

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

CVE Protests of:

Crosstown Courier Service Inc,

Protestor,

Re: Caduceus Medical Logistics LLC

Solicitation Nos. 36C26021Q0849,
36C25622Q0189, 36C25522Q0118

SBA No. CVE-239-P

Decided: July 26, 2022

APPEARANCES

Steven A. Neeley, Esq., Michael J. Schrier, Esq., Husch Blackwell LLP, Washington, D.C., for the Protestor

Julie M. Nichols, Esq., James S. Phillips, Esq., Roeder, Cochran, Phillips, PLLC, McLean, Virginia, for Caduceus Medical Logistics LLC

DECISION¹

I. Introduction and Jurisdiction

On October 8, 2021, Crosstown Courier Service Inc. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Caduceus Medical Logistics LLC (Caduceus) in connection with U.S. Department of Veterans Affairs (VA) Request for Quotations (RFQ) No. 36C26021Q0849. The Contracting Officer (CO) forwarded the protest to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) for review. While that protest was pending, Protestor filed a second SDVOSB status protest against Caduceus on February 7, 2022, in conjunction with a different VA procurement, RFQ No. 36C25622Q0189. On April 1, 2022, Protestor filed a third SDVOSB status protest against Caduceus, in connection with another VA procurement, RFQ No. 36C25522Q0118. Because the three protests presented identical issues and involved the same parties, OHA consolidated them into a single proceeding for adjudication. For the reasons discussed *infra*, the protests are denied.

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded the parties an opportunity to file a request for redactions if desired. No redactions were requested, and OHA therefore now issues the entire decision for public release.

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 respective protests within five business days after learning that Caduceus was the apparent awardee, so the protests are timely. 13 C.F.R. § 134.1004(a)(2)(i). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Procurements

On August 4, 2021, VA issued RFQ No. 36C26021Q0849 for medical courier services at the VA Puget Sound Health Care System in Seattle, Washington. (Case File (CF) Exh. 76.) The CO set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 492210, Local Messengers and Local Delivery, with a corresponding size standard of \$30 million annual receipts. (*Id.* at 1.) Quotations were due August 18, 2021. (*Id.*) Protestor and Caduceus submitted timely quotations. On October 1, 2021, the CO announced that Caduceus was the apparent awardee.

On December 8, 2021, VA issued RFQ No. 36C25622Q0189 for medical courier services at the Central Arkansas Veterans Healthcare System (CAVHS) and associated community-based outpatient clinics (CBOCs). (First CF Supp.,³ Exh. 32.) The RFQ was set aside entirely for SDVOSBs and was assigned NAICS code 492110, Couriers and Express Delivery Services, with a corresponding size standard of 1,500 employees. (*Id.* at 2.) Quotations were due January 13, 2022. (*Id.*) Protestor and Caduceus submitted timely quotations. On February 2, 2022, the CO announced that Caduceus was the apparent awardee.

On March 1, 2022, VA issued RFQ No. 36C25522Q0118 for medical courier services at the VA St. Louis Healthcare System (SLHS). (Second CF Supp.,⁴ Exh. 3.) The RFQ was set aside entirely for SDVOSBs under NAICS code 492110. (*Id.* at 1.) Quotations were due March 15, 2022. (*Id.*) Protestor and Caduceus submitted timely quotations. On March 31, 2022, the CO announced that Caduceus was the apparent awardee.

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).

³ Because VA's Center for Verification and Evaluation (CVE) had previously transmitted the Case File pertaining to Caduceus in response to Protestor's first protest, OHA instructed that CVE need not re-submit the entire Case File in response to the second protest. Rather, CVE could submit any new documents that had been added to the Case File since the first protest.

⁴ As with the second protest, OHA directed that CVE need not re-submit the entire Case File in response to the third protest, and that CVE instead could file any new documents that had been added to the Case File since the second protest.

B. Protests and Responses

1. The First Protest

In the first protest, Protestor alleged that Caduceus is not fully controlled by Mr. Brian N. Kosoris, a service-disabled veteran who is Caduceus's majority owner and Chief Executive Officer (CEO). (First Protest at 3-4.) Instead, Protestor posited, Caduceus is controlled by Mr. Mark W. Speight, who is neither a veteran or a service-disabled veteran. (*Id.* at 5.) Mr. Speight is Caduceus's Chief Operating Officer (COO). (*Id.* at 3.) Protestor alleged that Mr. Kosoris “has no prior experience in the medical courier services industry” and therefore lacks “managerial experience of the extent and complexity necessary to run a medical courier services company that is providing same-day delivery of human specimens.” (*Id.* at 3, 5.) Mr. Speight, on the other hand, does have such experience. (*Id.* at 3.) Protestor further contended that Mr. Kosoris has other employment besides Caduceus; specifically, he has been employed full-time as Chief Technology Officer and chief brewmaster at the Viking Alchemist Meadery (Viking), since 2012. (*Id.* at 3, 5.) Because of Mr. Kosoris's duties at Viking, he “cannot reasonably devote” the time required for operation of a nationwide medical courier services company. (*Id.* at 5.) Protestor claimed that Mr. Speight likely controls the long-term and day-to-day management of Caduceus. (*Id.*)

Next, Protestor observed that, in addition to serving as Caduceus's COO, Mr. Speight is CEO of another medical courier services company, Ardent Corporation d/b/a/ Ardent Medical Logistics (Ardent). (*Id.* at 4.) Mr. Kosoris serves as Secretary of Ardent and is one of Ardent's directors. (*Id.*)

Protestor alleged that Caduceus and Ardent are co-located, and that the two firms share employees, resources, and equipment. (*Id.* at 6.) In support, Protestor offered website printouts for Caduceus and Ardent, and contended that employee descriptions for Mr. Speight; Mrs. Aom Speight, the wife of Mr. Speight; and Mr. Claude Humphrey are “the exact same” on both websites. (*Id.*) Mrs. Speight is Caduceus's Chief Financial Officer and Mr. Humphrey is Caduceus's Chief Administrative Officer. (*Id.* at 3.) According to Protestor, Caduceus operates from Mr. Kosoris's personal residence, whereas Ardent is located in “an actual office suite,” and Ardent's employees—Mr. Speight, Mrs. Speight, and Mr. Humphrey—are “the only ones with the experience necessary to perform the [instant] contract.” (*Id.* at 6.) Protestor further alleged that Caduceus and Ardent share a telephone number and that Ardent is incorporated and headquartered in Hyannis, Massachusetts, which is one of Caduceus's locations. (*Id.*)

Lastly, Protestor argued that Mr. Kosoris's relationship with Ardent and Mr. Speight creates such dependence that Mr. Kosoris is unable to exercise independent business judgement. (*Id.*) Protestor reiterated its view that Caduceus “cannot perform the medical courier services contract without Mr. Speight, Mr. Humphrey and the Ardent team.” (*Id.*) These facts should give rise to a rebuttable presumption that Caduceus is not controlled by Mr. Kosoris, and is instead controlled by Mr. Speight and/or Ardent. (*Id.* at 5, 7.)

