

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

CVE Protest of:

Veteran Electric, LLC,

Protestor,

Re: Global Engineering Services, Inc.

Solicitation No. 36C26022Q0868

U.S. Department of Veterans Affairs

SBA No. CVE-272-P

Decided: March 24, 2023

APPEARANCES

Jonathan D. Perrone, Esq., Timothy J. Turner, Esq., Whitcomb, Selinsky, P.C., Denver, CO, for Veteran Electric, LLC

Cole Woodman, President, for Global Engineering Services

DECISION¹

I. Introduction and Jurisdiction

On December 22, 2022, the Contracting Officer (CO) for the subject procurement forwarded to the Small Business Administration (SBA) Office of Hearings and Appeals (OHA) a status protest filed by Veteran Electric, LLC (Protestor) against Global Engineering Services, Inc. (GES) in connection with the U.S. Department of Veterans Affairs (VA) Solicitation No. 36C26022Q0868. Protestor alleges that GES is not eligible for the subject Service-Disabled Veteran-Owned Small Business (SDVOSB) set aside because GES is not capable of selfperforming the requirements of the solicitation and will subcontract to a local, non-SDVOSB. 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 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.

134 subpart J. Protester filed its protest within five business days of receiving notification that GES was the apparent awardee, so the protest is timely. 13 C.F.R. § 134.1004(a)(2)(i).² Accordingly, this matter is properly before OHA for decision.

II. Background

A. CVE Verification

On May 17, 2022, Department of Veterans Affairs, Center for Verification and Evaluation (CVE) informed GES that its application for reverification of its SDVOSB status was approved after determining that it “is presently, as of the issuance of this notice, in compliance with the regulation.” (Case File (CF), Exh. 272 at 1.) The verification is valid for a period of three years. (*Id.*) GES was required to report any changes that might adversely affect its eligibility within 30 days of the change. (*Id.*)

B. Solicitation

On October 17, 2022, the VA issued Solicitation No. 36C26022Q0868 for HVAC system replacement on the Rosebury VAMC Campus in Rosebury Oregon. (Solicitation, at 1.) The solicitation calls for a contractor to “replace the entire existing Trane Trace Temperature Controls system with a new JCI Temperature Controls system.” (Statement of Work (SOW), at 1.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding \$39.5 million annual receipts size standard.³ (*Id.*) Bids were due November 16, 2023. (Solicitation, at 1.) Protestor and GES submitted timely bids. On December 16, 2022, the CO announced that GES was the awardee.

² OHA adjudicates SDVOSB status protests under the authority of 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. Part 134 Subpart J. Effective January 1, 2023, SBA amended OHA's procedural regulations governing SDVOSB status protests. 87 Fed. Reg. 73400 (Nov. 29, 2022). This protest, however, was filed prior to the effective date of the new regulations, so the older version of the rules continues to apply here. *CVE Protest of Elevated Technologies, Inc.*, SBA No. CVE-254-P (2023).

³ SBA advised “all procurement professionals not to use the NAICS 2022 codes when preparing solicitations and awarding contracts until SBA updates its small business size standards to NAICS 2022, which SBA anticipates implementing on October 1, 2022.” See *Guidance on using NAICS 2022 for Procurement*, available at <https://www.sba.gov/article/2022/feb/01/guidance-using-naics-2022-procurement> (Last visited March 20, 2023); SBA updated the small business size standard for NAICS code 236220 to a \$45 million size standard; however, this was not in effect until March 17, 2023, after the date of the solicitation. See *Table of size standards*, available at <https://www.sba.gov/document/support-table-size-standards> (last visited March 20, 2023). “[T]he size standard in effect on the date the solicitation is issued” is controlling. 13 C.F.R. § 121.402(a).

C. Protest

On December 21, 2022, Protestor filed the instant protest with the CO, challenging GES's SDVOSB status. (Protest, at 1.) Protestor asserts that the solicitation calls for electrical work; however, GES does not purport to be an electrical specialist nor have an electrical contract license. (*Id.*, at 3-4.) According to Protestor, GES is not capable of self-performing the requirements of the solicitation and will subcontract to a local, non-SDVOSB electrical contractor. (*Id.*, at 5.) Protestor speculates that GES will subcontract to Sims Electric Inc. (Sims), who Protestor believes will perform the primary and vital task of the solicitation. (*Id.*)

