Cite as: *Matter of Gray Venture, LLC*, SBA No. VET-276 (2022)

United States Small Business Administration
Office of Hearings and Appeals

IN THE MATTER OF:

Gray Venture, LLC,

Appellant

Solicitation No. H92239-19-R-00014

SBA No. VET-276

Decided: July 21, 2022

APPEARANCES

Emily J. Chancey, Esq., J. Andrew Watson, III, Esq., Jon Davidson Levin, Esq., Nicholas P. Greer, Esq., Maynard, Cooper & Gale, P.C., Huntsville, Alabama, for Gray Venture, LLC

J. Francesca Gross, Esq., Edmund Bender, Esq., Office of General Counsel, U.S. Small Business Administration, Washington, D.C., for the Agency

Christopher R. Shiplett, Esq., Falls Church, VA, for Strategic Alliance Solutions LLC

DECISION[1]

I. Introduction

This appeal arises from a determination by the U.S. Small Business Administration (SBA) Director of Government Contracting (D/GC) concluding that Gray Venture, LLC (Appellant), a venture comprised of GEBC, LLC, (GEBC) a Service-Disabled Veteran-Owned Small Business Concern (SDVO SBC), and Thompson Gray, Inc. (TG), GEBC's SBA-approved mentor, is not an eligible SDVO SBC Joint Venture. For the reasons discussed *infra*, I AFFIRM the D/GC's determination and DENY the appeal.

SBA Office of Hearings and Appeals (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

[1] This decision was initially issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded counsel an opportunity to file a request for redactions if desired. OHA received one or more timely requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

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, Protest, and Determination

On May 20, 2021, the Department of Defense (DOD), Missile Defense Agency (MDA) Contracting Office at Redstone Arsenal, in Alabama, issued a Request for Proposal (RFP) under Solicitation No. HQ0858-21-R-0014 (Solicitation) for non-governmental personal advisory and assistance services for Program Planning and Acquisition Support. (Solicitation, at 5-6.) The Contracting Officer (CO) set-aside the acquisition entirely for SDVO SBCs and assigned North American Industry Classification System (NAICS) code 541330, Engineering Services, with a corresponding $41.5 million annual receipts size standard. Proposals were due July 9, 2021. (RFP Amendment 0004, at 1.) Appellant and Strategic Alliance Solutions, LLC (SAS) submitted timely offers.

On February 17, 2022, the CO announced that Appellant was the apparent successful awardee. (Protest File (PF), at 2563.) On February 25, 2022, SAS filed a size protest and an SDVO SBC protest, challenging Appellant's status. (*Id.*, at 2557-2582.) SAS alleged that Appellant was other than small because GEBC, the SDVO SBC member, was affiliated with a large business, Science Applications International Corporation (SAIC) and that it was both other than small and ineligible as an SDVO SBC, because its Joint Venture Agreement did not comply with the applicable regulation at 13 C.F.R. § 125.18(b)(2). SBA D/GC addressed both protests.

On April 7, 2022, SBA Area Office III Office of Government Contracting (Area Office) first denied SAS's size protest. (PF, at 2537-2551.) The Area Office found that Appellant was a joint venture, of which GEBC owned 51% and TG 49%. GEBC was not affiliated with SAIC. (*Id.*)

When considering whether Appellant's Joint Venture Agreement (JVA) complied with the regulation at 13 C.F.R. § 125.18(b)(2), the Area Office looked at whether the JVA contained the twelve elements to be compliant. First, it must set forth the purpose of the joint venture. The Area Office found the JVA was not compliant here. Section 3.1 of the JVA says its purpose is to submit proposals for and seek the award of one or more contracts. The Teaming Agreements of December 15, 2020 and December 17, 2020, stated that MDA is expected to issue the subject solicitation and the parties intend to submit a proposal. These Teaming Agreements were dated five months before the May 21, 2020 date of the solicitation and did not identify the solicitation number of the procurement Appellant proposed to bid on. The Area Office found the purpose of the joint venture is not specific to the subject solicitation and is thus not compliant with the regulation. (PF, at 2544-45, citing 13 C.F.R. § 125.18(b)(2)(i).)