2. Response to First Protest

On January 7, 2022, Caduceus responded to the First Protest. Caduceus argued that documents referenced by Protestor in the protest are irrelevant to show that Caduceus is not a SDVOSB. (Response to First Protest, at 2.) Although Protestor attempts to “disparage Caduceus for being a small (only one contract) and relatively new company,” Protestor's allegations do nothing more than make false “inferences and implications” regarding Caduceus's owners. (*Id.*)

Caduceus first explained that its leadership team consists of Mr. Kosoris, a service-disabled veteran who owns 81% of Caduceus; Mr. Speight, who holds the remaining 19% ownership interest; Mr. Humphrey, the Chief Administrative Officer; and Mrs. Speight, the Chief Financial Officer. (*Id.* at 3.)

Caduceus denied the allegations set forth in the protest. Contrary to Protestor's suggestions, Mr. Kosoris has “years of managerial experience running a successfully company” accompanied by “extensive experience” in “developing, implementing, and managing logistics and IT systems,” all of which are skills that transfer to the medical courier services industry. (*Id.* at 4, 7, 9.) Caduceus adds that SBA regulations do not require that Mr. Kosoris personally have necessary technical expertise, “so long as he maintains 51% ownership of Caduceus.” (*Id.*, citing 13 C.F.R. § 125.13(b) and *CVE Protest of Superior Optical Labs, Inc.*, SBA No. CVE-157-P (2020).)

Next, Caduceus argues that Mr. Kosoris “spends 40+ hours per week managing and operating Caduceus . . . during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday,” while time spent with Viking occurs “either at nights or on the weekends.” (*Id.* at 10.) Caduceus offers a sworn declaration from Mr. Kosoris, stating that his position at Viking does not prevent him from “dedicating full time to Caduceus.” (*Id.* and Exh. L.) Caduceus also submits meeting logs, a flight ticket from Georgia to Washington, signed contracts, e-mails, text messages, and 6-month call logs between Mr. Kosoris and Mr. Speight, purporting to show that Mr. Kosoris fully controls the daily operations of Caduceus. (*Id.* at 8, and Exhs. H-I and M-O.)

Caduceus insists that “there is no present business relationship” or “contracts” between Caduceus and Ardent, nor do any of Caduceus's owners or employees work for Ardent. (*Id.* at 10.) According to Caduceus, Ardent is not an operational company, and has “no bank account, no equipment, no resources, and no operations.” (*Id.*)

Lastly, Caduceus argues that Protestor's allegations of unusual reliance are based on incorrect “speculation and assumptions” about Ardent. (*Id.*) Caduceus reiterates that “there is no business relationship whatsoever” between Caduceus and Ardent, as the latter is merely a “shell” company. (*Id.* at 11.) Citing to payroll records, Caduceus maintains that its own employees will be “performing 100% of the work on the contract” and that Caduceus will not “subcontract[] any portion to any other company.” (*Id.*, Exh. J.) Caduceus also highlights that that its quotation submitted to the VA makes no mention of Ardent or any other potential subcontractor. (*Id.*)

3. Supplemental Protest

On January 24, 2022, after its counsel reviewed the CVE Case File under an OHA protective order, Protestor moved to supplement its protest allegations. Accompanying its Supplemental Protest, Protestor offered a declaration from its founder, owner, and CEO, Mr. Christopher J. Noyes.

In the Supplemental Protest, Protestor contends that Caduceus cannot meet its burden to show that long-term decisions and day-to-day operations are controlled by an appropriately experienced and qualified service-disabled veteran. (Supp. Protest at 3, citing 13 C.F.R. § 125.13(a) and (b).) Further, Caduceus “has not and cannot” overcome rebuttable presumptions that it is controlled by non-service-disabled veterans. (*Id.* at 5.) In support of these claims, Protestor advances five main arguments.

Protestor maintains, first, that Mr. Kosoris does not have managerial experience of the extent and complexity needed to run Caduceus, a medical courier services company. Protestor contends that Mr. Kosoris's resume “confirms that his managerial experience is limited to automation systems and the production of mead and cider.” (*Id.* at 4, citing CF, Exh. 21.) Mr. Kosoris's declaration likewise does not explain how his prior experience directly “translates to establishing and operating a nationwide medical courier[] services company.” (*Id.*) Conversely, Mr. Speight's declaration “confirms” that he plays a “more active role in the actual day-to-day operations of Caduceus.” (*Id.*) Protestor also claims that Caduceus's website “expressly identifies Mr. Speight (not Mr. Kosoris) as the person responsible for overseeing the financial and operational aspects of Caduceus's operations.” (*Id.*)

Next, Protestor argues that the record establishes that Mr. Kosoris is “fully employed” at Viking, a meadery that he established in 2016 which now has multiple locations in the state of Georgia. (*Id.* at 6.) In particular, Mr. Kosoris's work hours at Caduceus and Viking “overlap” because his responsibilities for both companies “nearly identical.” (*Id.* at 7.) Based on the description of Mr. Kosoris's work at Viking, it is “highly unlikely” that Mr. Kosoris could work for Viking “only during nights and weekends.” (*Id.*) Protestor cites *CVE Protest of Covenant Constr. Servs.*, SBA No. CVE-152-P (2020), *recons. denied*, SBA No. CVE-158-P (2020) (PFR) and *CVE Appeal of Valor Constr., Inc.*, SBA No. CVE-121-A (2019) for the proposition that a rebuttable presumption arises where a challenged firm's service-disabled veteran owner has other full-time employment that conflicts with the normal hours of operation of the challenged concern. (*Id.* at 7-8.)

