

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

VSBC Protest of:

Elevated Technologies, Inc.,

Protestor,

Re: Veterans Contracting Group, Inc.

Solicitation No. 36C24224B0032

U.S. Department of Veterans Affairs

SBA No. VSBC-393-P

Decided: September 18, 2024

APPEARANCES

Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., John M. Mattox II, Esq., Ian P. Patterson, Esq., Timothy J. Laughlin, Esq., Schoonover & Moriarty LLC, Olathe, Kansas, for Elevated Technologies, Inc.

Jonathan D. Perrone, Esq., Whitcomb Selinsky, PC, Denver, Colorado, for Veterans Contracting Group, Inc.

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On June 7, 2024, Elevated Technologies, Inc. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Veterans Contracting Group, Inc. (VCG), in connection with U.S. Department of Veterans Affairs (VA) Invitation for Bids (IFB) No. 36C24224B0032. Protestor alleges that VCG is neither majority-owned nor fully controlled by service-disabled veterans. 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 15 U.S.C. § 657f and 13 C.F.R. Part 134 Subpart J. Protestor filed its protest within five business days after bid opening, so the protest is timely. 13 C.F.R. § 134.1004(a)(4). Accordingly, this matter is properly before OHA for decision.

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<sup>1</sup> 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.

## II. Background

### A. The IFB

On April 12, 2024, VA issued IFB No. 36C24224B0032, seeking a contractor to upgrade elevators at the VA New York Harbor Healthcare System (NYHHS) in Brooklyn, New York. (IFB, SF 1442.) 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 size standard of \$45 million average annual receipts. (*Id.*) Bids were due June 4, 2024. (IFB, Amend. 0004.) VCG and Protestor submitted timely bids.

### B. Protest

On June 4, 2024, bids were opened and the CO announced that VCG was the apparent awardee. On June 7, 2024, Protestor timely filed the instant protest. The CO forwarded the protest to OHA for review.

In the protest, Protestor alleges that VCG is neither majority-owned nor fully controlled by service-disabled veterans. (Protest at 1-2.) Protestor first observes that, in December 2017, the U.S. Court of Federal Claims affirmed an OHA decision that VCG did not comply with SDVOSB regulations at that time, commenting that “Ronald Montano, a service-disabled veteran, owns 51 percent of [VCG] and Greg Masone owns the remaining 49 percent.” (*Id.* at 2, quoting *Veterans Cont. Grp., Inc. v. United States*, 135 Fed. Cl. 316, 326 (2017).) The Court further found that, under a shareholder agreement, VCG would have an automatic buyback right of any shares in the event of a shareholder's death. (*Id.*, citing *Veterans Cont.*, 135 Fed. Cl. at 327.) Mr. Montaro passed away in October 2023. (*Id.*) As a result, Protestor alleges, VCG likely purchased Mr. Montaro's interest, and one or more service-disabled veterans no longer owns at least 51% of VCG, in contravention of 13 C.F.R. § 128.202. (*Id.*)

Protestor also contends that service-disabled veterans do not fully control VCG. (*Id.*) SBA regulations restrict a qualifying service-disabled veteran from engaging in other outside employment that interferes with his or her ability to manage the SDVOSB. (*Id.* at 2-3, citing 13 C.F.R. § 128.203(i).) Here, VCG's Chief Executive Officer, Mr. Matthew Seeber, has at least four other outside commitments. (*Id.* at 3.) More specifically, according to his LinkedIn profile, Mr. Seeber “is a real estate investor with Seeber Capital, owner of a dumpster roll-off company, serves as a licensed real estate agent, and . . . works as an associate attorney at Klein Law Group PLLC.” (*Id.*) Due to these various activities, Mr. Seeber does not fully control VCG since he devotes too little of his time and attention to VCG during normal business hours. (*Id.*)

### C. VCG's Response

On July 9, 2024, VCG responded to the protest. VCG maintains that two service-disabled veterans together own a majority (51%) of VCG, and that the protest relies on outdated

information concerning Mr. Seeber's outside employment. (Response at 1-2.) The protest should therefore be denied.

VCG argues, first, that Mr. Seeber and Mr. Walter Eddie, both of whom are service-disabled veterans, together own 51% of VCG. (*Id.* at 2.) After Mr. Montano's passing, VCG purchased Mr. Montano's interest from his estate. (*Id.*) Messrs. Seeber and Eddie subsequently acquired the stock from VCG. (*Id.*) Mr. Seeber now owns 49% of VCG and Mr. Eddie owns 2%. (*Id.* at 1.) VCG offers a copy of a Stock Redemption Agreement, dated March 29, 2024, whereby VCG bought Mr. Montano's interest. (VCG Response, Exh. 1 at 7-14.) In addition, VCG provides Mr. Seeber's May 22, 2024 Stock Purchase Agreement of 49% of VCG. (*Id.* at 19-28.) Mr. Eddie's Stock Purchase Agreement of 2% of VCG stock was provided as well, albeit with a specific date in May 2024 left blank. (*Id.* at 33-43.)

