

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

VSBC Protest of:

Veteran Elevated Solutions LLC JV,

Protestor,

Re: Armstrong Elevator Company

Solicitation No. 36C24624R0048

U.S. Department of Veterans Affairs

SBA No. VSBC-410-P

Decided: October 28, 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 Veteran Elevated Solutions LLC JV

William Selinsky, Esq., Tim Turner, Esq., Jonathan D. Perrone, Esq., Whitcomb Selinsky, PC, Denver, Colorado, for Armstrong Elevator Company

DECISION¹

I. Introduction and Jurisdiction

On August 6, 2024, Veteran Elevated Solutions LLC JV (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Armstrong Elevator Company (AEC), in connection with U.S. Department of Veterans Affairs (VA) Request for Proposals (RFP) No. 36C24624R0048. Protestor alleges that AEC is not fully controlled by its service-disabled veteran owner. 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 receiving notification that AEC was the apparent awardee, so the protest is timely. 13 C.F.R. § 134.1004(a)(3). Accordingly, this matter is properly before OHA for decision.

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.

II. Background

A. The RFP

On March 26, 2024, VA issued RFP No. 36C24624R0048, seeking a contractor to upgrade elevators at the Central Virginia VA Healthcare System in Richmond, Virginia. (RFP, SF 1442.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 238990, All Other Specialty Trade Contractors, with a corresponding size standard of \$19 million average annual receipts. (*Id.*) Proposals were due April 29, 2024. (*Id.*) AEC and Protestor submitted timely proposals.

B. Protest

On July 30, 2024, VA announced that AEC had been selected for award. On August 6, 2024, Protestor timely filed the instant protest. The CO forwarded the protest to OHA for review.

In the protest, Protestor alleges that AEC is not fully controlled by a service-disabled veteran. (Protest at 1.) More specifically, according to SAM.gov, AEC is headquartered in Largo, Florida. (*Id.* at 2.) However, AEC's owner, Mr. Roy Armstrong, has not lived near Largo, Florida for over 16 years. (*Id.* at 3.) Moreover, Mr. Armstrong is “intensely involved” with several other businesses, including Potcake Cellars and Potcake Aviation, LLC (Potcake Aviation), both of which are located in Oregon. (*Id.* at 2.) Potcake Cellars is a vineyard and winery co-founded by Mr. Armstrong and his wife. (*Id.*) Mr. Armstrong is President of Potcake Cellars. (*Id.* at 2-3.) Mr. Armstrong also owns Potcake Aviation, where he rescues potcake dogs from the Bahamas. (*Id.* at 3.) Protestor observes that Mr. Armstrong additionally serves as Airport Manager at the McMinnville Airport in Oregon. (*Id.* at 3.) Since Mr. Armstrong splits his time between these various commitments, Protestor contends that Mr. Armstrong cannot devote the necessary time and attention to AEC. (*Id.* at 2-3.)

Based on publicly-available information, Protestor alleges that Mr. Armstrong also is involved with Madiera Service Group, Inc.; World Class Wines, LLC; Peninsula Helicopters; Northwest Jet Aviation; Neskowin Beach House LLC; Caribbean Way LLC; Petjet LLC; and Smooth Air, LLC. (*Id.* at 4.) Furthermore, Mr. Armstrong owns properties across the United States and the Caribbean. (*Id.*) Mr. Armstrong resides in Oregon, thousands of miles away from AEC. (*Id.*) As such, Protestor argues, Mr. Armstrong does not devote his full-time and attention to AEC. (*Id.*)

C. AEC's Response

On September 12, 2024, AEC responded to the protest. AEC maintains that Mr. Armstrong does control AEC and that the protest should therefore be denied. (Response at 1.)

AEC asserts that, as its President, Mr. Armstrong is heavily involved in the day-to-day management of AEC, “often working 50-60 hours per week, or more.” (*Id.*) AEC claims that

there are no partners, investors, or any other individuals who could exert control over AEC. (*Id.* at 1-2.) Furthermore, “Mr. Armstrong is the only person who can sign a check, submit a bid, or authorize any other contract documents, including change orders, [Requests for Information (RFIs)], and other submittals.” (*Id.* at 2.) Mr. Armstrong is the direct supervisor of all AEC employees and is only person who can fire or hire. (*Id.*) He also assigns mechanics and communicates with them daily to resolve any issues. (*Id.*)