Protestor claims that Caduceus has made no attempt to show that Mr. Kosoris's work hours at Caduceus (8 a.m. - 5 p.m. EST, Monday through Friday) are typical of businesses in the nationwide medical courier services industry. (*Id.* at 8, citing *CVE Protest of HamHed, LLC*, SBA No. CVE-180-P (2021), *recons. denied*, SBA No. CVE-190-P (2021) (PFR).) Referencing Mr. Noyes's affidavit, Protestor asserts:

[T]he normal working hours for medical courier services companies providing nationwide service is 24 hours per day, seven days a week. *See* Ex. A (Noyes Aff.) ¶¶ 2-10. Pick-ups and deliveries typically extend well beyond the standard 9:00am

to 5:00pm working day and require additional planning and work both before and after shifts begin. *Id.* ¶¶ 2-4. This is especially true because of the different time zones across the country. *Id.* ¶ 4. If a courier service company based on the East Coast is providing services on the West Coast, the working day at the headquarter[s] office extends late into the evening because deliveries may not be done until 7:00pm PST, which is 10:00pm EST. *Id.*

(*Id.* at 8.)

RFQ No. 36C26021Q0849 is for medical courier services in the state of Washington, which is three hours behind East Coast time. (*Id.*) In performing the contract, Caduceus will be “required to pick-up samples from multiple [sites] between 4:00pm and 4:30pm PST (*i.e.*, 7:00pm and 7:30pm EST) and to deliver those samples to the VA's main laboratory in Seattle by 7:00pm PST (*i.e.*, 10:00pm EST).” (*Id.* at 8-9.) Yet Caduceus does not explain how Mr. Kosoris could oversee such operations if he stops working at 5:00 p.m. EST, as his schedule suggests. (*Id.* at 9.) As such, Protestor argues, the rebuttable presumption at 13 C.F.R. § 125.13(k) should apply here. (*Id.*)

Third, Protestor maintains that Mr. Kosoris is not located within a reasonable commute to Caduceus's job-site locations, and Caduceus thus has failed to rebut the presumption at 13 C.F.R. § 125.13(l). (*Id.* at 10.) Specifically, Mr. Kosoris resides in Marietta, Georgia, about a “40-hour drive” from the place of performance of the instant RFQ in Seattle, Washington. (*Id.* at 13.) Similarly, Mr. Kosoris is a “15 to 17 hour drive away” from Caduceus's locations in Massachusetts. (*Id.*) Mr. Kosoris's ability to ability to oversee work virtually “is not by itself a reasonable rebuttal.” (*Id.* at 10-11, citing *CVE Appeal of Next Dimension Training*, SBA No. CVE-108-A (2019).) Protestor also cites *PFR of FHITO Logistics, LLC*, SBA No. CVE-202-P (2021) (PFR) for the proposition that Caduceus cannot overcome the presumption at 13 C.F.R. § 125.13(l) by showing that its headquarters is Mr. Kosoris's personal residence. (*Id.* at 12-13.)

Fourth, Protestor renews its allegations that Caduceus is co-located and shares a management team—Mr. and Mrs. Speight, and Mr. Humphrey—with Ardent. (*Id.* at 14.) Particularly, Mr. Speight has “essentially identical” roles at both Ardent and Caduceus. (*Id.*)

Although Caduceus attempts to rebut the protest by arguing that Ardent was established after Caduceus, and that Ardent currently is merely a shell company with no operations, OHA should reject these arguments because SBA regulations attach no significance to whether a controlling non-SDVOSB was established before or after the SDVOSB. (*Id.* at 15.) Moreover, Caduceus itself acknowledges that “[t]he intent is for [Ardent] and Caduceus to perform some commercial and government work together, which may include teaming on various opportunities,” so it is reasonable to assume that Caduceus may, in the future, “increase the distributions to Mr. Speight, notwithstanding his 19% interest in Caduceus.” (*Id.* at 15-16.) Protestor continues:

Caduceus can subcontract up to 50% of the amount paid by the government under its set-aside contracts to Ardent. *See* 13 C.F.R. § 125.6(a)(1). As the majority owner of Ardent, Mr. Speight would receive the majority of the distribution from half the

value of Caduceus's set-aside contracts, plus an additional 19% of the distributions from other 50% performed by Caduceus. Yet, in each instance, the people performing the work are the same—Mr. Speight, his wife Mrs. Speight, and Mr. Humphrey—each of whom are overlapping officers of Caduceus and Ardent. The rebuttable presumptions at 13 C.F.R. § 125.13(i)(3) and (4) apply here and show that Caduceus is not eligible for SDVOSB status.

(*Id.* at 16.)

Lastly, Protestor maintains that Mr. and Mrs. Speight and Mr. Humphrey are “responsible for all of Caduceus's operations.” (*Id.* at 16-17, citing *Matter of Artis Builders, Inc.*, SBA No. VET-214 (2011).) This reliance is so extensive that Mr. Kosoris cannot exercise independent business judgment without great economic risk. (*Id.* at 17-18, citing 13 C.F.R. § 125.13(i)(7).)

4. Supplemental Response

On February 8, 2022, Caduceus responded to the Supplemental Protest. Caduceus insists that it is controlled solely by Mr. Kosoris and is not reliant on Ardent. Accompanying its Supplemental Response, Caduceus attached a document entitled “Articles of Voluntary Dissolution of Corporation Which Has Not Issued Shares or Has Not Commenced Business,” signed by Mr. Speight on February 7, 2022. (Supp. Response, Exh. A.) In that document, Mr. Speight requests that the Commonwealth of Massachusetts formally dissolve Ardent.

Caduceus denies the allegations raised in the Supplemental Protest. Contrary to Protestor's suggestions, Mr. Kosoris has had a distinguished career through which he has developed many transferrable skills applicable to running Caduceus; he fully controls Caduceus's long-term and day-to-day operations. (Supp. Response at 3-5.) In Caduceus's view, Protestor's allegations are premised on “a selective and self-serving reading” of Mr. Kosoris's resume, as Protestor simply disregards all information inconsistent with its claims. (*Id.* at 4-5.)

Next, Caduceus argues that Protestor's allegation that Mr. Kosoris does not work full-time for Caduceus during normal business hours is based on the “self-serving assumption” that Mr. Kosoris is “fully employed” by Viking. (*Id.* at 6.) In actuality, Mr. Kosoris devotes himself to Caduceus full-time during normal business hours, and “is available 24/7” as necessary. (*Id.* at 6-7, 9-10, citing *CVE Appeal of Veterans 1st Architecture, LLC*, SBA No. CVE-122-A (2019).) In support, Caduceus highlights Mr. Kosoris's response to a CVE request for additional information, his sworn declaration, his flight ticket, meeting logs, and signed contracts, as well as communications and call logs between Mr. Kosoris and Mr. Speight, which show that Mr. Kosoris actively manages and controls Caduceus on a day-to-day basis. (*Id.*) Caduceus adds that Mr. Kosoris has repeatedly “made it clear” that his role at Viking “does not interfere with his duties and responsibilities to Caduceus.” (*Id.* at 7.)

