

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

VSBC Protest of:

Arapaho Technical Services, LLC,

Protestor,

Re: MedForce Government Solutions, Inc.

Task Order Solicitation No. 15246

U.S. Department of Defense
Defense Health Agency

SBA No. VSBC-302-P

Decided: August 21, 2023

APPEARANCES

Joseph G. Lukowski, Manager, Arapaho Technical Services, LLC, San Antonio, Texas

Edward J. Tolchin, Esq., Offit Kurman, Bethesda, Maryland, for MedForce Government Solutions, Inc.

DECISION¹

I. Introduction and Jurisdiction

On May 17, 2023, Arapaho Technical Services, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of MedForce Government Solutions, Inc. (MedForce), in connection with U.S. Department of Defense, Defense Health Agency (DHA) Task Order Proposal Request (TOPR) No. 15246. Protestor contends that MedForce is not fully controlled by one or more service-disabled veterans. For the reasons discussed *infra*, the protest is SUSTAINED.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates SDVOSB status protests pursuant to 15 U.S.C. § 657f and 13 C.F.R. Part 134 Subpart J. The instant TOPR was set aside entirely for SDVOSBs, but the underlying Multiple

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. Pursuant to 13 C.F.R. § 134.205, OHA afforded MedForce Government Solutions, Inc. 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.

Award Contract (MAC) was set aside only for small businesses, not for SDVOSBs. As a result, Protestor timely filed its protest within five business days after receiving notification that MedForce was the apparent awardee of the task order. 13 C.F.R. §§ 128.401(d)(1)(i)(A) and 134.1004(a)(3)(i). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The TOPR

On November 10, 2022, DHA issued TOPR No. 15246 under a MAC for medical support services. The TOPR sought a contractor to perform medical records technician services at Fort Belvoir Community Hospital, Virginia. (Task Order Performance Work Statement, at 1-2.) The Contracting Officer (CO) set aside the TOPR entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 621999, All Other Miscellaneous Ambulatory Health Care Services, with a corresponding size standard of \$18 million² average annual receipts. (*Id.*) Task order proposals were due December 8, 2022. MedForce and Protestor submitted timely offers.

B. Protest

On May 16, 2023, DHA announced that MedForce was the apparent awardee of the task order. On May 17, 2023, Protestor filed the instant protest with the CO. Protestor observes that MedForce is not certified by SBA as an SDVOSB, nor was MedForce previously verified as an SDVOSB by the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE). (Protest at 1, 3.)

Protestor alleges that, according to public records, MedForce has two principals: Mr. Timothy C. Bucklaw, Sr., its President and CEO, and Mr. Jon J. Bucklaw, its Executive Vice President and COO. (*Id.* at 3.) Jon J. Bucklaw, however, does not purport to have “veteran life experience” on MedForce’s website. (*Id.*) Therefore, any claim that MedForce is an SDVOSB apparently stems from Timothy C. Bucklaw, Sr. (*Id.*)

Protestor contends that documents filed by MedForce in the states of Virginia and Pennsylvania reflect that Jon J. Bucklaw is MedForce’s sole director. (*Id.*) Furthermore, Timothy C. Bucklaw, Sr. did not claim a Pennsylvania property tax exemption restricted to service-disabled veterans. (*Id.*) Protestor posits that MedForce did not seek to be certified as an SDVOSB “because the controlling member of the company (Jon J. Bucklaw, the Director) had never had any veteran affiliation; and/or because Mr. Timothy C. Bucklaw, Sr., who is a veteran, is not an *eligible* veteran for certification as service-disabled.” (*Id.*, emphasis Protestor’s.)

The CO forwarded the protest to OHA for review.

² Effective December 19, 2022, SBA increased the size standard for NAICS code 621999 to \$20.5 million. 87 Fed. Reg. 69,118, 69,150 (Nov. 17, 2022). However, under SBA regulations, “the size standard in effect on the date the solicitation is issued” is controlling. 13 C.F.R. § 121.402(a).

C. MedForce's Response

Upon receipt of the protest, OHA instructed the Director of SBA's Office of Government Contracting (D/GC) to provide all records pertaining to MedForce's certification as an SDVOSB. On June 28, 2023, the D/GC responded that MedForce currently is not certified as an SDVOSB, and that MedForce had not yet submitted a complete application for certification; “therefore, Submitted Documents and a submission date are not available.” (Case File Index, at 1.) The D/GC provided OHA a partial Case File (CF) consisting of communications between his office and MedForce.