AEC observes that the central premise of the protest is that Mr. Armstrong's involvement in businesses located across the United States and in the Caribbean prevents him from devoting sufficient time and attention to AEC. (*Id.*) AEC asserts that its Largo, Florida address is merely a “maildrop”, as “AEC has no headquarters”. (*Id.*) AEC performs contracts across the country with mechanics residing near the jobsites. (*Id.*) While Mr. Armstrong travels often and has several residences, Protestor offers no evidence that Mr. Armstrong does not control AEC. (*Id.*)

AEC allows that SBA regulations are skeptical of a controlling service-disabled veteran's having other outside employment. (*Id.* at 3-4.) Nevertheless, in the instant case, Mr. Armstrong devotes sufficient time to AEC. (*Id.* at 4.) AEC emphasizes Mr. Armstrong's weekly schedule for AEC and notes that Protestor fails to quantify any estimate as to how much time Mr. Armstrong spends on his other businesses. (*Id.*) Moreover, AEC contends, Mr. Armstrong's other businesses are merely investments, as “he does not manage them.” (*Id.*)

Mr. Armstrong is President of Potcake Cellars, but AEC asserts that his wife has complete control of that company. (*Id.*) Potcake Aviation was created only so that Mr. Armstrong could get to remote AEC jobsites easily. (*Id.* at 4.) In 2019, Potcake Aviation flew dogs to shelters in the United States and brought supplies to the Bahamas during its recovery from Hurricane Dorian. (*Id.*) Mr. Armstrong had no involvement in those flights beyond the donation of planes and fuel. (*Id.*) As for his role at McMinnville Airport, Mr. Armstrong became Manager of the airport in 2018 but has delegated managerial responsibilities to Mr. Rob Dehner. (*Id.*) It is Mr. Dehner who “actually manages the airport.” (*Id.*) AEC maintains that Mr. Armstrong spends no time attending airport board meetings or maintaining airport grounds and facilities. (*Id.*)

AEC likewise refutes the allegations concerning Mr. Armstrong's other businesses. (*Id.*) AEC explains that Madeira Service Group, Inc. is a private payroll company not managed by Mr. Armstrong that distributes payroll to AEC staff. (*Id.* at 5.) Mr. Armstrong has “no knowledge” of Peninsula Helicopters and “no ownership interest” in Northwest Jet Aviation. (*Id.*) Neskowin Beach House, LLC is a holding company for one of Mr. Armstrong's properties. (*Id.*) Caribbean Way, LLC similarly was created to hold title to one of Mr. Armstrong's investment properties. (*Id.*)

Accompanying its Response, AEC offers a statement from Mr. Armstrong affirming that he “ha[s] read the above Response, and [is] familiar with all of the facts contained therein.” (*Id.* at 6.) Mr. Armstrong “verif[ies] under penalty of perjury that the foregoing is true and correct.” (*Id.*)

D. Supplemental Protest

On September 27, 2024, after its counsel reviewed the Case File under an OHA protective order, Protestor supplemented its protest. Protestor renews its contention that Mr. Armstrong's outside endeavors prevent him from controlling AEC's everyday business. (Supp. Protest at 1.) Protestor emphasizes that, in an SDVOSB protest proceeding, AEC has the burden to prove its SDVOSB eligibility. (*Id.*)

Protestor asserts that AEC has submitted no direct evidence that Mr. Armstrong works for AEC during regular business hours. (*Id.* at 2.) Instead, AEC offers argument from its legal counsel, and statements from third parties “about their impressions of Mr. Armstrong's responsiveness and availability.” (*Id.*) Protestor reiterates that “given his busy schedule flying airplanes, rescuing dogs, jetting to vacation homes, and dabbling in other businesses,” Mr. Armstrong cannot and does not devote his full attention to AEC. (*Id.*) AEC could have produced a sworn declaration from Mr. Armstrong attesting to his involvement in AEC and detailing his work schedule, yet chose not to do so. (*Id.*) Such a declaration could also have “provided basic information about [[AEC], including where the company's headquarters and its jobsites are located, the number of employees it has (and where those employees are located), . . . and how Mr. Armstrong is able to supervise those employees from a different location.” (*Id.*) Absent this information, OHA should find that AEC has not carried its burden of proving that Mr. Armstrong fully controls AEC. (*Id.*)