Caduceus further claims that Protestor's allegation that Mr. Kosoris has “nearly identical” duties at both Viking and Caduceus is “speculation without support.” (*Id.* at 8-9.) This allegation is contradicted by Mr. Kosoris's resume, but even if his duties were similar at both companies, this would be “irrelevant to prove Protestor's stretch assertion that Mr. Kosoris is working full-

time for Viking.” (*Id.*) Caduceus contends that *CVE Protest of Covenant Constr. Servs.*, SBA No. CVE-152-P (2020), *recons. denied*, SBA No. CVE-158-P (2020) (PFR), cited by Protestor, is distinguishable, as the challenged firm's principal in that case had other employment which directly conflicted with running the challenged firm. (*Id.*)

Caduceus then claims that Protestor's allegation with regard to 13 C.F.R. § 125.13(l) is in the nature of an “improper reply,” and should be disregarded. (*Id.* at 11.) Protestor could have, but did not, raise this allegation as part of its initial protest. (*Id.*) Even if OHA does consider the issue, however, the presumption at 13 C.F.R. § 125.13(l) does not apply in the instant case because Caduceus is headquartered at Mr. Kosoris's own personal residence. “As this is his home, he lives within a reasonable commute of the company's headquarters.” (*Id.*) Caduceus highlights that both Mr. Kosoris and Protestor's CEO, Mr. Noyes, reside on the East Coast of the United States. (*Id.* at 12.) Thus, if Mr. Kosoris is unable to manage a nationwide medical courier services company from the East Coast of the United States, as Protestor suggests, the same would be true of Protestor. (*Id.* at 12-13.) Caduceus maintains that Mr. Kosoris can oversee Caduceus's operations from its Georgia headquarters as he has staff to help with the management of nationwide operations. (*Id.* at 13-14.) Caduceus also emphasizes that VA selected Caduceus for award of the instant contract, knowing full well that Caduceus was headquartered in Georgia. (*Id.* at 13.)

Caduceus argues that the two OHA decisions referenced by Protestor, *CVE Appeal of Next Dimension Training*, SBA No. CVE-108-A (2019) and *PFR of FHITO Logistics, LLC*, SBA No. CVE-202-P (2021) (PFR), are readily distinguishable. (*Id.* at 14.) In *Next Dimension Training*, the service-disabled veteran resided in North Carolina, but the company was headquartered in Colorado. (*Id.* at 14.) Conversely, Mr. Kosoris plainly lives within an extremely short “commute” to Caduceus's headquarters, and Caduceus has proffered extensive evidence to show Mr. Kosoris's ability to manage and operate Caduceus. (*Id.*)

OHA's decision in *PFR of FHITO Logistics, LLC*, SBA No. CVE-202-P (2021) (PFR) was based primarily on ostensible subcontractor issues, and on the challenged firm's failure to offer any substantive response to two OHA orders. (*Id.* at 14-15.) Such matters are not present here. (*Id.*) Further, Caduceus has submitted “ample evidence” to establish Mr. Kosoris's control over Caduceus, and thus has rebutted the presumption at 13 C.F.R. § 125.13(l). (*Id.* at 15-16.)

Caduceus maintains that it has no business relationship at all with Ardent, so Protestor's allegations of extreme reliance are completely unfounded. (*Id.* at 16.) While Ardent and Caduceus previously may have intended to “perform some commercial and government work together,” the two firms have yet to establish any business relationship and do not share resources. (*Id.* at 16-17.) Caduceus reiterates that Ardent currently “is not a functioning business.” (*Id.* at 17.) In addition, Ardent now has requested dissolution by the Commonwealth of Massachusetts, further demonstrating that there is not, nor has there ever been, any business relationship between Ardent and Caduceus. (*Id.*, citing Exh. A.)

Caduceus asserts that Mr. Kosoris is not unusually reliant on Mr. Speight and/or Ardent, and exercises independent business judgment in his management and control of Caduceus. (*Id.*) There are “no contracts” between Caduceus and Ardent, as Ardent is “simply a shell of a non-

operating company with a website.” (*Id.* at 18.) Caduceus maintains that the evidence, such as employee payroll records, shows that Caduceus self-performs work with its own employees. (*Id.*) Further, under 13 C.F.R. § 125.13(b), Mr. Kosoris need not have “detailed specific package courier experience or knowledge,” so long as he has ultimate managerial and supervisory control over those who possess such expertise. (*Id.*)

Finally, Caduceus highlights that its First Amended and Restated Operating Agreement (Operating Agreement) gives Mr. Kosoris “full control except for extraordinary circumstances.” (*Id.* at 19.) OHA should deny the protest, as Caduceus meets all SDVOSB ownership and control requirements. (*Id.*, citing *CVE Protest of First Nation Group, LLC d/b/a Jordan Reses Supply Co.*, SBA No. CVE-201-P (2021).)

5. The Second Protest

On February 7, 2022, Protestor filed its second protest, challenging Caduceus's SDVOSB status in conjunction with RFQ No. 36C25622Q0189. Protestor's allegations mirror those set forth in its first protest and supplemental protest. (Second Protest at 2.) Specifically, Protestor reiterates its contentions that Caduceus is not controlled by Mr. Kosoris because: (1) Mr. Kosoris lacks the relevant managerial experience to run a nationwide medical courier services company; (2) due to his employment with Viking, Mr. Kosoris cannot work for Caduceus during the hours that businesses in the medical courier services industry normally work; (3) Mr. Kosoris does not live within reasonable proximity of Caduceus's locations and jobsites; (4) Caduceus is co-located, and shares management, with Ardent; and (5) the business relationships between Caduceus, Ardent, and Mr. Speight create such dependence that Mr. Kosoris cannot exercise independent business judgement without great economic risk. (*Id.* at 4-11.)

6. Response to Second Protest

On March 4, 2022, Caduceus responded to the second protest. Caduceus indicates that, because Protestor raises no new allegations in the second protest, “Caduceus hereby restates and reiterates its responses in its January 7, 2022, and February 8, 2022, response filings with OHA.” (Second Response at 2.)

