

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

VSBC Protest of:

Elevated Technologies, Inc.,

Protestor,

Re: Blue Spader Contractors Inc.

Solicitation No. 36C25924Q0262

U.S. Department of Veterans Affairs

SBA No. VSBC-376-P

Decided: August 1, 2024

APPEARANCES

Matthew T. Schoonover, Esq., Matthew P. Moriarty, Esq., John M. Mattox II, Esq., Ian P. Patterson, Esq., Timothy J. Laughlin, Esq., Schoonover & Moriarty LLC, Olathe, Kansas, for Elevated Technologies, Inc.

Adam D. Bruski, Esq., Warner Norcross + Judd LLP, Midland, Michigan, for Blue Spader Contractors Inc.

DECISION¹

I. Introduction and Jurisdiction

On May 7, 2024, Elevated Technologies, Inc. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Blue Spader Contractors Inc. (Blue Spader), in connection with U.S. Department of Veterans Affairs (VA) Request for Quotations (RFQ) No. 36C25924Q0262. Protestor contends, *inter alia*, that Blue Spader will be unusually reliant upon a non-SDVOSB subcontractor to perform the instant contract, in contravention of 13 C.F.R. §§ 128.401(g) and 134.1003(c). For the reasons discussed *infra*, the protest is sustained in part and denied in part.

The U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) adjudicates SDVOSB status protests pursuant to 15 U.S.C. § 657f and 13 C.F.R. Part 134

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 therefore now issues the entire decision for public release.

Subpart J. Protestor filed its protest within five business days after receiving notification that Blue Spader was the apparent awardee, so the protest is timely. 13 C.F.R. § 134.1004(a)(3). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The RFQ

On March 1, 2024, VA issued RFQ No. 36C25924Q0262 for “Comprehensive Elevator Maintenance Services” at the Rocky Mountain Regional VA Medical Center (VAMC) in Aurora, Colorado. (RFQ, SF 1449.) The Contracting Officer (CO) set aside the procurement entirely for SDVOSBs, and assigned North American Industry Classification System (NAICS) code 561210, Facilities Support Services, with a corresponding size standard of \$47 million in average annual receipts. (*Id.*)

According to the RFQ's Statement of Work (SOW), the contractor will provide “all personnel, supervision, professional expertise, vehicles, tools, materials, services, equipment and quality control to perform elevator preventative maintenance, emergency repairs and assist a third-party contractor in the semi-annual, annual and five-year load test/inspections for all 49 elevators and dumbwaiters within the Rocky Mountain Regional VAMC.” (RFQ at 4.)

For preventive maintenance, the contractor must “inspect, test, calibrate, repair and service the equipment as required by the manufacturer, industry or statutory requirements to prevent premature equipment failures and to extend equipment life.” (*Id.* at 5.) Preventative maintenance must be performed “at weekly intervals” on all 49 elevators. (*Id.*) The contractor also must “furnish all necessary parts, tools, data tags, and materials,” as well as “qualified repair crews” to conduct the preventive maintenance. (*Id.*)

For general maintenance, the RFQ listed requirements relating to lubrication, guide rails, oil buffers, controller contractors and relays, car safety mechanisms, hoist ways and pits, machine rooms, car tops, painting, lights, fans, audio, doors, leveling, speed, recalls, cleaning, and testing/analysis. (*Id.* at 6-8.) Additionally, “monthly fireman recall tests” are required for all elevators outside normal business hours, and the contractor will assist VA or another VA contractor with “annual fire alarm tests” on all elevator recalls, shunt trips and associated detectors. (*Id.* at 9.)

Scheduled/routine repairs include furnishing, installing, and replacing traveling cables (on up to nine traction elevators), hoistway ropes (on up to ten traction elevators), and controllers (up to one controller for each traction and hydraulic elevators). (*Id.* at 9.) Upon request from VA, the contractor must perform “callback services 24 hours a day, 7 days a week” in order to “correct any elevator problem or condition.” (*Id.*) Any emergency service calls must be timely answered. (*Id.* at 17.) With regard to inspections, the contractor will “assist and accompany any third-party elevator safety inspector(s) during the semi-annual and annual elevator inspections and performance tests” in accordance with safety standards. (*Id.* at 11.) The RFQ further stipulated that the contractor is responsible for providing “all tools, equipment, lubricants,

hydraulic fluids and cleaning supplies necessary” to accomplish the requirements of the contract. (*Id.* at 12.)

