

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

CVE Protest of:

Eagle Home Medical Corp.,

Protestor,

Re: Veterans Advantage Medical  
Equipment, LLC

Solicitation No. 36C25719R0027

U.S. Department of Veterans Affairs

SBA No. CVE-238-P

Decided: July 18, 2022

APPEARANCES

H. Todd Whay, Esq., Baker, Cronogue, Tolle & Werfel, LLP, McLean, Virginia, for Eagle Home Medical Corp.

David F. Dowd, Esq., Potomac Law Group, PLLC, Washington, D.C., for Veterans Advantage Medical Equipment, LLC.

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On November 18, 2021, Eagle Home Medical Corp. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Veterans Advantage Medical Equipment, LLC (Veterans Advantage), in connection with U.S. Department of Veterans Affairs (VA) Request for Proposals (RFP) No. 36C25719R0027. Veterans Advantage is a joint venture between Avenue Mori Medical Equipment, Inc. (AMME) and its SBA-approved mentor, Rotech Healthcare, Inc. (Rotech). 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 38 U.S.C. § 8127(f)(8)(B) and 13 C.F.R. part

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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, the challenged concern, Veterans Advantage, timely requested redactions. OHA now issues this redacted decision for public release.

134 subpart J.<sup>2</sup> Protestor filed the instant protest within five business days after receiving notification of the planned award to Veterans Advantage, so the protest is timely. Accordingly, this matter is properly before OHA for decision.

## II. Background

### A. The RFP

On February 6, 2020, VA issued RFP No. 36C25719R0027, seeking “Home Oxygen services for eligible patients (Veterans)” at various locations in the state of Texas. (Case File (CF), Exh. 306 at 1, 6.) The RFP stated that VA planned to award one or more Indefinite-Delivery Indefinite-Quantity (ID/IQ) contracts. (*Id.* at 5.) Specific services would be defined in task orders issued after award of the base contract(s). (*Id.* at 46.) According to the RFP, VA would award the contract(s) on a “Lowest Priced Technically Acceptable” basis. (*Id.* at 85.)

The RFP estimated that the number of veterans served by the contract(s) would include “6,868 oxygen-using patients, an estimated 55 ventilator patients, and an estimated 8 non-sleep related CPAP/BiPAP/NIV/Ventilator/Oxygen patients.” (*Id.* at 8, emphases omitted.) At the time of contract award, each successful offeror would be required to provide “a list of all employees currently competent to perform licensed respiratory therapy services, delivery/recovery and patient education services,” as well as “all required documentation of certification and/or registry from the National Board for Respiratory Care (NBRC) and a valid State license for all Respiratory Therapist personnel.” (*Id.* at 18.)

The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 621610, Home Health Care Services, with a corresponding size standard of \$16.5 million annual receipts. (*Id.* at 1.) Proposals were due May 8, 2020. (CF, Exh. 327.) Veterans Advantage and Protestor submitted timely proposals.

### B. Mentor-Protégé Agreement

On February 27, 2017, the Director of SBA's All-Small Mentor-Protégé Program (ASMPP) approved a Mentor-Protégé Agreement (MPA) between AMME, as protégé, and Rotech, as mentor. (CF, Exh. 41.) The Director stated that the MPA would be effective until February 27, 2020, and thereafter renewable for an additional three years. (*Id.*)

The MPA was signed by representatives of AMME and Rotech on February 17, 2017. (CF, Exh. 77, at 9.) The MPA explained that AMME is a small business which offers “a full product line of Durable Medical Equipment (DME) and provides services, primarily in the Southern California area.” (*Id.* at 1.) AMME requests Rotech's assistance in five areas: Management and Technical Assistance; Financial Assistance; Contracting; Business Development; and General and/or Administrative Assistance. (*Id.* at 2-6.)

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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).

With regard to Management and Technical Assistance, AMME requires: (1) assistance in developing policies and processes for hiring a larger workforce to support larger contracts; (2) physical facilities beyond Southern California; (3) management training for hiring and supervising a larger workforce; and (4) patient call center support, centralized intake (CI), and centralized billing. (*Id.* at 2-4.) To assist, Rotech will, first, work with AMME to develop policies, procedures and processes for hiring, will train AMME's management, and will make its own management available to answer questions. (*Id.* at 2-3.) Second, Rotech will assist AMME by allowing AMME employees to work from Rotech locations in servicing joint contracts. (*Id.* at 3.) Third, Rotech will assist during contract transition through the use of its internal recruiters and longstanding relationships with recruiting agencies. (*Id.*) Fourth, Rotech will allow AMME to utilize Rotech's 24/7 patient call center, CI team, and centralized billing system. (*Id.* at 4.)