Protestor contends that GES is unduly reliant on Sims and thus is in violation of the ostensible subcontractor rule (13 C.F.R § 125.29(c))⁴ under the *Dover Staffing* factors established in OHA precedent. (*Id.*, at 6, citing *Size Appeal of Leumas Residential, LLC*, SBA No. SIZ-6103 (citing *Size Appeal of Dover Staffing, Inc.*, SBA No. SIZ-5300 (2011).) Protestor asserts that GES fails to meet the fourth factor because GES “lacks relevant experience and must rely upon SIMS to perform the contract”. (*Id.*, at 6.) Specifically, the solicitation requires the installation of sensors, controllers, and interfaces; however, GES “represents itself as a general contractor, not an electrical specialist.” (*Id.*, at 7.) Protestor cites to GES's website which states “we ‘plan, manage, and build multi-phase jobs. . . . We offer an end-to-end client experience that includes seamless communication, budgeting, staffing, on-site organization, and solid, quality handiwork every time.” (*Id.*, at 6-7, citing <https://ges-us.com/about-us>.) Protestor asserts that GES cannot perform this work alone and believes “GES will be forced to rely on an outside electrical subcontractor for the necessary knowledge, experience, and licensing to be successful on this on project.” (*Id.*, at 7.)

Protestor further contends GES is in violation of the ostensible subcontractor rule because Sims will perform the primary and vital requirements of the contract. (*Id.*, citing 13 C.F.R § 125.29(c).) (*Id.*) Protestor maintains the SOW requires fifty items, the majority of which are electrical related work, while the few items of nonelectrical work are of general contracting or architectural nature. (*Id.*) Protestor asserts that 95% of the solicitation requirements are electrical related, and thus GES is only able to perform a minor part of the contract. (*Id.*)

D. GES Response

On January 10, 2023, GES filed a response to the protest. GES argues the protest is based upon three incorrect assumptions. (GES Response, at 1.) First, that the subcontractor Johnson Controls would submit the same quote to all offerors. However, GES worked with Johnson to lower costs so that they received a lower quote. (*Id.*, at 3.) Second, that GES has no experience in and cannot perform electrical work. GES asserts that it has experience with and can perform projects requiring electrical work. Specifically, GES's predecessor company, Global Telecom Services, performed electrical work. GES points to its recent receipt of an award for specialty electrical repair and construction. (*Id.*, at 3-4.) Third, that the scope of work on this project is

⁴ This section was removed, effective January 1, 2023. See 87 FR 73400, 73412, Nov. 29, 2022. The rule for the Veteran Small Business Certification Program may now be found at 13 C.F.R. § 128.401(g). The procedural rule for OHA remains at 13 C.F.R. § 134.1003(c).

entirely electrically based. Electrical work is not the only substantial component of the solicitation. (*Id.*, at 4.) Specifically, the solicitation also calls for plumbing, fire stopping, finishes, and other mechanical controls. (*Id.*) GES asserts that plumbing is a major portion of the work required, citing the significant quote it received for plumbing work. (*Id.*, at 5.) GES contends that while the project appears to be primarily electrical at face value further review shows that the project “consists of multiple sub-specialties.” (*Id.*) GES argues that managing and coordinating the multiple specialties required to execute a project such as this is the job of a general contractor. (*Id.*)

E. Case File

The Case File indicates that GES is a limited liability company (LLC) based in Wyoming. (Case File (CF), Exh. 80.) Cole Woodman, who serves as GES's President and Managing Member, is a service-disabled veteran. (CF, Exhs. 80 & 254.) Mr. Woodman owns 100% of GES. (CF, Exh. 212.) GES operates in California, Nevada and Utah. (CF, Exh. 164.) According to the Bylaws, Mr. Woodman is the president, vice president, secretary and treasurer of GES. (CF, Exh. 205.) GES's Operating Agreement states that GES is “controlled on a daily basis and managed by Cole Woodman . . . [a]ny matter not expressly explained in this Agreement will be decided upon by Cole Woodman.” (CF, Exhs. 80, at 2.)

The Case File includes a copy of Mr. Woodman's resume. (CF, Exh. 170). Mr. Woodman has experience as Owner and President of GES since March 2012, where he is “[d]irectly responsible for the day-to-day operations and control of all company matters” and “[d]irectly managed projects ranging from \$12,000 - \$1.4M.” (*Id.*) Prior to GES, Mr. Woodman was owner and manager of Global Telecom Services, where he “[m]anaged contracting and day to day goal employment, vital to Global Telecom Services' success installing over 600,000 feet of structured cable during Utah Department of Transportation's I-15 CORE project, the largest project of its kind in Utah history.” (*Id.*) The Case File also includes Mr. Woodman's certification as a project management professional since 2012. (CF, Exhs. 9 & 168.)

On May 10, 2022, GES provided a letter of explanation (LOE) regarding additional inquiries. (CF, Exh. 269). GES informed CVE that its primary business office is located in Midvale, Utah, the same location as Mr. Woodman's current address. (CF, Exh. 221). In the LOE, GES further states that Mr. Woodman lives within 150 miles of two of its five current projects and is on-site at least three times per week. (CF, Exh. 269, at 1-2.)