The RFQ indicated that the contractor must provide “one (1) full time (40 hours per week) journeyman elevator mechanic, and one (1) half time (20 hours per week) apprentice elevator mechanic dedicated to the preventive maintenance, routine repairs, and inspections & testing preparations and assistance.” (*Id.* at 5.) The “technician/resident mechanic” must have “at least five (5) years (post apprenticeship) experience, and be a certified elevator maintenance technician,” and the apprentice mechanic must have “at least three (3) years of documented elevator maintenance experience.” (*Id.* at 18.) All technician/resident mechanics must be “[Vertical Transportation Equipment (VTE)] certified and licensed in the state [of employment].” (*Id.*)

The RFQ stated that VA would evaluate proposals based on three evaluation factors: Technical Capability, Past Performance, and Price. (*Id.* at 54.) Blue Spader submitted its initial offer including price on March 14, 2024.

B. Proposal

Blue Spader's proposal explained that Blue Spader is “committed to delivering unparalleled elevator maintenance and repair services by harnessing the expertise of a carefully selected team of subcontractors,” who are “highly trained, striving to deliver the best possible service on every visit, backed by quick response times facilitated by strategically located warehouses near Aurora.” (Proposal, Vol. I, at 3.) Blue Spader's team consists of “highly skilled professionals who specialize in the maintenance and repair of elevators and escalators” and who are trained to perform in accordance with the “latest industry standards and technological advancements.” (*Id.*)

The proposal did not identify which subcontractor(s) Blue Spader intended to engage, nor delineate how work would be divided between Blue Spader and its subcontractors. As part of its quotation, however, Blue Spader certified that it would comply with VA Acquisition Regulation (VAAR) clause 852.219-75 “VA Notice of Limitations on Subcontracting — Certificate of Compliance for Services and Construction (JAN 2023) (DEVIATION).” (Proposal, Contractual Vol. at 38-40.) The clause states, in pertinent part:

In the case of a contract for services (except construction), the contractor will not pay more than 50% of the amount paid by the government to it to firms that are not certified SDVOSBs listed in the SBA certification database as set forth in [VAAR] 852.219-73 or certified VOSBs listed in the SBA certification database as set forth in [VAAR] 852.219-74. Any work that a similarly situated certified SDVOSB/VOSB subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded. Other direct costs may be excluded to the extent they are not the principal purpose of the acquisition and small business concerns do not provide the service as set forth in 13 CFR 125.6.

(*Id.* at 38.) For past performance, the proposal listed three contracts in Colorado previously performed, or currently being performed, by Blue Spader and/or its unnamed subcontractors. (Proposal, Vol. II, at 1-3.)

C. Protest

On April 30, 2024, the CO notified unsuccessful offerors, including Protestor, that Blue Spader was the apparent awardee. On May 7, 2024, Protestor timely filed the instant protest. The CO forwarded the protest to OHA for review.²

In the status protest, Protestor alleges that Blue Spader's owner, Mr. Billy G. Collins, is also “owner and operator” of Blue Next Services LLC (Blue Next). (Protest at 4.) This outside employment conflicts with Mr. Collins' ability to “devote full-time” to Blue Spader. (*Id.*) Protestor posits that Mr. Collins “invariably spends significant time during Blue Spader's normal operating hours to direct [Blue Next],” which may result in “other individuals,” such as his son, who is not a service-disabled veteran, controlling the day-to-day management of Blue Spader. (*Id.*) Protestor notes that Blue Next and Blue Spader apparently are “co-located.” (*Id.*)