VCG maintains that Messrs. Seeber and Eddie also fully control VCG. (VCG Response at 2-3.) Under SBA regulations, control over a corporation's board of directors is established when, as here, “[t]wo or more qualifying veterans together own at least 51% of all voting stock, each such qualifying veteran is on the Board of Directors, no supermajority voting requirements exist, and the qualifying veteran shareholders can demonstrate that they have made enforceable arrangements to permit one qualifying veteran to vote the stock of all qualifying veterans as a block without a shareholder meeting.” (*Id.*, quoting 13 C.F.R. § 128.203(e)(1)(iii).)

Next, VCG contends that Mr. Seeber's LinkedIn profile is outdated, and that his outside commitments do not interfere with his management of VCG. (*Id.* at 3.) Mr. Seeber has not worked for Klein Law Group since the summer of 2023. (*Id.*) Although Mr. Seeber is co-owner of a dumpster roll-off company, he devotes little time to that business, performing only bookkeeping for the company in the evenings and weekends for roughly five hours each week. (*Id.*) Mr. Seeber wholly owns Seeber Capital, LLC, but this is a holding company which serves as an “investment vehicle for his rental properties.” (*Id.*) The properties themselves are not personally managed by Mr. Seeber but rather by a full-service property manager. (*Id.*) Lastly, VCG acknowledges that Mr. Seeber also is a licensed real estate agent, but asserts that he obtained this license to assist friends and family with occasional real estate purchases, at most one or two times a year. (*Id.*)

#### D. Supplemental Protest

On July 22, 2024, after its counsel reviewed the record pursuant to an OHA protective order, Protestor moved to supplement its protest. (Motion for Leave at 2.) Protestor maintains that VCG forfeited its SDVOSB status upon the passing of Mr. Montano. (Supp. Protest at 1.) In particular, after VCG bought back Mr. Montano's interest on March 29, 2024, VCG's sole owner was Mr. Masone, who is not a service-disabled veteran. VCG thus was no longer an eligible SDVOSB since one or more service-disabled veterans did not own at least 51% of the company at that time. (*Id.* at 2.)

Protestor further argues that Messrs. Seeber and Eddie do not unconditionally own their shares in VCG. (*Id.*) According to the Stock Purchase Agreements, Messrs. Seeber and Eddie “purchased their shares through an arrangement that they would make regular payments towards

satisfying the purchase price.” (*Id.*) These shares are pledged as collateral until fully paid for by Messrs. Seeber and Eddie. (*Id.*) SBA regulations at 13 C.F.R. § 128.202(b)(1) permit encumbering stock as collateral, but Protestor urges that their ownership is not unconditional in the instant case. (*Id.*)

Protestor highlights that the terms of Mr. Seeber's Stock Purchase Agreement restrict his ability to sell his shares as he sees fit. (*Id.* at 3.) Instead, Mr. Seeber only may sell his shares if he first obtains VCG's consent. (*Id.*) Thus, Mr. Seeber does not have an “unconditional” ownership interest. (*Id.*) Additionally, the Second Amended and Restated Shareholders Agreement likewise dictates that Messrs. Seeber and Eddie only may sell their shares upon approval of all VCG shareholders. (*Id.* at 3-4.) Accordingly, Protestor asserts, Messrs. Seeber and Eddie do not unconditionally own their shares as required by 13 C.F.R. § 128.202(b). (*Id.* at 4.)

#### E. Request for Additional Information

On August 15, 2024, OHA issued an Order, pursuant to its authority at 13 C.F.R. § 134.1007(g), requesting that VCG further address whether Messrs. Seeber and Eddie unconditionally own their interests in VCG. On August 28, 2024, VCG timely responded to OHA's Order.