For Financial Assistance, AMME lacks sufficient working capital for oxygen, ventilator and other equipment, and the vehicle fleet needed to service a large contract. (*Id.*) Rotech will assist by permitting AMME “to use Rotech owned equipment in the service of jointly awarded contracts” eliminating a potentially large expenditure when a contract is awarded. (*Id.*) Additionally, Rotech will share access to its national vehicle supply chain so AMME may purchase vehicles at lower prices, and will assist AMME with fleet management, routing tools, and procedures for safe delivery of equipment and services. (*Id.*)

In the area of Contracting Assistance, AMME needs “(1) assistance in identifying potential opportunities for bid; [and] (2) training in writing more effective proposals, particularly for larger contract opportunities.” (*Id.* at 5.) Rotech will assist AMME in “successfully identifying, proposing, and performing larger VA contracts” and, on joint proposals that are not accepted by VA, Rotech will participate in the debriefing process to obtain feedback on the strengths and weaknesses of the proposal. (*Id.*)

For Business Development, the MPA stated that AMME wants to expand its current business beyond Southern California. (*Id.*) Rotech will provide “needed infrastructure, experiential knowledge and support to setup operational processes to service large VA contracts,” specifically focusing on “location coverage, the oxygen, [Positive Airway Pressure (PAP)], ventilator and DME equipment required to service the contract, [and] employee and fleet development.” (*Id.*)

For General and/or Administrative Assistance, AMME needs assistance with obtaining business licenses and registration in states other than California. (*Id.* at 6.) Rotech will assist AMME in understanding licensure rules and obtaining required licenses. (*Id.*)

In January 2020, Mr. Myo Tun, President of AMME, inquired about renewal of the MPA. SBA responded:

The ASMPP is a 6 year program. Your extension is automatic unless the MPA partners or SBA initiates a termination to the MPA.

(CF, Exh. 278.) SBA subsequently elaborated:

In an effort to streamline [the ASMPP] we are interpreting 13 CFR [§ 125.9] to mean that an MPA may last up to six years, renewing automatically each year, unless SBA or either party to the MPA terminate the agreement. This excludes extensions. However, every protégé is required to complete its Annual Evaluation timely, every year on your anniversary date.

(E-mail from T. Ebb-Murphy to M. Tun (Apr. 30, 2020).) The Case File contains no indication that the MPA ever lapsed, or that the MPA was ever terminated by SBA or by the parties.

### C. Joint Venture Agreement

The Case File contains a Joint Venture Agreement (JVA) for Veterans Advantage, executed by AMME and Rotech on September 7, 2017. (CF, Exh. 75.) The JVA states that Veterans Advantage is “an unpopulated separate legal entity” organized as a Delaware limited liability company (LLC). (*Id.* ¶ 6.0.) AMME owns 51% of Veterans Advantage, and Rotech owns the remaining 49%. (*Id.*) The JVA identifies AMME as Managing Venturer and Rotech as Partner Venturer. (*Id.* ¶ 4.1.)

According to the JVA, Veterans Advantage is governed by a Management Board whose purpose is “specifying overall policy, objectives, and control of the Joint Venture.” (*Id.* ¶ 4.2.) The Management Board also settles any disputes relating to contract performance. (*Id.*) The Management Board consists of three representatives: two selected by AMME (one of whom is Managing Director), and one by Rotech. (*Id.*) Each representative has one vote, and two representatives are needed for a quorum. (*Id.*) Action requires majority vote, and in the event of a tie, the Managing Director makes the final decision. (*Id.* ¶ 4.6.) Mr. Tun is the Managing Director. (*Id.* ¶ 4.3.1.)

The JVA provides that the Project Manager on a contract will be determined at the time of proposal and will be an AMME employee. (*Id.* ¶ 5.0.) During proposal evaluation, AMME will be the primary point of contact with the customer and the “Project Manager will have primary responsibility for Contract negotiations, as well as the negotiation of all proposals for task or delivery orders to be awarded under the Contract.” (*Id.* ¶ 7.1.)

