, but he is not part of ECI's long-term decision-making or its day-to-day operations, and he has no authority to direct ECI's business. (*Id.*, at 12, citing ECI's Exs. 3-4.) In response to Protestor's allegations, ECI states that Mr. Alvarez and "Roy" are the same person. (*Id.*, at 15.) The only "clear line" involving Mr. Alvarez is that he does work for ECI on a contract basis. (*Id.*, citing ECI's Ex. 4). Further, Mr. Alvarez has no interest in ECI and no employment relationship with ECI. (*Id.*)

In response to Protestor's request that the VA conduct a thorough investigation of EMI's SDVOSB status, ECI argues that it is irrelevant to ECI's SDVOSB status, as EMI was not awarded a contract under the Solicitation and the two concerns are two separate entities. (*Id.*, at 2, 16.)

Additionally, ECI finds Protestor's allegations are based on speculation and not fact. First, Protestor claims that Mr. Shippy visits job sites, citing to one job site sign-in sheet, to argue that Mr. Shippy controls ECI. (*Id.*, at 16, citing to Protestor's Ex. S.) While ECI admits that Mr. Shippy makes job site visits for ECI, this does not support Mr. Broderick's speculation. In fact, the sign-in sheet proffered by Protestor also shows two other individuals making job site visits for Protestor, who are other than Mr. Broderick, the unconditional and univocally controlling service-disabled veteran owner of Protestor. (*Id.*, citing Protestor's Ex. B.) Protestor's

reasoning is therefore flawed. Mr. Shippy makes jobs site visits for ECI as part of his duty handling ECI's operations and reporting to Mr. Hail. (*Id.*, citing ECI's Ex. 2.)

ECI states that Mr. Hail delegates this authority to Mr. Shippy. (*Id.*) ECI also explains that construction businesses frequently have other officers beyond the controlling owner who carry out day-to-day oversight of operations and report to the owner. (*Id.*, at 17, citing ECI's Ex. 2.) That is exactly the structure that ECI has. Here, Mr. Shippy conducts day-to-day operations, including dealing with bids and contract execution. (*Id.*) Ultimate decisions about bids or about contract execution are made by Mr. Hail. (*Id.*, citing ECI's Exs. 1-2.)

Further, Protestor's claim over the structure of ECI "likely" having Mr. Mancillas, Mr. Alvarez and Mr. Shippy filling certain roles is also speculative. ECI states that the speculation is contradicted by the facts demonstrated in the sworn declarations made by Mr. Hail, Mr. Mancillas, Mr. Shippy and Mr. Alvarez. (*Id.*, at 16.) Mr. Hail's testimony directly contradicts Protestor's statement that the former is only nominally involved. (*Id.*, at 16-17.)

ECI also denies that Mr. Shippy owns 49% of ECI and responds that Protestor makes speculations about the relationship between ECI, EMI, and Morningside without factual support. (*Id.*, at 8-9.) In fact, Mr. Shippy does not own any portion of ECI; Mr. Hail previously owned EMI and sold his interest to Mr. Mancillas, while Mr. Alvarez's position as a contracted employee of ECI does not confer him any power to conduct ECI's business. (*Id.*, at 9.) ECI further denies any affiliation with either EMI or Morningside, and points that there is no web of affiliated entities capitalizing on Mr. Hail's service-disabled veteran status. (*Id.*, at 9-10.) In turn, ECI states that Mr. Shippy works for ECI, Mr. Alvarez is a contract employee of ECI, and Mr. Mancillas, though having an ownership interest in ECI, is not involved in its daily operations and does not control its long-term decision-making. (*Id.*) Mr. Hail controls ECI, because he owns it and because he operates it. (*Id.*, at 10.) Additionally, ECI states that corporate filings with the Indiana Secretary of State are inconclusive about any facts of ECI's ownership, operation or control of its SDVOSB status.

