

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

VSBC Protest of:

In and Out Valet Company,

Protestor,

Re: Crown Based Services, LLC

Solicitation No. 36C25023Q0889

U.S. Department of Veterans Affairs

SBA No. VSBC-363-P

Decided: June 12, 2024

APPEARANCES

Nancy M. Camardo, Esq., Camardo Law Firm, P.C., Auburn, New York, for In and Out Valet Company

John Ryan, Contracting Officer, U.S. Department of Veterans Affairs, Network Contracting Office, Cincinnati, Ohio

DECISION

I. Introduction and Jurisdiction

On October 12, 2023, In and Out Valet Company (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Crown Based Services, LLC (Crown), in connection with U.S. Department of Veteran Affairs (Agency) Solicitation No. 36C25023Q0889, to the U.S. Small Business Administration, Office of Hearings and Appeals (OHA). Protestor filed a Supplemental Protest with the VA Contracting Officer (CO) on January 25, 2024. The CO forwarded the Protest and the Supplemental Protest to OHA on March 4, 2024. Protestor contends that Mr. Shagdrick Michael Hill, the service-disabled veteran upon whom Crown Based Services, LLC (Crown) bases its claim of eligibility, does not maintain control of Crown as required under 13 C.F.R. § 128.203.¹ For the reasons discussed *infra*, the protest is DENIED.

¹ Protestor relied upon the since superseded version of SBA's SDVOSB regulations at 13 C.F.R. Part 125. The regulations have been at 13 C.F.R. Part 128 since January 1, 2023, which is prior to the date for determining's Crown's eligibility. Accordingly, these were the applicable

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 its initial protest within five business days of receiving notification that Crown 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.²

II. Background

A. Solicitation

On September 7, 2023, U.S. Department of Veteran Affairs (VA) issued RFQ No. 36C25023Q0889 for a contractor to provide labor, material, supplies, and equipment and supervision of contractor personnel necessary to perform valet parking support services for the VA Medical Center in Dayton, Ohio. (Solicitation, at 6.) The Contracting Officer (CO) set aside the solicitation entirely for SDVOSBs and designated North American Industry Classification System (NAICS) code 812930, Parking Lots and Garages, with a corresponding \$41.5 Million annual receipts size standard, as the appropriate code. (*Id.* at 2.)

The solicitation calls for the contractor to be “completely liable and responsible for ticketing, securing keys, parking, delivery, and directing certain valet vehicles to and from the valet greeting areal (sic), for the period specified in accordance with all terms, conditions, schedules, provisions, and requirements of this solicitation. . . .” (*Id.* at 17.) The contractor must also “implement their proposed plan and carry it out on a day-to-day basis for the duration of the contract.” (*Id.*)

Offers were due September 13, 2023. Protestor and Crown both submitted timely offers.

regulations. Where possible, I have changed the citations in the discussions of Protestor's pleading to the new, applicable regulations.

² Protestor received notice of the award of the contract to Crown on October 4, 2023, and filed a protest on October 12, 2023. The CO did not forward the initial protest as required by 13 C.F.R. § 134.1004(c). A CO is required to forward any SDVOSB status protest to OHA, “notwithstanding whether the contracting officer believes it is premature, sufficiently specific, or timely.” 13 C.F.R. § 134.1004(c). Whether the protest was filed with the CO post award or pre award is irrelevant. OHA adjudicates SDVOSB status protests pursuant to 13 C.F.R. Part 134 Subpart J. On January 19, 2024, the CO issued an award of notice via SAM.gov, listing Crown as the awardee of the solicitation. On January 25, 2024, Protestor filed another protest within five days of the January 19, 2024 notification on SAM.gov. Although, the CO did not forward the protest and supplemental protest to OHA until March 4, 2024, I find both the October 12, 2023 initial protest and the January 25, 2024 supplemental protest timely under 13 C.F.R. § 134.1004(c).

B. Protest and Supplemental Protest

On October 12, 2023, Protestor protested the award of solicitation 36C25023Q0889 to Crown. Protestor asserts the VA failed to comply with FAR 52.212-2 Evaluation, Simplified Acquisition Procedures because the VA “failed to evaluate each offer to ensure that all the requirements of the solicitation would be met.” (Protest, at 1-2.) More specifically, the VA did not conduct a proper evaluation and comparison of each offeror's proposal under the three evaluation factors, price, past performance, and technical. Protestor concludes that the VA only conducted a “peripheral evaluation of the Past Performance and Technical factors and chose to award the contract to Crown. . . .” (*Id.* at 6.)