On June 29, 2023, OHA ordered that MedForce produce, by July 21, 2023, all relevant documentation demonstrating that it qualifies as an SDVOSB. On July 25, 2023, MedForce requested an extension of time to respond to OHA's Order. (E-mail from J. Bucklaw (July 25, 2023).) Subsequently, MedForce filed a response to OHA's Order and included, *inter alia*, a motion to dismiss the protest. In its motion, MedForce argues that Protestor's allegations should be rejected as “insufficient”. (Motion at 1.) In particular, MedForce need not “appear on SBA's ‘official website responsible for SDVOSB certification,’ in order to be an SDVOSB, not now and not on December 8, 2022.” (*Id.* at 1-2.) MedForce explains that, for the instant task order, MedForce “self-certified its business as an SDVOSB.” (*Id.* at 2.)

MedForce asserts that Timothy C. Bucklaw, Sr. owns 51% of MedForce and is a service-disabled veteran. (*Id.*) MedForce further maintains that Timothy C. Bucklaw, Sr. is the “sole director” of MedForce. (*Id.*) Additionally, as the majority owner, Timothy C. Bucklaw, Sr. would have “the authority to remove or change directors at any time under both Virginia law and Pennsylvania law.” (*Id.* at 2-3.) MedForce denies Protestor's contention that Timothy C. Bucklaw, Sr. is not a service-disabled veteran, contending that his “fail[ure] to check the box” for a property tax exemption is not dispositive on this issue. (*Id.* at 3.)

MedForce offers copies of its Articles of Organization; Restated Bylaws; VA Form 0877; resumes of Timothy C. Bucklaw, Sr. and Jon J. Bucklaw; stock certificates, dated June 8, 2008; and a stock ledger, dated June 8, 2008. The documents provided reflect that MedForce is structured as a corporation with its principal office in Carbondale, Pennsylvania. (Exh. 1, Bylaws at 1.) Timothy C. Bucklaw, Sr. is a service-disabled veteran, whereas Jon J. Bucklaw is neither a veteran nor a service-disabled veteran. (Exh. 2, VA Form 0877 at 1.) According to MedForce's stock ledger and stock certificates, as of June 8, 2008, Timothy C. Bucklaw, Sr. owns 50.1% (501 shares) of MedForce; Jon J. Bucklaw owns the remaining 49.9% (499 shares). (Exh. 4, Stock Ledger at 1; Exh. 5, Stock Certificates.) MedForce's Bylaws identify Timothy C. Bucklaw, Sr. as ““President/CEO - Sole Director” of MedForce, and Jon J. Bucklaw is “Vice President/COO.” (Exh. 1, Bylaws at 13.) The Bylaws also contain the following provisions pertinent to this protest:

ARTICLE II: SHAREHOLDERS

Section 2.1. SERVICE DISABLED VETERAN OWNERSHIP. Until the earlier of (a) the effective date of the Board of Directors' affirmative approval by formal

resolution that the Corporation shall no longer seek to qualify as participant in the Service-Disabled Veteran-Owned Small Business (“**SDVOSB**”) program; or (b) the date the Corporation otherwise no longer qualifies as a participant in the SDVOSB program (the “**SDVOSB Termination**”) one or more Service-Disabled Veterans, as such term is defined in the SBA Regulations, shall at all times maintain direct, unconditional ownership of no less than fifty-one percent (51%) of the shares entitled to cast vote at a meeting of shareholders. To the extent there are multiple classes or series of shares of the Corporation, one or more Service-Disabled Veterans shall at all times maintain direct, unconditional ownership of no less than fifty-one percent (51%) of each class and series of the shares.

...

Section 2.4. SPECIAL SHAREHOLDERS' MEETINGS. Special meetings of the shareholders may be called by the Board of Directors, Chief Executive Officer, upon the demand of the holders of at least 51% of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting unless a lesser or greater percentage of the votes set out in the Articles of Incorporation. To demand a special meeting, the holders of the required percentage of votes must sign, date, and deliver to the Corporation's Chief Executive Officer or Secretary one or more written demands for the meeting describing the purpose or purposes for which the meeting is to be held. Only business within the purpose or purposes described in the notice of the meeting may be conducted at a special meeting of the shareholders.

...