Further, the JVA must designate an SDVO SBC as the managing venturer and designate a named employee of the SDVO SBC as the manager with the ultimate responsibility for contract performance. While § 8.1 of the Operating Agreement states the Manager shall be the small business concern, § 8.4 assigns GEBC as the Manager and § 8.11 states the Manager shall

appoint a Project Manager responsible for overseeing contract performance who shall be an employee of the Manager and report directly to the Manager, neither the Operating Agreement nor the Teaming Agreements identify the name of the GEBC employee who would be the Project Manager. Thus, the Area Office found Appellant had not met this regulatory requirement. (PF, at 2545, citing 13 C.F.R. § 125.18(b)(2)(ii).)

The Area Office further noted the responsibilities of the parties about the negotiation of the contract, source of labor, and contract performance were described in both, the Operating Agreement and the Teaming Agreements. However, because the Teaming Agreements were drafted prior to the issue of the solicitation, the described responsibilities are not specific to this solicitation and therefore, the Agreements were not in compliance with the regulations. (PF, at 2547, citing 13 C.F.R. § 125.18(b)(2)(vii).)

Therefore, while the Area Office found that Appellant's JVA complied with most of the requirements of the regulation, it failed to meet three of the requirements and therefore, failed to comply with the regulation. The Area Office thus found GEBC and TG were not exempt from a finding of affiliation for the purposes of this procurement and were affiliated. (PF, at 2548-49, citing 13 C.F.R. § 121.103(h)(1)(ii).)

However, upon examining GEBC's and TG's combined annual receipts, the Area Office found that they did not exceed the applicable size standard, and that Appellant was therefore small for this procurement. (PF, at 2549-2551.)

On May 16, 2022, the Deputy D/GC (DD/GC) determined that Appellant did not meet the SDVO SBC joint venture eligibility requirements at the time of its offer for the instant solicitation and was thus not eligible to perform the instant contract. (PF, at 6-13.)

The DD/GC first determined that GEBC's principal, [Individual 1], was a service-disabled veteran, who directly and unconditionally owns 51% of the firm, and who controls the firm. (PF, at 9-10.) However, the DD/GC adopted the Area Office's conclusion that Appellant's Operating Agreement and Teaming Agreements failed to meet the regulatory requirements for an SDVO SBC joint venture agreements, and so adopted the Area Office's finding that Appellant was not an eligible SDVO SBC joint venture. (PF, at 11.)

B. The Appeal

On May 31, 2022, Appellant filed the instant appeal. Appellant argues the Area Office held it to an unreasonable standard, not supported by the regulations. Appellant points to Congress's definition of SBA's purpose to aid, counsel, assist and protect the interests of small business concerns. (Appeal, at 3-4, citing 15 U.S.C. § 631(a) and 13 C.F.R. § 101.100.) Appellant further points to SBA's mission to assist SDVO SBCs in obtaining their fair share of Government contracts and to act for the benefit of small businesses generally. (*Id.*, citing 15 U.S.C. §§ 631-657u; 13 C.F.R. § 125.2(a)(1).)

Appellant states that it was created when GEBC and TG entered into an Operating Agreement in September 2020. When [Individual 1] learned of this procurement, he decided to

pursue the opportunity, and the firms entered into Teaming Agreements to supplement the Operating Agreement to add more detail and information. These documents together constitute Appellant's JVA. (*Id.* at 4.)

Appellant argues that its JVA stated its purpose, in compliance with 13 C.F.R. § 125.18(b)(2)(i). The JVA clearly described the subject procurement, identifying MDA by name and identifying the program the procurement served with the same title as the solicitation, the TEAMS Next Program Planning and Acquisition (PP&A) effort. The JVA also expressly stated Appellant planned to submit a bid as a prime contractor for this effort. Appellant quotes from its JVA, which states that whereas MDA (identified as "customer") would issue an RFP for PP&A under the TEAMS Next PP&A solicitation, the parties to the JVA intend to submit a responsive and responsible proposal in response to the RFP solicitation. Any finding that the JVA was deficient because it did not include the Solicitation number would be clear error as the regulation does not require that. (*Id.*, at 5-6.)

