

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

CVE Protest of:

In and Out Valet Company,

Protestor,

Re: Spearpoint Logistics, LLC

Solicitation No. 36C25022Q0377

U.S. Department of Veterans Affairs

SBA No. CVE-237-P

Decided: July 11, 2022

APPEARANCES

Nancy M. Camardo, Esq., Camardo Law Firm, P.C., Auburn, New York, for In and Out Valet Company

Sean Mitzel, President, Spearpoint Logistics LLC, Newark, Delaware

DECISION¹

I. Introduction and Jurisdiction

On April 20, 2022, In and Out Valet Company (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Spearpoint Logistics, LLC (Spearpoint) in connection with U.S. Department of Veterans Affairs (VA) Request for Quotations (RFQ) No. 36C25022Q0377. Protestor alleges that Spearpoint is financially dependent upon a non-SDVOSB, Granite Peak Group (GPG), and that Mr. Sean Mitzel, a service-disabled veteran and Spearpoint's President, does not fully control Spearpoint. 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

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. After reviewing the decision, the challenged firm, Spearpoint Logistics, LLC, informed OHA that it had no requested redactions. Therefore, OHA now issues the entire decision for public release.

134 subpart J.² Protestor filed its protest within five business days after receiving notification that Spearpoint 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. The Procurement

On March 25, 2022, VA issued RFQ No. 36C25022Q0377 for valet parking services at the Cincinnati VA Medical Center (VAMC) in Cincinnati, Ohio. (Case File (CF), Exh. 95, at 15.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 812930, Parking Lots and Garages, with a corresponding size standard of \$41.5 million average annual receipts. (*Id.* at 1.) Quotations were due April 11, 2022. (*Id.* at 1, 53.) Spearpoint and Protestor submitted timely quotations.

B. Protest

On April 13, 2022, the CO informed Protestor that Spearpoint was the apparent awardee. Protestor filed the instant protest on April 20, 2022, and the CO forwarded the protest to OHA for review. Accompanying its protest, Protestor offered business reports relating to Spearpoint and GPG, as well as website and social media printouts, purporting to show common personnel, similar addresses, and phone numbers between the two concerns. (Protest Exhs. 1-15.)

In the protest, Protestor alleges that Spearpoint received, and continues to receive, critical financial support from GPG, a non-SDVOSB. (Protest at 3-4.) Protestor asserts that Spearpoint “opened approximately 20 facilities within the last 2 years,” and that “[i]t would be unreasonable to believe that one veteran could possibly finance the expensive start-ups for the establishment of all these facilities within 2 years.” (*Id.* at 3.) Therefore, Protestor urges, “the only reasonable explanation for this massive enterprise is that GPG either ‘gave’ or ‘loaned’ Spearpoint the necessary start-up monies.” (*Id.*) Protestor further posits that Spearpoint could not support the new facilities immediately after opening, so “it is reasonable to assume that GPG is supporting the operations costs” for the new facilities. (*Id.* at 4.) The alleged financial relationship between the companies creates “a possibility of control by GPG”. (*Id.*)

Protestor also contends that Spearpoint's President, Mr. Mitzel, does not control the day-to-day management of Spearpoint. (*Id.*) Protestor claims that Mr. Mitzel holds “several positions within GPG” that may interfere with his duties and responsibilities at Spearpoint. (*Id.*) At a minimum, Mr. Mitzel likely will be unable to devote significant attention to the instant contract, as he must simultaneously manage “over 20 separate facilities” and “4 continuing SDVOSB contracts” for Spearpoint. (*Id.*) Mr. Mitzel apparently resides in Idaho, whereas Spearpoint is based in Newark, Delaware. (*Id.* at 2, 4.) Protestor also observes that NAICS code 812930 is not

² 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).

listed in Spearpoint's SBA profile, and in Protestor's view, the NAICS codes which are identified have "little or no relationship to the valet parking work required under the contract." (*Id.*)

Protestor concludes that "Spearpoint and GPG are 'gaming the system' and committing a fraud on the Government." (*Id.* at 5.) OHA should sustain the protest and find that Spearpoint "is merely a front for GPG to improperly partake in the SDVOSB program." (*Id.*)

C. Spearpoint's Response

On May 6, 2022, Spearpoint responded to the protest. Spearpoint contends that the protest is based on "erroneous facts and false assumptions," and should be denied. (Response at 2.)