Section 2.7. QUORUM OF SHAREHOLDERS. Unless otherwise required by the State law, or the Articles of Incorporation, no quorum shall be deemed achieved at any given meeting unless the present shares constituting at least fifty-one percent (51%) of the votes entitled to be cast at a meeting to vote on a matter, are represented by Service-Disabled Veterans. Once a share is represented in person or by proxy for any purpose at a meeting, that share is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be fixed for that adjourned meeting. The holders of a majority of the shares represented in person or by proxy at a meeting and that would be entitled to vote if a quorum were present may adjourn the meeting from time to time, even if a quorum is not present.

...

ARTICLE III: DIRECTORS

...

Section 3.10. QUORUM AND ACTION BY DIRECTORS. A majority of the number of directors prescribed by the Articles of Incorporation or these Bylaws shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the directors present at a meeting at which a quorum is present when the vote is taken shall be the act of the Board of Directors, unless the vote of a greater number is required by the Articles of Incorporation or these Bylaws.

(Exh. 1, Bylaws at 1-3, 7.)

On July 26, 2023, MedForce moved to introduce revised versions of its stock ledger, stock certificates, and Bylaws signature page. MedForce states that, in its prior submission, it “inadvertently included a copy of the stock ledger and certificates which were inaccurate.” (Motion at 1.) Accompanying the motion, MedForce offers an amended stock ledger, dated July 26, 2023, reflecting that Timothy C. Bucklaw, Sr. owns 51% (510 shares) of MedForce and Jon J. Bucklaw owns 49% (490 shares). (*Id.* at 3-5, citing MedForce Stock Ledger.) In support, MedForce offers copies of new stock certificates issued to the Bucklaws, also dated July 26, 2023. (*Id.* at 6-7, citing MedForce Stock Certificates 3 and 4.) Lastly, MedForce offers a new signature page to its Bylaws, dated May 23, 2023. (*Id.* at 8.) The revised signature page identifies Timothy C. Bucklaw, Sr. as “President/CEO/Owner 51%” of MedForce, but no longer names him as MedForce's sole director. Jon J. Bucklaw is described on the revised signature page as MedForce's “Vice President/COO/Owner 49%”.

D. Case File

In its communications with the D/GC, MedForce represented that both Timothy C. Bucklaw, Sr. and Jon J. Bucklaw are members of MedForce's Board. (Case File (CF), Exhs. 20-21.) When asked whether these same individuals “manage or supervise the day-to-day operations of the business applying for certification,” MedForce responded “Yes” for both Timothy C. Bucklaw, Sr. and Jon J. Bucklaw. (*Id.*)

III. Discussion

A. Burden of Proof

As the protested firm, MedForce has the burden of proving its eligibility by a preponderance of the evidence. 13 C.F.R. § 134.1010.

B. Date of Eligibility

In a SDVOSB status protest pertaining to a procurement, OHA determines the eligibility of the protested concern as of the date of its initial offer or response which includes price. 13 C.F.R. § 134.1003(e)(1). Here, MedForce submitted its proposal for the instant task order on December 8, 2022. Section II.A, *supra*. Therefore, OHA must examine MedForce's SDVOSB

eligibility as of this date, using the substantive ownership and control regulations in effect on that date.³

C. Analysis

MedForce has not persuasively proven its eligibility as a SDVOSB. This protest must therefore be sustained.

As of December 8, 2022, the date MedForce submitted its offer for the instant task order, SBA regulations stipulated that an eligible SDVOSB must be “at least 51% unconditionally and directly owned by one or more service-disabled veterans.” 13 C.F.R. § 125.13. If the concern in question is a corporation, “at least 51% of the aggregate of all stock outstanding and at least 51% of each class of voting stock outstanding must be unconditionally owned by one or more service-disabled veterans.” *Id.* § 125.13(d). Additionally, one or more service-disabled veterans must fully control the concern. “Control” means that both the concern's daily business operations, and its long-term decision-making, are conducted by service-disabled veterans. *Id.* § 125.14(a). Non-service-disabled veteran individuals or entities must not control the concern. *Id.* § 125.14(i). Furthermore, with regard to a corporation, one or more service-disabled veterans “must control the Board of Directors of the concern.” *Id.* § 125.14(e). A service-disabled veteran may be deemed to control a corporation's board if “[a] single service-disabled veteran individual owns at least 51% of all voting stock of [the corporation], the individual is on the Board of Directors and no super majority voting requirements exist for shareholders to approve corporation actions.” *Id.* § 125.14(e)(1)(ii). OHA examines the terms of a concern's governing documents, such as its bylaws, in assessing whether ownership and control requirements are met. *E.g.*, *CVE Protest of Valiant Constr., LLC*, SBA No. CVE-205-P, at 15 (2021) (citing *XOtech LLC v. United States*, 950 F.3d 1376, 1380 (Fed. Cir. 2020)).