Appellant further argues that it did name a managing venturer and a responsible manager. The Operating Agreement states at § 8.1 that there shall be one Manager, which will be the "Small Business Concern," which shall be designated the 'Managing Venturer." The Operating Agreement references compliance with 13 C.F.R. § 125.8, whose requirements parallel those of 13 C.F.R. § 125.18. The Operating Agreement further identified GEBC as the Small Business Concern. The Teaming Agreements named [Individual 1] as Appellant's contractual representative. [Individual 1] is the obvious choice for this position as GEBC's CEO and controlling member. [Individual 1] signed the Operating Agreement on behalf of GEBC. Appellant maintains that it met the regulatory requirements by any reasonable definition.[2] (*Id.*, at 6-8.)

Appellant argues its JVA did set out the responsibilities of the parties. The Operating Agreement stated at § 3.3 that the Manager, which is GEBC, has authority to make all decisions which arise from the negotiation of any contract. The specific responsibilities of each Member with regard to provision of labor, major equipment, facilities and other resources to be furnished by each Member, negotiations related to the contract and each Member's requirements shall be set forth as incorporated into an addendum to the Operating Agreement. The Teaming Agreement at § 14.5(a) named [Individual 1] as the contractual manager for the effort. These provisions, read together, demonstrate that [Individual 1] would be responsible for negotiation of the contracts, of subcontracts, and of setting the requirements for the provision of labor and other resources from the Members. The Operating Agreement further states at § 3.3(a)(v) that the Project Manager responsible for overseeing performance of a contract shall be further responsible for engaging the labor force required for that performance. The Teaming Agreements appoint [Individual 1] as the contract manager, conferring responsibility for sourcing the labor from each member for the joint venture, and thus, the DD/GC erred in stating that this information was not included. With regard to the responsibilities for contract performance, the

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[2] Appellant argues the DD/GC erred when it found that Appellant's JVA did not comply with 13 C.F.R. § 125.18(b)(2)(vi). However, the DD/GC did not make such a finding but found this regulation inapplicable to a services contract. (PF, at 2547.)

Teaming Agreements included Article 4, which set out the responsibilities of both GEBC and TG. (*Id.*, at 8-10.)

Both Teaming Agreements contain an Exhibit A, a Statement of Work and Workshare. It provides that GEBC will perform at a minimum [xx]% of Appellant's workshare, the GEBC will hold [xx]% of total contract man-years on the PP&A program and be prepared to reallocate up to [xx]% throughout the team or to support new team members. TG will perform [xx]% of total contract man-years on the PP&A Program. TG and Appellant will negotiate to determine TG's precise functions. This section describes the parties' responsibilities in the form, of tasks, as well as the percentage of labor hours. They also addressed the workshare requirements of 13 C.F.R. § 125.18(b). (*Id.*, at 10-11.)

Appellant maintains the DD/GC read § 125.18(b)(2)(vii) as imposing more stringent requirements than the plain language of the regulation can support. The determination requires more specificity than is necessary or realistic. Joint venturers would have to restate their entire proposals in the joint venture agreement just to be safe. Further, requiring such detailed documentation would not serve SBA's goal of promoting SDVO SBC bidders. The DD/GC adopted the Area Office's findings, but its logic was concerned not with the content of the JVA, but with its timing. The Area Office found that because the JVA was drafted prior to the issuance of the solicitation, the responsibilities of the parties were not specific to the instant solicitation and thus were not in compliance with the regulation. (*Id.*, at 11-12.)