Contrary to Protestor's allegation that Spearpoint has established 20 new facilities within the last two years, Spearpoint states that it has opened only "4 facilities of relatively small size since its formation", which are located in Newark, Delaware; Reno, Nevada; Post Falls, Idaho; and Houston, Texas. (*Id.* at 1.) Spearpoint has "never received" loans or other financial assistance from GPG, nor is Spearpoint financially dependent on GPG. (*Id.* at 1-2.)

Next, Spearpoint argues that, although Protestor focuses specifically on the role of Mr. Mitzel, he is by no means "the only" service-disabled veteran associated with Spearpoint. (*Id.*) Instead:

- Mr. Brandon D. McGowan, a service-disabled veteran, owns 32% of Spearpoint;
- Mr. Joshua B. Jamison, another service-disabled veteran, also owns 32% of Spearpoint; and
- Mr. Roy F. Bourne, a veteran but not a service-disabled veteran, owns 32% of Spearpoint.

(*Id.*) Spearpoint states that Messrs. McGowan, Jamison, and Bourne each "devote substantial time to the business strategy and decision making" of Spearpoint. (*Id.* at 2.) Although Mr. Mitzel is also a service-disabled veteran and is Spearpoint's President, he holds only a 2% ownership interest in Spearpoint. (*Id.*)

Spearpoint explains that Mr. Mitzel works full-time for Spearpoint and "devotes 100%" of his efforts to Spearpoint. (*Id.*) Mr. Mitzel previously was employed by GPG, but resigned from that position upon assuming his role as President of Spearpoint, and is no longer employed by GPG. (*Id.*) Spearpoint reiterates that "[t]here is not, and never has been, any managerial decision making or financial link in any way whatsoever between [Spearpoint] and [GPG]." (*Id.*)

D. Case File

The Case File indicates that Spearpoint is a limited liability company based in the state of Delaware. (CF, Exh. 9.) According to Spearpoint's Operating Agreement adopted on September 9, 2019, Messrs. McGowan, Jamison, and Bourne each own 30% of Spearpoint; the remaining 10% interest is held by a fourth individual, Mr. James L. Evenson. (CF, Exh. 32 at 2.) Messrs. McGowan and Jamison are service-disabled veterans. (CF, Exhs. 18, 23.) Spearpoint's Operating Agreement identifies Messrs. McGowan, Jamison, Bourne, and Evenson as Members of Spearpoint. (CF, Exh. 32. at 1-2.) Pursuant to the Operating Agreement, “[t]he business and affairs of the Company shall be managed, directed, supervised, and conducted by one or more Managers to be elected by the Members.” (*Id.* at 6.) Mr. McGowan is the “initial Manager” with “exclusive control over the business and affairs of the Company”. (*Id.*) The Manager serves “until he resigns or is removed by the Members as provided in this agreement.” (*Id.*) Among other powers, the Manager unilaterally appoints, and may remove, Spearpoint's officers and agents. (*Id.* at 6-7.)

In response to a request for additional information from VA's Center for Verification and Evaluation (CVE), Spearpoint stated that Messrs. McGowan and Jamison manage and control the daily operations of Spearpoint. (CF, Exh. 64 at 2.) Spearpoint further represented that it “does not have any business relationship with any entity of [GPG]”. (*Id.* at 3.)

On October 5, 2020, CVE verified Spearpoint as an SDVOSB, and added Spearpoint to the Vendor Information Pages database of eligible firms. (CF, Exh. 87.)

III. Discussion

A. Burden of Proof

As the protested firm, Spearpoint has the burden of proving its eligibility 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, Spearpoint submitted its quotation for the instant procurement on April 11, 2022, and the protest was filed on April 20, 2022. Sections II.A and II.B, *supra*. Therefore, OHA must examine Spearpoint's eligibility as of these dates, using the substantive ownership and control regulations in effect on each date.