In concluding its response, ECI asserts that the VA correctly awarded ECI the SDVOSB status in November 2020. (*Id.*, at 18.) The information submitted to the VA at the time of ECI's status application was that Mr. Hail, a service-disabled veteran, owned a majority interest in ECI. The evidence further showed that Mr. Hail was ECI's highest officer, and he controlled ECI. (*Id.*) ECI notes that at its own request, the VA was apprised of ECI's ownership structure in the voluminous submissions to obtain the SDVOSB status in 2020, and the VA was satisfied with this structure to find ECI an SDVOSB. (*Id.*, at 13, citing CF, Exs. 63, 74, 79). On the other hand, there was no new evidence brought by Protestor that undermines the VA's decision. The VA correctly found that ECI meets the VA's SDVOSB requirements after a comprehensive investigation. (*Id.*, at 18-19.) Thus, ECI is controlled by a service-disabled veteran, Mr. Hail.

The evidence in this protest similarly shows that Mr. Hail's owns 51% of ECI and Protestor was incorrect in claiming that Mr. Shippy owned the minority interest, because Mr. Mancillas is the minority owner. (*Id.*, at 18.) However, the minority interest is of no importance when there is no evidence contradicting Mr. Hail's direct, express testimony and documentary evidence that he is the majority owner of ECI. (*Id.*)

Furthermore, Mr. Hail, Mr. Shippy, Mr. Mancillas and Mr. Alvarez all acknowledge that Mr. Hail is ECI's highest officer and, most importantly, that Mr. Hail oversees the long- and short-term decision-making at ECI. (*Id.*, at 18.) Mr. Hail's widely experience in the construction industry is sufficiently skill to run ECI. (*Id.*) To do so, he solely works full-time for ECI during business hours, with a wide variety of tasks drawing on his experience and his relationships in the construction industry. Mr. Hail sits on ECI's Board of Directors, and no non- veteran can override his decisions on the Board of Directors. (*Id.*)

With its initial response, ECI submits Exhibits 1 through 9, consisting of sworn declarations from Mr. Hail (Ex. 1), Mr. Shippy (Ex. 2), Mr. Mancillas (Ex. 3) and Mr. Alvarez (Ex. 4), Morningside's accounting services billing invoice to ECI (Ex. 5), Form 2553 corporate registration (Ex. 6), ECI's organizational structure (Ex. 7), ECI's leadership responsibility as President and CEO (Ex. 8), and ECI's office building signage (Ex. 9).

In Mr. Hail's declaration, Mr. Hail identifies himself as the majority shareholder and CEO of ECI. (ECI's Ex. 1, at 1.) Mr. Hail admits that initial filings identified him as Secretary and Treasurer, but in November 2020, he became CEO and has held the highest position in ECI. (*Id.*, at 2.) Mr. Hail describes his active role and duties at ECI, his working hours and schedule, and his recollection of the telephone conversation with Mr. Broderick. (*Id.*, at 2-6.) Mr. Hail denies that he retired but admits that he stepped back from his prior business, EMI, to commit full-time to ECI. (*Id.*, at 7.) Further, Mr. Hail identifies Mr. Mancillas as the minority shareholder and COO of ECI, his role in ECI, his business ownership of EMI, Morningside, and a real estate. (*Id.*, at 2, 5.) ECI, EMI, and Morningside are located on Tomahawk Trail and each business has its own office suite. (*Id.*, at 2.)

The rest of the declarations acknowledge that Mr. Hail is the CEO of ECI. (ECI's Exs. 2-4.) Particularly, Mr. Shippy states that he is the President of ECI and has no ownership interest in the company. (ECI's Ex. 2, at 1.) Mr. Shippy used to work as a project manager at EMI, when Mr. Hail owned it, and has since worked solely for ECI. (*Id.*) While Mr. Shippy works as a President, he reports to and consults with Mr. Hail on daily operations. (*Id.*, at 2-3.) Next, Mr. Mancillas confirms that he owns Morningside, a drywall, paint and finish subcontractor for residential and commercial construction work, and EMI, a mechanical and HVAC subcontractor, and he draws a salary from each business, working full-time. (ECI's Ex. 3, at 1-2.) He also owns Morningside Real Estate, Inc.'s office building, which rents office space to EMI and ECI in suites B and C, respectively. Mr. Mancillas also offers his role in ECI and his observation of Mr. Hail. Finally, Mr. Mancillas attests that he is not involved in any day-to-day operations, planning, or decision making for ECI. (*Id.*, at 4.) As for Mr. Alvarez, he confirms his position as financial controller, employed by Morningside. (ECI's Ex. 4, at 1.) Morningside contracts with ECI for Mr. Alvarez's financial services, consisting of accounts receivable and accounts payable, at the direction of Mr. Hail or Mr. Shippy. (*Id.*, at 1-2.) Lastly, Mr. Alvarez attests that he has not made any decisions for ECI, but he is merely ECI's registered agent as a formality. (*Id.*, at 3.)