Appellant maintains that any requirement for the JVA to post-date the solicitation would be unreasonable. The SBA regulations do not require the JVA to be drafted after issuance of the solicitation, and most JVAs precede the solicitation. For most procurements of this size, there is a publicly available advance draft, which can accommodate specificity in the JVA. Appellant maintains that SBA's finding that there was a predecessor contract Appellant could rely on to the draft in its JVA with reasonable specificity was unreasonable. Further, SBA appears to predicate its finding on the completion of the JVA in advance of the solicitation was not on the actual content of the JV agreement, but on the timing of the same, which is also unreasonable. (*Id.*, at 12-13.)

Appellant distinguishes cases where SBA found JVAs to be deficient. In *Asirtek Fed. Servs., LLC, Appellant*, SBA No. VET-269 (2018), the JVA was repurposed from an 8(a) contract, and did not properly specify the responsibilities of the parties. In *SOF Assocs. F JV*, SBA No. VET-235 (2013) (*SOF Assocs*.), there was merely a general grant of authority to the SDVO SB. The joint venture agreement in *Critereom, LLC*, SBA No. VET-245 (2014) was only two sentences detailing each party's responsibilities under the agreement. (*Id.*) Appellant states that its teaming agreements set out far more detail than those at issue in *Critereom*, including which party would handle contract negotiation, the source of labor, and contract performance. (*Id.*, at 13, citing Appellant's Attach. H.) Further, Appellant clearly specified how much labor each member was responsible to provide. (*Id.*, at 14, citing Appellant's Attach. H.)

To conclude, Appellant maintains that the facts in the OHA decisions cited above are readily distinguishable from the facts at issue here. Appellant's teaming agreements expressly and specifically mentioned the procurement at issue and included the responsibilities for each

party, including the negotiating of the contract, the source of labor, and contract performance. Therefore, the facts of this appeal merit a different result. (*Id.*, at 14.)

C. The Agency Response

On June 13, 2022, SBA filed the Agency Response. SBA contends the Area Office properly applied 13 C.F.R. § 125.18(b)(2) when analyzing Appellant's JVA. In accordance with internal policy to avoid contradictory determinations, the DD/GC adopted the Area Office's findings that Appellant's JVA failed to meet the regulatory requirements. SBA maintains the Area Office did not hold Appellant to an unreasonable standard that deviated from the regulations, that it accurately interpreted the regulation, and therefore OHA should deny the appeal. (Agency Response, at 7.)

SBA replies to Appellant's criticism of the lack of specific references in the DD/GC's determination by explaining that this is not a failure to conduct a comprehensive review, but an attempt to avoid disclosing Appellant's confidential information. (*Id.*, at 8.)

SBA asserts the JVA fails to state Appellant's purpose for this Solicitation. Appellant's first Teaming Agreement of December 5, 2020, outlines the responsibilities of the parties. SBA notes §§ 2.1-2.2, citing PF at 163-165, focus on the general responsibilities of the prime and subcontractor. Further, § 2.3 states the parties shall bear the expense of the preparation of its own portion of the proposal and proposal activities. Article 3 outlines the responsibilities of the prime contractor, and Article 4 of those of the subcontractor. None of these sections is specific to this Solicitation or includes specific details regarding the parties' responsibilities in relation to it. SBA characterizes this as “boilerplate” language. The second Teaming Agreement of December 15, 2020, citing PF at 171-173, includes identical provisions. Neither includes specific responsibilities because they were executed prior to the MDA soliciting bids. (*Id.*, at 8-9.)

SBA also argues Appellant failed to designate an SDVO SBC as managing venturer and failed to designate an employee of the SDVO SBC as the manager with responsibility for performance of the contract. SBA notes Appellant argues that § 8.1 complies with the regulation at § 125.18(b)(2)(ii), as it names the Small Business Concern as the Manager, citing to PF at 124. GEBC is that concern, referring to § 1.49, PF at 113, and the Teaming Agreement names [Individual 1] as Appellant's contractual representative. SBA argues the Agreements must designate GEBC as managing venturer, and specifically identify a named project manager. (*Id.*, at 10, citing *Matter of Hana-JV*, SBA No. VET-227, at 6 (2012) (*Hana-JV*).) The DD/GC adopted the Area Office's conclusion that neither Appellant's Operating Agreement nor Teaming Agreements identify the name of the employee of the SDVO SBC firm assigned as manager, and thus they were not compliant with the regulation. (*Id.*, at 10.)

