

**REDACTED VERSION FOR PUBLIC RELEASE**  
**United States Small Business Administration**  
**Office of Hearings and Appeals**

**CVE PROTEST OF:**

Blue Cord Design and Construction, LLC

Protestor

RE: Contract and Purchasing Solutions, Inc.

Solicitation No. 36C24818R0454

U.S. Department of Veterans Affairs

Veterans Health Administration

SBA No. CVE-100-P

Decided: December 3, 2018

**APPEARANCES**

Megan M. Jeschke, Esq. of Holland & Knight, LLP, Tysons, Virginia, for Protestor.

Aron C. Beezley, Esq. of Bradley Arant Boult Cummings, LLP, Washington, District of Columbia, for Contract and Purchasing Solutions, Inc.

**DECISION<sup>1</sup>**

**I. Introduction and Jurisdiction**

On October 4, 2018, Blue Cord Design and Construction, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Contract and Purchasing Solutions, Inc. (CPS) in connection with U.S. Department of Veterans Affairs (VA) Solicitation No. 36C24818R0454.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates SDVOSB protests under the authority of 38 U.S.C. § 8127, and 13 C.F.R. § 134.102(u).<sup>2</sup>

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<sup>1</sup> This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA received one or more requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

<sup>2</sup> On October 1, 2018, 13 C.F.R. § 134.102(u) took effect, establishing OHA's jurisdiction over protests of eligibility for inclusion in the Department of Veterans Affairs Center for Verification and Evaluation (CVE) database. 83 Fed. Reg. 13626, 13628 (Mar. 30, 2018).

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II. BackgroundA. Solicitation

On May 10, 2018, the VA Network Contracting Office 8, issued Request for Proposals (RFP) No. 36C24818R0454 for the furnishing of all necessary equipment, labor, materials, tools, supervision, specialty services, and performing all work for Project No. 675-12-804 – renovating Building 500 for Veterans Benefits Administration located at the Orlando Veterans Affairs Medical Center, in Orlando, Florida. The Contracting Officer (CO) set the procurement aside entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 236220, Commercial and Institutional Building Construction, with a corresponding \$36.5 million annual receipts size standard. Proposals were due on June 20, 2018. CPS submitted its proposal on that date. On September 27, 2018, the CO notified unsuccessful offerors, including Protestor, that CPS was the apparent successful offeror.

B. Protest

On October 4, 2018, Protestor filed the instant protest with the CO, challenging CPS's size and SDVOSB status.<sup>2</sup> On October 16, 2018, the CO forwarded the status protest to OHA. Protestor alleges CPS is not controlled by a service-disabled veteran. (Protest, at 4.) Protestor alleges DeWayne Carson, the service-disabled veteran owner, does not control the day-to-day operations of CPS. Instead, Protestor alleges Mr. Carson is delegating these responsibilities to other individuals, including company executive and co-owner, Homer Lee Corbett, Jr. (*Id.*) Further, individuals other than Mr. Carson and Mr. Corbett are the license holders and qualifying agents for CPS. (*Id.* at 5.)

In support of its argument that Mr. Corbett controls CPS and not Mr. Carson, Protestor highlights that Mr. Corbett has been identified as the owner of CPS on site visit sign-in sheets, and is listed as the registered agent, Secretary, and Chief Financial Officer of CPS on the Georgia Corporations website. (*Id.* at 4.) Protestor further contends Mr. Corbett's email address is listed as the "company email" on CPS's VA Vendor Information Page (VIP), and he is also listed as the point of contact on numerous public records. (*Id.*) Mr. Corbett has construction experience, where Mr. Carson's construction experience is unclear. (*Id.*) Protestor also argues Mr. Carson delegated the "vital task" of site visits to Mr. Corbett. (*Id.*)

Mr. Carson does not appear to be the construction license holder for CPS in Georgia or Florida. CPS holds a general license from the state of Georgia. Protestor argues Georgia corporations are required to have Qualifying Agents when the license is held in the name of the corporation. (*Id.* at 5.) An individual named [Individual #1] serves as the Qualifying Agent for CPS in Georgia. In Florida, the qualifying license holder is [Individual #2] who is the president of another construction company. (*Id.*) Protestor questions Mr. Carson's ability to control

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<sup>2</sup> OHA does not have jurisdiction to make formal size determinations. The responsible SBA Government Contracting Area Director or designee makes formal size determinations in response to a size protest. See 13 C.F.R. § 121.1002. Accordingly, the Protestor forwarded the size protest to the CO, as required by 13 C.F.R. § 121.1003, for resolution with the appropriate SBA Government Contracting Area Office. Therefore, in this decision, OHA will only address CPS's SDVOSB status.



