

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

IN THE MATTER OF:

ASIRTek Federal Services, LLC,

Appellant,

Solicitation No. FA8773-16-R-8002

U.S. Department of the Air Force
38 CONS/LGCC
Tinker AFB, Oklahoma

SBA No. VET-269

Decided: March 27, 2018

APPEARANCES

Jeffery M. Chiow, Esq., Patricia A. Meagher, Esq., Stephen L. Bacon, Esq.,
Rogers Joseph O'Donnell, Washington, D.C., for ASIRTek Federal Services, LLC

Andrew R. Newell, Esq., Whitcomb, Selinsky, McAuliffe PC, Denver, Colorado, for
Cyber Protection Technologies, LLC

Sam Q. Le, Esq., Office of General Counsel, U.S. Small Business Administration
Washington, D.C.

DECISION¹

I. Introduction and Jurisdiction

This appeal arises from a determination by the U.S. Small Business Administration (SBA) Acting Director of Government Contracting (AD/GC) that ASIRTek Federal Services, LLC (Appellant) is not an eligible Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC). More specifically, the AD/GC found that Appellant is a joint venture between ITI Solutions, Inc. (ITI) and FEDITC, LLC (FEDITC), and that Appellant's joint venture agreement does not meet SBA requirements. On appeal, Appellant contends that the AD/GC's

¹ 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 now publishes the decision in full.

determination is clearly erroneous and should be vacated or reversed. For the reasons discussed *infra*, the appeal is denied.

OHA decides appeals of SDVO SBC status determinations under the Small Business Act of 1958, 15 U.S.C. § 631 *et seq.*, and 13 C.F.R. parts 125 and 134. Appellant filed the appeal within 10 business days of receiving the AD/GC's determination, so the appeal is timely. 13 C.F.R. § 134.503. Accordingly, this matter is properly before OHA for decision.

II. Background

A. Solicitation and Protest

On May 23, 2016, the U.S. Department of the Air Force (Air Force) issued Request for Proposals (RFP) No. FA8773-16-R-8002 seeking a contractor to provide engineering, management, and technical support services to the Air Force's 688 Cyberspace Wing (688 CW). (Protest File (PF), at 000024, 000083.) The RFP contemplated the award of a single indefinite delivery/indefinite quantity (ID/IQ) contract with a maximum contract value of \$99.9 million. (*Id.* at 000025, 000052, 000070). Specific requirements would be defined in subsequent task orders. (*Id.* at 000056, 000103.) The RFP's Performance Work Statement included several appendices outlining historical contract support by mission and position; technology areas in which the contractor must be proficient; hardware and software at 688 CW that the contractor must update and maintain; estimated work hours per year; and knowledge requirements by position. (*Id.* at 000108 — 000126.)

The Contracting Officer (CO) set aside the procurement entirely for SDVO SBCs, and assigned North American Industry Classification System (NAICS) code 541512, Computer Systems Design Services, with an associated size standard of \$27.5 million. (*Id.* at 000050, 000065.) The RFP warned that, if an offeror were “contemplating a joint venture on this project, offeror must meet the requirements of [Federal Acquisition Regulation (FAR) clause] 52.219-27 and 13 CFR 125.15.” (*Id.* at 000144.) Proposals were due July 20, 2016. (*Id.* at 000383.) Appellant and Cyber Protection Technologies, LLC (CyProTech) submitted timely offers.

On December 13, 2017, the CO notified unsuccessful offerors that Appellant was the apparent awardee. (*Id.* at 000022.) On December 20, 2017, CyProTech filed a protest challenging Appellant's size and SDVO SBC status. CyProTech maintained that FEDITC is not a small business. (*Id.* at 000003-000004.) In addition, in support of the status portion of the protest, CyProTech asserted:

It appears that [Appellant] is under the practical control of FEDITC. [Appellant's] purported majority owner and basis for its SDVOSB status, ITI Solutions, has never been awarded a contract under NAICS code 541512, while FEDITC has been awarded more than \$43 Million in contracts under NAICS code 541512. [Appellant], and its majority owner, ITI Solutions, will be heavily, if not completely, dependent on FEDITC for performance, given the size and scope of the contract. Under the circumstances, this does not appear to meet the “managerial control” standard established in 13 C.F.R. 125.13(b). ITI needs

nearly everything from FEDITC to fulfill this contract — especially its experience and access to its substantial labor force. FEDITC only needs ITI's SDVOSB certification. Under the circumstances, the likelihood that [Appellant] is merely a “storefront” for FEDITC is evident.