C. Analysis

I find no merit to this protest. Pursuant to SBA regulations, an eligible SDVOSB must be at least 51% owned by one or more service-disabled veterans. *See* 13 C.F.R. § 125.12. Here, the record reflects that Messrs. McGowan and Jamison, who are service-disabled veterans, together own 60% or more of Spearpoint, and there are no restrictions on their ownership. Sections II.C

and II.D, *supra*. SBA regulations also require that one or more service-disabled veterans must fully control the SDVOSB. *See* 13 C.F.R. § 125.13. In the instant case, Spearpoint's Operating Agreement identifies Mr. McGowan as the Manager of Spearpoint, and stipulates that he has “exclusive control over the business and affairs of the Company.” Section II.D, *supra*. Although Protestor questions whether Mr. Mitzel could control Spearpoint, Protestor raises no allegations that Messrs. McGowan and Jamison lack such control. Section II.B, *supra*. Accordingly, Spearpoint has persuasively shown that it meets the requisite ownership and control requirements.

In its protest, Protestor contends that GPG may have provided loans or other financial assistance to enable Spearpoint to open 20 new facilities in the last two years, and that Spearpoint and GPG may share facilities, personnel, or other resources. Section II.B, *supra*. Protestor, though, points to no evidence to support these claims, and Spearpoint denies that it has, or has had, any financial or business dealings with GPG. Sections II.C and II.D, *supra*. Spearpoint further insists that it has only four facilities, not 20 as alleged by Protestor. *Id*. Because Protestor's allegations have no apparent factual foundation beyond mere speculation, Protestor has not advanced valid grounds to sustain a protest. *E.g.*, *CVE Protest of VanDahl Eng'g & Sales, Ltd.*, SBA No. CVE-169-P, at 4 (2020) (rejecting protest allegations that were “based upon speculation as to [the challenged firm's] ownership and control”).

Protestor further alleges that Spearpoint's President, Mr. Mitzel, does not control Spearpoint, because he holds “several positions within GPG.” Section II.B, *supra*. This allegation fails for two reasons. First, Spearpoint reasonably explains that although Mr. Mitzel previously was employed by GPG, he has since resigned from GPG and now works solely for Spearpoint. Section II.C, *supra*. The record, then, does not support the conclusion that Mr. Mitzel had other employment as of April 11, 2022 and April 20, 2022, the pertinent dates for determining eligibility. *E.g.*, *CVE Protest of Welch Constr., Inc.*, SBA No. CVE-210-P, at 4 (2021). Second, even if Mr. Mitzel had been employed by both GPG and Spearpoint during April 2022, the issue would be immaterial here because Messrs. McGowan and Jamison, who are service-disabled veterans, still would control Spearpoint. As discussed above, Messrs. McGowan and Jamison together hold a controlling ownership interest in Spearpoint, and Mr. McGowan, as Spearpoint's Manager, has “exclusive control over the business and affairs of the Company.” Sections II.C and II.D, *supra*. Among his other responsibilities, Mr. McGowan appoints, and may remove, Spearpoint's officers, such as Mr. Mitzel. *Id*. Protestor does not dispute that Spearpoint is controlled by Messrs. McGowan and Jamison. Section II.B, *supra*. Consequently, Protestor's allegations regarding Mr. Mitzel's outside employment are immaterial to the issue of control.

Lastly, Protestor observes that NAICS code 812930, assigned to the instant procurement, is not listed on Spearpoint's SBA profile. Section II.B *supra*. While this may be true, such matters are not valid grounds for a status protest under 13 C.F.R. § 134.1003. Protestor has not explained how the omission of NAICS code 812930 from Spearpoint's SBA profile would have any bearing on Spearpoint's ownership or control by service-disabled veterans.

IV. Conclusion

Spearpoint has shown that it is an eligible SDVOSB for the instant procurement. The protest therefore is DENIED. 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