7. The Third Protest

On April 1, 2022, Protestor filed its third protest, challenging Caduceus's SDVOSB status in conjunction with RFQ No. 36C25522Q0118. Protestor's “grounds for protest” again mirror the contentions previously set forth in its earlier protests. (Third Protest at 4-11.)

8. Response to Third Protest

On April 27, 2022, Caduceus responded to the third protest. Caduceus adopts its Response to the Supplemental Protest filed on February 8, 2022, in its entirety, including the exhibits attached therein. (Response to Third Protest at 1-20.)

C. Case File

The Case File indicates that Caduceus is a limited liability company (LLC) based in Marietta, Georgia. (CF, Exhs. 9-11 and 54 at ¶ 2.5.) Mr. Kosoris owns 81% of Caduceus and Mr. Speight owns the remaining 19%. (CF, Exhs. 22 at ¶ 3.2 and 44.) Mr. Kosoris, who serves as Caduceus's CEO and Secretary, is a service-disabled veteran. (CF, Exhs. 44 and 54 at ¶¶ 1.7 and 6.1.2.) Mr. Speight, Caduceus's President and Treasurer, is neither a veteran nor a service-disabled veteran. (*Id.*)

1. Operating Agreement

The Case File includes Caduceus's First Amended Operating Agreement (Operating Agreement), signed by Messrs. Kosoris and Speight on September 29, 2020. (CF, Exh. 54.)

The Operating Agreement states that “[t]he ‘Managing Member’ or ‘Manager’ is the individual tasked with managing the daily and long-term operations of [Caduceus].” (*Id.* at ¶ 1.4.) The Manager may unilaterally take actions and make decisions on behalf of Caduceus, including:

the decision to hire key personnel, the decision to pursue and execute federal and commercial contracts, marketing decisions, business development decisions, tax elections, taking loans, leasing commercial space, and any and all other such actions that have the potential to have a substantive impact on a business of [Caduceus's] nature.

(*Id.* at ¶¶ 1.4, 5.2 - 5.3.) Mr. Kosoris is Caduceus's Manager, vested with “complete power and authority to manage and operate [Caduceus] and make all decisions affecting its business and affairs.” (*Id.* at ¶ 5.1.)

The Operating Agreement contains the following additional provisions pertinent to these proceedings:

SECTION 6

OFFICERS

...

6.2 Duties of Named Officers

6.2.1 CHIEF EXECUTIVE OFFICER: The Chief Executive Officer (CEO) shall attend and preside at all meetings, exercise general supervision over the property, business and affairs of [Caduceus], and do everything and discharge all duties generally pertaining to his office as the executive head of a Company of this character. The CEO, at all times, shall retain primary decision-making authority regarding [Caduceus] and assume responsibility and ultimate authority over [] the

day-to-day and long-term management of [Caduceus]. As noted [in ¶ 6.1.1], the CEO is the highest-ranked officer of [Caduceus].

6.2.2 PRESIDENT: Under the auspices of the Chief Executive Officer, the President shall perform any and all tasks assigned to him to the benefit of the business.

6.2.3 TREASURER: The Treasurer shall have general supervision of the funds, securities, notes, drafts, acceptances, and other commercial paper and evidence of indebtedness of [Caduceus] and he shall determine the funds belonging to [Caduceus] are kept on deposit in such banking institutions chosen by the [Manager]. The Treasurer shall confirm that accurate accounting records are kept, and the Treasurer shall render reports of the same and of the financial Condition of [Caduceus] at any time upon request. The Treasurer shall also perform other duties commonly incident to such office, including, but not limited to, the execution of tax returns.

6.2.4 SECRETARY. The Secretary shall (a) maintain all documents relevant to the operation and management of [Caduceus]; (b) see that all notices are duly given in accordance with the provisions of this Operating Agreement or as required by law; (c) be custodian of the trust records and of the seal of [Caduceus], if any; and (d) have general charge of the transfer books of [Caduceus].

(*Id.* at ¶ 6.2.)

2. Resumes

The Case File includes a copy of Mr. Kosoris's resume. (CF, Exh. 21.) Mr. Kosoris resides in Marietta, Georgia, at the same address identified in the Operating Agreement as Caduceus's "principal business office." (CF, Exhs. 21 and 54 at ¶ 2.5.)

Mr. Kosoris's resume describes him as an individual with "10 years of automation industry experience including design, robotics, and systems integration"; "10 Years of brewing experience specializing in Mead and Cider production"; and "[s]ix years of military experience with nuclear power, electrical generation and distribution equipment, feedback control systems, and PLC programming and plant integration." (CF, Exh. 21.)

Mr. Kosoris's resume indicates that he currently is employed both as the CEO of Caduceus, and as the Head Brewer/Production Lead at Viking. (*Id.*) At Caduceus, Mr. Kosoris is: "[r]esponsible for all daily and long-term business operations, including, but not limited to: marketing and contract decisions, business strategy and development, personnel decisions, and accounting"; "[h]ead of Planning, Sourcing, and Implementation"; "[p]athfinder for process improvement and research"; "[r]esponsible for contract review and submission"; and manager of "[v]ender relationships, sourcing, and quoting new consumable and production equipment." (*Id.*) At Viking, Mr. Kosoris is: "[r]esponsible for all purchasing decisions, marketing strategy and generating of business contacts, management of personnel and sales, and management of

operations for successful sustainment of business”; “[h]ead of Planning, Sourcing, and Implementation of Beverage production and bottling”; “[l]ead of process improvement and new formulas research”; “[r]esponsible for bottling and process equipment maintenance and upgrades”; and manager of “[v]ender relationships, sourcing, and quoting new consumable and production equipment.” (*Id.*) Prior to his work at Caduceus and Viking, Mr. Kosoris held various positions as an engineer, and served in the U.S. Navy. (*Id.*)

The Case File also includes a copy of Mr. Speight's resume. (CF, Exh. 15.) According to his resume, Mr. Speight currently is employed both as President of Caduceus and as CEO of Ardent. (*Id.*) At Caduceus, Mr. Speight is responsible for: “grow[ing] Caduceus to become the Federal Government's preferred medical logistics provider”; “[a]ssist[ing] with operations and management”; “[i]mplement[ing] comprehensive software management system”; and “[a]ssist[ing] with personnel development.” (*Id.*) From 2005 until 2019, Mr. Speight was Vice President and later President of Protestor, where he “[h]elped grow [Protestor] to become one of the premier national medical logistics providers operating in 37 states with ~300 drivers and 10M in annual revenue.” (*Id.*) Mr. Speight currently resides in Springfield, Massachusetts. (*Id.*)

