

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

VSBC Protest of:

Stripes Global LLC,

Protestor,

Re: RCG of North Carolina, LLC

Solicitation No. 36C26225Q0314

U.S. Department of Veterans Affairs

SBA No. VSBC-434-P

Decided: June 25, 2025

APPEARANCES

Nicole D Pottroff, Esq., Shane J. McCall, Esq., John L. Holtz, Esq., Gregory P. Weber, Esq., Stephanie L. Ellis, Esq., Annie E. Birney, Esq., Koprince McCall Pottroff LLC, Lawrence, Kentucky, for Stripes Global LLC

Alan Grayson, Esq., Grayson Law, Indialantic, Florida, for RCG of North Carolina, LLC

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On April 4, 2025, Stripes Global LLC (Protestor) protested the size and Service-Disabled Veteran-Owned Small Business (SDVOSB) status of RCG of North Carolina, LLC (RCG), in connection with U.S. Department of Veterans Affairs (VA) Request for Quotations (RFQ) No. 36C26225Q0314. Protestor contends that RCG is not controlled by a service-disabled veteran because it will rely on the licensure of its subcontractor in order to perform the subject procurement. 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 RCG had been awarded the contract, so the protest is timely. 13 C.F.R. § 134.1004(a)(3). 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 RFQ

On January 7, 2025, VA issued RFQ No. 36C26225Q0314, seeking a contractor to provide scheduled delivery of various medical gases for the VA Medical Center Greater Los Angeles. (RFQ at 5.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs and assigned North American Industry Classification System (NAICS) code 325120, Industrial Gas Manufacturing, with a corresponding 1,200 employees size standard. (RFQ, SF 1449.)

More specifically, according to the RFQ's Statement of Work, the contractor will provide several different medical gases including argon, carbon dioxide, helium, nitrogen, nitrous oxide, and oxygen. (RFQ at 6.) The RFQ stated that VA intended to award a single indefinite-delivery indefinite-quantity contract for one year with four option years. (*Id.* at 7.) Quotes were to be evaluated strictly by price. (*Id.* at 19.)

Regarding licenses, the RFQ stated the following:

If the Contractor is not the manufacturer of the medical gases that are placed into medical gas cylinders being supplied under this contract, the Contractor must provide evidence of the medical gas manufacturer's current licenses, permits, certifications, or registrations required by the FDA in the states in which this contract is performed, as well as an executed copy of the resellers agreement within ten (10) calendar days of contract award affirmatively demonstrating that the Contractor has authorization by the manufacturer to resell the medical gas and to rent the medical gas cylinders that the Contractor is providing under this contract. In addition, the Contractor shall provide annual updates to any agreements it has with the medical gas manufacturer and medical gas cylinder provider affirmatively demonstrating that the Contractor has authorization by the manufacturer to resell the medical gas and to rent the medical gas cylinders that the Contractor is providing under this contract. In the event of a change in the manufacturer, the Contractor shall provide a minimum of 30 days advance notification, or at the time it is known, to VA of the change in manufacturer, and shall provide evidence of the new medical gas manufacturer's current licenses, permits, certifications, or registrations required by the FDA and the states in which this contract is performed. The Contractor shall also provide a copy of its signed agreement with the new manufacturer demonstrating that the Contractor has authorization by the manufacturer to resell the medical gases and to rent the medical gas cylinders that the Contractor intends to provide under this contract.

Throughout the term of this contract, Contractor shall maintain all federal, state, and local licenses applicable to the Contractor, as well as any required FDA certifications. Contractor must also provide, annually, verification that the manufacturer from which it obtains the medical gases placed into the medical gas cylinders provided to VA under this contract holds current licensing, permits,

certifications, or registrations required by the FDA and the states in which this contract is performed.

(*Id.* at 9 (emphasis removed).)

RCG submitted its quote on January 20, 2025. On April 2, 2025, the CO informed Protestor and other unsuccessful offerors that RCG had been selected for award.

### B. Protest

On April 4, 2025, Protestor filed the instant protest, challenging RCG's size and SDVOSB status. The CO forwarded the status portion of the protest to OHA for review.<sup>2</sup>

The protest consists of several allegations concerning RCG's size. More specifically, the protest alleges that RCG cannot comply with the nonmanufacturer rule and should otherwise be found affiliated with its subcontractor, Airgas. (Protest at 6-10.)