With regard to the instant procurement, Protestor highlights that the primary purpose of this RFQ is to obtain elevator maintenance and repair services. (*Id.* at 4-5.) Blue Spader, though, is “a general construction contractor,” and therefore must subcontract the substantive contract work to “a bona fide elevator company, likely Elevator Technicians, LLC” (Elevator Technicians). (*Id.* at 4.) Protestor contends that Blue Spader itself “does not provide specialized elevator maintenance and repair services,” “does not employ elevator mechanics,” has no “experience replacing specialized elevator components,” and “does not have a store of replacement parts necessary to handle the [RFQ's] requirements.” (*Id.* at 5.) Furthermore, this procurement “*is not* a general construction contract, where the primary and vital requirements are the overall management of the contract.” (*Id.*, quoting *VSBC Protest of Elevated Techs., Inc.*, SBA No. VSBC-325-P, at 6 (2023) (emphasis added by Protestor).) Protestor adds that “[t]he Aurora VA is a unionized position and thus only mechanics who are members of the International Union of Elevator Constructors (“IUEC”) can perform work there.” (*Id.*) Because Blue Spader is not an IUEC member, Blue Spader “cannot employ mechanics to perform the repair and maintenance work” as required by the solicitation. (*Id.*)

Protestor observes that the RFQ was assigned a services NAICS code, 561210, and Blue Spader thus must self-perform at least 50% of the work in order to meet limitation on subcontracting restrictions. (*Id.* at 5-6, citing 13 C.F.R. § 125.6(a)(1). Blue Spader cannot possibly do so, because it has no “institutional competence or experience in the elevator trade”; no employees with the requisite “background, knowledge, and expertise”; and no “reserve of replacement parts or tools to perform elevator maintenance, repair, and modernization work.”

² Protestor also concurrently filed a protest challenging Blue Spader's size. Pursuant to 13 C.F.R. §§ 121.1003 and 134.1001(c), the CO directed the size portion of Protestor's allegations to SBA's Office of Government Contracting — Area IV (Area Office). On June 24, 2024, the Area Office issued Size Determination No. 04-2024-025, denying the size protest. Protestor did not appeal Size Determination No. 04-2024-025 to OHA.

(*Id.* at 6.) Blue Spader, thus, does not qualify for the limitation on subcontracting safe harbor at 13 C.F.R. § 128.401(g)(2). (*Id.*)

Protestor alleges additional facts suggesting that Blue Spader will be unduly reliant upon its subcontractor, Elevator Technicians, to perform the contract. (*Id.*) According to Protestor, Elevator Technicians “played a large, if not the exclusive role in Blue Spader’s proposal preparation.” (*Id.*) In support, Protestor observes that “Elevator Technicians is located in Colorado, which is proximate to the performance site; whereas Blue Spader is located thousands of miles away in Michigan.” (*Id.*) Moreover, Elevator Technicians’ personnel attended the site visit, whereas no one from Blue Spader was present. (*Id.*) Protestor concludes that “Elevator Technicians is taking the performance reins from start to finish,” and Blue Spader is “acting as an SDVOSB pass-through for a non-SDVOSB business.” (*Id.*)

D. Blue Spader’s Response

On May 31, 2024, Blue Spader responded to the protest. Blue Spader urges that the protest is based on “incorrect information and speculation” and should be denied. (Response at 1.)

Blue Spader asserts, first, that Mr. Collins devotes “his full-time efforts to Blue Spader, effectively managing and controlling [Blue Spader’s] operations using advanced digital tools and modern management practices.” (*Id.* at 2.) With regard to Blue Next, Blue Spader concedes that the two companies share the same location and “operational hours.” (*Id.*) However, Mr. Collins “maintains ultimate managerial and supervisory control over both the long-term and the day-to-day management of Blue Spader” through his effective use of a digital platform, Azure DevOps, to “oversee[] multiple projects simultaneously.” (*Id.*) Blue Spader continues:

[Mr.] Collins maintains detailed project timelines and task assignments within Azure Boards, ensuring all team members are aligned and deadlines are met. Screenshots and reports from Azure DevOps illustrate his ability to track project progress, manage resources, and streamline workflows. Additionally, usage logs from Microsoft Teams, integrated with Azure DevOps, demonstrate his active participation and oversight. These logs provide summaries of his regular communications, including team meetings, updates, and directives, showcasing his hands-on approach to project management and his ability to maintain control and efficiency across various contract awards.

