

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

CVE Protest of:

Welch Construction, Inc.,

Protestor,

Re: AFCI-CCI Joint Venture One, LLC

Solicitation No. 36C24220B0058  
U.S. Department of Veterans Affairs

SBA No. CVE-181-P

Decided: March 10, 2021

APPEARANCES

Mark Welch, President, Welch Construction, Inc., Marcellus, New York

Peter B. Ford, Esq., Meghan F. Leemon, Esq., PilieroMazza PLLC, Washington, D.C.,  
for AFCI-CCI Joint Venture One, LLC

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On November 10, 2020, Welch Construction, Inc. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of AFCI-CCI Joint Venture One, LLC (AFCI-CCI), in connection with U.S. Department of Veterans Affairs (VA) Invitation for Bids (IFB) No. 36C24220B0058. AFCI-CCI is a joint venture between a verified SDVOSB, American First Contracting, Inc. (American First), and its mentor under the U.S. Small Business Administration (SBA) All Small Mentor-Protégé Program (ASMPP), Cornerstone Contracting, Inc. (Cornerstone). For the reasons discussed *infra*, the protest is denied in part and dismissed in part.

SBA's Office of Hearings and Appeals (OHA) adjudicates SDVOSB status protests pursuant to 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. part 134 subpart J.<sup>2</sup> Protestor filed its initial

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<sup>1</sup> This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. After reviewing the decision, AFCI-CCI informed OHA that it had no requested redactions. Therefore, OHA now issues the entire decision for public release.

protest within five business days after bid opening, so the initial protest is timely. 13 C.F.R. § 134.1004(a)(2)(i). As explained below, however, Protestor subsequently filed supplemental protest allegations which are untimely.

## II. Background

### A. Solicitation

On September 21, 2020, VA issued IFB No. 36C24220B0058 to replace steam lines and install new steam and condensate piping for a building at the VA Medical Center (VAMC) campus in Bath, New York. (Case File (CF), Exh. 68.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 238220, Plumbing, Heating, and Air-Conditioning Contractors, with a corresponding size standard of \$16.5 million average annual receipts. Bids were due November 5, 2020. (CF, Exh. 72.)

### B. The Initial Protest

On November 5, 2020, bids were opened and the CO announced that AFCI-CCI was the lowest bidder and apparent awardee. On November 10, 2020, Protestor filed its initial protest with the CO. The CO forwarded the protest to SBA's Office of Government Contracting for review, which subsequently redirected the matter to OHA.

In the initial protest, Protestor alleges that, although American First purports to be an SDVOSB, it is not in fact controlled by one or more service-disabled veterans. (Initial Protest at 1.) Instead, Protestor claims, American First actually is controlled by Cornerstone and/or by Broadway Electric, Inc. (Broadway). (*Id.*)

Protestor raises five arguments in support of its protest. First, Protestor contends that American First, Cornerstone, and Broadway all are located within the “same building space.” (*Id.* at 5.) According to Protestor, American First is located at 837 Oakton Street, Elk Gove Village, Illinois, whereas Cornerstone and Broadway are located nearby at 831 Oakton Street. (*Id.*)

Next, Protestor alleges that the relationship between American First and Cornerstone shows that American First is not a proper SDVOSB. (*Id.*) American First has no employees, not even its supposed owner and President, Mr. Mark C. Roeckell. (*Id.*) Further, American First and Cornerstone formed a joint venture, AFCI-CCI, to compete for the instant award. (*Id.* at 6.) Protestor points to two other projects, also set-aside for SDVOSBs, where AFCI-CCI or American First was the lowest bidder. (*Id.* at 6-7.) Protestor claims that Cornerstone, rather than American First, was “responsible for soliciting subcontractors and assembling the bid” for these procurements. (*Id.* at 7.)

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<sup>2</sup> The regulations at 13 C.F.R. part 134 subpart J became effective on October 1, 2018. 83 Fed. Reg. 13,626 (Mar. 30, 2018).