The JVA does not address the instant procurement, noting that “[t]he Contract is currently unspecified.” (*Id.* ¶ 7.2.) However, the JVA contains a sample “Proposal Addendum” at Exhibit A, with blank areas for insertion of information pertaining to a particular procurement. (*Id.* at 16-17.) With regard to Source of Labor, the JVA states:

Once a definitive scope of work is made publicly available, the Venturers will jointly review the scope and consider each Venturer's unique capabilities and skillsets, in order to determine a division of the source of labor best suited to meet the Client's needs in an efficient and effective manner. The Venturers shall then execute a written addendum to this Agreement setting forth their specific responsibilities regarding scope of labor. The form of this addendum is attached to this Agreement as Exhibit A.

(*Id.* ¶ 7.2.) The JVA contains similar instructions for Contract Performance and Major Equipment, Facilities, and other Resources. (*See id.* ¶¶ 7.3 and 11.1.) Regarding Performance of Work, the JVA adds:

AMME, the SDVOSB and small business Partner to the Joint Venture, shall perform at least 40 percent of the work performed by the Joint Venture. The work performed by AMME shall be more than administrative or ministerial functions so that AMME will gain substantial experience.

(*Id.* ¶ 16.1.)

Concerning amendments to the JVA, the JVA states: “Any amendments or changes to this Agreement must be in writing, executed by both Venturers, and, if required by regulation, must be approved by the SBA.” (*Id.* ¶ 18.1.) Regarding addendums, the JVA states: “If the Joint Venture pursues additional contracts, the Venturers shall execute an addendum to this Agreement, setting forth the performance requirements on those additional contracts. (*Id.* ¶ 18.2.)

Finally, the JVA states:

This Agreement, together with any Joint Venture Operating Agreement that the Joint Venture may adopt, is an integrated agreement and embodies the complete agreement and understanding among the Venturers . . . . In the event of a conflict between a provision in this Agreement and a provision in the Joint Venture Operating Agreement, the provision in this Agreement shall control. In the event of a conflict between a provision in this Agreement and SBA's regulations, SBA's regulations shall control.

(*Id.* ¶ 28.)

D. Proposal

Veterans Advantage submitted its proposal for the instant procurement on May 7, 2020. The proposal indicated that Veterans Advantage would provide home oxygen services to beneficiaries at three locations. (Technical Proposal at 1.) Mr. Tun signed the proposal on behalf of Veterans Advantage.

In its proposal, Veterans Advantage stated that it is an unpopulated “Mentor Protégé/Joint Venture partnership” between AMME and Rotech, approved by VA's Center for Verification and Evaluation (CVE). (*Id.*) The joint venture is managed by its majority owner, AMME, an SDVOSB. (*Id.*) AMME and Rotech will maintain a “60/40 work split” to perform the contract. (*Id.* at 6.) [XX]

Accompanying the proposal, Mr. Tun signed a “Limitations on Subcontracting Acknowledgement and Certification” confirming that the “SDVOSB awardee will not pay more

than 50% of the amount paid to it by the government, to other firms that are not [CVE-approved] SDVOSBs.” (*Id.*, Attach. 5 at 1 (emphases omitted).) Veterans Advantage further agreed that:

A joint venture may be considered a SDVOSB if the joint venture is listed in [CVE's database] and complies with the requirements in 13 CFR 125.18(b), provided that any reference therein to service-disabled Veteran-owned small business concern or SDVO SBC, is to be construed to mean a [CVE-verified] SDVOSB. A joint venture agrees that, in the performance of the contract, [at least 50% of services] will be performed by the aggregate of the joint venture participants.

(*Id.*)

#### E. Protest

On November 18, 2021, Protestor filed the instant protest, challenging Veteran Advantage's status as an SDVOSB. The CO forwarded the protest to OHA for review.

In the protest, Protestor alleges that Veterans Advantage is not small due to affiliation with other firms, including AMME, Rotech, and Mori Medical Equipment, Inc. (Mori Medical). (Protest at 5.) Mr. Tun is President of Veterans Advantage and AMME, and, according to Protestor, these firms “operate with a skeleton crew of personnel, and are obviously unable to perform their existing contracts, BPAs, and their other obligations at seventeen locations with their own resources,” in contravention of 13 C.F.R. § 121.103(h). (*Id.* at 5-6.) Further, because AMME only has two employees and Veterans Advantage only has one employee, Veterans Advantage will be “wholly reliant upon Rotech and its multitude of subsidiaries to perform the work.” (*Id.* at 6.) AMME's joint ventures with Rotech are “nothing more than window dressing” as “Rotech personnel are the only people performing any substantive work.” (*Id.*)

