

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

VSBC Protest of:

NEIE Medical Waste Services, LLC,

Protestor,

Re: American Vet Solutions, Inc.

Solicitation No. 36C25624Q0424

U.S. Department of Veterans Affairs

SBA No. VSBC-358-P

Decided: May 15, 2024

ORDER DISMISSING PROTEST¹

On April 5, 2024, NEIE Medical Waste Services, LLC (Protestor) filed the above-captioned protest, challenging the size and Service-Disabled Veteran-Owned Small Business (SDVOSB) status of American Vet Solutions, Inc. (American). The Contracting Officer (CO) forwarded the status portion of the protest to the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA).

Upon review, OHA ordered Protestor to show cause why the status portion of the protest should not be dismissed as untimely. OHA explained that, under OHA's rules of procedure, a status protest by a non-governmental party must be submitted “by the close of business on the fifth business day after notification by the contracting officer of the apparent successful offeror.” (Order at 1, quoting 13 C.F.R. § 134.1004(a)(3).) Furthermore, OHA must dismiss an untimely protest, and OHA has no discretion to extend, or modify, the deadline for filing a protest. (*Id.*, citing 13 C.F.R. §§ 134.202(d)(2)(i)(A) and 134.1004(a)(6).)

On May 6, 2024, Protestor responded to OHA's Order. Protestor asserts that it originally intended to file an agency-level bid protest, rather than a size or status protest. (Response at 1.) Nevertheless, because the CO forwarded the matter to OHA upon determining that the allegations warranted OHA's review, OHA should treat the status protest as timely. (*Id.*)

I find that the status portion of this protest is untimely and must be dismissed. In its protest, Protestor acknowledged that it was notified on March 28, 2024 that American was the apparent awardee. Thus, the last day to file a timely status protest was April 4, 2024. The instant

¹ This protest is decided under the Small Business Act of 1958, 15 U.S.C. §§ 631 *et seq.*, and 13 C.F.R. parts 128 and 134 subpart J.

protest, however, was not filed until April 5, 2024, and therefore is untimely. The mere fact that the CO subsequently directed the status portion of the protest to OHA does not alter the deadline for filing a protest. Indeed, OHA's rules require that every SDVOSB status protest must be forwarded to OHA, irrespective of “whether the [CO] believes [the protest] is premature, sufficiently specific, or timely.” 13 C.F.R. § 134.1004(c).

For these reasons, the status portion of the protest is DISMISSED as UNTIMELY. This is the final decision of the U.S. Small Business Administration. 13 C.F.R. § 134.1007(b).

KENNETH M. HYDE
Administrative Judge