Third, Protestor observes that Cornerstone was identified as a co-defendant in a lawsuit involving another SDVOSB, Innovative Support Solutions, Inc. (ISS). (*Id.* at 9.) Protestor maintains that this shows that Cornerstone has a history of using SDVOSBs to advance its own business interests. (*Id.*)

Fourth, Protestor claims that Cornerstone and Broadway are affiliated, because both companies are owned by Mr. John Oehler. (*Id.*) This connection could mean that Cornerstone and Broadway are not small businesses. (*Id.*) Protestor further claims that, according to LinkedIn, Ms. Terry Ann Hoehn-Stoll, Senior Project Accountant for American First, is an employee of Broadway. (*Id.*)

Lastly, Protestor contends that it is possible that American First and/or AFCI-CCI may be unable to perform the instant contract. (*Id.* at 12.) Due to “time restraints,” Protestor was unable to locate any evidence to support this claim. (*Id.*) Protestor requests the right to amend and supplement its allegations in the event that further evidence is later discovered. (*Id.*)

### C. Protestor's Supplemental Allegations

On December 29, 2020, Protestor filed a supplemental pleading with additional allegations.

Protestor maintains, first, that “several subcontractors” have contacted Protestor to reveal that Cornerstone invited them to participate on SDVOSB set-aside projects. (Supp. Protest at 1.) In Protestor's view, although AFCI-CCI is a mentor-protégé joint venture, the protégé, American First, “should be involved in all business processes, otherwise [it is] little more than a storefront or pass-through.” (*Id.* at 2.)

Protestor next observes that American First and Cornerstone have entered into another joint venture, AC JV One, LLC. (*Id.*) Thus, “Cornerstone Contracting appears again and again each time we look into American First.” (*Id.*) Protestor renews its contention that Cornerstone is not a small business. (*Id.*)

Protestor asserts that Cornerstone has participated in other recent procurements with ISS. (*Id.* at 2-3.) Protestor argues that this shows that Cornerstone is attempting to utilize “rent-a-vet” companies. (*Id.* at 3.)

Fourth, American First has only ten employees, according to publicly-available information. (*Id.*) Protestor argues that this is insufficient to staff the contracts already awarded to AFCI-CCI, which are collectively worth millions of dollars. (*Id.*)

Finally, Protestor states that it can find no evidence that American First will perform at least 40% of joint venture work, or that AFCI-CCI, the prime contractor, will comply with limitations on subcontracting requirements. (*Id.* at 3-4.)

#### D. AFCI-CCI's Response

On December 30, 2020, AFCI-CCI responded to the protest. AFCI-CCI argues that the protest “is wholly without merit and is based on a misunderstanding of the law and facts.” (Response at 4.) As such, OHA should dismiss or deny the protest.

AFCI-CCI argues, as an initial matter, that several of Protestor's allegations pertain to American First, rather than to AFCI-CCI. (Response at 1.) The underlying procurement, though, was awarded to AFCI-CCI, not to American First. (*Id.*) Insofar as Protestor attempts to challenge the SDVOSB status of a concern that is not the awardee, the protest should be dismissed. (*Id.*) Further, although styled as a status protest, some of Protestor's allegations actually relate to questions of size and affiliation. (*Id.* at 2.) These issues are not properly before OHA at this time, and, in any event, in response to a size protest filed by a different unsuccessful bidder, SBA's Office of Government Contracting — Area IV (Area Office) issued Size Determination No. 04-2021-004, concluding that AFCI-CCI is an eligible small business for this procurement. (*Id.* at 4.) Size Determination No. 04-2021-004 was never appealed and is now final. (*Id.*)

AFCI-CCI highlights that Cornerstone and American First are an SBA-approved mentor and protégé under the ASMPP. Specifically, on May 19, 2020, SBA approved a mentor-protégé agreement (MPA) between American First and Cornerstone for a period of six years. (*Id.* at 3.) The MPA thus was in effect when AFCI-CCI submitted its bid for the instant procurement. (*Id.*) American First and Cornerstone established AFCI-CCI on May 20, 2020, as an unpopulated joint venture. (*Id.* at 2-3.) Pursuant to AFCI-CCI's joint venture agreement (JVA), American First is the Managing Venturer and holds a 51% ownership interest in AFCI-CCI. (*Id.* at 3.) Cornerstone holds the remaining 49% interest. (*Id.*) On July 27, 2020, VA's Center for Verification and Evaluation (CVE) verified AFCI-CCI as an SDVOSB. (*Id.*) On September 24, 2020, American First and Cornerstone executed an Addendum to the JVA, modifying certain sections to bid on the instant procurement and including various project-specific provisions. (*Id.*)