F. Motion for Leave to Reply and Supplemental Protest

On August 20, 2021, after reviewing the D/CVE's case file, Protestor filed a motion for leave to reply to ECI's response.⁴ Using information included in the CF, Protestor indicates that its Supplemental Protest shows that, contrary to ECI's arguments, ECI is not controlled by a service-disabled veteran. (Protestor's Motion, at 1.) Because the CF was first disclosed to Protestor, it asks OHA to consider its supplemental protest arguments, or in the alternative, it asks OHA for leave to reply. (*Id.*)

On its Supplemental Protest, Protestor asserts the CF provides additional support to demonstrate that ECI is not controlled by one or more service-disabled veterans. (Supp. Protest, at 1.) ECI's Response fails to adequately address and respond to the Protest, but it also includes additional facts that give rise to supplemental protest grounds. (*Id.*)

First, Mr. Hail does not control the Board of Directors and he cannot unilaterally act on behalf of the Shareholders. Protestor asserts that Mr. Mancillas, a non-veteran can prevent a quorum or otherwise, block action by the Board. (*Id.*, at 2-3, citing CF, Exs. 22, 74.) Applying 13 C.F.R. § 125.13(a), Protestor maintains that ECI's organizational documents, including its Bylaws and Meeting Minutes, demonstrate that Mr. Mancillas can block actions of the Board by his equal role as a director. Protestor cites a number of SBA regulations to assert that ECI's corporate structure requires unanimous consent and thus, it is not controlled by one or more service-disabled veterans. (*Id.*) Specifically, ECI's Article 2, Section 1 of its Bylaws show that ECI is managed by two directors and the Bylaws, as amended, do not provide for weighted voting based upon the percentage of shares. (*Id.*, at 3, citing CF, Ex. 22.) Instead, each director is entitled to vote, stand silent, or dissent, and in order to reach any decision, “[t]he vote of a majority of the directors present . . . shall be the act of the Board of Directors.” (*Id.*) Mr. Hail alone cannot constitute a quorum at the Board of Director meetings. Because there are no weighted voting requirements, Mr. Mancillas can block action of the Board. Thus, Mr. Hail cannot take unilateral action of the Board of Directors without Mr. Mancillas' assent. Should Mr. Hail wish to take informal action, that too requires the assent of Mr. Mancillas. (*Id.*) Therefore, the service-disabled veteran does not control ECI due to negative control by the board members who are not disabled veterans. (*Id.*, at 2-3.)

In addition, Mr. Hail's ability to control via his ownership interest is equally unavailing. ECI's Bylaws create supermajority voting requirements by the Board or Shareholders. (*Id.*, citing 13 CFR § 125.13(e).) ECI's Bylaws do not delineate between common voting and non-voting shares but require a majority of voting shares to constitute a quorum. (*Id.*, citing CF, Ex. 22, Art. I, § 5.) Absent a quorum, the members can only adjourn the meeting until a later time. (*Id.*) The Bylaws do not establish a division of voting or non-voting shares. Thus, even if Mr. Hail appears for a meeting and then, withdraws from the meeting for any reason, so long as a quorum existed, the remaining shareholders may continue to transact business, even if less than a quorum exists. (*Id.*) Therefore, Mr. Hail's ownership interest is not unconditional because the shareholders may

⁴ On August 19, 2021, Protestor sent a notice to ECI's counsel indicating its intention to seek leave to reply in the event that OHA deems any of Protestor's Supplemental Protest as a Reply. ECI indicated that it opposed the motion.

take action without the approval of Mr. Hail, the service-disabled veteran. (*Id.*, citing 13 CFR § 125.13(a).)