As to RCG's SDVOSB status, the protest alleges that RCG lacks the license needed to perform the contract. (*Id.* at 6.) Protestor highlights that, in order to be an eligible SDVOSB, a service-disabled veteran must either hold licenses required to operate in the concern's line of business or otherwise demonstrate that he or she controls those who possess the required licenses. (*Id.* at 9, citing 13 C.F.R. § 128.203(b).) Protestor observes that the procurement calls for the supply of nitrous oxide and other medical gases in California. (*Id.* at 10.) According to Protestor, California law requires companies to be licensed in order to distribute nitrous oxide. (*Id.*, citing Cal. Penal Code § 381b.) North Carolina, where RCG is incorporated, also requires a license to distribute medical gases. (*Id.*, citing N.C. Gen. Stat. Ann. § 90-85.22 and 21 N.C. Admin. Code 46.1608.) Protestor argues that RCG lacks this license and will rely on the license of Airgas. (*Id.*) Since RCG's qualifying veteran does not control Airgas, Protestor contends that RCG should be found an ineligible SDVOSB for the contract. (*Id.*)

### C. RCG's Response

On May 22, 2025, RCG responded to the protest. RCG maintains that the protest should be denied because (1) Protestor did not allege a valid basis for an SDVOSB protest and (2) RCG is not required to possess a license to perform the procurement. (Protest at 1.)

Based on FAR 19.307 and 13 C.F.R. § 128.500, RCG contends that there are four valid grounds for an SDVOSB protest: (i) veteran status; (ii) lack of veteran ownership and control; (iii) violation of the ostensible subcontractor rule; and (iv) invalid joint venture. (*Id.* at 5.) According to RCG, the protest's status allegations do not fit into any of these categories. (*Id.* at 6-10.) The protest did not allege that RCG's veteran owner cannot prove his veteran status or that he lacks ownership and control of RCG. (*Id.* at 6.) Because this is a supply contract, RCG argues

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<sup>2</sup> In accordance with 13 C.F.R. §§ 121.1003 and 134.1001(c), the CO directed the size portion of Protestor's allegations to SBA's Office of Government Contracting — Area VI. Administrative Judge

that the ostensible subcontractor rule is inapplicable. (*Id.* at 7-9, citing *Size Appeal of Invisio Commc'n, Inc.*, SBA No. SIZ-6084 (2020).) Lastly, because RCG did not submit its proposal as a joint venture, the fourth ground is also inapplicable. (*Id.* at 9-10.)

Even if the protest were valid, RCG asserts that it does not need a license to perform the procurement. (*Id.* at 10.) According to 21 U.S.C. § 353(e)(4)(Q), RCG argues that the distribution of medical gases as required in the solicitation is not considered wholesale distribution. (*Id.*) RCG bases this contention on the fact that the statute plainly states such, the statute does not require licenses for distribution of medical supplies “to a consumer,” and the statute explains that selling to a hospital for its own use is not “wholesale distribution.” (*Id.*) California, the state where the procurement will be performed, and North Carolina, RCG's place of business, both incorporate this statute. (*Id.* at 10-11, citing Cal. Bus. & Prof. Code § 4043 and N.C. Gen. Stat. § 106-145.2(10).) Furthermore, RCG notes that VA has on several occasions explained that “VA medical gas contracts are not wholesale distribution contracts and therefore do not require the prime contractor to possess a state wholesale license.” (*Id.* at 11.) VA further said for similar procurements that “the prime contractor could rely on the manufacturer's licenses to fulfill any licensure needs.” (*Id.*)

RCG claims that the premise of the protest is to find that RCG is affiliated with its supplier based on the license. (*Id.* at 12.) RCG contends that the licensing issue should be considered a “responsibility determination” by the CO. (*Id.*) RCG points to *CVE Appeal of Veterans 1st Architecture, LLC*, SBA No. CVE-122-A (2019) where “OHA ruled that when the veteran owner did *not* possess the license that the state *required in order to do the company's work* (which is not the case here), that owner could rely upon the licensee whom he hired for that work, and still main ‘control’ of the company's operations for SDVOSB purposes.” (*Id.* at 12-13 (emphasis RCG's).) Lastly, RCG observes that the protest alludes to violations of the ostensible subcontractor rule and the limitations on subcontracting, but RCG maintains that it is in full compliance. (*Id.* at 13-15.)

#### D. Supplemental Protest

On June 11, 2025, after reviewing the Case File under a protective order, Protestor filed a supplemental protest. Protestor reiterates that RCG should be found controlled by and affiliated with Airgas. (Supp. Protest at 1.)

