



Center for Verification and Evaluation Protests & Appeals

Presented by: SBA Office of Hearings
and Appeals

Who, What, When, Where?



Protests

**Veteran Owned Small
Business (VOSB) & Service
Disabled Veteran Owned
Small Business (SDVO SB)
Set-asides**

Who May file a Center for Verification and Evaluation (CVE)Protest?

If a VOSB or SDVO SB is awarded a Veteran's Affairs (VA)procurement:

- The Secretary of the VA
- The Contracting Officer, or
- An unsuccessful small business concern who bid on a solicitation and did not win (offeror).

What can be protested regarding the status of a veteran?

- The Contracting Officer or an unsuccessful business concern (offeror) can make a challenge to claim that the awardee cannot provide evidence that it meets the definition of a veteran, service-disabled veteran, or service-disabled veteran with a permanent and severe disability.

What can be protested regarding ownership?

- The protestor may protest that the business concern is not at least 51% owned and controlled by a veteran.

When can a CVE protest be filed?

- If the CVE protest relates to a VA procurement, the Contracting Officer can file a CVE protest at any time during the life of the contract.
- An unsuccessful small business concern (offeror) can only file a CVE protest within five (5) business days after being notified of the awardee's identity.
- Saturday, Sundays, and federal holidays do not count as business days. If the protest is not received within five business days, SBA's Office of Hearings and Appeals (OHA) will dismiss the CVE protest.

When can a CVE protest be filed?

- For example, on Monday, an unsuccessful offeror is notified of the awardee's identity.
- The time period begins on Monday, so the first day to count is Tuesday.
- The second, third, and fourth days are Wednesday, Thursday, and Friday.
- The fifth day is Saturday, so the time period rolls over to the next business day, which is Monday. The deadline is Monday (or Tuesday if Monday is a Federal holiday).

Where does an unsuccessful offeror file the CVE protest?

The unsuccessful small business concern (offeror) must file the CVE protest with the Contracting Officer, either in person, U.S. mail, or by email. The Contracting Officer must then forward the CVE protest to SBA's Office of Hearings and Appeals.

What must be included in a CVE protest?

It **MUST** be in writing and contain the following:

- The solicitation or contract number
- The specific allegation, together with credible evidence that the protested business concern does not meet the eligibility requirements for inclusion in the CVE database

What must be included in a CVE protest?

- Any information the protester deems necessary for the Administrative Judge to consider
- Name, address, telephone number, and email address of the protester and/or their attorney, if applicable

When should a protective order be requested?

- The protective order allows counsel for a business concern to review the confidential business information of the protested business concern as it relates to specific litigation.
- If desired, a protestor may request a protective order in its initial protest, within five (5) days thereafter unless good cause is shown.
- Procedures are laid out in 13 C.F.R. § 134.205.

When should a protective order be requested?

- The Office of Hearings and Appeals does not issue protective orders that allow non-attorneys to review a CVE case file that contains confidential business information.
- There are certain statements Counsel must make in order to be allowed to review the CVE case file. For example, Counsel must agree not to pass protected information on to anyone, including the client.
- A violation of these terms will result in sanctions against the attorney, including bar discipline.

What are the filing and service requirements?

- All parties to a CVE protest, including the protested business concern, must file a Certificate of Service (CoS) with all pleadings and filings.
- The CoS is a document signed by the person filing a pleading, attesting that they have sent a copy of the pleading to all the parties listed, and the parties are identified by name and address.

What are the filing and service requirements?

- When filing with OHA, a party can submit via OHA's Hearing and Appeals Submission Upload e-filing system found at www.sba.gov/oha, or via email at OHAFilings@sba.gov.
- OHA has provided a CoS template at www.sba.gov/oha.

What happens after a CVE protest reaches OHA?

- The Administrative Judge will issue a Notice and Order notifying all parties that it has received the CVE protest and establishing a due date for responses.

What happens after a CVE protest reaches OHA?

- A protester may supplement their protest within this timeframe
- After the date for responses due has passed, the record will close & the Administrative Judge will not allow further pleadings unless there is good cause shown

When will the Administrative Judge dismiss a CVE protest?

- If the Administrative Judge determines that the protest is premature (it was filed before the allowable period);
- Untimely (filed after the deadlines for filing have passed);
- Nonspecific (the protest does not contain specific enough allegations); or
- Based on allegations that are not protestable.
- The Administrative Judge will dismiss the protest and notify all parties of the dismissal.

Who can respond to a CVE protest?

- A protested business concern
- The Director of CVE
- The Contracting Officer, and
- Any other intervening offeror (if the protest stems from a VA procurement).

Who can respond to a CVE protest?

- The response must be filed by the date specified by the Administrative Judge.
- If a party wishes to reply to a response, the Administrative Judge must approve it first.

How does the Administrative Judge decide a case?

- The Administrative Judge's decision will be based on the case file & information provided by the parties
- The Administrative Judge reserves the right to request further information if necessary.

How does the Administrative Judge decide a case?