SBA asserts Appellant appears to have interpreted the regulations as requiring “the bare minimum” of compliance, and that its preamble, referring to PF at 171, with “Whereas” clauses meet the specificity requirement. However, specificity is in fact required, which Appellant did not provide. (*Id.*, at 11.) The regulation specifically requires the JVA must name the SDVO SBC, which will serve as the managing venturer and name the individual who will serve as manager. SBA argues Appellant is requiring SBA to “engage in mental gymnastics” to determine the

managing venturer and manager instead of specifying that GEBC and [Individual 1] will have these roles. SBA maintains Appellant failed to comply with the regulation, and the DD/GC was correct to adopt the Area Office's conclusion. (*Id.*, at 11.)

Further, SBA asserts the JVA failed to delineate the responsibilities of the parties specific to the Solicitation. SBA notes that Appellant argues the Operating Agreement, i.e., § 3.3, fulfills the requirement of identifying responsibilities of the parties. Further, the JVA named [Individual 1] as manager, referring to PF at 168, and he is responsible for contract negotiations. SBA further notes Appellant argues the DD/GC read higher requirements into the regulation than the plain language would support, and that the timing of the JVA rather than its content was found to be noncompliant. (*Id.*, at 13.)

Here, SBA argues that the appeal selects a few sentences from "the vast provisions" of § 3.3 of the Operating Agreement to support its argument. SBA asserts § 3.3(a) outlines the general responsibilities of the company as a prime contractor for any contract, in addition to the general responsibilities of the JV, its members and manager, but none of these responsibilities are specific to this Solicitation. The part of the Operating Agreement Appellant relies upon, § 3.3(a)(i), lines 5-7, does not specify GEBC as manager, not does it identify that such provisions apply to the Solicitation. The Area Office reasonably determined that the JVA lacked specificity regarding the instant Solicitation. (*Id.*, at 13-14.)

In response to Appellant's allegations, SBA argues the Area Office did not read into the regulation stringent requirements than its text can support. The regulation does not call for the JVAs to have general grants of authority to the parties, but to specifically identify just what the responsibilities of each party will be concerning contract negotiation, labor sources, and performance. (*Id.* at 14, citing *SOF Assocs.*, SBA No. VET-234.) Here, the Operating Agreement and the Teaming Agreements have general grants of authority with respect to the joint venture but not regarding this Solicitation. This is insufficient to meet the requirements of the regulation. (*Id.*)

SBA argues Appellant should have submitted its bid containing information specific to the Solicitation. The timing of the Teaming Agreements is important; they do not include specific information because they were executed months before MDA issued the Solicitation. A mere mention of the upcoming solicitation is not enough to meet the specificity requirements. (*Id.*, at 15.)

SBA asserts Appellant's JVA in this case, similar to that in *Asirtek*, failed to include provisions regarding the solicitation at issue. Like the JVA in *SOF Assocs.*, the Operating Agreement's § 3.3 contains a general grant of authority and is not specific to this solicitation. The grants of authority are too general, and as OHA held in *Critereom*, OHA should not have to speculate as to the intentions and meanings of documents presented.

D. SAS's Response

On June 2, 2022, SAS responded to the appeal. SAS first asserts that Appellant failed to designate an individual Project Manager as required by the regulation. SAS argues the regulation

requires that a specific individual be named as Project Manager. SAS further argues that while GEBC was named as Manager, [Individual 1] we not named as an individual Project Manager. The designation of [Individual 1] as a point of contact and his signing a signature block on behalf of the company are not enough to designate him as Project Manager. In the Operating Agreement, § 8.1 merely instructs the TG to direct correspondence to [Individual 1]'s attention. [Individual 1]'s signature binds GEBC to the contract, it does not designate him as Project Manager. (SAS Response, at 2-4, citing *Hana-JV*, SBA No. VET-227 and *VET Appeal of Seventh Dimension, LLC.*, SBA No. VET-6057, (2020) (*Seventh Dimension*).)

