

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

VSBC Protest of:

Marathon Industrial Equipment, LLC,

Protestor,

Re: Gilk and Sons, LLC

Solicitation No. SPE4A724P5431

U.S. Department of Defense

SBA No. VSBC-342-P

Decided: March 14, 2024

APPEARANCES

Philip Kircher, President, Marathon Industrial Equipment, LLC, Marathon, Florida

John O. Shirley, Esq., Phelps Dunbar LLP, Baton Rouge, Louisiana, for Gilk and Sons, LLC

DECISION

I. Introduction and Jurisdiction

On January 2, 2024, Marathon Industrial Equipment, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Gilk and Sons, LLC (Gilk and Sons), in connection with U.S. Department of Defense, Defense Logistics Agency, Aviation (DLA) Request for Quotations (RFQ) No. SPE4A724T4564. Protestor contends that the veteran, upon whom the Gilk and Sons' claim of eligibility is based, does not meet the requirement of control of the concern under 13 C.F.R. § 128.203. For the reasons discussed *infra*, the protest is GRANTED.

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

## II. Background

### A. Solicitation

On December 11, 2023, DLA issued RFQ No. SPE4A724T4564 for spill containment units. (Solicitation, at 6.) The Contracting Officer (CO) set aside the solicitation entirely for SDVOSBs and designated North American Industry Classification System (NAICS) code 325612, Polish and Other Sanitation Good Manufacturing, with a corresponding 900 employee size standard, as the appropriate code. (*Id.* at 2.) Final Proposal Revisions were due December 26, 2023. Protestor and Gilk and Sons both submitted timely offers.

### B. Protest

On January 2, 2024, Protestor filed the instant protest and asserts Gilk and Sons does not meet the requirements of the solicitation as a SDVOSB. (Protest, at 1.) According to Protestor, Gilk and Sons, owned by Edward R. Gilkison, quoted products from PacTec Inc. (PacTec), a manufacturer in its bid for the solicitation. (*Id.*) Protestor contends that Mr. Gilkison is an employee of PacTec, “but provided a quote from Gilk and Sons.” (*Id.*) Citing SBA regulations, Protestor asserts it has “not seen a company certified as a SDVOSB when the owner of the company is also listed as an employee of the company that produces the products they sell.” (*Id.*)<sup>1</sup> Protestor summarizes that “this apparent employee/dealer relationship may be a disqualifier.” (*Id.* at 2.)

### C. Case File

The Case File indicates that Gilk and Sons is a Louisiana based limited liability company. (Case File (CF), Exhs. 11, 50.) Mr. Gilkison owns 70% of Gilk and Sons, while John Owen Shirley owns the remaining 30%. (CF, Exh. 11, 50.) Mr. Gilkison is a Service-Disabled Veteran and the Managing Member of Gilk and Sons. (*Id.*) Mr. Shirley is neither a veteran nor a Service-Disabled Veteran. (CF, Exh. 18.)

Gilk and Sons was previously verified as an SDVOSB by the U.S. Department of Veterans Affairs, Center for Verification and Evaluation (CVE). (CF, Exh. 30.) According to Mr. Gilkison's resume, Mr. Gilkison is employed as the President of Gilk and Sons LLC. (CF, Exhs. 20, 43.) Mr. Gilkison's resume also indicates employment at PacTec as an Outside Sales representative and Verizon Communications as a Customer Service and Sales Associate. (*Id.*) All other previous employment ended in 2008. (*Id.* at 1-2.)

In a Letter of Explanation dated October 20, 2021, Mr. Gilkison asserted he works for Gilk and Sons Monday to Friday from 8:00am to 5:00pm. (CF, Exh. 22.) CVE requested additional information on Mr. Gilkison's outside employment. Specifically, CVE stated “[Mr. Gilkison's] resume/taxes/LinkedIn profiles indicates that [he] currently holds an outside

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<sup>1</sup> Protestor miscites the applicable regulations as 13 C.F.R. § 128.203(i); 13 C.F.R. §§ 125.13(e)(4)(i)(7); (e)(4)(k). The applicable regulations were at 13 C.F.R. §§ 125.14(i)(7) & 125.14(k); they are now at 13 C.F.R. §§ 128.203(h)(1)(ii) & 128.203(i).

position/ownership/obligation with [PacTec] and Verizon Communications.” (*Id.*) CVE requested that Mr. Gilkison “provide a complete schedule to include the times of the day and days of the week that [he] devote[s] to ALL entities, including the applicant.” (*Id.*) Mr. Gilkison asserts he departed from Verizon Communications July 2013 and further asserts “I am finishing up some consulting work with PacTec that will be completed by the end of the year . . . [w]hen I consult it is outside of the business hours for Gilk and Sons . . . [t]his does not conflict with my normal working hours.” (*Id.*)

#### D. OHA's Request for Information

On February 27, 2024, OHA issued an Order, pursuant to 13 C.F.R. § 134.1007(g), requesting that Gilk and Sons produce additional information. OHA ordered Gilk and Sons to address the issue of Mr. Gilkison's outside employment and Gilk and Sons' compliance with 13 C.F.R. § 128.203(i). (OHA's Order (Feb. 27, 2024).) Specifically, the Order required Gilk and Sons to clearly state Mr. Gilkison's current working hours at both Gilk and Sons and PacTec. (*Id.*) The Order also required Gilk and Sons to specify Mr. Gilkison's duties at Gilk and Sons and at PacTec. (*Id.*) OHA further ordered Gilk and Sons to respond no later than March 5, 2024, and cautioned that “[i]n the case of refusal or failure to furnish requested information within a required time period, the Judge may assume that disclosure would be contrary to the interests of the party failing to make disclosure.” (*Id.*, citing 13 C.F.R. § 134.1011.)