(*Id.* at 000006.) The CO referred the status protest to the AD/GC for review. (*Id.* at 000001.)

On December 21, 2017, the AD/GC notified Appellant of the protest and requested a response. The AD/GC stated that he considered the protest sufficiently specific, and that he would “examine all areas of [Appellant] as part of this protest.” (*Id.* at 000372.) The AD/GC instructed Appellant to produce documents “necessary to demonstrate its SDVO SBC eligibility,” including its “signed joint venture agreement.” (*Id.* at 000375.)

B. Joint Venture Agreement

Appellant's joint venture agreement (JVA), dated April 1, 2015, identified ITI as the “Managing Venturer” and FEDITC as the “Partner Venturer”. (*Id.* at 001798.) Appellant is 51% owned by ITI and 49% owned by FEDITC. (*Id.* at 001800, 001824.) According to the JVA, Appellant is organized as a corporation under Texas state law. (*Id.* at 001798, 001816.) Throughout the JVA, Appellant is referred to as “the Corporation.”

The JVA stated that ITI is a participant in SBA's 8(a) Business Development program. (*Id.* at 001798.) The purpose of the joint venture is to perform up to three 8(a) sole source or 8(a) competitive contracts. (*Id.*) In particular, the JVA stated that Appellant intends to submit a proposal for a competitive 8(a) procurement conducted by the 25th Air Force Directorate of Communications, RFP No. FA7037-13-R-0009. (*Id.*) Throughout the JVA, RFP No. FA7037-13-R-0009 is referred to as “the Contract.” The JVA indicated that “each awarded contract (other than [RFP No. FA7037-13-R-0009]) would be added to [the JVA] as an addendum to be approved by the SBA, as required.” (*Id.*)

Section 8.2 of the JVA specified that:

The performance of specific responsibilities under the Contract and task orders awarded thereunder will be allocated between the Venturers as set forth in each proposal. The Venturer primarily responsible for developing the winning proposal for an individual task order under this Contract or who has first identified, in writing to the President, an opportunity for pursuit prior to RFP release shall be the managing party of the corresponding task order award and will be responsible for contract negotiations, unless otherwise agreed upon during proposal creation by both parties, in order to satisfy 13 C.F.R. 124.513(c)(7).

(*Id.* at 001808.) However, “the Managing Venturer shall perform, at a minimum, forty percent (40%) of the total dollar amount of the labor portion of the Contract” and “the Partner Venturer shall perform no more than sixty percent (60%) of the total dollar amount of the labor portion of the Contract.” (*Id.*) “The Venturers shall receive profits from the Joint Venture commensurate with the work performed by the Venturers.” (*Id.* at 001800.)

ITI and FEDITC prepared a “First Addendum” to the JVA which referenced the instant procurement, RFP No. FA8773-16-R-8002. (*Id.* at 001825-001827.) The Addendum was signed by ITI on May 23, 2016 and by FEDITC on December 28, 2017. (*Id.* at 001827.) With regard to the instant procurement, the Addendum stated:

a. responsibilities of the party with regard to contract performance shall be: ITI Solutions, Inc.

NAME OF MENTOR HERE:

b. responsibilities of the party with regard to sources of labor shall be: ITI Solutions, Inc.

NAME OF MENTOR HERE:

c. responsibilities of the party with regard to negotiation of [RFP No. FA8773-16-R-8002]: ITI Solutions, Inc.

NAME OF MENTOR HERE:

(*Id.* at 001826.)

C. AD/GC's Determination

On February 6, 2018, the AD/GC issued his determination concluding that Appellant is not an SDVO SBC. The AD/GC explained that Appellant self-certified as an SDVO SBC with its initial offer on July 20, 2016. The AD/GC therefore applied the version of SBA regulations in effect on July 20, 2016. (*Id.* at 001934, 001938.)