Further, SAS asserts the JVA did not state the responsibilities of the parties with regard to negotiations, source of labor, and contract performance. The JVA specifically deferred stating these responsibilities to an addendum, which was never executed. (*Id.* at 4-5.)

SAS finally argues that there are foundational inconsistencies in Appellant's documents; that the Operating Agreement appears to be written as more of a teaming agreement. There is no evidence the teaming agreements are part of the JVA, because teaming agreements are agreements to work towards an award of a contract and then be replaced by subcontracts, and teaming agreements must be between a prime and subcontractor, while Appellant's are between the joint venture as a prime contractor and a member of the joint venture as a subcontractor. SAS questions whether the teaming agreements should be considered as part of the JVA. (*Id.* at 5-6.)

III. Discussion

A. Standard of Review

OHA reviews the DD/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 (2009) (discussing the clear error standard that is applicable to both size appeals and SDVO SBC appeals). Thus, I may overturn the D/GC's decision only if Appellant proves the DD/GC made a patent error based on the record before him or her.

B. Analysis

An SDVO SBC may enter into a joint venture agreement with one or more other small business concerns or its mentor for the purpose of performing an SDVO contract. 13 C.F.R. § 125.18(b). The regulations require that every such joint venture agreement must contain twelve provisions. 13 C.F.R. § 125.18(b)(2). The Area Office found, and the DD/GC adopted the findings, that Appellant's JVA was lacking three of the required provisions:

> (i) Setting forth the purpose of the joint venture.
>
> (ii) Designating an SDVO SBC as the managing venturer of the joint venture, and designated a named employee of the SDVO SBC managing venturer as the manager with the ultimate responsibility for performance of the contract ("the Responsible Manager").

(vii) Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance . . .

13 C.F.R. § 125.18(b)(2)(i), (ii), (vii).

In addressing the first requirement, § 3.1 of Appellant's Operating Agreement, states that the "business and purpose of the Company shall be to submit proposals for and seek awards of one or more Contracts." PF, at 115. The first Teaming Agreement of December 15, 2020, between Appellant and TG has several "Whereas" clauses referring to MDA, either issuing or being about to issue an RFP for Policy, Programs and Acquisition Support under the TEAMS Next PP&A solicitation, and that the parties "intend to submit a responsive and responsible proposal." PF, at 171. Appellant argues these documents, taken together, constitute its JVA. The Area Office concurred, and I cannot say that this was clear error. However, after finding these documents to be a JVA, the Area Office faulted Appellant on its description of purpose because it did not have the Solicitation number for this procurement. However, the solicitation had not yet issued, and no number was available; yet, it is clear Appellant sought to meet this requirement, given the use of the same title for the purpose of the procurement. The regulation does not require the solicitation number be included in the JVA. SBA relies upon *Seventh Dimension*, SBA No. VET-6057, but there, OHA did not find the JVA in question inadequate for the lack of statement of purpose but did approve the incorporation of later addenda into the original joint venture agreement, as was done here. In its Response, SBA discusses Appellant's lack of delineation of responsibilities, but that is inapposite to this requirement.

I conclude that the Area Office and DD/GC erred in finding that Appellant's JVA failed to state a purpose, and that Appellant did comply with this requirement.