Even if Mr. Hail's shares are deemed voting shares, Mr. Hail still cannot unilaterally make decisions without the written consent of all shareholders. (*Id.*, citing CF, Ex. 22, Art. I, § 6.) Conversely, should Mr. Hail call for a special meeting, he must provide notice and wait at least 10 days before calling a meeting and taking any form of action. (*Id.* citing CF, Ex. 22, Art. I, § 3.) Presumably, Mr. Shippy, as President, may call a meeting at any time and delay action by ECI. (*Id.*) Such delays may result in ECI failing to submit bids upon procurements, invading the purported role of Mr. Hail. (*Id.*) Such power effectively renders Mr. Hail's authority as illusory, as he does not control the Board, nor may he unconditionally execute his purported duties, as he is subject to the calling of shareholder meetings on any such business. (*Id.*, at 3-4, citing CF, Ex. 22, Art. I, § 1.) Therefore, Mr. Hail is presumed not to control ECI.

Next, Protestor asserts that Mr. Shippy, a non- service-disabled veteran, remains the President and CEO of ECI. Its Bylaws have not been properly amended since formation and the purported meeting minutes are improper and ineffective. (*Id.*, at 4, citing CF, Exs. 22, 74.) Even if the purported amendment was effective, it does not remove the previous language and ECI is left with two different paths, both of which result in a finding the service-disabled veteran lacks requisite control, *infra*.

Here, ECI's organizational documents hold out Mr. Shippy as ECI's CEO. (*Id.*, citing CF, Ex. 22.) Even after ECI's ineffective and improper amendment, Mr. Shippy remains ECI's CEO. (*Id.*, citing CF, Ex. 74.) Absent from ECI's Meeting Minutes from November 16, 2020, is any indication as to the quorum, voting procedures, or any other metric by which these meeting minutes were agreed to. (*Id.*) This proposed November 2020 action is not denoted as an action of the Board or Shareholders, and its Bylaws do not allow for amendment without an official vote of the Board or Shareholders. (*Id.*, citing CF, Ex. 22, Art. V.) No such vote has occurred, nor has ECI provided any log of such action. Additionally, no election of officers occurred, in contravention of the Bylaws. (*Id.*, citing CF, Ex. 22, Art. III, § 2.) Therefore, the amendment of the Bylaws and the election of new officers are void and ineffective. (*Id.*) As a result, Mr. Shippy remains the duly elected President of ECI. As President, Mr. Shippy is “the [CEO] and shall carry out the day-to-day operations of the corporation.” (*Id.*, citing CF, Ex. 22, Art. III, § 1.)

Should the Meeting Minutes be presumed to be effective, the number and function of officers has been changed and the previous officers have been removed; thus, ECI now has no Treasurer. (*Id.*) Notably, the Treasurer is authorized to open bank accounts, deposit funds, and designate signatories. (*Id.*, citing CF, Ex. 22, Art. III, § 1.) Here, Protestor ponders the alternative option for ECI is that the Meeting Minutes were in addition to the original Bylaws, and it did not remove any of the previous language. However, Protestor argues that the alternative option is unavailing, as it creates shadow officers with duplicate roles. Further, Protestor revisits its argument that ECI has spun its own web of officers, which results in an untenable corporate structure in which ultimate control is not vested in one or more service- disabled veterans. (*Id.*)

Lastly, Protestor claims that Mr. Hail does not work or represent ECI during normal business hours. (*Id.*, at 5.) The CF also shows that Mr. Hail does not work for ECI full-time. (*Id.*,

citing CF, Ex. 62.) Pursuant to 13 CFR § 125.13(k), Protestor claims that Mr. Hail's filings with the CVE create yet another presumption that he does not control ECI. (*Id.*)

Replying to ECI's response, Protestor argues that nothing in ECI's response denotes whether Mr. Hail works during the normal business hours of ECI. Instead, Mr. Hail affirms that he works at least four days per week at the Indianapolis office. (*Id.*, citing ECI's Ex. 1, ¶ 27.) Generally accepted businesses are normally operated from 8:00 a.m. through 5:00 p.m., Monday through Friday. Mr. Hail forecasted his working hours back when he worked solely for EMI in accordance with these general hours of operation; however, he did not provide his working hours at ECI. (*Id.*, citing CF, Ex. 63.)