VCG allows that “[i]t is fundamental that a Service-Disabled Veteran's ownership must be unconditional.” (Response to Order at 1.) Nevertheless, “the pledge of stock as collateral will not affect the unconditional nature of ownership if two conditions are met: (1) ‘the terms follow normal commercial practices,’ and (2) ‘the owner retains control absent violations of the terms.’” (*Id.*, quoting 13 C.F.R. § 128.202(b)(1).) According to VCG, Messrs. Seeber and Eddie's ownership interests comport with these requirements. (*Id.*)

VCG acknowledges that the Stock Pledge Agreements would necessitate VCG's approval before Messrs. Seeber or Eddie could sell or transfer their shares. (*Id.* at 2.) Based on VCG's governing documents, any action by VCG must be approved by a vote of its board of directors representing the majority of outstanding shares. (*Id.*) In order to sell their shares, then, the qualifying service-disabled veterans (*i.e.*, Messrs. Seeber and Eddie) only would need each other's approval since they together comprise a majority of VCG's outstanding shares and are both directors. (*Id.*) VCG further contends that the arrangements here follow “normal commercial practices” because the Stock Pledge Agreements reference the Uniform Commercial Code, and because 13 C.F.R. § 128.202(b)(1) itself states that “seller financed transactions” are not inconsistent with unconditional ownership. (*Id.* at 3.)

#### F. Case File

The Case File (CF) indicates that VCG is a corporation established in the state of New York. (CF, Exh. 156.) VA's Center for Verification and Evaluation (CVE) previously verified VCG as an SDVOSB in August 2021, for a period of three years. (CF, Exh. 33.) SBA subsequently extended VCG's SDVOSB certification until August 27, 2025. (CF, Exh. 2.) On June 14, 2024, VCG notified SBA of its change in ownership and control, which is under review.

(CF, Exh. 1.) Any documents submitted by VCG concerning this change are not included in the Case File.

Mr. Seeber and Mr. Eddie purchased their shares in VCG in May 2024. Until the purchase price is fully paid, the shares are subject to a security interest held by VCG. Section 5(c) of the Stock Pledge Agreement signed by Mr. Seeber states:

Without the prior written consent of Secured Party [*i.e.*, VCG], Pledgor [*i.e.*, Mr. Seeber] shall not, directly or indirectly (i) sell, assign, transfer, exchange or otherwise dispose of, or grant any option with respect to, the Pledged Collateral or any part thereof, or (ii) create, incur, authorize or permit to exist any Lien or option in favor of or any claim of any Person with respect to any of the Pledged Collateral, or any interest therein.

(Stock Pledge Agreement at 7.)

According to section 7 of the Stock Pledge Agreement:

Unless and until an Event of Default shall have occurred and be continuing, Pledgor shall be permitted to receive all Pledged Shares distributions or cash dividends paid in the normal course of business and to exercise all voting rights with respect to the Pledged Shares; provided, however, that no vote shall be cast or right exercised or other action taken which would impair the Pledged Collateral or which would be inconsistent with or result in any violation of any provision of this Pledge Agreement. . . .

(*Id.* at 8., emphasis in original.)

### III. Discussion

#### A. Burden of Proof

As the challenged concern, VCG has the burden of proving its eligibility as an SDVOSB by a preponderance of the evidence. 13 C.F.R. § 134.1010.

#### B. Date to Determine 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, bids were opened on June 4, 2024. Sections II.A and II.B, *supra*. Therefore, OHA must examine VCG's SDVOSB eligibility as of this date, using the substantive ownership and control regulations in effect on that date.

### C. Analysis

To be considered an eligible SDVOSB, “one or more service-disabled veterans must unconditionally and directly own at least 51 percent of the concern.” 13 C.F.R. § 128.202. Additionally, one or more service-disabled veterans must fully control the concern. 13 C.F.R. § 128.203. The “control” requirement means that “both the long-term decision-making and the day-to-day operations” must be conducted by service-disabled veterans. 13 C.F.R. § 128.203(a). SBA regulations also stipulate that the service-disabled veteran(s) upon whom a concern relies for its SDVOSB status “may not engage in outside employment that prevent[s] [him or her] from devoting the time and attention to the concern necessary to control its management and daily business operations.” 13 C.F.R. § 128.203(i).