The AD/GC found that Appellant is a joint venture between ITI and FEDITC, and that ITI qualifies as an SDVO SBC. (*Id.* at 001937- 001938.) Appellant's JVA, though, did not comport with SBA requirements. Specifically, the JVA failed to meet the requirement at 13 C.F.R. § 125.15(b)(2)(iii) (2016) that at least 51% of the net profits of the joint venture be distributed to an SDVO SBC. (*Id.* at 001939-001940.) In addition, the JVA did not adequately specify the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the SDVO contract, as required by 13 C.F.R. § 125.15(b)(2)(iv) (2016). (*Id.* at 001940.) The JVA is further flawed because § 8.2 “gives FEDITC authority to exercise control over the joint venture contracts if it identifies and pursues task orders under the contract.” (*Id.*)

The AD/GC declined to consider the First Addendum to the JVA because the document was not signed by both ITI and FEDITC until December 28, 2017. “Consequently, [the AD/GC] has concluded that the addendum was not in effect at the time of [Appellant's] initial offer for [RFP No. FA8773-16-R-8002].” (*Id.* at 001939.)

D. Appeal

On February 16, 2018, Appellant appealed the AD/GC's determination to OHA. Appellant contends that the AD/GC's determination is clearly erroneous, for four reasons.

First, Appellant maintains, the AD/GC clearly erred by not dismissing CyProTech's protest, which failed to raise specific, protestable issues. (Appeal at 8.) Appellant asserts that CyProTech's protest "offered only unsubstantiated shot-in-the-dark allegations, not facts." (*Id.* at 10.) Appellant points to CyProTech's allegation that "It *appears* that [Appellant] is under the practical control of FEDITC", and contends that, in *Matter of Service Disabled Veteran Manufacturing & ZAMS, Inc.*, SBA No. VET-122 (2007), OHA upheld the dismissal of a similarly vague protest alleging "it is our understanding" an offeror does not qualify. (*Id.* at 10-11, emphasis Appellant's.)

Furthermore, Appellant continues, CyProTech's protest consisted of generic allegations that could be raised by any protester against any joint venture. (*Id.* at 10.) Here Appellant notes that joint venturers are allowed to combine capabilities, and that neither SBA nor the U.S. Department of Veterans Affairs requires "the disadvantaged owner" to have specific technical experience if s/he has sufficient managerial experience. (*Id.* at 10-11.) As for control, CyProTech's protest contained no allegation corresponding to any of the points of control enumerated in 13 C.F.R. § 125.13. (*Id.* at 11-12.) Also, CyProTech's allegation that ITI has never been awarded a contract under NAICS code 541512 is irrelevant to any claim that ITI's service-disabled veteran owner does not control Appellant. (*Id.* at 12-13.) Appellant states that it urged the AD/GC to dismiss the protest, but the AD/GC ignored this request, also a clear error. (*Id.* at 8-9.) Because the AD/GC should have dismissed CyProTech's protest, OHA should grant this appeal as it did in *Matter of Jamaica Bearings Company*, SBA No. VET-257 (2016) and *Matter of METRIX Enterprise Solutions, Inc.*, SBA No. VET-208 (2010). (*Id.* at 8.)

Second, Appellant asserts, the AD/GC clearly erred in finding that Appellant's JVA did not meet the requirement that at least 51% of net profits be distributed to ITI, the SDVO SBC joint venturer. (*Id.* at 13.) Appellant highlights that § 6.2 of the JVA allocates net operating income and net operating loss between the joint venturers in proportion to their respective ownership interests, and § 6.1 shows that ITI has 51% ownership. (*Id.* at 14.) The AD/GC erred in relying on JVA language, written to comply with 8(a) program requirements, stating that ITI will perform at least 40% of the work. (*Id.* at 15.) Appellant contends that the amount of profit is not commensurate with the amount of labor performed. (*Id.*) Further, 40% is merely a floor, not a ceiling. (*Id.* at 16.)