3. Declarations

Accompanying its Response to the First Protest, Caduceus offered a sworn declaration from Mr. Kosoris. (Response, Exh. L.) In his declaration, Mr. Kosoris avers that he is a service-disabled veteran and the CEO of Caduceus. (*Id.* ¶ 2.) As CEO, Mr. Kosoris “provide[s] overall direction for the company and control[s] day-to-day operations” including, *inter alia*, conducting regular “meetings with Caduceus's leadership to discuss current operations and future company endeavors.” (*Id.* ¶ 3.) Mr. Kosoris “devote[s] 40+ hours per week to Caduceus operations,” and considers himself “available 24/7 given that prospective and current clients can always reach [him] electronically.” (*Id.* ¶ 4.) Mr. Kosoris “perform[s] work outside ‘regular’ office hours, as necessary, and delivery services to be performed by Caduceus may occur outside of normal 8:00 a.m. to 5:00 p.m. Monday through Friday office hours.” (*Id.*)

Mr. Kosoris is also co-owner of Viking. (*Id.* ¶ 5.) Mr. Kosoris works for Viking “only on nights and weekends,” which are “the typical hours” for firms engaged in the “meadery and cidery” business. (*Id.* ¶¶ 5-6.)

Mr. Kosoris is a minority owner of Ardent, “a non-SDVOSB courier services company formed in Massachusetts.” (*Id.* ¶ 8.) Although Ardent has “a minimal website up and running,” Ardent currently is not an operational business. (*Id.* ¶ 9.) Ardent has “no bank account, no capital, no other resources, no employees, and no business.” (*Id.*) Mr. Kosoris states that he “spend[s] none of [his] time working for Ardent,” adding that “Caduceus has no business relationship with Ardent.” (*Id.* ¶¶ 10-11.)

Accompanying its Supplemental Protest, Protestor offered a sworn declaration from Mr. Christopher J. Noyes. (Supp. Protest, Exh. A.) In his declaration, Mr. Noyes avers that he is “a service-disabled veteran and the founder, owner, and [CEO] of [Protestor].” (*Id.* ¶ 1.) Mr. Noyes has worked in the medical courier services industry since 1998. (*Id.* ¶ 2.) According to Mr. Noyes, “businesses in the nationwide medical courier services industry typically work 24 hours

per day, seven days a week.” (*Id.*) This is true because “[c]ourier pick-ups and deliveries . . . typically extend beyond the standard business day of 9:00 a.m. to 5:00 p.m., and issues related to scheduling and unforeseen circumstances frequently require significant work virtually around the clock.” (*Id.*) “Same-day routed work frequently extends beyond standard business day hours.” (*Id.* ¶ 3.) Further, “[p]roviding nationwide courier services necessarily means that ‘normal working hours’ extend across the multiple time zones across the nation.” (*Id.* ¶ 4.) In addition to “scheduled same-day routed work,” there are “unscheduled orders” for “urgent, time-sensitive deliveries,” which may require adjustment to the “same-day routed work to accommodate.” (*Id.* ¶ 5.) Mr. Noyes concludes that, based on his “more than 20 years” of experience in the medical courier services industry, “it is not reasonably possible to establish and manage the day-to-day operations of a start-up medical courier services company while simultaneously working a full-time job as an officer at another company in an unrelated industry.” (*Id.* ¶¶ 10-11.)

4. CVE Verification

As part of its review of Caduceus's application for verification as an SDVOSB, CVE posed several additional questions to Caduceus. Mr. Kosoris, on behalf of Caduceus, responded as follows:

List the hours of the day and days of the week that [Mr.] Kosoris currently works for [Caduceus] each week (e.g., M-F 8am-5pm).

M-F 8am-5pm

List the hours of the day and days of the week of [Caduceus's] current operating hours (e.g., M-F, 8am-5pm).

Office Hours: M-F 8am-5pm (Effectively, the office hours are the hours that I have set and am working myself, as I am the sole individual working at Caduceus's one physical location.

Also, I consider myself available 24/7 given that prospective clients can always reach me electronically, I perform work outside these “regular” office hours as necessary, and delivery services to be performed by Caduceus may occur outside this 8 to 5 window.

List the physical addresses for all business offices and job-site locations⁵ of [Caduceus].

[REDACTED], Marietta, GA 30064

⁵ In earlier correspondence, CVE defined a “job-site location” as “any place where work directly related to the applicant is performed, to include administrative and accounting functions. Examples include, but are not limited to: contractor work sites, locations where full-time employees work, and home offices where official business functions are conducted.” (CF, Exh. 55 at 1.)

***I note that some individuals who provide support, such as [Mr.] Speight, are/will be permitted to work from their homes given that all tasks can be performed virtually and are completed at my direction and under my supervision. It is simple to stay in touch via email, phone, text, Microsoft Teams, and other modes of communication used at my discretion based on the context of the communication and in order to ensure I assume full control over all operations. At any rate, no such acts touch upon the management of my business and are all done via my direction and subject to my approval and review.**

Does [Mr.] Kosoris reside within 150 miles of at least one location listed above? If so, please identify the location.

Yes, the sole physical address of the business is also my residence.

If more than one location is listed above, provide a detailed explanation of how [Mr.] Kosoris is able to manage and control the daily operations of each location.

N/A - However, please see the information provided in the asterisk above.

...

[Mr. Kosoris's] resume, LinkedIn profile and taxes each indicate that [Mr.] Kosoris currently holds an outside ownership with [Viking]. Please provide a complete schedule to include the times of the day and days of the week that you devote to this outside entity.

My time at [Viking] is limited to nights and weekends. This is a meadery, which by nature has hours that are outside the scope of normal "office" hours (generally open as of late afternoon and over the weekends) As a part-owner of [Viking], I have no set schedule and easily schedule/perform my duties to not conflict with Caduceus. This is also aided by the fact that due to the nature of each business, the hours of operation do not overlap to a significant degree. For instance, Caduceus's operating hours are Monday through Friday, while [Viking] as a meadery is open on weekends and occasionally participates in scheduled events.

Please advise if [Caduceus] has a business relationship with [Viking]. If so, please describe the relationship and indicate if any employees, equipment, phone lines, website, email services, business location, or contracts for service are shared? Does [Caduceus] pay for any shared services?

Other than th[e] fact that I have ownership interest in each, there is no other commonality or shared resources between these two entities.

...