- The Administrative Judge will give greater weight to specific, signed, factual evidence over unsupported allegations and opinions.
- The decision will be based on a preponderance of the evidence.

Can the Contracting Officer award the contract after a CVE protest is filed?

- **No**, the Contracting Officer must hold off on awarding the contract before the Administrative Judge issues a decision, unless the Contracting Officer determines that award is necessary to protect the public interest and notifies the Administrative Judge of such determination.

What happens when the protested concern is found to be ineligible?

- The Director of the CVE must immediately remove the business concern from the CVE database
- An awarded contract may be deemed *void ab initio* “invalid from the outset”
- The business must not submit an offer in a future VA procurement until it has been readmitted into the CVE database.

Can a decision by SBA's Office of Hearings and Appeals be reconsidered?

- Any party to the case may file a Petition for Reconsideration with OHA within twenty (20) business days of receiving the initial OHA decision.
- The Petition for Reconsideration must show that the Administrative Judge made a clear error of fact or law in the initial decision.

Appeals

Who may file a CVE appeal?

- If CVE status is either denied or cancelled, one may file an appeal with OHA challenging that decision.
- A business concern may only file an appeal if the decision was NOT based on the failure to meet any veteran or service-disabled veteran eligibility criteria.
- Ownership and control of the business concern will be the only two issues that OHA will consider.

When can an appeal be filed?

- A business concern may file an appeal with the Office of Hearings and Appeals within ten (10) business days of receiving the CVE denial or cancellation.
- The Office of Hearings and Appeals will dismiss an appeal filed more than ten days after the CVE denial or cancellation.

What must be included in a CVE appeal?

- Copy of the denial or cancellation and the date it was received
- An explanation, including any pertinent information the Administrative Judge should consider, on why the cancellation or denial was made in error
- The contact information of the appellant

Who does the appellant have to serve with the appeal?

- Appellants must file a Certificate of Service (CoS) with all pleadings and filings.
- The CoS is a document signed by the person filing a pleading, attesting that they have sent a copy of the pleading to all the parties listed. The parties are identified by name and address.
- The Office of Hearings and Appeals has provided a CoS template at www.sba.gov/oha

Who does the appellant have to serve with the appeal?

- When filing with the Office of Hearings and Appeals, a party can submit via the Hearings and Appeals Submission Upload e-filing system at www.sba.gov/oha, or by email at OHAFilings@sba.gov.
- All CVE appeals must be served upon the Director of CVE and Veterans Affairs counsel at CVEService@va.gov.

How does a case file reach the Office of Hearings and Appeals?

- The Director of CVE at Veterans Affairs must provide the Office of Hearings and Appeals with the entire case file relating to the denial or cancellation.

What happens after a CVE appeal reaches OHA?

- Once the Office of Hearings and Appeals receives a CVE appeal, the Administrative Judge will issue a Notice and Order notifying all parties that it has received the CVE appeal, while establishing a due date for responses.

Who can respond to a CVE appeal?

- The Director of CVE, or a designee, may file a response to the CVE appeal by the date specified in the Office of Hearings and Appeals Notice & Order.
- If the Director of CVE wants to file a response, it must be served upon the appellant and any other individuals identified in the Certificate of Service.

Who can respond to a CVE appeal?

- If the Director of CVE files a response, the appellant may file a motion seeking to reply to the response, and attach the reply.
- However, the Administrative Judge will ultimately decide whether the reply is allowed.

What will be the standard of review?

- The Administrative Judge will determine whether the denial or cancellation was based on clear error of fact or law.
- The burden is upon the appellant to show, by a preponderance of the evidence, that an error has occurred.

What will be the standard of review?

- However, the Administrative Judge will not allow evidence beyond the case file, unless the appellant has shown good cause.

What criteria will the Administrative Judge use to make a decision?

- The Administrative Judge's decision will be based on the case file and information provided by the parties, while also reserving the right to request further information.
- The Administrative Judge will give greater weight to specific, signed, factual evidence over unsupported allegations and opinions.

What criteria will the Administrative Judge use to make a decision?

- The Administrative Judge will also be able to consider issues that were not raised in the pleading and the denial or cancellation letter.

What are the effects of the Office of Hearings and Appeals' decision?

- The Office of Hearings and Appeals' decision is **final**.
- If the Office of Hearings and Appeals dismisses or denies the appeal, the Director of CVE's determination remains in effect.

What are the effects of the Office of Hearings and Appeals' decision?

- However, if the Office of Hearings and Appeals reverses the denial or cancellation, the Director of CVE must reinstate or include the appellant in the CVE database.

Can a decision by OHA be reconsidered?

- Yes. Any party to the case may file a Petition for Reconsideration with OHA within twenty (20) calendar days of having received the initial OHA decision.
- The petition must show that the Administrative Judge made a clear error of fact or law in the decision.

New CVE Rules

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-30/pdf/2018-06034.pdf>

Office of Hearings and Appeals

<https://www.sba.gov/oha>