Protestor asserts it received a response on or about November 21, 2023, from the Agency, stating Protestor “identified some procurement irregularities and [[the Agency] determined that corrective action was required.” (Supplemental Response at 1.) Protestor asserts the Agency dismissed the protest, despite not identifying in its letter what it considered a “procurement irregularity.” (*Id.* at 2.) As the incumbent, Protestor asserts its existing contract extended until January 31, 2024, but received no information regarding the new solicitation. (*Id.*) Protestor asserted it inquired about the status of the contract on January 23, 2024, and received an email response from the Agency stating, “the follow-on contractor has confirmed they will be starting operations on 1 FEB 2024.” (*Id.* at 2.) Protestor filed a supplemental protest on January 25, 2024, and again asserts the VA “failed to conduct a proper evaluation of Crown's proposal.” (*Id.*) Protestor asserts “[n]ot keeping Protestor notified of the contract award process put them in a position that is forcing them to dismiss their faithful employees with only a six-day notice. . . .” (*Id.* at 3.) Protestor reasserts the arguments raised in the protest.

Further, in the supplemental protest, Protestor contends, inter alia, that there is evidence that Crown is in violation of limitations on subcontracting requirements and SDVOSB regulations that require an owner control and maintain a level of management over the company. (*Id.* at 3-4.) More specifically, Mr. Hill cannot maintain control as required under 13 C.F.R. § 128.203(a). (*Id.*) Protestor lists Crown's previous contracts' NAICS codes and location of contract performance, and asserts Mr. Hill is unable to manage the various contracts awarded because he has no prior experience. (*Id.*) In addition, Protestor asserts, among other things, that Crown's location in Texas is a residence and the “actual location of the business is unknown.” (*Id.* at 5.) Further, Mr. Hill did not disclose the outside business he owns, which Protestor alleges “would also require his attention.” (*Id.* at 6.) Lastly, Protestor asserts Crown has no employees, thus Crown must hire subcontractors to perform its various contracts, and this is not in compliance with the limitations on subcontracting requirements. (*Id.* at 6.)

C. Case File

The Case File establishes that Crown is a Texas based limited liability company (LLC), formed in March 2020 with a business address of 4507 Juniper Ridge Lane, Manvel, Texas 77578 (4507 Juniper Ridge Lane) and registered with the Office of the Secretary of State of Texas. (Case File (CF), Exhs. 4, 10, 18.) Crown is 100% owned by Mr. Shagdrick Michael Hill a Service-Disabled Veteran and the single member of the LLC. (CF, Exhs. 13, 26.)

Crown was previously verified as an SDVOSB by the U.S. Department of Veterans Affairs, Center for Verification and Evaluation (CVE) on January 14, 2021. (CF, Exh. 8.) The CVE verification is valid for three years from the date of the letter. (*Id.*)

According to Mr. Hill's resume, he is currently employed as the President of Crown as of 2020. (CF, Exh. 19.) Mr. Hill's resume also indicates employment as a licensed insurance agent from October 2014 to present. (*Id.*) On January 12, 2021, Mr. Hill reported that he works for Crown Monday to Friday, 8am to 2pm, Crown's current operating business hours. (CF, Exh. 7.) Mr. Hill also works as a licensed insurance agent Monday to Thursday, from 2pm to 8pm. Further, Mr. Hill stated that he resides at 4507 Juniper Ridge Lane, the same location as Crown's physical address. (*Id.*)

Crown previously informed CVE that it does not have Tax Form 941 records due to not having "any employees." (CF, Exh. 27.) Crown also informed CVE that it does not have an operating agreement as a single member LLC. (CF, Exh. 26.)

SBA verification records indicate that Crown was last verified on January 14, 2021, with an expiration date of January 15, 2025. (CF, Exh. 1.)