[Mr. Speight's] resume indicates [he has] a current outside ownership or employment with [Ardent] and Vetbiz lists outside ownership with [Protestor]. Please advise if [Caduceus] has a business relationship with [Ardent] and [Protestor]. If so, please describe the relationship and indicate if any employees, equipment, phone lines, website, email services, business location, or contracts for service are shared? Does [Caduceus] pay for any shared services?

To confirm, Caduceus has no business relationship with either [Ardent] or [Protestor]. It has no business relationship and has no dealings with [Protestor]. With respect to [Ardent], this a business Mr. Speight has established which has not yet been incorporated. The intent is for [Ardent] and Caduceus to perform some commercial and government work together, which may include teaming on various opportunities; however, at the moment, no business relationship or shared resources exist Caduceus notes that it is committed to ensuring that any such relationship with [Ardent] does not impede on Caduceus's eligibility for [CVE verification]. To that end, I have engaged counsel to ensure that as Caduceus's business develops, it continues to meet all eligibility criteria. For instance, if any resources are provided by one entity to the other, these will be compensated at fair market value. We will also promptly notify the CVE of any changes that require reporting.

(CF, Exh. 59, at 1-3.)

On October 15, 2020, CVE verified Caduceus as an SDVOSB and added Caduceus to CVE's database of eligible firms. (CF, Exh. 64.) On February 14, 2022, CVE re-verified Caduceus as an SDVOSB. (First CF Supp., Exh. 25.)

III. Discussion

A. Burden of Proof

As the protested firm, Caduceus 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, Caduceus submitted its quotations for the three procurements on August 18, 2021, January 13, 2022, and March 15, 2022, respectively. Section II.A, *supra*. Protestor's three protests were filed on October 8, 2021, February 7, 2022, and April 1, 2022. Section II.B, *supra*. The earliest date for determining eligibility, then, is August 18, 2021, and the latest is April 1, 2022. OHA will examine Caduceus's eligibility as an SDVOSB during this time period.

C. Analysis

I find no merit to these protests. 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 Mr. Kosoris, a service-disabled veteran, owns 81% of Caduceus, and there are no restrictions on his ownership. Section II.C, *supra*. SBA regulations also require that one or more service-disabled veterans must fully control the SDVOSB. *See* 13 C.F.R. § 125.13. According to Caduceus's Operating Agreement, Mr. Kosoris is Caduceus's Manager, vested with “complete power and authority to manage and operate [Caduceus] and make all decisions affecting its business and affairs.” Section II.C.1, *supra*. Mr. Kosoris also holds the position of CEO, Caduceus's highest officer position. Section II.C, *supra*. Thus, Mr. Kosoris fully controls Caduceus in both its daily and long-term aspects. Although Mr. Speight is a minority owner and a Member of Caduceus, he is not Caduceus's Manager, and the Operating Agreement does not afford Mr. Speight any ability to interfere with Mr. Kosoris's control over Caduceus. Section II.C.1, *supra*. Similarly, while Mr. Speight serves as Caduceus's President, the Operating Agreement clearly stipulates that this position is subordinate to Caduceus's Manager and CEO. *Id.* On these facts, Caduceus has persuasively shown that it meets the requisite ownership and control requirements.

In challenging Caduceus's eligibility as an SDVOSB, Protestor raises five principal allegations. Sections II.B.3 and II.B.5, *supra*. First, Protestor highlights that Mr. Kosoris had no prior experience with medical courier services, the industry in which Caduceus operates, before he established Caduceus. While this may be true, SBA regulations require only that a service-disabled veteran have “managerial experience of the extent and complexity needed to run the concern,” and do not mandate that the service-disabled veteran must have developed such experience within a particular industry. 13 C.F.R. § 125.13(b). Here, Mr. Kosoris's resume shows multiple years of experience in roles with managerial responsibilities. Section II.C.2, *supra*. I therefore cannot conclude that Mr. Kosoris lacks the managerial experience necessary to run Caduceus. Furthermore, as Caduceus observes, under 13 C.F.R. § 125.13(b), a service-disabled veteran need not personally have the technical expertise necessary to run a concern, if the service-disabled veteran can demonstrate ultimate managerial and supervisory control over those who possess such expertise. *E.g.*, *CVE Protest of PDS Consultants, Inc.*, SBA No. CVE-189-P, at 20 (2021). In the instant case, as discussed above, Mr. Kosoris is Caduceus's Manager and CEO, and fully controls its daily and long-term decision-making. Mr. Kosoris thus holds ultimate managerial and supervisory control over any Caduceus personnel who may possess greater technical expertise.

Next, Protestor contends that Mr. Kosoris cannot work full-time for Caduceus due to his outside employment with Viking. Section II.B.3, *supra*. Employment or other commitments beyond the SDVOSB may create a rebuttable presumption that a service-disabled veteran does not control the firm, if the service-disabled veteran is unable to work for the firm during the normal working hours that businesses in that industry normally work. 13 C.F.R. § 125.13(k).

The record reflects, and Caduceus acknowledges, that Mr. Kosoris is employed by both Viking and Caduceus. Caduceus has demonstrated, however, that Mr. Kosoris works full-time

for Caduceus during its normal business hours, 8 a.m. - 5 p.m. Monday through Friday, while working for Viking on nights and weekends. Sections II.C.3 and II.C.4, *supra*. Notably, Caduceus offers meeting logs, signed contracts, a flight ticket from Georgia to Washington, a sworn declaration from Mr. Kosoris, as well as e-mails, text messages, and call logs between Mr. Kosoris and Mr. Speight, to corroborate that Mr. Kosoris devotes himself full-time to Caduceus during normal working hours. Conversely, Protestor's allegations are largely speculative, as Protestor maintains, for example, that in Protestor's view it would be "highly unlikely" that Mr. Kosoris could work for Viking "only during nights and weekends." Section II.B.3, *supra*. Even Protestor's proffered evidence, consisting primarily of Mr. Noyes's declaration attesting to what he believes are normal working hours in the medical courier services industry, does not purport to describe Mr. Kosoris's daily involvement at Caduceus. Nor does Mr. Noyes explain why Mr. Kosoris's work at Viking on nights and weekends would conflict with his ability to operate Caduceus. Pursuant to 13 C.F.R. § 134.1011, OHA must "give greater weight to specific, signed, factual evidence than to general, unsupported allegations or opinions."