Third, Appellant attacks the AD/GC's finding that the JVA did not specify the responsibilities of the parties with regard to contract performance, source of labor, and negotiation of the SDVO contract. (*Id.* at 17.) Appellant points to the ID/IQ structure of the procurement, claiming that "it was impossible for the parties to include more specificity in the JVA until task orders are awarded." (*Id.*) Further, the instant contract is for services only, the exact mix of which is yet to be known, and the JVA did state that neither venturer anticipated providing facilities or equipment. (*Id.* at 17-18.) In Appellant's view, "[t]o require additional

specificity, as the [AD/GC] did, would require [Appellant] to simply speculate about the [Air Force's] true requirements in advance of the scope being definitized in a task order.” (*Id.* at 19.)

Appellant distinguishes the instant case from OHA's decision in *Size Appeal of IEI-Cityside, JV*, SBA No. SIZ-5664 (2015), *aff'd sub. nom IEI-Cityside, JV v. United States*, 122 Fed. Cl. 750 (2015). (*Id.* at 20-21.) In *IEI-Cityside*, Appellant explains, OHA held that a JVA lacked the requisite specificity after concluding that the joint venture “could have used the agreement to describe the type of work each venture partner would perform and the resources it would contribute in each region”, where all major functions were to be performed in each region. (*Id.* at 21.) By contrast, Appellant “did not know whether any particular labor categories would be included in any task order”, so *IEI-Cityside* is inapposite. (*Id.*)

Fourth, Appellant asserts, the AD/GC clearly erred in determining that FEDITC, the non-SDVO SBC joint venturer, could control Appellant's contracts. (*Id.* at 22.) The JVA provision relied upon by the AD/GC stated that the venturer “primarily responsible for developing the winning proposal [or] who has first identified ... an opportunity for pursuit prior to RFP release” would manage the task order. (*Id.*, quoting JVA § 8.2.) This language was drafted before the instant RFP was issued, and would not apply to the instant procurement because Appellant is the sole awardee, and thus will not compete with other contractors for task orders. (*Id.* at 22-23.) Further, even if FEDITC were to manage a task order, the JVA vests ITI as Appellant's Managing Venturer, in charge of Appellant's business affairs, as well as Program Manager. (*Id.* at 23.) Thus, the AD/GC misinterpreted the JVA. (*Id.* at 23.)

As relief, Appellant requests OHA to reverse or vacate the AD/GC's determination either by concluding the AD/GC erred in not dismissing CyProTech's protest outright or, in the alternative, by concluding that Appellant did satisfy all SDVO SBC eligibility requirements at the time of its proposal. (*Id.*)

E. CyProTech's Response

On March 6, 2018, CyProTech responded to the appeal. CyProTech disputes the notion that the AD/GC should have dismissed the protest as non-specific, characterizing that assertion as “a misplaced ‘fruit of a poisonous tree’ argument”. (CyProTech Response at 2.) Implicit in the appeal is the argument that if the protest was not specific, then there should have been no investigation and no adverse determination. (*Id.* at 3-4.) CyProTech's protest was specific, though, and even if not, the AD/GC has authority to delve beyond the protest. (*Id.*)

CyProTech contends that the AD/GC correctly found that Appellant's JVA does not comply with the SDVO SBC joint venture regulations. First, the JVA improperly indicated that ITI will be entitled to only 40% of profits. (*Id.* at 4-5.) Second, the JVA did not specify the joint venturers' roles and responsibilities relating to the instant procurement, and OHA determined that such requirements apply to ID/IQ contracts in *IEI-Cityside*. (*Id.* at 5.) Third, FEDITC could control the contract because, under the JVA, if FEDITC primarily develops a proposal for a task order, it will manage that task order. (*Id.* at 6.)

F. SBA's Response

On March 6, 2018, SBA responded to the appeal. SBA maintains that the AD/GC correctly found that the protest was specific, and correctly determined that Appellant is ineligible as an offeror because its JVA does not conform to regulatory requirements. (SBA Response at 1-2.) Therefore, OHA should deny the appeal.