Next, Protestor argues that, although Veterans Advantage is a joint venture between an SBA-approved mentor and protégé, Veterans Advantage does not qualify for the exception to affiliation at 13 C.F.R. § 121.103(h)(1)(ii). In Protestor's view, AMME, the protégé member of the joint venture, lacks sufficient personnel to control the “day-to-day management and administration” of the contract as required by 13 C.F.R. § 125.18(b)(2)(ii)(A), and with only two employees, AMME likewise is “incapable of performing 40% of [Veteran Advantage's] joint venture work as required by § 125.18(b)(3)(ii).” (*Id.*) AMME's two employees are “responsible for performing all of AMME's other contracts and BPAs, as well as operat[ing] its seventeen locations.” (*Id.*) Protestor alleges that AMME's role in performing the instant procurement “will be nothing more than administrative or ministerial.” (*Id.*) Veterans Advantage was formed in 2017 and the RFP was issued in 2020, so Protestor contends that the JVA could not possibly itemize the “major equipment, facilities, and other resources to be furnished” by each joint venture partner, as required by 13 C.F.R. § 125.18(b)(2)(vi). (*Id.* at 6-7 and n.1, citing *CVE Protest of KTS Solutions, Inc.*, SBA No. CVE-146-P, at 10 (2020).) Because Veterans Advantage does not meet the requirements set forth in § 125.18(b), it therefore is not a SDVOSB, as one of the joint venturers, Rotech, is “not small under the \$16.5 million [size standard] assigned to the procurement.” (*Id.* at 7.)

Protestor also argues that, notwithstanding their mentor-protégé relationship, AMME is affiliated with Rotech on various grounds, including the “newly organized concern” rule, common management, and the totality of the circumstances. (*Id.* at 7-9.) Accompanying the protest, Protestor submitted a copy of the RFP; a Notification of Unsuccessful Offeror letter; a printout from AMME's website describing the firm's relationship with Rotech; printouts of FPDS pages of AMME; printouts of CVE's database entries for AMME and Veterans Advantage; printouts of the AMME and Veterans Choice Medical Equipment LLC (Veterans Choice) Duns & Bradstreet profiles; printouts of the System for Award Management (SAM) pages for Veterans Advantage, AMME, and Rotech; a printout of a list of office locations for Veterans Advantage, Veterans Choice, and various Rotech entities; a printout of Rotech's “Locations of Care,” including with AMME and Veterans Advantage; a printout of a Yelp page for Rotech; printouts of Duns & Bradstreet for Holland Medical Services, Inc., Roth Medical Inc., Oxygen Plus Inc., PHI Medical Equipment Inc., and G& G Medical Inc.; a printout of the Mori Medical incorporation documents with the state of California; and a resume for Ms. Robin L. Menchen, Chief Operating Officer at Rotech. (Protest, Exhibits 1-15.)

#### F. Veterans Advantage's Response

On January 7, 2022, Veterans Advantage responded to the protest, requesting that the protest be dismissed or denied. According to Veterans Advantage, Protestor devotes the bulk of its protest to questions of size and affiliation, but such matters must be addressed through a size protest and/or size appeal. (Response at 2, citing 13 C.F.R. § 134.301(a).) OHA should decline to review size and affiliation issues in the instant SDVOSB status protest. (*Id.*)

If OHA nevertheless does consider Protestor's size and affiliation allegations, OHA should find that AMME is not affiliated with Rotech. (*Id.* at 5-6.) Veterans Advantage denies Protestor's allegation that Mr. Gordon Mori, an officer of AMME, is also a Rotech employee. Veterans Advantage offers a declaration from Ms. Menchen, COO of Rotech, asserting that Gordon Mori is not, nor ever has been, an employee of Rotech. (*Id.*, Exh. A, Menchen Declaration.) The SAM report cited by Protestor in contending that Gordon Mori is employed by Rotech is erroneous, and Rotech is currently in the process of remedying the error. (*Id.* at 6.) Protestor's arguments based on the totality of the circumstances are equally meritless. (*Id.* at 7.)