AFCI-CCI acknowledges that Cornerstone is a large business and, thus, not an SDVOSB. (*Id.* at 2.) Cornerstone's size is immaterial, however, because AFCI-CCI is a joint venture between an SBA-approved mentor and protégé. American First, the protégé, is an SDVOSB, and under applicable regulations, only American First need be an eligible SDVOSB in order for AFCI-CCI to qualify as an SDVOSB joint venture for the instant procurement. (*Id.* at 3, citing 13 C.F.R. § 125.18(b).)

AFCI-CCI contends that American First is an SDVOSB, as it is fully owned and controlled by Mr. Roeckell, a service-disabled veteran. (*Id.* at 5.) Mr. Roeckell owns 100% of American First; he serves as the President and the sole director; and he has ample experience to run American First. (*Id.*) As such, American First meets all of the ownership and control requirements found at 13 C.F.R. §§ 125.12 and 125.13. (*Id.*)

AFCI-CCI then argues that its JVA, as amended, meets all requirements found at 13 C.F.R. § 125.18(b)(2) and (3). AFCI-CCI discusses each of the requirements of the regulation, and describes the corresponding provisions within the JVA and/or Addendum. (*Id.* at 5-7.)

AFCI-CCI notes that the JVA, including the Addendum, have already been reviewed by the Area Office, which found the JVA to be compliant. (*Id.* at 5.) CVE also reviewed the JVA in verifying AFCI-CCI as an SDVOSB. (*Id.*)

AFCI-CCI addresses the five allegations raised in Protestor's initial protest. First, AFCI-CCI denies that American First shares an address with Cornerstone or Broadway. (*Id.* at 7.) Indeed, Protestor itself identifies American First having a different address than Cornerstone or Broadway. Although the firms are located on the same street, they plainly do not have the same location. (*Id.*)

Next, AFCI-CCI argues that the MPA between American First and Cornerstone permits Cornerstone to provide bid preparation assistance, project management assistance, and bonding assistance to American First. (*Id.* at 8.) SBA's regulations provide that a protégé is not affiliated with its mentor merely because the protégé receives assistance from the mentor within the scope of their MPA. (*Id.*, citing 13 C.F.R. § 121.103(b)(6).) American First and Cornerstone therefore cannot be affiliated based on such assistance. (*Id.*) The Area Office reached this exact conclusion in Size Determination No. 04-2021-004. (*Id.*)

AFCI-CCI argues that Protestor's allegations regarding Cornerstone's supposed dealings with ISS have no relevance to the instant case. (*Id.* at 9.) Protestor does not allege, and has not proven, any connection between American First and ISS. (*Id.*)

Similarly, the relationship between Cornerstone and Broadway is irrelevant to the SDVOSB status of AFCI-CCI or American First. (*Id.*) There is no dispute that Cornerstone is a large business. However, because Cornerstone is the SBA-approved mentor of American First, Cornerstone's own size and/or affiliates have no bearing here. (*Id.*) AFCI-CCI emphasizes that there is no common ownership or management between American First and Broadway. (*Id.*) Nor do American First and Broadway share employees. (*Id.*) American First and Broadway have never subcontracted work to each other, and there are no direct financial ties between them. (*Id.*)

Lastly, AFCI-CCI contends that Protestor's allegation concerning AFCI-CCI's ability to perform the contract is speculative, and, in any event, beyond OHA's jurisdiction. (*Id.* at 10, citing *Size Appeal of Bacik Group, LLC*, SBA No. SIZ-6071 (2020).)

#### E. MPA, JVA and Addendum

With its response to the protest, AFCI-CCI provided a copy of the MPA between American First and Cornerstone, and SBA's letter formally approving the MPA. (Response, Exh. A.) The MPA outlines the scope of the mentor-protégé relationship between American First and Cornerstone. According to the MPA, Cornerstone will provide American First a range of assistance, including general and administrative assistance; management and technical assistance; financial assistance; and business development and contracting assistance. (MPA at 2.)