#### E. Response

On March 7, 2024, Gilk and Sons filed an untimely response to OHA's request for information. Gilk and Sons' response includes a declaration from Mr. Gilkison where he stated:

My intention was to quit my job at PacTec and work full-time with [Gilk and Sons] once I won my first bid but, unfortunately, each bid that [Gilk and Sons] won was protested by Basic Concepts for some minor difference in a specification (specifications which were adopted directly from the berms designed and manufactured by Basic Concepts), so the business has never been able to get off of the ground.

(Response, at 1.)

### III. Discussion

#### A. Burden of Proof

As the protested firm, Gilk and Sons 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, Gilk and Sons submitted its proposal for the solicitation on December 14, 2023. Section II.A, *supra*. Therefore, OHA must examine Gilk and Sons' SDVOSB eligibility as of this date, using the substantive ownership and control regulations in effect on that date.

### C. Analysis

Gilk and Sons has not persuasively proven its eligibility as a SDVOSB. I must therefore grant the protest.

To be considered an eligible SDVOSB, a concern must be at least 51% owned, and controlled, by one or more service-disabled veterans. 13 C.F.R. §§ 128.200(b), 128.202 and 128.203. The “control” requirement means that “both the long-term decision-making and the day-to-day operations” must be controlled by service-disabled veterans. 13 C.F.R. § 128.203(a). Further, SBA regulations prohibit the service-disabled veteran upon whom a concern relies for its SDVOSB status from engagement “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). Normally, the service-disabled veteran “must devote full-time during the business's normal hours of operations.” *Id.*

Here, Protestor alleges Mr. Gilkison, a Service-Disabled Veteran and Managing Member of Gilk and Sons maintains outside employment with PacTec, the intended manufacturer for the solicitation. Section II.B, *supra*. Information in the Case File suggest Mr. Gilkison held or maintains a working relationship with PacTec. Section II.C, *supra*. This is further supported by publicly available information. More specifically, PacTec's website lists Mr. Gilkison as a Territory Sales Executive for the company, and Mr. Gilkison's LinkedIn indicates he works in sales for PacTec from the duration of August 2013 to present. Sections II.B and II.D, *supra*.

OHA ordered Gilk and Sons to provide additional information. Section II.D, *supra*. Gilk and Sons filed an untimely Response. Section II.E, *supra*. Nevertheless, in the interest of having a complete record I will ADMIT Gilk and Sons' Response. It does appear from the Response that Mr. Gilkerson continues to be employed at PacTec, despite his earlier statement to the CVE that he intended to leave that concern. However, the Response fails to answer the questions posed in the Order. The Response fails to clearly state just what Mr. Gilkerson's working hours are both at Gilk and Sons and at PacTec. The Response fails to describe what Mr. Gilkerson's duties are at Gilk and Sons and at PacTec. It does not describe how Mr. Gilkerson handles his duties at Gilk and Sons while also performing his duties at PacTec. The Response fails to comply with the Order. Further, it fails to establish that Mr. Gilkerson controls Gilk and Sons.

In the case of refusal or failure to furnish requested information within a required time period, the Judge may assume that disclosure would be contrary to the interests of the party failing to make disclosure. 13 C.F.R. § 134.1011. OHA must assume Mr. Gilkison engages in outside employment with PacTec as a current employee. This employment may prevent Mr. Gilkison from devoting “full-time during the business's normal hours of operations” as required under 13 C.F.R. § 128.203(i). Mr. Gilkison concedes that he is currently employed with PacTec. Section II.E, *supra*. Gilk and Sons has failed to answer the questions posed in the Order and has

failed to establish that Mr. Gilkison devotes himself to the concern full time during normal business hours. Thus, I find Gilk and Sons has failed to meet its burden of proving its eligibility by a preponderance of the evidence. Therefore, I must conclude that Gilk and Sons does not qualify as an eligible SDVOSB because the veteran upon whom its claim of eligibility is based, Mr. Gilkison, must be assumed to hold outside employment that prevents him from devoting full time to Gilk and Sons. See *e.g.*, *VSBC Protest of the Controls Company, LLC*, SBA No. VSBC-326-P (2023).<sup>2</sup>

#### IV. Conclusion

Gilk and Sons has not shown that it was an eligible SDVOSB as of December 14, 2023. Accordingly, the protest is GRANTED. Gilk and Sons is not an SDVOSB for the instant solicitation. 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).

CHRISTOPHER HOLLEMAN  
Administrative Judge

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<sup>2</sup> The record has nothing to support Protestor's allegation that Gilk and Sons is economically dependent upon another concern. 13 C.F.R. § 128.203(h)(1)(ii).