

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

VSBC Protest of:

Aero-Tel Wire Harness Corp.,

Protestor,

Re: Fortem Genus Inc.

Solicitation No. SPE4A7-24-T-7074

Defense Logistics Agency

SBA No. VSBC-344-P

Decided: March 22, 2024

APPEARANCES

Tony Donatto, President, Aero-Tel Wire Harness Corp., Orlando, Florida

Judy Feeney, Chief Operating Officer, Fortem Genus Inc., Fayetteville, North Carolina

DECISION

I. Introduction and Jurisdiction

On January 25, 2024, Aero-Tel Wire Harness Corp. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Fortem Genus Inc. (Fortem) in conjunction with Defense Logistics Agency (DLA) Request for Quotations (RFQ) No. SPE4A7-24-T-7074. Protestor maintains that Fortem is not a certified SDVOSB and therefore is ineligible for award. 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. Protestor filed its protest within five business days after receiving notification that Fortem 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.

II. Background

A. The RFQ

On December 26, 2023, DLA issued RFQ No. SPE4A7-24-T-7074 for electrical power cable assemblies. (RFQ at 7.) The Contracting Officer (CO) set aside the procurement for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 334419,

Other Electronic Component Manufacturing, with a corresponding size standard of 750 employees. Fortem submitted its quote on January 10, 2024, representing itself as an SDVOSB. On January 24, 2024, the CO announced that Fortem was the apparent awardee.

B. Protest

On January 25, 2024, Protestor, an unsuccessful offeror, filed the instant protest with the CO, challenging Fortem's SDVOSB status. Protestor observes that Fortem is not listed in SBA's database of certified SDVOSBs. (Protest at 1.) Furthermore, based on "hearsay evidence," Protestor alleges that another company prepared and submitted Fortem's quote. (*Id.*) Protestor posits that Fortem likely intends to subcontract all manufacturing to the other company, in contravention of the nonmanufacturer rule. (*Id.*) The CO forwarded the protest to OHA for review.

C. OHA Proceedings

Fortem did not submit any formal response to the protest allegations. On February 21, 2024, Fortem forwarded OHA a copy of a letter, dated May 22, 2019, from the U.S. Department of Veterans Affairs (VA) Center for Verification and Evaluation (CVE). In the letter, CVE stated that it had verified Fortem as an SDVOSB, effective for a period of "three (3) years from the date of this letter." (Letter from T. McGrath to D. Feeney (May 22, 2019).) Because CVE's verification of Fortem appeared to have expired in May 2022, OHA requested that Fortem clarify whether it possessed any current certification or verification. In response, Fortem asserted that it was "in the process of working with SBA to recertify." (E-mail from J. Feeney (Mar. 1, 2024).) On March 13, 2024, the deadline established by OHA for any response to the protest, Fortem informed OHA that it had been "unable to complete" recertification, and would not respond to the protest. (E-mail from J. Feeney (Mar. 13, 2024).)

D. Case File

The Case File (CF) indicates that Fortem applied for SDVOSB certification on January 19, 2024. (CF, Exh. 9.) SBA subsequently notified Fortem that its application was incomplete in various respects. (CF, Exhs. 6-8.) On February 22, 2024, Fortem's application was administratively withdrawn due to inactivity. (CF, Exh. 5.)

III. Discussion

A. Burden of Proof

As the protested firm, Fortem 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 an 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, Fortem submitted its quotation on January 10, 2024. Section II.A, *supra*. Therefore, OHA must examine Fortem's SDVOSB eligibility as of this date, using the substantive ownership and control regulations in effect on that date.¹

C. Analysis

SBA regulations generally require that a concern must be a certified SDVOSB in order to compete for, or to be awarded, an SDVOSB set-aside contract. 13 C.F.R. §§ 128.200(c)(1) and 128.401(a). If, however, a concern submitted “a complete SDVOSB certification application to SBA on or before December 31, 2023,” the concern is permitted to self-certify as an SDVOSB until such time as “SBA declines or approves the concern's application.” *Id.*

Here, there is no dispute that Fortem was not an SBA-certified SDVOSB as of January 10, 2024, when Fortem submitted its quotation for the instant procurement. Sections II.B — II.D, *supra*. Nor could Fortem properly self-certify as an SDVOSB for this procurement, because Fortem did not apply for SDVOSB certification prior to December 31, 2023. Section II.D, *supra*. As the challenged concern, Fortem bears the burden of proof in the instant proceeding, and Fortem has not attempted to adduce evidence that it was an eligible SDVOSB as of January 10, 2024. Section II.C, *supra*. This protest must therefore be sustained. *See, e.g., VSBC Protest of McKenna Brytan Indus. LLC*, SBA No. VSBC-334-P (2024).

IV. Conclusion

Fortem has not proven that it is an eligible SDVOSB. The protest is SUSTAINED. 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

¹ Effective January 1, 2023, the relevant SDVOSB ownership and control regulations are found at 13 C.F.R. Part 128. 87 Fed. Reg. 73,400 (Nov. 29, 2022).