D. Additional Filings

On March 21, 2024, Protestor filed a Revised Protestor Objection to Agency Action with OHA. Protestor asserts it received an email from the CO informing Protestor's Counsel that according to Subpart C of CFR 134, the CO shall "consider" suspending performance, and the VA "has decided its best course of action is to continue with the Awardee [Crown]." (Objection, at 1.) Protestor objects to the CO's decision and asserts the issue here is whether Crown may only perform under the contract if the CO determines it is the "best course of action" and whether that decision will be "to protect public interest" (sic) under 13 CFR § 134.1007(h). (*Id.* at 2.) Protestor asserts "it would not be in the public interest, nor could it be the Agency's best course to have Crown, who has never been awarded a valet contract, to start performance within 10 days, only to have the contract cancelled if (sic) OHA upholds the protest, which would result in a serious disruption of service." (*Id.*) Protestor requests that OHA "exercise whatever authority it has to look into and resolve this matter." (*Id.* at 3.)

On March 25, 2024, OHA issued an Order to the CO to comply with regulations. OHA determined that under applicable regulations, the CO "may award a contract before the Judge issues a decision only if the contracting officer determines that an award must be made to protect the public interest and notifies the Judge and [the Director of SBA's Office of Government Contracting (D/GC)] in writing of such determination." 13 C.F.R. § 134.1007(h). Further, a CO "shall not award a contract to a protested concern that the Judge has determined is not an eligible VOSB or SDVOSB . . . [i]f the contract has already been awarded, the contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government." 13 C.F.R. § 134.1007(j)(2).

OHA ordered CO not to move forward with the awardee, Crown, during these proceedings until it complies with 13 C.F.R. § 134.1007(h). (OHA's Order, at 2.) More

specifically, OHA ordered the CO to make a determination on whether proceeding with Crown would be necessary to protect the public interest and further ordered the CO to notify OHA and the D/GC of that determination in writing. 13 C.F.R. § 134.1007(h). (*Id.*) OHA informed the CO that if it determines Crown is not an eligible SDVOSB for the subject solicitation after award, then the CO must terminate the contract, unless they make a written determination that to do so would not be in the best interest of the Government. (*Id.*, citing 13 C.F.R. § 134.1007(j)(2).)

On March 27, 2024, the CO responded to OHA's order. The CO asserts its email to Protestor “was not intended to communicate that award had not yet occurred and VA was proceeding with award, rather to communicate to [Protestor] as the incumbent contractor that the new awardee, Crown, would take over the required services as of April 1, 2024.” (*Id.* at 2.) The CO further asserts that because it received the status protest after award, the CO considers the protest to be a “post-award protest” and thus, 13 C.F.R. § 134.1007(h) would not apply. (*Id.*) The CO concludes that he is “aware of no requirement in 13 C.F.R. § Subpart J (sic) that requires the Contracting Officer to suspend performance of an awarded contract pending OHA's decision on a post-award status protest.” (*Id.*) Yet, the CO did “fully acknowledge pursuant to 13 C.F.R. § 134.1007(j)(2) if OHA determines Crown is not an eligible SDVOSB for the subject solicitation after award, then [the CO] must terminate the contract or make a written determination that to do so would not be in the best interest of the Government.” (*Id.*)

On March 28, 2024, Protestor filed a Notice of Agency's Failure to Comply with OHA Order. Protestor provides email correspondence to and from the CO which it asserts shows the CO's intent to not comply with OHA's Order or the requirements of Federal Government Contract laws and regulations, especially the SDVOSB regulations. (Notice at 2.) Protestor's President sent an email to the CO asserting that the “sub-contracted entity (Share's Valet) start services on April 1, 2024.” (*Id.*) Protestor asserts the CO's “bad faith actions are disgraceful, incomprehensible and are in violation of laws and regulations,” and request that “OHA proceeds with any action possible and necessary to address this flagrant disregard of its previous Order.” (*Id.* at 2.)

III. Discussion

A. Burden of Proof

As the protested firm, Crown 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, Crown submitted its proposal for the solicitation on September 26, 2023. Section II.A, *supra*. Therefore, OHA must examine Crown's SDVOSB eligibility as of this date, using the substantive ownership and control regulations in effect on that date.