Protestor then argues that OHA found “no such exception for fledgling, or new, businesses to the requirement for service-disabled veterans to work for the concern during normal working hours.” (*Id.*, citing *CVE Protest of Hamhed, LLC*, SBA No. CVE-190 (2021) (PFR).) In this case, Mr. Hail fails to rebut the presumption that he does not work for ECI during normal working hours. (*Id.*, citing CF, Ex. 63; ECI's Ex. 1.) Further, ECI does not provide a work schedule for Mr. Hail, ECI's working hours, or Mr. Hail's days and hours in the office. The only filings with the CVE are projected work hours, and thus, ECI's response fails to rebut the presumption he does not work at ECI during normal working hours. (*Id.*)

Therefore, Mr. Hail is presumed to not control ECI and OHA should find lack of control on this basis alone. Taken together with Protestor's initial arguments, which ECI fails to rebut, and these supplemental protest grounds, ECI is not an eligible SDVOSB. (*Id.*)

G. ECI's Motion and Supplemental Response

On August 25, 2021, ECI filed a motion for leave to respond to Protestor's supplemental protest.⁵ (ECI's Motion.) ECI states that Protestor's supplemental protest contained three more detailed arguments about ECI's SDVOSB status than in its original protest, filed on June 28, 2021, and these new iterations of Protestor's arguments will go un rebutted if ECI does not make a supplemental response. (*Id.*, at 1.) Pursuant to 13 C.F.R. § 134.1007(f), ECI states that the regulation grants ECI 15 days for a supplemental response and Protestor's supplemental protest was due on August 20, 2021; however, OHA did not set a date for ECI's supplemental response. (*Id.*) To the extent that OHA determines a motion for leave to submit ECI's supplemental protest is required, ECI seeks this leave to make its supplemental response. (*Id.*, at 2.)

In its Supplemental Response, ECI revisits its argument that ECI meets 13 C.F.R. § 125.13(e)(1)(ii) three factors test for a service-disabled veteran to control a corporate board. (Supp. Response, at 1.) First, Mr. Hail owns 51% of a corporation's common stock, which Protestor concedes. (*Id.*, citing ECI's Ex. 1; Supp. Protest, at 3). Second, Mr. Hail is on the corporation's board of directors, which Protestor concedes. (*Id.*, citing CF, Ex. 11; Supp. Protest, at 3.) Third, there is no supermajority voting requirements *for shareholders* to approve corporate actions. (*Id.*, emphasis ECI's.)

⁵ ECI's counsel advised Protestor's counsel of its Motion, and Protestor indicated that it objects to the leave sought in this Motion.

ECI claims that Protestor's argument that ECI's Bylaws create supermajority voting by both, the Board of Directors and by its shareholders, is unsupported, when its Bylaws do not expressly or even impliedly create supermajority voting for its shareholders. (*Id.*, at 1-2, citing CF, Ex. 11). ECI states that Indiana law requires supermajority requirements to be affirmatively created, but ECI did not do so when it made its Bylaws. (*Id.*, at 2.) Further, when the CVE was informed of ECI's corporate structure, it granted ECI's SDVOSB status, in part, because ECI had met this test for corporate board control. (*Id.*)

In response to Protestor's supplemental argument about control and how it does not account for Mr. Hail's ultimate authority as the majority shareholder of the corporation, ECI counterargues that a majority of shares—that is, Mr. Hail's controlling shares—can call a shareholders' meeting for any purpose. (*Id.*, citing CF, Ex. 11, Art. I, § 2.) At that shareholders' meeting, a majority of shares, again, Mr. Hail's controlling shares, can remove or replace any director. (*Id.*, citing CF, Ex. 11, Art. II, § 9.) In the event of a deadlock of the Board of Directors, Mr. Hail has the final mechanism to exert his control over ECI's business. (*Id.*)