AFCI-CCI's JVA is included in the Case File at Exhibit 24. Additionally, with its response to the protest, AFCI-CCI provided a copy of the Addendum, dated September 24, 2020. (Response, Exh. B.) CVE verified AFCI-CCI as an SDVOSB on July 27, 2020. (CF, Exh. 61.)

The JVA identifies Cornerstone and American First as an SBA-approved mentor and protégé. (CF, Exh. 24, at 1.) The purpose of the JVA is to compete for, and perform, Government contracts. (*Id.* at 2.) The JVA designates American First as the Managing Venturer of AFCI-CCI, and explains that American First owns a 51% interest in the joint venture and Cornerstone the remaining 49%. (*Id.* at 2-3.) Profits will be distributed commensurate to the work each firm performs. (*Id.* at 3.) The JVA requires the establishment of a separate bank account in the name of the joint venture. (*Id.* at 5.) The parties will remain obligated to perform any contract awarded to AFCI-CCI even if one of the parties later withdraws. (*Id.* at 4.) Accounting, administrative, and financial records will be kept and maintained by American First. (*Id.* at 5.) The JVA requires that a project-end profit and loss statement be submitted to SBA no later than 90 days after the completion of the contract. (*Id.* at 6.) American First, the protégé, must perform at least 40% of the work of performed by AFCI-CCI, and such work must be more than administrative or ministerial in nature. (*Id.*)

The Addendum provides additional information specific to the instant IFB. Mr. Roeckell is identified as AFCI-CCI's Project Manager for this procurement. (Addendum at 1.) The Addendum outlines the respective responsibilities of the parties with regard to source of labor and contract performance, and itemizes the major equipment, facilities, and other resources to be furnished by each party. (*Id.* at 1-3.)

### III. Discussion

#### A. Burden of Proof

As the protested firm, AFCI-CCI has the burden of proving its eligibility by a preponderance of the evidence. 13 C.F.R. § 134.1010.

#### B. Timeliness

Protestor filed its initial protest within five business days after bid opening, so the initial protest is timely. 13 C.F.R. § 134.1004(a)(2)(i). Protestor's supplemental allegations, however, were filed on December 29, 2020, almost two months after bid opening. Section II.C, *supra*. An untimely protest must be dismissed. 13 C.F.R. §§ 134.1004(a)(4) and 134.1007(b). Accordingly, Protestor's supplemental allegations are dismissed as untimely, and have not been considered in reaching this decision.

### C. Analysis

The applicable SBA regulations<sup>3</sup> make clear that an ASMPP mentor is encouraged to provide business development assistance to its protégé, which may include “technical and/or management assistance; financial assistance in the form of equity investments and/or loans; subcontracts (either from the mentor to the protégé or from the protégé to the mentor); trade education; and/or assistance in performing prime contracts with the Government through joint venture arrangements.” 13 C.F.R. § 125.9(a). Once the MPA has been approved by SBA, an ASMPP mentor and protégé are exempt from affiliation based on their MPA or assistance within the scope of the MPA. *Id.* § 125.9(d)(4); *see also* § 121.103(b)(6). Further, although joint venturers normally are affiliated with one another for any contract performed by the joint venture, SBA regulations authorize an exception for ASMPP joint ventures:

A protégé and mentor may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement. Such a joint venture may seek any type of small business contract (*i.e.*, small business set-aside, 8(a), HUBZone, SDVO, or WOSB) for which the protégé firm qualifies (*e.g.*, a protégé firm that qualifies as a WOSB could seek a WOSB set-aside as a joint venture with its SBA-approved mentor).

*Id.* § 125.9(d)(1); *see also* § 121.103(h)(3)(ii). To qualify for the exception, and when competing for an SDVOSB set-aside, the terms of the JVA must comply with § 125.18(b)(2) and (c). *Id.* §§ 121.103(h)(3)(ii).

In the instant case, American First and Cornerstone are an SBA-approved mentor and protégé. Section II.E, *supra*. The MPA was formally approved by SBA on May 19, 2020, approximately five months before AFCI-CCI submitted its bid for the procurement on November 5, 2020. Sections II.A and II.E, *supra*. As a result, American First and Cornerstone could properly joint venture for the instant procurement, provided that the protégé, American First, is an SDVOSB, and so long as AFCI-CCI's JVA meets the requirements at § 125.18(b)(2) and (c). AFCI-CCI has shown that American First is a verified SDVOSB, and that the JVA, as supplemented by the Addendum, meets all the conditions at § 125.18(b)(2) and (c). Section II.E, *supra*. As a result, AFCI-CCI is an eligible SDVOSB joint venture for this procurement.