Protestor's reliance on *CVE Protest of Covenant Constr. Servs.*, SBA No. CVE-152-P (2020), *recons. denied*, SBA No. CVE-158-P (2020) (PFR) and *CVE Appeal of Valor Constr., Inc.*, SBA No. CVE-121-A (2019) is misplaced, as those cases are factually distinguishable from the instant dispute. In both *Covenant* and *Valor*, the service-disabled veteran had other full-time employment which overlapped with the normal hours of operation of the SDVOSB. *Covenant*, SBA No. CVE-152-P, at 3; *Valor*, SBA No. CVE-121-A, at 5. By contrast, in the instant case, Caduceus denies that Mr. Kosoris works full-time for Viking, and the record supports Caduceus's claim that Mr. Kosoris devotes himself full-time to Caduceus during normal working hours. As such, the presumption at 13 C.F.R. § 125.13(k) does not apply here. *E.g.*, *CVE Protest of Valiant Constr., LLC*, SBA No. CVE-205-P, at 17 (2021); *PDS Consultants*, SBA No. CVE-189-P, at 19.

Protestor also argues that Caduceus is co-located with and shares managerial personnel with Ardent, which is not an SDVOSB. Section II.B.3, *supra*. Under 13 C.F.R. § 125.13(i)(3), a rebuttable presumption may arise that Mr. Kosoris does not control Caduceus, if Caduceus and Ardent are co-located and if Ardent or an owner, director, officer, or manager of Ardent holds an equity interest in Caduceus. A similar rebuttable presumption arises under 13 C.F.R. § 125.13(i)(4), if Caduceus shares employees or other resources with Ardent, and if Ardent or Ardent's owners, directors, or officers has an equity interest in Caduceus.

The record establishes that Mr. Speight, the majority owner of Ardent, does hold an equity interest in Caduceus. Section II.C, *supra*. The pertinent questions, then, are whether Caduceus and Ardent are co-located, and whether the two companies share employees or other resources.

There is no indication here that these criteria are met. In response to the protests, Caduceus explains that although Ardent has "a minimal website up and running," Ardent currently is not an operational business. Sections II.B.4 and II.C.3, *supra*. Ardent thus has "no bank account, no capital, no other resources, no employees, and no business." *Id.* Caduceus made similar representations to CVE during the course of the verification review. Section II.C.4, *supra*. The fact that Mr. Speight has now requested that the Commonwealth of

Massachusetts formally dissolve Ardent further supports the conclusion that Caduceus and Ardent are not co-located and do not share resources. Section II.B.4, *supra*. Accordingly, the presumptions at 13 C.F.R. § 125.13(i)(3) and (i)(4) are not applicable in the instant case. *CVE Protests of Alpha4Solutions LLC d/b/a Alpha Transcription*, SBA No. CVE-132-P, at 19-20 (2019), *recons. denied*, SBA No. CVE-137-P (2019) (PFR).

Protestor also alleges that Caduceus and/or Mr. Kosoris are reliant upon Ardent to such an extent that they cannot exercise independent judgement, in contravention of 13 C.F.R. § 125.13(i)(7). Section II.B.3, *supra*. These allegations fail because, as discussed above, Ardent is not an operational business. Sections II.C.3 and II.C.4, *supra*. Caduceus has persuasively shown that it has no business relationship with Ardent. Nor is there any indication that Caduceus will utilize Ardent as a subcontractor for the instant procurements. Accordingly, there is no basis here to find violation under 13 C.F.R. § 125.13(i)(7).

Protestor lastly argues that OHA should apply the presumption at 13 C.F.R. § 125.13(l), because Mr. Kosoris does not reside within reasonable proximity of Caduceus's job-site locations. Section II.B.3, *supra*. Under this rule:

There is rebuttable presumption that a service-disabled veteran does not control the firm if that individual is not located within a reasonable commute to [the] firm's headquarters and/or job-sites locations, regardless of the firm's industry. The service-disabled veteran's ability to answer emails, communicate by telephone, or to communicate at a distance by other technological means, while delegating the responsibility of managing the concern to others is not by itself a reasonable rebuttal.

13 C.F.R. § 125.13(l).

I find Protestor's arguments unpersuasive for several reasons. First, the presumption at § 125.13(l) applies when the service-disabled veteran does not reside with reasonable commuting distance of either the SDVOSB's headquarters or its job-sites. Here, Caduceus is headquartered at Mr. Kosoris's own personal residence. Sections II.B.4 and II.C.2, *supra*. Accordingly, although Mr. Kosoris may not live within commuting distance of Caduceus's job sites, he plainly does live within a reasonable commuting distance of Caduceus's headquarters, and the presumption at 13 C.F.R. § 125.13(l) does not apply.

Even if § 125.13(l) were applicable, SBA's commentary in the *Federal Register* reflects that SBA's principal concern in adopting this presumption was to prevent “over-delegation of authority,” specifically situations where “individuals located at the headquarters and onsite are providing day-to-day management that should be provided by a service-disabled veteran.” 83 Fed. Reg. 48,908, 48,911 (Sep. 28, 2018). SBA thus opined that the presumption at § 125.13(l) could be rebutted by “present[ing] evidence that the service-disabled [veteran] has not abdicated authority to others to run the firm.” *Id.* Here, there is no evidence to suggest that Mr. Kosoris has abdicated day-to-day decision-making authority, or that he has excessively delegated such authority to one or more non-service-disabled veterans. Even if the presumption were applicable here, then, Caduceus has persuasively rebutted it.

OHA's decisions in *CVE Appeal of Next Dimension Training*, SBA No. CVE-108-A (2019) and *PFR of FHITO Logistics, LLC*, SBA No. CVE-202-P (2021) (PFR) do not require a different result. In *Next Dimension Training*, the service-disabled veteran resided in North Carolina, but the company was headquartered in Colorado. *Next Dimension Training*, SBA No. CVE-108-A, at 6-7. Accordingly, *Next Dimension Training* bears little similarity with the instant case, as Caduceus is headquartered at Mr. Kosoris's own personal residence. In *FHITO Logistics*, OHA issued two orders directing the challenged firm to respond to protest allegations, and when the challenged firm failed to offer any “substantive response” to those orders, OHA drew an adverse inference that the missing information would have shown that the challenged firm was not controlled by service-disabled veterans. *FHITO Logistics*, SBA No. CVE-202-P, at 1-2. Such circumstances are not present here, as Caduceus has responded to all protest allegations, and has not disregarded any orders from OHA.

IV. Conclusion

Caduceus has shown that it is an eligible SDVOSB for the instant procurements. The protests therefore are 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