Protestor reiterates that Mr. Armstrong is involved with Potcake Cellars, Potcake Aviation, and the McMinnville Airport. (*Id.* at 3.) It is “nonsensical” to believe that Mr. Armstrong would establish Potcake Aviation in the state of Oregon if the purpose of that company is for him to travel to and from AEC worksites, when Mr. Armstrong claims that he does not reside in Oregon and, at least prior to 2021, no AEC jobs were near McMinnville. (*Id.*) AEC's assertion that it has no fixed headquarters is undermined by the Case File, because according to the Case File, Mr. Armstrong obtained a Florida driver's license in January 2022 so as to be near AEC's “main office”. (*Id.*, quoting Case File (CF), Exh. 5.) In any event, Protestor maintains, Mr. Armstrong's business and personal interests preclude him from devoting sufficient time and attention to AEC. (*Id.* at 4.) Protestor lastly notes that Potcake Cellars' website appears to have been changed in response to this protest and no longer describes Mr. Armstrong's other commitments. (*Id.*)

E. AEC's Supplemental Response

On October 3, 2024, AEC responded to the supplemental protest. AEC argues that the supplemental protest should be disregarded because it is in the nature of an improper Reply to AEC's Response. (Supp. Response at 1, citing 13 C.F.R. § 134.1007(f).) In AEC's view, Protestor makes no new substantive allegations and merely reiterates its prior claims. (*Id.*) Protestor therefore should, as a procedural matter, have obtained leave from OHA to reply to AEC's Response. (*Id.*) In any event, AEC maintains, AEC's Response did not consist solely of legal argument because Mr. Armstrong confirmed, under penalty of perjury, that he “devotes a full-time schedule to managing AEC during its normal business hours.” (*Id.* at 2.) Since COVID-

19, AEC, like many other businesses, has not needed a permanent office, and has determined that Mr. Armstrong can effectively “manag[e] the company's work remotely — by phone, email, project management tools, video calls, and direct messages — or by traveling by company jet to remote project sites, on a project-to-project basis.” (*Id.*)

F. Case File

The Case File indicates that AEC is a corporation established in the state of Florida. (CF, Exh. 15.) VA's Center for Verification and Evaluation (CVE) previously verified AEC as a Veteran-Owned Small Business (VOSB) on January 5, 2022, for a period of three years. (CF, Exh. 39.) At that time, Mr. Armstrong did not represent himself as a service-disabled veteran. (CF, Exh. 33.) On April 12, 2023, however, VA sent Mr. Armstrong a letter confirming his service-connected disability, and SBA then changed AEC's status from VOSB to SDVOSB. (AEC Response, Attach. A.) SBA subsequently extended AEC's SDVOSB certification until January 5, 2026. (CF, Exh. 44.)

AEC is 100% owned by Mr. Armstrong. (CF, Exh. 9.) The most recent board meeting minutes found in the Case File are from April 12, 2021. (CF, Exh. 4.) At this meeting, Mr. Armstrong was nominated, and elected, AEC's sole director, President, Secretary, and Treasurer. (*Id.*) In 2021, in response to an inquiry from CVE, Mr. Armstrong stated that he “will be obtaining a Florida drivers license in close proximity to [AEC's] main office in January [2022].” (CF, Exh. 5.) When AEC applied for VOSB certification, its last five contracts were in Florida, California, Missouri, Tennessee, and Texas. (CF, Exh. 27 at 1, 6, 12-13, and 15.)

In December 2021, as part of its application for VOSB verification, AEC sent CVE a letter of explanation concerning Mr. Armstrong's employment. (CF, Exh. 8.) AEC stated that its normal operating hours are from 9 a.m. to 5 p.m., Monday through Friday. (*Id.* at 2.) AEC further asserted that Mr. Armstrong works for AEC from 8 a.m. to 8 p.m., Monday through Friday, and on weekends as needed. (*Id.* at 1.) Asked whether Mr. Armstrong spends time working for or managing other companies, including Potcake Cellars and Potcake Aviation, AEC responded:

No. [Mr.] Armstrong does not spend any time working/managing any of the above listed companies. All of these companies except Potcake Aviation LLC (FBO) are simply holding companies for various assets such as Airplanes, Boats or Real Estate to separate financial liability from [AEC]. None of these companies require or receive active management from [Mr. Armstrong]. Potcake Aviation FBO is a fuel service provider [Mr. Armstrong] own[s] at an Airport. This service is managed by a full-time staff and does not require [his] active management. [Mr. Armstrong] also do[es] not receive any salary from this entity.