Next, ECI asserts that Mr. Shippy is not ECI's CEO. While Protestor argues on its supplemental protest that Mr. Shippy, ECI's President, remains the CEO because ECI's amendment of its Bylaws were improperly amended, thus depriving Mr. Hail of control of ECI, here, ECI responds that these claims are expressly contradicted by the evidence in the record that Mr. Hail is ECI's CEO and Mr. Shippy avers only as the President. (*Id.*, citing ECI's Exs. 1-2.) While it is undisputed that ECI gathered its two shareholders and its two directors together on November 16, 2020, the Meeting Minute affirmatively states that ECI's Bylaws are amended to set out its officers' responsibilities. (*Id.*, citing CF, Ex. 74.) The amendment clarifies that Mr. Hail is ECI's CEO and that Mr. Shippy is ECI's president. (*Id.*)

ECI further explains that its shareholders and its Board of Directors are each empowered to do consent resolutions in lieu of formal meetings. (*Id.*, citing CF, Ex. 11, Arts. I, § 6 and II, § 8.) The Bylaws do not direct what written form a shareholder's or director's action by consent resolution must take. (*Id.*) ECI then claims that Protestor's “argument that somehow ECI's November amendment is ineffective or invalid is an exaltation of form over substance, suggesting that the format of the document or the informality of its execution somehow did not amount to an exercise of valid shareholder or Board of Directors action expressly authorized by ECI's bylaws.” (*Id.*) Additionally, Protestor ignores the evidence in the record that Mr. Hail, by the account of all witnesses, acts as ECI's CEO. (*Id.*)

As for Mr. Hail working hours and Protestor's final supplemental arguments that Mr. Hail does not work full-time for ECI, ECI asserts that Mr. Hail works full-time, and Protestor is ignoring copious evidence about Mr. Hail's work for ECI. (*Id.*, at 3.) ECI explains that Mr. Hail works 40 to 50 hours per week for ECI. (*Id.*, citing ECI's Ex. 1, ¶ 27.) That is four or five days per week in ECI's Indianapolis office. (*Id.*) He works those hours during the business days, which Protestor concedes is Monday through Friday, from 8:00 a.m. to 5:00 p.m. (*Id.*, citing ECI's Ex. 1, ¶ 12.) Mr. Hail also does business development, estimating and job site visits out of ECI's office during the business day. (*Id.*, citing ECI's Ex. 1, ¶ 27.)

ECI further asserts that Protestor's arguments are a mischaracterization of the evidence in the record. Mr. Hail does not work for any other entity. (*Id.*, citing ECI's Ex. 1, ¶ 29.) Its CEO's duties encompass long-term decision making for the corporation, from contacting vendors, suppliers and contractors, pricing of goods and services, purchasing of equipment, to executing bonds and insurance. (*Id.*, citing ECI's Ex. 1, ¶ 19.) Mr. Hail visits job sites and attends internal meetings at ECI, as well as meetings with the VA. (*Id.*, citing ECI's Ex. 1, ¶¶ 20-23.) The breadth of Mr. Hail's work as ECI's CEO supports his claims of full-time work. Thus, Mr. Hail's work could not be done at irregular, non-business hours.

III. Discussion

A. Burden of Proof

As the protested firm, ECI has the burden of proving its eligibility as a SDVOSB by a preponderance of the evidence. 13 C.F.R. § 134.1010. The decision must be based primarily on the case file and the information provided by the protester, the protested concern, and any other parties. 13 C.F.R. § 134.1007(g). Accordingly, all the evidence submitted by the Protestor and ECI is part of the record.

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. 13 C.F.R. § 134.1003(d)(1); *CVE Protest of Alpha4 Solutions, LLC d/b/a Alpha Transcription*, SBA No. CVE-103-P (2019). Here, ECI submitted its bid on June 23, 2021, and the instant protest was filed on June 28, 2021. Sections II.C and II.D, *supra*. Thus, OHA must examine ECI's eligibility as of these dates, using the substantive ownership and control regulations in effect on each date.