C. Analysis

Upon review of Protestor's amended protest and the case file, I find Crown has persuasively proven its eligibility as a SDVOSB. I must therefore deny 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's claim of eligibility is based from engaging “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.* 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.*

Here, Protestor alleges Mr. Hill cannot maintain control of Crown as required under 13 C.F.R. § 128.203(a). Section II.B, *supra*. I find this argument unpersuasive. Evidence from the case file shows Crown is 100% owned by Mr. Hill, an SDV, and is located at 4507 Juniper Ridge Lane, the same location as Mr. Hill's residence. Section II.C, *supra*. Further, Mr. Hill confirmed that he operates Crown full time, during Crown's normal business hours of 8:00 am to 2:00 pm, Monday to Friday. *Id.* Although Crown holds outside employment as an insurance agent from 2:00 pm to 8:00 pm Monday to Friday, this outside employment does not prevent Mr. Hill from working full time with Crown, during Crown's normal business hours. *Id.* Appellant further argues that Crown is unable to perform under the contract due to the location of the business concern. Section II.B, *supra*. SBA regulations previously established a rebuttable presumption that a veteran does not control a concern “if that individual is not located within a reasonable commute to [the] firm's headquarters and/or job-sites locations.” *See* 13 C.F.R. § 125.14(l) (2022). SBA has since eliminated this presumption; this regulation was no longer in effect at the time Crown submitted its offer. Thus, I find Mr. Hill's outside employment does not impede his ability to make both long term decision making and day to day management of Crown as required by 13 C.F.R. § 128.203(a) and 13 C.F.R. § 128.203(i).

SBA permits protestors to challenge a prime contractor's reliance on a non-SDVOSB subcontractor. *See* generally 13 C.F.R. §§ 128.401(g) and 134.1003(c). The regulations provide:

In the case of a contract or order for services, specialty trade construction or supplies, SBA will find that a prime VOSB or SDVOSB contractor is performing the primary and vital requirements of the contract or order, and is not unduly reliant on one or more subcontractors that are not certified VOSBs or SDVOSBs, where the prime contractor can demonstrate that it, together with any subcontractors that

are certified VOSBs or SDVOSBs, will meet the limitations on subcontracting provisions set forth in § 125.6 of this chapter.

13 C.F.R. § 128.401(g)(2); FAR 52.219-14(e). Because the instant procurement is for services, Crown, the prime contractor, must comply with the “Limitations on Subcontracting” provisions related to services at 13 C.F.R. § 125.6(a)(1). That regulation, in turn, stipulates that the prime contractor may subcontract no more than 50% of services to entities that are not similarly situated. *See VSBC Protest of Panakeia, LLC*, SBA No. VSBC-352-P, at 2 (2024).

Here, Protestor alleges Crown violates the limitations on subcontracting requirements. Section II.B, *supra*. Protestor contends that Crown, as a single member LLC, will subcontract the majority of the services to be performed under the contract. *Id.* Upon review of the record, I find this argument unpersuasive. Here, Crown's proposal states that the subcontractor will only be responsible for providing 40% of the professional valet services. (Crown's Subcontractor Plan, at 1.) Crown further confirmed in a Memorandum of Record to the CO that Crown will fully comply with the Limitations on Subcontracting requirements at FAR 52.219-14 and will provide that at least 50% of the cost of contract performance incurred for personnel shall be expended for employees of Crown as specified in the PWS. (Crown's Memorandum for Record, at 1.) Thus, I find Crown's proposal complies with the Limitations on Subcontracting requirements of 13 C.F.R. § 125.6(a)(1).

Lastly, OHA does not have jurisdiction to adjudicate matters dealing with the conduct of the procurement. *Size Appeal of Ekagra Partners, LLC*, SBA No. SIZ-6189, at 9 (2023). The determination of what capabilities are necessary to perform a contract and whether the awardee has them, are matters of responsibility for the contracting officer to determine and thus, are not within OHA's jurisdiction. *VSBC Protest of Veterans Command, LLC*, SBA No. VSBC-270-P (2023) (PFR); *Size Appeal of Bacik Group, LLC*, SBA No. SIZ-6071, at 2-3 (2020). Here, Protestor's allegations in its initial protest regarding the CO's proposal evaluation process are contract administration requirements which are contractor responsibility issues, and such questions are beyond OHA's jurisdiction. *See e.g., CVE Protest of Veterans Command, LLC*, SBA No. CVE-191-P, at 5 (2021). Thus, I find Protestor's allegations in its initial protest beyond OHA's jurisdiction.

IV. Conclusion

Crown has shown that it was an eligible SDVOSB as of September 26, 2023. Accordingly, the protest is DENIED. Crown is 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