Next, Veterans Advantage disputes the allegation that it is not an SDVOSB because its protégé member, AMME, is affiliated with other firms. (*Id.* at 2.) Protestor provides no evidence to suggest that Mori Medical controls the daily operations of AMME, and Protestor has not shown that the two firms would exceed the size standard even if they were affiliated. (*Id.* at 6.) Veterans Advantage insists that it qualifies for the exception to affiliation for mentor-protégé joint ventures at 13 C.F.R. § 121.103(h)(1)(ii), and Protestor's allegations to the contrary are false. (*Id.* at 4.) Protestor's allegations of potential defects in the JVA are wholly speculative, as Protestor does not reference or discuss any specific portions of the JVA. (*Id.*) Veterans Advantage also disputes Protestor's claim that AMME will be unable to perform at least 40% of the work of Veterans Advantage. (*Id.* at 5.) The RFP did not require that AMME have all required staff on board as of the date of proposal submission. (*Id.*) Further, Veterans Advantage has not yet been formally awarded a contract, and thus, has not had to staff any of the beneficiary locations. (*Id.* at 2-3.)

Veterans Advantage avers that the protest does not show that any non-SDVOSB, or any individual other than a service-disabled veteran, controls the daily operations of either Veterans Advantage or AMME. (*Id.* at 2.) Mr. Tun, a service-disabled veteran, is the principal owner of AMME and controls the firm's daily operations. (*Id.*, citing Exh. B, Tun Declaration.) In turn, Mr. Tun also manages the daily operations of Veterans Advantage. (*Id.* at 3.) Moreover, Protestor cannot “credibly complain” that Veterans Advantage is not managed by a service-disabled veteran when, according to Protestor's website, Mr. Joseph Henson, upon whom Protestor relies for its own SDVOSB status, began his military service in 1950. (*Id.* at 3-4.) Accordingly, Mr. Henson is at least 90 years old, casting doubt on “whether he is in a position to manage [[Protestor's] day-to-day operations.” (*Id.*) In addition, Mr. Henson apparently resides nearly 600 miles from Protestor's headquarters, which calls into further question his ability to control Protestor. (*Id.*)

Accompanying its Response, Veterans Advantage submitted sworn declarations from Ms. Menchen and Mr. Tun. (*Id.*, Exhs. A and B.)

G. JVA Addendum

On June 16, 2022, OHA ordered Veterans Advantage to submit additional information pursuant to 13 C.F.R. § 134.1007(g). Specifically, OHA directed that Veterans Advantage produce a copy of any Addendum to the JVA pertaining to the instant procurement, as well as copies of any amendments to the JVA executed after September 7, 2017. (Order at 1-2.) On June 23, 2022, Veterans Advantage timely responded to OHA's Order and submitted a copy of a JVA Proposal Addendum (the “JVA Addendum”) for the instant procurement, dated March 8, 2020. (Response at Exh. A.)

The JVA Addendum stated that Mr. Tun, an AMME employee, will serve as Project Manager for the procurement, and will “be responsible for performance of the Contract and management of the Joint Venture, subject to the direction of AMME, the Managing Venturer.” (JVA Addendum § 2.0.) As the Managing Venturer, AMME shall:

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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)(1)(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 (3). *Id.* §§ 125.9(d)(1)(ii) and 121.103(h)(1)(ii).

In the instant case, there is no dispute that AMME, the protégé member of Veterans Advantage, is a verified SDVOSB. Similarly, it is undisputed that AMME and Rotech are an SBA-approved mentor and protégé. Specifically, SBA approved the MPA on February 27, 2017 for a three-year term, and the MPA thereafter renewed automatically. Section II.B, *supra*. As a result, AMME and Rotech could properly joint venture for the instant procurement, provided that Veterans Advantage's JVA meets the requirements at § 125.18(b)(2) and (3). The record demonstrates that Veterans Advantage's JVA, as supplemented by the JVA Addendum, meets all the conditions at § 125.18(b)(2) and (3). Sections II.C and II.G, *supra*. Therefore, Veterans Advantage is an eligible SDVOSB joint venture for this procurement.

Protestor did not seek an OHA protective order in this case, and thus cannot point to particular language in the JVA that Protestor alleges to be problematic. Section II.E, *supra*. Protestor highlights, however, that Veterans Advantage was formed in 2017, whereas the RFP was issued in 2020. *Id.* Because several of the requirements at § 125.18(b)(2) and (3) are contract-specific, Protestor maintains that Veterans Advantage could not have adequately addressed all such matters in the initial JVA. The regulations require, for instance, that a joint venture's JVA must itemize “all major equipment, facilities, and other resources to be furnished by each party to the joint venture,” and that the JVA explain how the SDVOSB member(s) of the joint venture will perform at least 40% of the contract work. OHA has, in numerous prior decisions, sustained SDVOSB status protests based on defects or omissions in a joint venture's JVA. *See, e.g., CVE Protest of U.S. Dep't of Veterans Affairs*, SBA No. CVE-148-P (2020); *CVE Protest of KTS Solutions, Inc.*, SBA No. CVE-146-P (2020); *CVE Protest of Commonwealth Home Healthcare, Inc.*, SBA No. CVE-116-P (2019); *CVE Protest of Veterans Contracting, Inc.*, SBA No. CVE-107-P (2019).