C. Analysis

First, Protestor's allegations that ECI is not a small business and is affiliated with multiple entities lacks jurisdiction and credible evidence. Sections II.D, and II.F, *supra*. If Protestor had any specific allegations that ECI was other than small, it should have filed a size protest with the CO. 13 C.F.R. § 121.1003. However, Protestor failed to do so. Accordingly, I DISMISS such allegations, because they are not made in the proper venue and are not based on credible evidence that the concern is not 51% owned by a service-disabled veteran. 13 C.F.R. § 134.1003(b); *CVE Protest of Alpha4 Solutions LLC*, SBA No. CVE-156, at 5 (2020) (*Alpha4 Solutions*).

Next, to be considered an eligible SDVOSB, a concern must be a small business that is unconditionally owned and controlled by one or more SDVs. 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.” As discussed further below, ECI has persuasively demonstrated that it meets these requirements. In reviewing the protest in

light of the record and ECI's responses, I find Protestor's allegations to be speculative and without a legal or factual basis. Therefore, I must deny this protest.

In the context of a corporation, at least 51% of the aggregate of all stock and of each class of voting stock outstanding must be unconditionally owned by one or more service-disabled veterans. 13 C.F.R. § 125.12(d). The control requirement means that both long-term decision-making and “the day-to-day management and administration of the business operations” must be conducted by one or more service-disabled veterans. 13 C.F.R. § 125.13(a). The service-disabled veteran must hold the position of the highest officer in the concern. 13 C.F.R. § 125.13(b). If the service-disabled veteran is not the most highly compensated officer of the firm, there is a rebuttable presumption that they do not control it. 13 C.F.R. § 125.13(i)(2). If the concern is a corporation, the service-disabled veteran must control the Board of Directors. If the service-disabled veteran owns at least 51% of the concern's stock, has a seat on the Board of Directors, and there are no supermajority voting requirements, the service-disabled veteran is deemed to control the Board. 13 C.F.R. § 125.13(e)(1)(ii). The terms of the concern's governing documents determine who controls the decisions of the company. *See XOtech LLC v. United States*, 950 F.3d 1376, 1380 (Fed. Cir. 2020).

As the relevant dates are June 23, 2021, the date bids were submitted, and June 28, 2021, the date the protest was filed, and the record reflects no change in ECI's status in the intervening time, I will determine ECI's eligibility relying upon the same documents for both dates.

Here, Protestor's questioning of Mr. Hail's ownership and control of ECI based on mere allegations that Mr. Hail confided he was selling and retiring from a firm other than ECI, relying on unidentified sources that Mr. Shippy is the minority shareholder of ECI, and speculating that multiple businesses share the same address with ECI— as evidence that other non-veterans control ECI, amounts to no more than groundless assertions and mere speculation, and provide no evidentiary statements from Mr. Hail, Mr. Shippy, Mr. Mancillas, and Mr. Alvarez. OHA must give greater weight to sworn testimony over mere assertions and speculations.⁶ 13 C.F.R. § 134.1011; *CVE Protest of Veterans Command, LLC*, SBA No. CVE-191-P, at 4 (2021). These sworn statements give first-hand evidence that Mr. Hail controls both, the long-term decision making and day-to-day operations of ECI, and that he thus, controls the concern. 13 C.F.R. § 125.13(a).

In response to the protest, ECI explained that Mr. Hail sold his other business, EMI, to Mr. Mancillas, ECI's minority shareholder, and therefore, Mr. Hail was retiring from EMI to focus on ECI. Sections II.E, and II.G, *supra*. Mr. Shippy has no ownership interest in ECI. *Id.* Further, ECI admits that it is located in the building as EMI and Morningside, but in a separate office, Suite C, while paying rent. *Id.* The fact that ECI is in a separate suite means it is not co-located with Morningside in a way that would raise a rebuttable presumption of control under 13 C.F.R. § 125.13(i)(3). *CVE Protest of Randy Kinder Excavating, Inc.*, SBA No. CVE-

⁶ In contrast, Protestor's sworn declaration offers mere allegations, relating to Mr. Hail's intention and actions as then owner of EMI, and mere speculations, questioning Mr. Hail's current role and activities at ECI. The first part of Mr. Broderick's declaration is irrelevant to the issue of Mr. Hail's ownership and control of ECI, while the latter is without evidentiary support.