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[Individual #2] if he is not, at a minimum, a CPS employee. (*Id.*) Protestor argues Mr. Carson is unduly reliant upon [Individual #1] and [Individual #2] for licensing, and there is a rebuttable presumption that a non-service-disabled veteran controls an SDVOSB when he or she holds a critical license that is normally required of firms operating in the same field or industry. (*Id.*, citing 13 C.F.R. § 125.13(i)(6).)

### C. CPS's Response to Protest

On November 9, 2018, CPS responded to the instant protest. CPS states that both of CPS's co-owners, Mr. Carson and Mr. Corbett, are service-disabled veterans and play an active role in the management of CPS. (Response, at 4; and Response Exhibit D.) CPS characterizes Protestor's assertion that Mr. Carson does not control the day-to-day operations of CPS as speculative. Nevertheless, Mr. Corbett is also a service-disabled veteran, and SBA's regulations permit the management and control of an SDVOSB by "one *or more* service-disabled veterans." (*Id.* at 5, citing 13 C.F.R. 125.13(a)) (emphasis CPS's).

In response to Protestor's argument that service-disabled veterans do not control CPS because construction licenses are held by individuals other than the owners of CPS, CPS argues the service-disabled veteran manager does not have to possess the required license to be found in control of a concern as long as he has the "ultimate managerial and supervisory control over those who possess the required licenses." (*Id.* at 5, citing 13 C.F.R. § 125.13(b).) The licenses referenced in the protest are not required or critical, and neither the instant solicitation nor the federal law requires them. (*Id.* at 6, citing *Leslie Miller, Inc., v. Arkansas*, 352 U.S. 187, 190 (1956).) Further, if CPS were to perform a contract where one of the licenses was required, its owners would have the "ultimate managerial and supervisory control" over the license holders. (*Id.* at 6.) Also, "critical license" issues by themselves are insufficient to establish that a protested concern is not controlled by a service-disabled veteran. (*Id.* at 6-7, citing 63 Fed. Reg. 35726-02.)

Lastly, CPS argues Mr. Carson and Mr. Corbett are both service-disabled veterans and each plays a vital role in the management and control of the day-to-day operations of CPS. (*Id.* at 7.)

## III. Discussion

### A. Burden of Proof

CPS has the burden of proving its eligibility as an SDVOSB by a preponderance of the evidence. 13 C.F.R. § 134.1010.

### B. Analysis

As a preliminary matter, I note that as of October 1, 2018, OHA has jurisdiction over all SDVOSB protests pertaining to issues of ownership and control. *See* 13 C.F.R. § 134.102(u). SBA has also issued substantive rules that, among other things, now address the issue of ownership and control for both SDVOSBs that have been certified in the VA's CVE and Service-Disabled Veteran-Owned Small Business Concerns (SDVO SBCs) that self-certify for procurements other than those issued by the VA. *See* 83 FR 48909 (September 28, 2018), to be

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codified at 13 C.F.R. part 125.

In a CVE protest concerning a procurement, the dates for determining the eligibility of the protested concern are (1) the date of the bid or initial offer that included price, and (2) the date the CVE protest was filed. *See* 13 C.F.R. § 134.1003(c)(1). Here, CPS submitted its initial offer including price on June 20, 2018. Therefore, I must determine CPS's eligibility as of that date under the substantive rules that were in effect at the time that address ownership and control for SDVOSBs, 38 C.F.R. part 74. The instant protest was filed on October 4, 2018. I must also determine CPS's eligibility as of the date of the protest under the rules addressing ownership and control in effect at that time, i.e. 13 C.F.R. part 125, as amended.<sup>3</sup>

The Protestor has two central arguments challenging CPS's SDVOSB status. First, CPS's owner, DeWayne Carson does not control the day-to-day operations of the company because many of these responsibilities are delegated to Homer Lee Corbett, Jr. Second, Mr. Carson does not hold the critical licenses for the operation of CPS.