SBA observes that Appellant's JVA describes Appellant as a corporation rather than the LLC it is; references a significantly different, multiple-award contract rather than the single-award contract at issue here; and addresses the 8(a) program rather than the SDVO SBC program. (*Id.*) Thus, the JVA fails to meet SDVO SBC program requirements, including the requirement that it be “for the purpose of performing an SDVO contract.” (*Id.* at 4, quoting 13 C.F.R. § 125.15(b) (2016).)

Because the JVA pertains to a completely different procurement, it also does not address the requirement to describe each joint venturer's responsibilities regarding contract negotiation, labor sources, and performance. (*Id.* at 5, citing 13 C.F.R. § 125.15(b)(2)(iv) (2016) and *Matter of SOF Associates-JV*, SBA No. VET-235 (2013).) In response to Appellant's argument that these were unknown because the contract is an ID/IQ, SBA highlights that the RFP included appendices setting forth contract labor requirements and technical responsibilities which easily could have been discussed in the JVA, had the JVA been intended for this RFP. (*Id.* at 4-6.) Instead, the JVA conforms to 8(a) program requirements, which are different. (*Id.* at 6.) Nor does the First Addendum to the JVA shed any light on these required points. (*Id.*)

SBA also argues CyProTech's protest was sufficiently specific. Appellant's reliance on OHA's decisions in *METRIX* and *Jamaica Bearings* is unavailing. In both of those cases, the protester alleged affiliation under the size regulations, rather than make allegations relevant to SDVO SBC eligibility, while CyProTech's protest here correctly was based on SDVO SBC criteria. (*Id.*) In SBA's view, “[w]here the protest alleges that the SDVO SBC offeror is not a compliant joint venture, the D/GC must address the issue.” (*Id.* at 8, citing *Matter of Mission Essentials, LLC*, SBA No. VET-222 (2011).)

III. Discussion

A. Standard of Review

OHA reviews the AD/GC's decision to determine whether it is “based on clear error of fact or law.” 13 C.F.R. § 134.508; *see also Size Appeal of Taylor Consultants, Inc.*, SBA No. SIZ-4775, at 10-11 (2006) (discussing the clear error standard that is applicable to both size appeals and SDVO SBC appeals). OHA will overturn the AD/GC's determination only if Appellant proves that the AD/GC made a patent error based on the record before him.

B. Analysis

Appellant has not shown any reversible error in the AD/GC's determination. As a result, this appeal must be denied.

SBA regulations in effect at the time of Appellant's self-certification stated that “[a]n SDVO SBC may enter into a joint venture agreement with one or more other SBCs for the purpose of performing an SDVO contract.” 13 C.F.R. § 125.15(b) (2016). The regulations added, however, that the joint venturers must also prepare a JVA that meets certain requirements. Specifically:

Every [JVA] to perform an SDVO contract must contain a provision:

- (i) Setting forth the purpose of the joint venture;
- (ii) Designating an SDVO SBC as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for performance of the SDVO contract;
- (iii) Stating that not less than 51% of the net profits earned by the joint venture will be distributed to the SDVO SBC(s);
- (iv) Specifying the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the SDVO contract;
- (v) Obligating all parties to the joint venture to ensure performance of the SDVO contract and to complete performance despite the withdrawal of any member; [and]
- (vi) Requiring the final original records be retained by the managing venturer upon completion of the SDVO contract performed by the joint venture[.]

Id. § 125.15(b)(2) (2016).

Here, the principal problem for Appellant is that its JVA did not address the instant procurement at all, or indeed any SDVO SBC procurement. Rather, the JVA was dated April 1, 2015, more than a year before the instant RFP was issued. Section II.B, *supra*. Although the JVA did include some discussion of “the Contract,” this discussion referred to an unrelated 8(a) procurement conducted by the 25th Air Force Directorate of Communications, not the procurement in question here. *Id.* Accordingly, the JVA plainly did not meet the regulatory requirement to “[s]pecify[] the responsibilities of the parties with regard to contract performance, source of labor and negotiation of the SDVO contract.” 13 C.F.R. § 125.15(b)(2)(iv) (2016). The AD/GC therefore properly concluded that Appellant's JVA was defective.