The second requirement is to designate the SDVO SBC as Managing Venturer for the contract, and a named individual employee of the SDVO SBC as the Responsible Manager. The Operating Agreement at § 8.1 does state Appellant shall have one Manager, and that Manager shall be the SBC, defined as GEBC at § 1.49, also at § 8.4. The Operating Agreement also provides that the Manager shall appoint a Project Manager who shall an employee of the Manager. *See* § 8.11. However, as the Area Office noted, the JVA fails to name the individual GEBC employee who will be the Project Manager, or in the term favored by the regulation, the Responsible Manager. The regulation requires that "a named employee of the SDVO SBC" have this position. 13 C.F.R. § 125.18(b)(2)(ii) (emphasis supplied). In its Appeal, Appellant attempts to argue that [Individual 1]'s position as Project Manager can be inferred from his signature on GEBC's behalf on the Operating Agreement and his nomination as contractual representative. However, these are insufficient. The regulation is clear, and an individual employee of the SDVO SBC must be identified by name and appointed as the Project/Responsible Manager, the person who will be directly managing performance on this particular contract. *Hana-JV*, SBA No. VET-227, at 7 ("[T]he regulation can reasonably be understood as requiring that a specific employee of the SDVO SBC be identified as the project manager in the joint venture agreement; as such, a mere statement of intention that the project manager will be an employee of the SDVO SBC is not sufficient."); *SOF Assocs.*, SBA No. VET-235, at 7. Appellant has failed to do this. Therefore, the Area Office and DD/GC properly concluded that it had failed to comply with the regulation.

As for the Area Office's finding that Appellant failed to comply with § 125.18(b)(2)(vii), requiring that the JVA specify the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, Appellant's argument — the Area Office is insisting on more specificity in the JVA than the regulation requires — is flawed. In fact, OHA has repeatedly held that there must be specificity under this regulation. *Asirtek*, SBA No. VET-269 (JVA which does not address any particular procurement, prepared long before subject solicitation issued, is fatally defective); *Critereom*, SBA No. VET-245 (Agreement which does not identify sources of labor, who will negotiate the contract, and does not delineate the roles of the parties in contract performance is insufficiently specific); *SOF Assocs.*, SBA No. VET-235 (agreement with a general grant of authority which does not specifically identify the responsibilities of the parties in regard to sources of labor, negotiation and performance is not compliant with the regulation). Because the Operating Agreement and Teaming Agreements were drafted prior to issuance of the solicitation, the Area Office correctly concluded the responsibilities in the JVA were not specific to this Solicitation, and thus not compliant with the regulation.

It is undisputed that the JVA contains general grants of authority to the Manager, but it does not say which party will conduct negotiations. Again, Appellant asks us to draw the conclusion by reading documents together, that [Individual 1] will conduct these negotiations, but again, there is no specific designation of a negotiator. The Teaming Agreement describes the "The Responsibilities of the Parties" in the most general way, i.e., First Teaming Agreement, Article 2, without mentioning negotiation, source of labor or contract performance. The Statement of Work and Workshare attached to the same agreement states it is anticipated that TG will perform [xx]% of total contract manhours, with the functions to be performed left to future negotiations. There is no other indication of the sources of labor for the contract, and no discussion of which tasks each firm will perform, including the role of GEBC. Article III of the Operating Agreement discusses "The Nature of the Business" in general, but does not address the issues of negotiation, labor source, or contract performance. While Appellant complains that the Area Office held the timing of the agreements against Appellant, the question is not the timing, but whether the agreement is compliant with the regulation. An agreement drafted prior to issuance of a solicitation cannot have sufficient specificity to comply with the regulation, absent the addition of an addendum. Appellant has asserted that it was aware this procurement would be forthcoming, but despite being aware of the requirements it would seek to meet, it made no effort to address how its performance would be handled by the GEBC and TG. Thus, Appellant's agreement has the same fatal lack of specificity as those in the cases cited above.

I conclude that Appellant's JVA failed to meet the requirement of the regulation, that it specify the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance.

Therefore, I conclude that the DD/GC did not err by adopting the Area Office's finding that Appellant's JVA had failed to comply with the regulatory requirements at 13 C.F.R. § 125.18(b)(2)(ii) & (vii), because it clearly failed to identify a named employee of GEBC as the Responsible Manager and failed to specify the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance. Accordingly, Appellant

has failed to establish the DD/GC's determination was based on a clear error of fact or law, and I must deny this appeal.

IV. Conclusion

The DD/GC's determination was not based upon clear error. Thus, the instant appeal is DENIED, and the DD/GC's status determination is AFFIRMED.

This is the final decision of the Small Business Administration. 13 C.F.R. § 134.515(a).

CHRISTOPHER HOLLEMAN
Administrative Judge