Protestor argues that RCG failed to sufficiently rebut its original protest allegation that RCG is not unconditionally controlled by a service-disabled veteran. (*Id.* at 2.) Information in the Case File, according to Protestor, supports its position even more. (*Id.* at 3.) RCG's last medical gas distributor license expired on December 31, 2021, and RCG informed VA that it did not need to maintain such license. (*Id.*) Furthermore, since RCG has no employees and operates out of a garage, Protestor contends that RCG does not have the capacity to take possession of the supplies for this procurement. (*Id.*) Based on this evidence, Protestor contends that RCG must be found reliant on, and thus controlled by, a non-service-disabled-veteran — Airgas. (*Id.* at 4.) SBA regulations provide that a qualifying veteran may not have any business relationships that limit the veteran's ability to make independent business judgement. (*Id.*, citing 13 C.F.R. § 128.203(h)(2).) SBA regulations also dictate that an SDVOSB may not rely on a non-qualifying

veteran's license. (*Id.*, citing 13 C.F.R. § 128.203(h)(4).) In Protestor's view, RCG violates both requirements based on its relationship with Airgas. (*Id.*)

The remainder of the supplemental protest contains arguments as to RCG's size. More specifically, Protestor argues that RCG should be found affiliated with Airgas and that RCG is not able to comply with the nonmanufacturer rule. (*Id.* at 4-7.)

#### E. Supplemental Response

On June 24, 2025, RCG responded to the supplemental protest. RCG argues that the supplemental protest merely “regurgitates” the protest allegations without providing any additional evidence of support. (Supp. Response at 1.) RCG complains that the supplemental protest is not based on any new information contained in the Case File and should thus be dismissed on those grounds. (*Id.* at 2-3.) RCG takes further issue with spelling issues in the supplemental protest and Protestor's continued failure to cite relevant controlling legal authority. (*Id.* at 3-4.)

The supplemental protest, according to RCG, again primarily alleges that RCG is not controlled by a qualifying veteran because RCG relies on Airgas' license for the procurement. (*Id.* at 4.) RCG maintains, however, that this is not a valid ground for an SDVOSB protest. (*Id.*) Regardless, RCG reiterates that a license is not required based on 21 U.S.C. § 353(e)(4)(Q). (*Id.* at 5.) RCG notes that Protestor does not address this statute in its supplemental protest. (*Id.* at 6.) Based on this statute, RCG argues that a license is not required for “the *retail* delivery of medical gases to *end-user* that VA *hospital* in Southern California.” (*Id.* (emphasis RCG's).) RCG reasserts that “the VA already has made this determination by judging RCG's offer to be responsive, and by making an affirmative determination of responsibility for RCG.” (*Id.*)

RCG further contests Protestor's argument that RCG should be found affiliated with Airgas based on the licensing issue. (*Id.*) RCG argues:

- There is no showing whatsoever that a wholesaler's license is even relevant, much less “critical.”
- There is no showing whatsoever that such a license, if it were relevant, would give Airgas (or does give Airgas) any “influence” over RCG, especially in view of the fact that RCG can replace Airgas at will as its supplier, with or without a license.
- An assertion of “affiliation” must be based on “control,” not “influence.”

(*Id.*) As such, RCG contends that Protestor has failed to establish that Airgas' possession of license causes Airgas to control or even influence RCG in such a way that RCG “cannot exercise independent judgement without great economic risk.” (*Id.* at 7, quoting 13 C.F.R. § 128.203(h)(2).) In line with *Size Appeal of Bukkehave, Inc.*, RCG notes that just because RCG is an authorized dealer of Airgas products does not mean that the two are affiliated. (*Id.*, citing SBA No. SIZ-5981, at 8 (2019).)

RCG emphasizes that OHA's jurisdiction is limited in SDVOSB protests. (*Id.* at 8.) However, RCG maintains, Protestor asks OHA to go beyond and investigate issues such as the nonmanufacturer rule. (*Id.*) RCG emphasizes that Protestor concedes the nonmanufacturer rule has been waived for this class of products. (*Id.*) Further, because this procurement was solicited under Simplified Acquisition Procedures, the non-manufacturer rule is inapplicable. (*Id.* at 8-9, citing *Size Appeal of Chartwell RX, LLC*, SBA No. SIZ-6276 (2024).) In sum, RCG argues that “it is not OHA's responsibility to revisit the VA's proposal evaluation, source selection and responsibility determinations that RCG can (and does) ‘take [] ownership or possession of the item(s) with its personnel, equipment or facilities in manner consistent with industry practice.’” (*Id.* at 9-10, quoting 13 C.F.R. § 121.406(b).)