As SBA highlights in its response to the appeal, the AD/GC's determination is consistent with established OHA precedent. In *Matter of CriterEOM, LLC*, SBA No. VET-245 (2014),

OHA affirmed a determination that the challenged firm was not an eligible SDVO SBC joint venture. After reviewing the challenged firm's JVA, OHA found that “just what each party shall do in contract performance is left unmentioned.” *CriterEOM*, SBA No. VET-245, at 7. OHA considered this omission “a fatal defect, because it is a failure to comply with the regulation.” *Id.* (citing 13 C.F.R. § 125.15(b)(2)(iv).) Similarly, in *Matter of SOF Associates-JV*, SBA No. VET-235 (2013), OHA held that the challenged firm was “not an eligible SDVO SBC joint venture at the time it submitted its offer.” *SOF Associates-JV*, SBA No. VET-235, at 9. OHA reasoned that 13 C.F.R. § 125.15(b)(2)(iv) “demands the joint venture agreement specifically identify just what the responsibilities of each joint venturer will be with regard to contract negotiation, labor sources and performance.” *Id.* at 8. The challenged firm's JVA “contain[ed] no such provision” and therefore was deficient. *Id.* Because Appellant's JVA here suffers from the same shortcomings seen in *CriterEOM* and *SOF Associates-JV*, these cases support the AD/GC's conclusion that Appellant is not an eligible SDVO SBC joint venture.

Appellant argues that it could not have included the requisite level of detail given the undefined nature of the underlying ID/IQ contract, but this argument is meritless. While it is true that the RFP contemplated the award of an ID/IQ contract, the RFP also provided detailed appendices, including technical requirements and labor estimates, which Appellant might have utilized to describe the types of work each joint venture partner would perform, and the labor each partner would contribute. Section II.A, *supra*. Appellant therefore has not demonstrated that it would have been impossible for Appellant's JVA to provide the information required by 13 C.F.R. § 125.15(b)(2)(iv) (2016). Further, based on the phrasing of the regulation, OHA has interpreted 13 C.F.R. § 125.15(b)(2) to mean that “there can be no exceptions” to the requirement that particular terms must be included in the JVA. *SOF Associates-JV*, SBA No. VET-235, at 7. I therefore cannot conclude that a joint venture may be excused from complying with 13 C.F.R. § 125.15(b)(2)(iv) (2016) if the underlying contract is an ID/IQ. Insofar as Appellant disputes whether the regulation itself is reasonable or realistic, such complaints are beyond OHA's jurisdiction and must instead be directed to SBA policy officials. “It is well-settled that OHA has no authority to entertain a challenge to the underlying regulations.” *Matter of Precise Systems, Inc.*, SBA No. VET-246, at 13 (2015).

It is worth noting that the First Addendum to Appellant's JVA does not alter the above analysis. As the AD/GC recognized in his decision, the First Addendum was not signed by both of the joint venturers until December 28, 2017, and thus was not in effect when Appellant self-certified for the instant procurement on July 20, 2016. Section II.C, *supra*. OHA has repeatedly explained that documents created after the self-certification date are not relevant for purposes of determining eligibility. *E.g.*, *Matter of Apex Ventures, LLC*, SBA No. VET-219, at 6 (2011) (“[T]he AD/GC based his determination on [the challenged firm's] status at the time of self-certification. Developments that occurred after the date of self-certification are irrelevant to this analysis.”); *Matter of Cedar Electric, Inc./Pride Enters., Inc., JV*, SBA No. VET-129, at 4 (2008) (“[T]he D/GC must determine SDVO SBC eligibility as of the date [the challenged firm] submits its initial offer. . . . A putative SDVO SBC cannot cure its lack of eligibility after submission of the initial offer.”). Accordingly, the AD/GC properly did not consider the First Addendum in reaching his decision. Moreover, even if it were appropriate to consider the First Addendum, the First Addendum contained no substantive information about the respective roles and responsibilities of ITI and FEDITC. Section II.B, *supra*. As a result, Appellant still would not

have complied with 13 C.F.R. § 125.15(b)(2)(iv) (2016), and still would not qualify as an eligible SDVO SBC joint venture.