I find Protestor's allegations unpersuasive for two reasons. First, while it is true that AMME and Rotech could not have addressed contract-specific questions within the initial JVA, the JVA stated that the parties would prepare a separate written addendum discussing these matters. Section II.C, *supra*. Veterans Advantage has produced such a JVA Addendum for the instant procurement, dated March 8, 2020, which describes AMME's and Rotech's respective responsibilities on the contract, and itemizes the equipment, facilities, and resources to be contributed by each party. Section II.G, *supra*. Contract-specific matters therefore are fully addressed by the JVA as supplemented by the JVA Addendum. An additional problem for Protestor is that the instant RFP contemplated the award of one or more ID/IQ contracts. Section II.A, *supra*. When, as here, the underlying procurement is indefinite in nature, SBA regulations are more lenient as to the level of detail expected within a JVA. The regulations thus indicate that:

If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the SDVO small business partner(s) to the joint venture will meet the performance of work requirements set forth in [§ 125.18(b)(3)]. . . .

13 C.F.R. § 125.18(b)(2)(vii). Similarly, for an ID/IQ contract, the JVA need only include “a general description of the anticipated major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each.” *Id.* § 125.18(b)(2)(vi). Accordingly, given that Veterans Advantage prepared a separate JVA Addendum addressing contract-specific matters, and given further that the instant RFP called for the award of one or more ID/IQ contracts, Veterans Advantage has shown that its JVA, as supplemented by the JVA Addendum, fully meets the requirements of § 125.18(b)(2) and (3).

Protestor also suggests that AMME will be excessively reliant upon Rotech to perform the instant contract. Section II.E, *supra*. This argument fails because Veterans Advantage is a joint venture, rather than a standalone SDVOSB. As such, Veterans Advantage is not bound by the ownership and control requirements for SDVOSBs at 13 C.F.R. §§ 125.12 and 125.13. Instead, Veterans Advantage need only demonstrate compliance with the applicable joint venture regulations at § 125.18(b). *E.g.*, *Commonwealth Home Healthcare*, SBA No. CVE-116-P, at 12-13 (citing *Matter of Constr. Eng'g Servs., LLC*, SBA No. VET-213 (2011)). The joint venture regulations do not contain provisions for finding one joint venturer inordinately reliant upon another joint venturer. The fact that AMME and Rotech are an SBA-approved mentor and protégé, and that the MPA authorizes a wide variety of assistance that Rotech may provide AMME, further undermines the notion that AMME is excessively dependent upon Rotech. *See* 13 C.F.R. § 125.9(d)(4) (“No determination of affiliation or control may be found between a protégé firm and its mentor based solely on the [MPA] or any assistance provided pursuant to the [MPA].”).

In sum, notwithstanding Protestor's allegations, I find that Veterans Advantage's JVA, as supplemented by the JVA Addendum, is fully compliant with SDVOSB joint venture requirements. The JVA and JVA Addendum meet the requirements of 13 C.F.R. § 125.18(b)(2)(vi) and (vii) by providing a general description of the “anticipated major equipment, facilities, and other resources” to be furnished by AMME and Rotech for this procurement, and by describing the source of labor and the respective contract responsibilities of AMME and Rotech. Sections II.C and II.G, *supra*. Furthermore, in accordance with § 125.18(b)(2)(ii), the JVA and JVA Addendum designate AMME, a verified SDVOSB, as Managing Venturer of Veterans Advantage, and designate a named employee of AMME, Mr. Tun, as Project Manager with ultimate responsibility for performance of the instant contract. *Id.* Unlike the situation seen in *CVE Protest of Commonwealth Home Healthcare, Inc.*, SBA No. CVE-116-P (2019), both the JVA and JVA Addendum here were executed well before the pertinent dates for assessing eligibility. Sections II.C, II.G, and III.B, *supra*. Accordingly, I

find that the JVA and JVA Addendum together satisfy the requirements of § 125.18(b)(2) and (3).

IV. Conclusion

Veterans Advantage has proven its eligibility as an SDVOSB joint venture by a preponderance of the evidence. The protest therefore is DENIED. 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