In the instant case, the record reflects that, in May 2024, two service-disabled veterans acquired 51% ownership of VCG. Sections II.C and II.F, *supra*. Specifically, Mr. Seeber now owns 49% of VCG and Mr. Eddie owns 2%. *Id.* Accordingly, while it is true that VCG is no longer majority-owned by Mr. Montano, VCG nevertheless remains at least 51% owned by service-disabled veterans. Protestor further suggests that VCG should be deemed to have “forfeited” its SDVOSB status upon the passing of Mr. Montano, or alternatively, when VCG repurchased his shares. Sections II.B and II.D, *supra*. These arguments fail because, in an SDVOSB status protest pertaining to a procurement, OHA determines SDVOSB eligibility as of the date of the concern's initial response to the solicitation including price. Section III.B, *supra*. Here, VCG met the 51% ownership requirement when bids were opened on June 4, 2024, since Messrs. Seeber and Eddie acquired their ownership interests prior to this date. Sections II.C and II.F, *supra*. Additionally, notwithstanding Protestor's assertion that VCG “forfeited” its SDVOSB status in October 2023 or March 2024, the record indicates that VCG remained a certified SDVOSB throughout this time period. Section II.F, *supra*. Insofar as Protestor complains that VCG did not promptly disclose changes in its ownership structure to SBA, such matters are not among the valid grounds for a status protest as set forth at 13 C.F.R. § 134.1003. *E.g., CVE Protest of First Nation Grp., LLC d/b/a Jordan Reses Supply Co., SBA No. CVE-185-P, at 19 (2021) (challenged concern's “negligence in providing required information” was not relevant in a SDVOSB status proceeding).*

Protestor further argues that Messrs. Seeber and Eddie do not “unconditionally” own their interests in VCG, as required by 13 C.F.R. § 128.202, because the shares are pledged as collateral until fully paid for by Messrs. Seeber and Eddie. Section II.D, *supra*. Protestor highlights in particular that Messrs. Seeber and Eddie are not at liberty to sell or otherwise transfer their shares without first obtaining VCG's consent. *Id.*

SBA regulations define “unconditional ownership” as:

***Unconditional ownership.*** To be considered unconditional, ownership must not be subject to any conditions, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity).

13 C.F.R. § 128.202(b). In other words, ownership generally will be “unconditional” when there is no impediment to the full range of ownership rights and benefits. In the instant case, Protestor maintains, the fact that VCG must approve any sale or transfer of shares means that ownership is not unconditional.

SBA regulations further permit, however, that “[t]he pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms.” 13 C.F.R. § 128.202(b)(1). Here, Messrs. Seeber and Eddie acquired their interests from VCG through a seller-financed transaction, after VCG re-purchased Mr. Montano's interest. Section II.C, *supra*. Moreover, although the shares owned by Messrs. Seeber and Eddie are pledged as collateral until Messrs. Seeber and Eddie have fully paid the agreed-upon purchase price, their ownership is not otherwise contingent on future events, and nothing in the agreements interferes with the ability of Messrs. Seeber and Eddie to vote their shares or to receive distributions. Section II.F, *supra*. Instead, the right of refusal bestowed to VCG is squarely tied to the collateral agreements with Messrs. Seeber and Eddie. *Id.* This right is commercially reasonable in light of the potential risk to VCG if Messrs. Seeber and Eddie were to transfer their ownership interests without having fully paid for them, and the right is thus consistent with “normal commercial practices.”

The decision of the U.S. Court of Federal Claims in *Miles Constr., LLC v. United States*, 108 Fed. Cl. 792 (2013) is instructive here. In *Miles*, VA determined that an SDVOSB's ownership structure was not unconditional, because the Operating Agreement granted “the company, or the remaining members of the company if the company declines, the first opportunity to purchase a member's shares, should he or she decide to sell.” *Miles*, 108 Fed. Cl. at 801. The Court reversed, finding the clause in question “a standard provision used in normal commercial dealings, and does not burden the veteran's ownership interest unless he or she chooses to sell some of his or her stake.” *Id.* at 803. As such, ownership was indeed unconditional. *Id.* The right of first refusal seen in *Miles* is akin to the condition here that VCG consent to any sale of Messrs. Seeber or Eddie's shares, until such time as those shares have been fully paid for by Messrs. Seeber and Eddie.

Protestor lastly alleges that VCG's CEO, Mr. Seeber, does not fully control VCG due to other side employment. Section II.B, *supra*. It is true that Mr. Seeber's LinkedIn page indicates that he concurrently works as an associate at a law firm, a realtor, a real estate investor, and co-owner of another business. *Id.* In response to the protest, though, VCG explains, with supporting evidence, that (1) Mr. Seeber no longer works at the law firm; (2) he sells one or two houses a year to assist friends and family; (3) his real estate holdings are managed by a property company; and (4) he spends roughly five hours each week during the evenings and weekends doing bookkeeping for his other business. Section II.C, *supra*. I find that VCG has persuasively shown that Mr. Seeber does not have outside employment that would restrict his ability to devote the required amount of his time and attention to VCG.

IV. Conclusion

VCG has proven its eligibility as an SDVOSB by a preponderance of the evidence. VCG is 51% unconditionally and directly owned by two service-disabled veterans. VCG has persuasively shown that Mr. Seeber devotes full-time to VCG without conflicting outside employment. The protest therefore is DENIED. 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