The AD/GC also determined that Appellant's JVA was deficient in two other respects, and Appellant disputes these findings. First, the AD/GC found that Appellant's JVA failed to meet the requirement at 13 C.F.R. § 125.15(b)(2)(iii) (2016) that at least 51% of the net profits of the joint venture be distributed to an SDVO SBC. Section II.C, *supra*. Second, the AD/GC found that language in the JVA suggested that FEDITC may exercise control over any task orders for which it developed the winning proposal. *Id.* Again, the problem for Appellant is that Appellant's JVA did not address the instant procurement at all, and was not drafted for purposes of any SDVO SBC procurement. Thus, with regard to the question of net profits, the JVA stated that “[t]he Venturers shall receive profits from the Joint Venture commensurate with the work performed by the Venturers.” Section II.B, *supra*. The work to be performed by each venturer on this procurement, though, was completely undefined, as the JVA did not mention the instant procurement. As a result, the AD/GC reasonably concluded that ITI would not be guaranteed at least 51% of net profits. Similarly, Appellant itself acknowledges that the JVA language regarding tasks orders was intended for a different procurement where Appellant would have competed with other contractors for task orders. Section II.D, *supra*. The language is potentially problematic if applied to the instant procurement, a single-award ID/IQ, because it creates the possibility that FEDITC might control task orders; if such task orders were of large dollar value, ITI's control over the procurement as a whole might be jeopardized. Accordingly, Appellant has not shown that the AD/GC committed any reversible error in his analysis.

Lastly, I find no merit to Appellant's claim that the AD/GC should have summarily dismissed CyProTech's protest as insufficiently specific. OHA considered, and rejected, a strikingly similar argument in *SOF Associates-JV*, explaining:

[The challenged firm] argues that [the] protest should have been dismissed as insufficiently specific, as it did not identify the [Joint Venture] Agreement as a basis for protest. This argument is meritless. [The protester] specifically alleged [the challenged firm] failed to have a Managing Venturer as required by the regulation. [The protester] made a specific allegation, and [the challenged firm] had notice that its Agreement's compliance with the regulations was at issue. [The protester] was under no obligation to identify individual Agreement provisions in conflict with the regulation. The Agreement was, of course, not available to [the protester]. OHA has recognized that protest allegations are difficult for a protestor to prove without access to concrete evidence. The challenged concern, however, does have access to the information to prove its own eligibility. In such cases, a protest such as [the protester's] is sufficiently specific.

SOF Associates-JV, SBA No. VET-235, at 6.

As in *SOF Associates-JV*, the challenged firm here is a joint venture, and the protest raised allegations which, if true, would disqualify the challenged firm from the procurement. CyProTech's protest maintained that one of the joint venture partners, FEDITC, is not a small business, which would contravene the regulatory requirement that a proper SDVO SBC joint

venture must be between an SDVO SBC and “one or more other SBCs.” 13 C.F.R. § 125.15(b) (2016); *see also* FAR 52.219-27(e)(2). Further, CyProTech's protest alleged that FEDITC had “managerial control” over the joint venture, which would violate the regulatory requirement that an SDVO SBC must serve as the managing venturer. 13 C.F.R. § 125.15(b)(2)(ii) (2016); *see also Matter of HANA-JV*, SBA No. VET-227, at 5-6 (2012). Thus, CyProTech's protest alleged that Appellant is not a proper SDVO SBC joint venture, and gave reasons which would support such an assertion. Like the protester in *SOF Associates-JV*, CyProTech did not have access to Appellant's JVA at the time of the protest, and therefore could not point to exact provisions in the JVA that might be considered improper. Nevertheless, the protest was sufficient for Appellant to understand that its status as an SDVO SBC joint venture was at issue, and to craft a meaningful response. Thus, the AD/GC did not err by failing to dismiss CyProTech's protest.

IV. Conclusion

Appellant has not shown that the AD/GC clearly erred in determining that Appellant is not an eligible SDVO SBC joint venture, due to defects in Appellant's JVA. Accordingly, the appeal is DENIED. This is the final decision of the Small Business Administration. 13 C.F.R. § 134.515(a).

KENNETH M. HYDE
Administrative Judge