In the instant case, the record reflects that, as of December 8, 2022, Timothy C. Bucklaw, Sr., a service-disabled veteran, owned 50.1% (501 shares) of MedForce, while a non-service-disabled veteran, Jon J. Bucklaw, owned 49.9% (499 shares). Section II.C, *supra*. Accordingly, although Timothy C. Bucklaw, Sr. did hold a majority ownership interest in the company, MedForce plainly failed to meet the regulatory requirement that it be “at least 51%” owned by one or more service-disabled veterans. 13 C.F.R. § 125.13.

Nor has MedForce demonstrated that one or more service-disabled veterans fully controlled MedForce as of December 8, 2022. MedForce responded “Yes” when asked whether Jon J. Bucklaw, a non-service disabled veteran, “manage[s] or supervise[s] the day-to-day operations of the business”. Section II.D, *supra*. This admission is problematic since, as noted above, SBA regulations stipulate that “[n]on-service-disabled veteran individuals or entities may not control the firm.” 13 C.F.R. § 125.14(i). MedForce further informed the D/GC that both

³ As of December 8, 2022, the relevant SDVOSB ownership and control regulations were found at 13 C.F.R. Part 125. Effective January 1, 2023, SBA amended these rules, as well as OHA's procedural regulations governing SDVOSB status protests. 87 Fed. Reg. 73,400 (Nov. 29, 2022). Because the date to determine MedForce's eligibility precedes the effective date of the new regulations, the older version of the rules applies here.

Timothy C. Bucklaw, Sr. and Jon J. Bucklaw are members of MedForce's board. Section II.D, *supra*. If MedForce's board consists of two members, though, Jon J. Bucklaw, a non-service disabled veteran, could prevent a quorum from being established, as MedForce's Bylaws state that “[a] majority” of the directors are needed for a quorum. Section II.C, *supra*. Jon J. Bucklaw thus could exert negative control over MedForce. 13 C.F.R. § 125.12. Additionally, Timothy C. Bucklaw, Sr. did not hold a sufficiently large ownership interest (51% or greater) to be deemed to control MedForce's board under 13 C.F.R. § 125.14(e)(1)(ii).

In response to the protest, MedForce claims that, as of July 26, 2023, Timothy C. Bucklaw, Sr. does own 51% of MedForce. Section II.C, *supra*. In support, MedForce offers a “corrected” stock ledger and stock certificates that reflect ownership of 510 shares by Timothy C. Bucklaw, Sr., and 490 shares by Jon J. Bucklaw. *Id.* This change of ownership, however, is irrelevant here, for two reasons. First, in an SDVOSB status protest pertaining to a procurement, OHA must determine SDVOSB eligibility as of the date of the concern's initial offer including price. Section III.B, *supra*. MedForce submitted its offer for the instant task order on December 8, 2022, and changes occurring after that date thus have no bearing on MedForce's SDVOSB status. *E.g., VSBC Protests of Beshenich Muir & Assocs., LLC and ELB Servs. LLC*, SBA No. VSBC-292-P, at 15 (2023) (declining to consider employment offer letter created after the relevant date for determining eligibility). Second, MedForce has not explained how the change of ownership would, by itself, resolve all potential issues of control. Even assuming Timothy C. Bucklaw, Sr. did own 51% of MedForce as of December 8, 2022, it is not clear that he would have fully controlled MedForce, in light of MedForce's own acknowledgement that Jon J. Bucklaw “manage[s] or supervise[s] the day-to-day operations of the business” and is one of two members of MedForce's board. Section II.D, *supra*.

IV. Conclusion

MedForce has not shown that it was an eligible SDVOSB as of December 8, 2022. Accordingly, the protest is SUSTAINED. MedForce is not an SDVOSB for the instant task order. This is the final agency action of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(B); 13 C.F.R. § 134.1007(i).

KENNETH M. HYDE
Administrative Judge