III. Discussion

A. Burden of Proof

As the protested firm, GES has the burden of proving its eligibility 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 GES is part of the record.

B. Analysis

GES has persuasively demonstrated that it meets the requirements of an eligible SDVOSB. I find Protestor's allegations to be speculative and without a legal or factual basis. Therefore, I must deny this protest.

Among the grounds for a SDVOSB status protest, a protestor may allege that “the prime contractor appears unduly reliant on a small, non-similarly situated entity subcontractor or where the small non-similarly situated entity is performing the primary and vital requirements of the contract.” 13 C.F.R § 125.29(c). Specifically, under the ostensible subcontractor rule, a subcontractor which is not similarly situated to the prime contractor must not perform the primary and vital requirements of the contract, nor can the prime contractor be unduly reliant on a subcontractor which is not similarly situated. 13 C.F.R. § 125.18(f).⁵

OHA precedent has established an exception to the ostensible subcontractor rule for construction contracts in recognition that in construction contracting, subcontractors often perform a majority of the actual construction work, because the prime contractor frequently must engage multiple subcontractors specializing in a variety of trades and disciplines. *Size Appeal of C&C Contractors, LLC*, SBA No. SIZ-5990 (2019); *Size Appeal of J.R. Conkey & Associates, Inc. d/b/a Solar Power Integrators*, SBA No. SIZ-5326, at 8 (2012). This rule considers “[t]he primary role of a prime contractor in a construction project is to superintend, manage, and schedule the work, including coordinating the work of the various subcontractors.” *Size Appeal of C.E. Garbutt Construction Company*, SBA No. SIZ-5083, at 7 (2009). So long as the prime contractor retains management of the contract, a small business prime contractor on a construction contract may delegate a large portion of the construction work to its subcontractors without contravening the ostensible subcontractor rule. *J.R. Conkey*, SBA No. SIZ-5326, at 8; *Size Appeal of Roundhouse PBN, LLC*, SBA No. SIZ-5383, at n.6 (2012); *Size Appeal of Colamette Constr. Co.*, SBA No. SIZ-5151, at 6 (2010).

According to the proposal, GES provided a price schedule and certifies that GES “will comply with the limitation on subcontracting specified in [the contract].” Section II.E, *supra*. Further, Mr. Woodman's resume shows multiple years of experience in roles with managerial responsibilities and a certification in project management since 2012. *Id.* According to GES's May 10, 2022, LOE on management, Mr. Woodman explained that he utilizes “technology and delegation” to manage most projects and hold weekly progress meetings. *Id.* For this reason, I find GES will manage the construction contract and perform a substantial portion of work and is not in violation of the ostensible subcontractor rule. See *C&C Contractors, LLC*, SBA No. SIZ-5990, 14.

Protestor alleges that GES is unduly reliant on Sims. Section II.C, *supra*. I find this argument to be speculative and unsupported by any evidence. Protestor offers no evidence, nor even any specific theory, as to how or why GES might be unable to perform the primary and

⁵ This section was removed, effective January 1, 2023. See 87 FR 73400, 73412, Nov. 29, 2022. See fn. 3, *supra*.

vital contract requirements or would be unduly reliant upon a non-SDVOSB subcontractor. A proper status protest must contain “[s]pecific allegations supported by credible evidence.” 13 C.F.R. § 134.1005(a)(2). Nonspecific allegations will be dismissed. 13 C.F.R. § 134.1007(b). There is nothing in the record to support an allegation that Sims will be performing the work on this contract. As Protestor has not advanced a specific allegation supported by credible evidence, this portion of the protest must be dismissed. *CVE Protest of Welch Construction, Inc.*, SBA No. CVE-181-P (2021).

Protestor further contends that GES lacks electrical related experience for the contract. Section II.C, *supra*. 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. § 125.14(b).⁶ Here, it is evident from the record that Mr. Woodman has experience managing day to day operations of GES as well as years of experience managing contracts as the owner of Global Telecom Services. Section II.E, *supra*. I therefore cannot conclude that Mr. Woodman lacks the managerial experience necessary to run GES.

Furthermore, under 13 C.F.R. § 125.14(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 Mr. Woodman is GES's Manager and CEO, and fully controls its daily and long-term decision-making. Section II.E, *supra*. Mr. Woodman thus holds ultimate managerial and supervisory control over any GES personnel who may possess greater technical expertise.

Thus, I conclude GES has shown that it is an eligible SDVOSB for this solicitation.

IV. Conclusion

For the above reasons, the protest 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).

CHRISTOPHER HOLLEMAN
Administrative Judge

⁶ This section was removed, effective January 1, 2023. *See* 87 FR 73400, 73412, Nov. 29, 2022. The rule for the Veteran Small Business Certification Program may now be found at 13 C.F.R. § 128.203(b).