198-P, at 20 (2021). ECI further admits EMI and Morningside work in the construction line of business; however, Morningside is a drywall, paint, and finish subcontractor for residential and commercial construction work, while EMI is a mechanical and HVAC subcontractor. *Id*; Rogelio Mancillas' Declaration, ¶¶ 4, 9. ECI also admits it subcontracts Morningside's registered agent to handle accounts payable and receivable for a fee. None of these admissions amount to any loss of control by Mr. Hail over the company. Therefore, I find allegations related to EMI and Morningside irrelevant to Mr. Hail's ownership and control of ECI.

Next, Protestor's supplemental allegation—that ECI's corporate meeting on November 16, 2020, amending its Bylaws and electing Mr. Hail as the CEO were ineffective and improper—is meritless. Section II.F, *supra*. The amendment to its Bylaws was made by ECI's key officers, also in their capacity as Directors and Shareholders, while the same officers' Declarations acknowledge each individual's role in the meeting and are not inconsistent with the documentation in the Case File. More importantly, this set of Meeting Minutes was submitted to the CVE as part of ECI's application and verification to the program. This amendment to the Bylaws enacted by ECI plainly elected Mr. Hail as CEO, and thus, he holds the highest officer position, as required to establish his control of the firm. 13 C.F.R. § 125.13(b). Whether ECI lacks a Treasurer after Mr. Hail became the CEO is also irrelevant in determining Mr. Hail's ownership and control of the concern. Even if alleged, Protestor offers no legal authority for the assertion that the amendment of the Bylaws and the election of new officers are void and ineffective.

The only key issue in this case is whether ECI's Bylaws contain a supermajority vote, impermissibly limiting Mr. Hail's ability to own and control ECI, as Protestor asserts. Section II.F, *supra*. In reviewing the Bylaws and considering Mr. Hail's amended position as a CEO and his majority shares of ECI, it is clear that there is no supermajority vote required in its Bylaws, nor is it required under Indiana law. *See* Sections II.E, and II.G, *supra*; IND. CODE §§ 23-1-39-2, -3. As ECI underlined, Mr. Hail can request a special meeting to remove a director with or without cause and his majority shares constitute a quorum. Having conferred these rights, I can hardly find that Mr. Mancillas, the minority shareholder of and director of ECI, has negative control over Mr. Hail or ECI. *Id*. Thus, it is clear that Mr. Hail has the majority of ECI's stock, he is seated on the Board of Directors, and there are no supermajority voting requirements. Accordingly, ECI meets the regulatory requirement for control of the Board of Directors by Mr. Hail. 13 C.F.R. § 125.13(e)(1)(ii); *Alpha4 Solutions*, at 6.

Lastly, Protestor's reliance on *Hamhed* to argue that Mr. Hail has failed to rebut the presumption that he does not work for ECI during normal working hours, is inapposite. In *Hamhed*, OHA found the protested concern's service-disabled veteran upon whom the claim of eligibility was based, had two employments, one that occurred during the normal working hours for a startup federal contracting business concern, and another, which overlapped with its federal employment working hours. *Hamhed* at 2, 4. Here, there is no evidence that Mr. Hail has other employment besides ECI. To the contrary, Mr. Hail has provided documentation of his devoting full-time to ECI during the normal working hours, and the record and sworn declarations support it. Sections II.E, and II.G, *supra*; ECI's Exs. 1-4. Protestor offers only its own speculation in support of its claim that Mr. Hail does not devote full-time to ECI. As

Protestor concedes, Mr. Hail sold his other business to Mr. Mancillas. Therefore, Mr. Hail's working hours are consistent with the record before the CVE and OHA.

Having found no impermissible clauses in ECI's Bylaws, the record reflects, and Protestor does not dispute, that ECI is majority-owned by Mr. Hail, a service-disabled veteran. Sections II.E, and II.G, *supra*. Mr. Hail is also a Director of ECI and holds ECI's highest officer position of CEO. *Id.* Accordingly, I find that ECI is owned and controlled by Mr. Hail, a service-disabled veteran.

IV. Conclusion

ECI has proven its eligibility as a SDVOSB by a preponderance of the evidence. I therefore DENY the protest. 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