A concern must be unconditionally owned and controlled by one or more service-disabled veterans in order to be a SDVOSB eligible for inclusion in the CVE VIP database. *See* 38 C.F.R. § 74.2(a); 13 C.F.R. §§ 125.11, 125.12. Protester argues Mr. Carson, the service-disabled owner of CPS, is not in control of CPS. However, the Protestor ignores Mr. Corbett's own service-disabled veteran status.

An SDVOSB must be at least 51% owned by one or more service-disabled veterans. *See* 38 C.F.R. § 74.3; 13 C.F.R. §§ 125.11, 125.12. CPS's Articles of Incorporation authorized the issuance of [XXXXXX] shares of stock on November 1, 1998. *See* Case File, Exhibit 6. On December 1, 1998, Mr. Carson and Mr. Corbett each registered [XXXXXX] shares of CPS stock. *See Id.*, at Exhibit 44. Both Mr. Carson and Mr. Corbett filed VetBiz VIP Verification forms identifying both of them as service-disabled veterans and listed each individual as holding a 50% interest in CPS. *See Id.*, at Exhibits 13-15. Thus, under both the regulations in effect at the time of CPS's submission of its initial offer and those in effect at the time of the protest, CPS is wholly owned by service-disabled veterans.

Protestor argues that CPS is not controlled by a service-disabled veteran. Control of an SDVOSB requires one or more service-disabled veterans to participate in the day-to-day operations as well as the long-term decision-making of the concern. *See* 38 C.F.R. § 74.4(a); *see also* 13 C.F.R. 125.13(a). CPS argues Mr. Carson and Mr. Corbett share the responsibilities of the day-to-day operations of CPS, as well as engage in long-term decision-making for the company. In 1998, Mr. Carson and Mr. Corbett both signed the Articles of Incorporation for CPS and designated themselves as CPS's Board. The Minutes of CPS's Organizational Meeting named Mr. Carson as CPS's President and Chairman and Mr. Corbett as CPS's Vice President, Secretary, and Treasurer. Case File Exhibit 17. As the President of CPS, Mr. Carson engages in bid and proposal preparation, contract management, and business development. *Id.* at Exhibit 89. Mr. Corbett conducts procurement activity assessments, develops and recommends negotiation strategies, and engages in contract management. *Id.* at Exhibit 16. Thus, under both

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<sup>3</sup> Citations to 38 C.F.R. part 74 are to the regulations in effect as of June 20, 2018, the date CPS submitted its proposal for the instant procurement. Citations to 13 C.F.R. are to the regulations in effect on October 4, 2018, the date Protestor filed its protest.



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the regulations in effect at the time of CPS's submission of its initial offer and those in effect at the time of the protest, the two service-disabled veteran owners of CPS clearly control the concern.

Protestor argues CPS is unduly reliant on its Qualifying Agents to hold critical licenses in the performance of its contracts. However, a veteran is not required to have the technical expertise or possess a critical license to be found in control of an SDVOSB, so long as she or he exercises the ultimate managerial and supervisory control over those who possess such expertise and licenses. *See* 38 C.F.R. § 74.4(b). CPS holds a general contracting license in Florida and Georgia. *See* Case File Exhibits 136 & 137, respectively. The states of Florida and Georgia require that a Qualifying Agent be designated for work performed in the respective states when engaging in general contracting on behalf of a business organization. *See* Title XXXII § 489.119(2) of the Florida Statute, *see also* Georgia Code § 43-41-9.