(*Id.* at 2-3.) Blue Spader contends that the operations of Blue Next are “designed to complement and support the activities of Blue Spader” without “interfer[ing] with [Mr. Collins’] primary commitments and responsibilities at Blue Spader.” (*Id.* at 2.) According to Blue Spader, Mr. Collins’ management of Blue Spader “far exceed[s] the minimum threshold of commitment” required under 13 C.F.R. § 128.203(i). (*Id.* at 3.) Protestor’s bare claim that Mr. Collins’ involvement with Blue Next during Blue Spader’s normal operating hours “automatically leads to a lack of control” is not only “outdated and not reflective of current business environments,” but is also without “any” legal support. (*Id.* at 1-2.)

Blue Spader denies that it will be unusually reliant upon Elevator Technicians to perform the instant procurement. Although Blue Spader has “partner[ed]” with Elevator Technicians to perform this contract, Blue Spader will also engage Artius, an SDVOSB, as a subcontractor. (*Id.* at 4.)

Blue Spader maintains that it is “fully capable” of meeting the limitation on subcontracting requirements set forth 13 C.F.R. § 125.6(a)(1). (*Id.*) In support, Blue Spader offers a “summary Work Breakdown Structure (WBS),” purporting to describe the respective responsibilities of Blue Spader and its two subcontractors:

1. Maintenance

- 1.1. Blue Spader Contractors, Inc.
 - 1.1.1. Preventive Maintenance Scheduling
 - 1.1.2. Routine Inspection and Testing
 - 1.1.3. Minor Repairs and Parts Replacement
 - 1.1.4. Documentation and Reporting
- 1.2. Elevator Technicians, LLC (Subcontractor)
 - 1.2.1. Licensed Technician Services
 - 1.2.2. Union Approved Major Repairs
 - 1.2.3. Safety Compliance and Certification

2. Modernization

- 2.1. Blue Spader Contractors, Inc.
 - 2.1.1. Project Planning and Management
 - 2.1.2. Design and Engineering
 - 2.1.3. Procurement of Modernization Components
 - 2.1.4. Installation Supervision and Quality Control
- 2.2. Artius (Subcontractor)
 - 2.2.1. Specialist Installation Tasks
 - 2.2.2. Technical Upgrades and Testing
 - 2.2.3. Integration of Advanced Systems

3. 24/7 Call Center for Elevator Emergency Services

- 3.1. Blue Spader Contractors, Inc.
 - 3.1.1. Call Center Operations and Staffing
 - 3.1.2. Initial Troubleshooting and Triage
 - 3.1.3. Coordination with Field Technicians
 - 3.1.4. Emergency Response Documentation
- 3.2. Elevator Technicians, LLC (Subcontractor)
 - 3.2.1. Emergency On-site Response by Licensed Technicians
 - 3.2.2. Critical Repairs and Incident Resolution
 - 3.2.3. Safety and Compliance Checks Post-Repair

4. Distribution of Tasks

- Blue Spader Contractors, Inc. (Prime Contractor)
- Maintenance: 4 tasks (80%)
- Modernization: 4 tasks (66.7%)
- 24/7 Call Center: 4 tasks (80%)
- Overall: 12 out of 18 tasks (66.7%)

- Elevator Technicians, LLC (Subcontractor)
- Maintenance: 1 task (20%)
- 24/7 Call Center: 1 task (20%)
- Modernization: 3 tasks (37%)
- Artius (Subcontractor)
- Modernization: 2 tasks (33.3%)

(*Id.* at 4-5.) Blue Spader maintains that, in light of the summary WBS, OHA should find that Blue Spader will be responsible for “the majority of tasks” required under the instant solicitation. (*Id.* at 5.) Although Elevator Technicians will perform “tasks requiring licensed and union-approved elevator technicians,” Blue Spader and Artius together will perform “non-union tasks.” (*Id.*) Blue Spader further highlights that, in selecting Blue Spader for award, “Blue Spader’s qualifications and capabilities to perform the required work, along with its partners, were reviewed and approved by the VA.” (*Id.*)

E. Motion and Order

On June 3, 2024, Protestor moved that OHA order Blue Spader to produce additional information. In particular, Protestor notes that the Case File (CF) does not include Blue Spader’s proposal nor any subcontracting or teaming agreements pertaining to the instant procurement. To ensure a complete record, Blue Spader must be required to produce such documents, which are essential to assess whether Blue Spader’s “subcontracting relationships comport with the ostensible subcontractor rule.” (Motion at 1-2.)