(CF, Exh 8 at 1.) According to Mr. Armstrong's personal tax returns in the Case File, Mr. Armstrong earned income only from AEC. (CF, Exhs. 12 and 38.)

III. Discussion

A. Burden of Proof

As the challenged concern, AEC 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, proposals were due April 29, 2024. Section II.A, *supra*. Therefore, OHA must examine AEC'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, a concern must be at least 51% owned, and fully controlled, by one or more service-disabled veterans. 13 C.F.R. §§ 128.202 and 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 require 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). Ordinarily, the service-disabled veteran “must devote full-time during the business's normal hours of operations”. *Id.* Furthermore, “[w]here a qualifying veteran claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, SBA will assume that the qualifying veteran does not control the concern, unless the concern demonstrates that the qualifying veteran has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management of the business.” *Id.*; *see generally VSBC Protest of The Controls Co., LLC*, SBA No. VSBC-326-P (2023), *recons. denied*, SBA No. VSBC-337-P (2024) (PFR).

In the instant case, the record reflects that Mr. Armstrong, a service-disabled veteran, owns 100% of AEC, and is AEC's President and sole director. Section II.F, *supra*. AEC thus broadly meets the ownership and control requirements of 13 C.F.R. §§ 128.202 and 128.203. Nevertheless, Protestor alleges, Mr. Armstrong does not fully control AEC due to his other business and personal interests. Sections II.B and II.D, *supra*. Protestor highlights in particular that Mr. Armstrong owns or is associated with several other companies, including Potcake Cellars and Potcake Aviation, and that he is Manager of the McMinnville Airport. *Id.* AEC reasonably explains, however, that Mr. Armstrong devotes full-time to AEC during its normal hours of operation. Sections II.C and II.F, *supra*. Specifically, AEC's normal operating hours are from 9 a.m. to 5 p.m., Monday through Friday, and Mr. Armstrong works for AEC from 8 a.m. to 8 p.m., Monday through Friday, and on weekends as needed. *Id.* Nor does Mr. Armstrong

spend significant time working for, or managing, his other companies. *Id.* Mr. Armstrong's wife runs Potcake Cellars, and Potcake Aviation was established to assist Mr. Armstrong in traveling to and from remote AEC jobsites. Section II.C, *supra*. Mr. Armstrong also owns several other companies, but these companies merely hold assets, such as real estate, and do not require active involvement by Mr. Armstrong. Sections II.C and II.F, *supra*. Additionally, Mr. Armstrong has delegated his role as Manager of the McMinnville Airport to Mr. Dehner. *Id.* On this record, then, AEC has persuasively shown that Mr. Armstrong does not have outside employment or other commitments that interfere with his ability to devote the necessary time and attention to AEC. It is also worth noting that, according to AEC and corroborated by the Case File, there appear to be no other individuals who might control AEC other than Mr. Armstrong. AEC is 100% owned by Mr. Armstrong, and he is AEC's President, Secretary, Treasurer, and sole director. *Id.* Mr. Armstrong thus has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management of AEC.

Protestor also highlights that Mr. Armstrong apparently resides in Oregon, thousands of miles away from AEC's "main office" in Florida. Sections II.B and II.D, *supra*. AEC denies these allegations and asserts that it has no fixed headquarters. Section II.C, *supra*. I find it unnecessary to explore these allegations in detail. SBA regulations previously established a rebuttable presumption that a service-disabled veteran does not control a concern "if that individual is not located within a reasonable commute to firm's headquarters and/or job-sites locations, regardless of the firm's industry." 13 C.F.R. § 125.14(l) (2022). SBA eliminated this presumption, though, effective January 1, 2023, and the presumption thus was not in effect as of April 29, 2024, the date AEC submitted its offer for the instant procurement. *VSBC Protest of In and Out Valet Co.*, SBA No. VSBC-363-P, at 6 (2024); *VSBC Protest of M Wilkinson Constr. Co.*, SBA No. VSBC-322-P, at 4 (2023). Whether or not Mr. Armstrong resides in close proximity to AEC's headquarters or job sites is therefore immaterial to the outcome of this case.

IV. Conclusion

AEC has proven its eligibility as an SDVOSB by a preponderance of the evidence and has persuasively shown that Mr. Armstrong devotes full-time to AEC without conflicting outside employment or other commitments. 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