[Individual #2] is the Qualifying Agent for CPS in Florida. He signed an agreement with CPS which states he will defer any salary due him until CPS elects to perform construction work requiring a Florida license. "[A]t the time CPS elects to perform contracted construction work under conditions requiring a Florida Contractors License I will be placed onto the CPS payroll at a mutually agreeable rate for the duration of the work." Case File Exhibit 166. The agreement also states, "I acknowledge as the Qualifying Agent I have no 'control' over CPS operations, decision making, or management." *Id.* He recognizes that CPS may, at will, replace him as Qualifying Agent. *Id.*

[Individual #1] is the Qualifying Agent for CPS in Georgia. He signed an agreement, similar to that of [Individual #2], that states, "I affirm that as the Qualifying Agent I have no 'control' over CPS operations, decision making, or management." *Id.* at Exhibit 168. [Individual #1] states that he was paid [XXXX] to serve as CPS's Qualifying Agent. In the event CPS elects to perform work requiring a Georgia construction license, he will be placed on CPS's payroll as an employee. He recognizes that CPS may, at will, replace him as Qualifying Agent. *Id.*

CPS argues if it did have to perform a contract that required a Qualifying Agent, it would exercise the "ultimate managerial and supervisory control" over [Individual #2] and [Individual #1]. Further, both Qualifying Agents agree they do not have control over CPS and are only hired in the event CPS performs a contract in Florida or Georgia that requires a Qualifying Agent. It is therefore clear that [Individual #2] and [Individual #1] would be acting as subordinates to CPS's service-disabled veteran owners/managers who would have the ultimate managerial and supervisory control over them. Further, they agree that CPS may replace them at will. Therefore, under the regulations in effect at the time of CPS's submission of its initial offer, the fact that [Individual #2] and [Individual #1] held its Florida and Georgia licenses as Qualifying Agents did not diminish the control of the firm by service-disabled veterans.

In examining CPS's eligibility at the time of the filing of the protest, I must consider Protestor's argument that the new SBA regulations mandate a finding of control by individuals who are not service-disabled veterans. The regulation provides:

Non-service-disabled veteran individuals or entities may not control the firm. There is a rebuttable presumption that non-service-disabled veteran individuals or entities control or have the power to control a firm in any of the following

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circumstances,  
...

(6) In circumstances where a critical license is held by a non-service-disabled individual, or other entity, the non-service-disabled individual or entity may be found to control the firm. A critical license is considered any license that would normally be required of firms operating in the same field or industry, regardless of whether a specific license is required on a specific contract.


13 C.F.R. § 125.13(i)(6).

Here, while [Individual #2] and [Individual #1] hold CPS's Florida and Georgia licenses, neither holds any ownership interest in the concern, nor do they hold any management position. Further, it is clear from the record that [Individual #2] and [Individual #1] serve as employees of CPS, and have no control over the concern. They may be replaced at will. If CPS requires their services, it will place them on its payroll. It is clear that [Individual #2] and [Individual #1] will be managed and supervised by Mr. Carson and Mr. Corbett. Therefore, CPS meets the regulatory requirement that the service-disabled veteran need not possess a required license if they can demonstrate that they have the ultimate managerial and supervisory control over those who do possess the required licenses. 13 C.F.R. § 125.13 (b); *Matter of A1 Procurement LLC/JVS*, SBA No. VET-223 (2011). Accordingly, I conclude that CPS has successfully rebutted the presumption that [Individual #2] and [Individual #1] control the firm when they hold its Florida and Georgia licenses as its Qualifying Agents, because [Individual #2] and [Individual #1] are mere employees of CPS, which is owned and controlled by Mr. Carson and Mr. Corbett - service-disabled veterans.

After reviewing the record, I conclude that CPS has met its burden of proving its eligibility as an SDVOSB by a preponderance of the evidence. It is wholly owned by two service-disabled veterans, who hold the senior management positions in the firm and comprise the Board of Directors. The Qualifying Agents holding CPS's construction licenses are under the management and supervisory control of the service-disabled veterans. Protestor's allegations are meritless.

#### IV. Conclusion

CPS has proven its eligibility as an SDVOSB by a preponderance of the evidence. The protest therefore is DENIED. This is the agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127; 13 C.F.R. § 134.1007(i).

  
CHRISTOPHER HOLLEMAN  
Administrative Judge



CERTIFICATE OF SERVICE

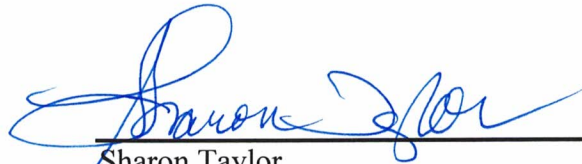
I hereby certify that, on December 11, 2018, I served the foregoing, by email, upon the following:

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