#### F. Case File

The Case File (CF) reflects that RCG is a limited liability company based in the state of North Carolina. (CF, Exh. 65.) Mr. Robert C. Guillot Jr., a service-disabled veteran, owns 100% of RCG, and is its sole member. (CF, Exhs. 122, 187.) RCG's primary industry is in NAICS code 325120, Industrial Gas Manufacturing. (CF, Exh 3.) When applying for recertification in 2021, RCG held a medical gas distributor license in the state of North Carolina. (CF, Exh. 33.)

### III. Discussion

#### A. Burden of Proof

As the challenged concern, RCG 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 which includes price. 13 C.F.R. § 134.1003(e)(1). Here, RCG submitted its initial offer including price on January 20, 2025. Section II.A, *supra*. Therefore, OHA must examine RCG's SDVOSB eligibility as of January 20, 2025, using the substantive ownership and control regulations in effect on that date.

#### C. Analysis

Protestor challenged both RCG's size and SDVOSB status. A review of the protest, however, shows that the bulk of the allegations relate to RCG's size — whether RCG is affiliated with Airgas or is otherwise in violation of the nonmanufacturer rule. Section II.B, *supra*. Protestor conflates these allegations and attempts to argue that RCG is not controlled by a service-disabled veteran due to a lack of licensure, but as explained *infra*, this argument is unpersuasive, and the status portion of the protest must be dismissed.

There are four grounds for a valid SDVOSB protest: challenging the service-disabled veteran's status, arguing the lack of service-disabled veteran ownership and control, alleging a violation of the ostensible subcontractor rule, or contesting an ineligible joint venture. 13 C.F.R.

§ 134.1003. Protestor has raised no challenge to Mr. Guillot's veteran status, or his ownership of RCG. RCG is not a joint venture, and so that ground of challenge is likewise inapplicable here. Protestor instead alleges that RCG is not controlled by a service-disabled veteran owner because it will rely on its subcontractor's license to perform the contract. Section II.B, *supra*. Even though Protestor phrases this as a “control” issue, this is essentially an undue reliance or ostensible subcontractor issue. However, because this is a supplies contract rather than a services contract, the ostensible subcontractor rule is not applicable. *See, e.g., VSBC Protest of Anderson Boneless Beef Holdings, LLC*, SBA No. VSBC-409-P (2024). Instead, the non-manufacturer rule applies which the area office will address, along with the affiliation issue, in making the size determination.

To construe Protestor's allegations as an SDVOSB control issue would lack sense. The license allegedly required would be specific to the contract. Outside of a violation of the ostensible subcontractor rule, OHA has not found that a concern is ineligible as an SDVOSB for only one contract. Furthermore, RCG could be considered to control Airgas through its subcontracting agreement. If RCG experiences difficulties controlling Airgas, RCG would be free to subcontract with a different manufacturer. Protestor conflates its affiliation arguments in an attempt to show that RCG is not controlled by a service-disabled veteran. These allegations will be more properly addressed by the area office in the size determination.

In any event, the licensure questions are not relevant here. In *Size Appeal of Advant-Edge Solutions*, SBA No. SIZ-6194 (2023), we refused to consider protester arguments that the awardee lacked state permits, holding that license questions lie outside OHA's size-determination jurisdiction. In *CVE Protest of Vet Reporting, LLC*, SBA No. CVE-250-P (2022), we dismissed a protest alleging lack of a required state license. SDVOSB eligibility issues are ones of ownership and control, not licensure. Generally, licensing issues are responsibility determinations for the contracting officer, rather than valid grounds of protest.

Even assuming this is a valid protest, it appears based on statute that a license is not required for this procurement. The statute cited by Protestor, Cal. Penal Code § 381b, criminalizes the possession of nitrous oxide for non-medical purposes. Section II.B, *supra*. The statute identified by RCG, 21 U.S.C. § 353(e), details the licensing requirements for the wholesale distribution of drugs. Section II.C, *supra*. Generally speaking, a license by the state of distribution is required for wholesale distribution of drugs. 21 U.S.C. § 353(e)(1)(A)(i)(I). However, distributing a drug to a hospital is not considered “wholesale distribution.” 21 U.S.C. § 353(e)(4)(B). Furthermore, the distribution of medical gases is not considered “wholesale distribution.” 21 U.S.C. § 353(e)(4)(Q). In the supplemental protest, Protestor provided no rebuttal to this statute. *See* Section II.D, *supra*. As such, based on the plain language of the statute, RCG has persuasively shown that a license is not even required for this procurement.

Protestor has not raised any issue that would successfully challenge RCG's eligibility, and I must deny this protest.

IV. Conclusion

RCG has proven its eligibility as an SDVOSB by a preponderance of the evidence. The protest is therefore 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).

CHRISTOPHER HOLLEMAN  
Administrative Judge