Protestor raises five main allegations in attempting to challenge AFCI-CCI's status. Section II.B, *supra*. Protestor's first allegation is that American First, Cornerstone, and Broadway share an address. *Id.* It is true that, if an SDVOSB is co-located with a non-SDVOSB in the same or similar line of business, and if the non-SDVOSB or an owner, director, officer, or manager, or direct relative of an owner, director, officer, or manager of that firm owns an equity

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<sup>3</sup> Effective November 16, 2020, SBA introduced changes to the ASMPP regulations. *See* 85 Fed. Reg. 66,146 (Oct. 16, 2020). These changes, however, do not apply in the instant case, because they occurred after November 10, 2020, the date of the initial protest. Unless otherwise indicated, citations throughout this decision refer to the version of SBA's rules in effect on November 10, 2020.

interest in the SDVOSB, there is a rebuttable presumption that the non-SDVOSB controls the contested concern. 13 C.F.R. § 125.13(i)(3). In the instant case, though, Protestor has not established that American First is co-located with Cornerstone and/or Broadway. On the contrary, according to Protestor itself, American First has the address 837 Oakton Street, whereas Cornerstone and Broadway have the address 831 Oakton Street. Section II.B, *supra*. The firms therefore are not co-located. Further, American First is wholly-owned by Mr. Roeckell, and neither Cornerstone nor Broadway holds any ownership interest in American First. The presumption at 13 C.F.R. § 125.13(i)(3) thus does not apply here.

Second, Protestor argues that Cornerstone prepares the bids for the AFCI-CCI joint venture. Section II.B, *supra*. While this may be true, Cornerstone and American First are an SBA-approved mentor and protégé. Section II.E, *supra*. As discussed above, it is not improper — and in fact is expressly encouraged — for a mentor to provide assistance to its protégé under the ASMPP. Cornerstone's assistance with bid preparation does not disqualify AFCI-CCI from competing as an SDVOSB in the instant solicitation.

Third, Protestor alleges that Cornerstone conducts business with ISS, another SDVOSB. Section II.B, *supra*. ISS, though, has no involvement with the instant procurement, nor any apparent connection with American First. Protestor has failed to explain how this alleged association would impact the SDVOSB status of American First or the AFCI-CCI joint venture.

Fourth, Protestor contends that Cornerstone is affiliated with Broadway. Section II.B, *supra*. AFCI-CCI freely acknowledges that Cornerstone is affiliated with Broadway, and that Cornerstone is not an SDVOSB. Section II.D, *supra*. As discussed above, however, because Cornerstone and American First are an SBA-approved mentor and protégé, there is no requirement that Cornerstone be an SDVOSB in order for AFCI-CCI to qualify for this procurement. Instead, only the protégé, American First, need qualify as an SDVOSB. 13 C.F.R. § 125.18(b)(1)(ii). Protestor has failed to demonstrate that affiliation between Cornerstone and Broadway impacts the SDVOSB status of American First or the AFCI-CCI joint venture.

Lastly, Protestor argues that it is possible that AFCI-CCI may be unable to perform the contract requirements. Section II.B, *supra*. Protestor offers no evidence, nor even any specific theory, as to how or why AFCI-CCI might be unable to perform the primary and vital contract requirements or would be unduly reliant upon non-SDVOSB subcontractors. A proper status protest must contain “[s]pecific allegations supported by credible evidence.” 13 C.F.R. § 134.1005(a)(2). Nonspecific allegations will be dismissed. *Id.* § 134.1007(b). As Protestor has not advanced a specific allegation supported by credible evidence, this portion of the protest must be dismissed.



IV. Conclusion

As discussed above, certain of Protestor's allegations are untimely or nonspecific, and those allegations are DISMISSED. The protest otherwise is DENIED, because AFCI-CCI has shown that it is an eligible SDVOSB joint venture for the instant IFB. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(B); 13 C.F.R. § 134.1007(i).

KENNETH M. HYDE  
Administrative Judge