On June 5, 2024, OHA ordered that Blue Spader to produce any subcontracts and/or teaming agreements pertaining to the instant procurement. (Order at 2.) OHA also made available, to counsel admitted under an OHA protective order, copies of the RFQ and Blue Spader’s proposal, which the CO previously had forwarded to OHA. (*Id.* at 1.)

F. Blue Spader’s Response to OHA’s Order

In response to OHA’s Order, Blue Spader produced two documents: (1) a teaming agreement between Blue Spader and Artius, signed by Mr. Collins, on behalf of Blue Spader, and Mr. Theophilus Tor, CEO of Artius, on January 31, 2024; and (2) an unsigned draft subcontract agreement between Blue Spader and Elevator Technicians.

G. Supplemental Protest

On June 17, 2024, after its counsel reviewed the record under an OHA protective order, Protestor supplemented its protest with additional allegations. Protestor contends that Mr. Collins does not control Blue Spader because he does not possess a required license. According to Protestor:

SBA’s regulations do not categorically mandate that a service- disabled veteran possess the critical license necessary for the SDVOSB to operate. Nonetheless, a “non-qualifying-veteran must not . . . provide . . . a critical license to the Applicant

or Participant, which directly or indirectly allows the non-qualifying-veteran significantly to influence business decisions of the qualifying veteran.” 13 C.F.R. § 128.203(h)(1)(iv). Moreover, a non-qualifying-veteran cannot hold a required license unless “the qualifying veteran can demonstrate that he or she has ultimate managerial and supervisory control over those who possess the required licenses or technical expertise.” *Id.* at § 128.203(b).

(Supp. Protest at 1.) Protestor complains that Blue Spader did not respond to an SBA inquiry as to whether Blue Spader required any business licenses to operate, and SBA did not explore the matter further. (*Id.* at 2 (citing CF, Exh. 23).) Based on the Michigan Residential Code, however, Protestor contends that in the state of Michigan, where Blue Spader is incorporated, a “Residential Builder's License” is, in fact, required for Blue Spader to operate within the construction industry. (*Id.*) Protestor asserts that Mr. Jason Collins, Blue Spader's Vice President of Operations, holds the license in question. (*Id.*, Exhs. 2 and 3.) Protestor offers a copy of a Linked-In profile for Jason Collins. (*Id.*, Exh. 4.) Furthermore, the Case File is “silent” as to “whether Billy Collins has the ‘ultimate managerial and supervisory control over’ Jason Collins.” (*Id.* at 2.) In Protestor's view, Billy Collins' resume “read[s] more like those of a middle-level financial manager than the chief executive officer of a construction company.” (*Id.*)

Next, Protestor claims that, in seeking SDVOSB certification, Blue Spader did not disclose whether Billy Collins has outside employment or obligations. (*Id.*) Mr. Collins founded and held an ownership interest in Blue Next “more than a month before” Blue Spader responded “no” to an ownership question in the application. (*Id.*) These facts amount to the “submission of false information” to SBA, which should have resulted in the denial of Blue Spader's application under 13 C.F.R. § 128.302(d)(2). (*Id.* at 2-3.)

Lastly, based on its review of Blue Spader's proposal and the teaming agreements, Protestor renews its contention that Elevator Technicians, not Blue Spader, will perform the primary and vital contract requirements. (*Id.* at 4.) First, Blue Spader appears to have “relied entirely on Elevated Technicians” for its past performance. (*Id.*) Protestor points out that “all three past performance references were performed in Colorado, which is Elevator Technicians' area of operation.” (*Id.*) Second, Elevator Technicians “took the driver's seat” in writing Blue Spader's proposal. (*Id.*) Highlighting two pages in Appendix B attached to the proposal, Protestor asserts that Appendix B is “emblazoned” with Elevator Technicians' name, which suggests that Elevator Technicians not only prepared the proposal but “will be the entity” performing the contract. (*Id.*) Protestor further points to placeholders, such as “[Contractor's Name],” in the proposal, in arguing that use of an unidentified prime contractor's name suggests that Elevator Technicians, not Blue Spader, was likely the principal author of the document. (*Id.*) The proposal is also replete with “team” terminology, which Protestor contends was used “purposeful[ly]” to “obscure the tasks that Blue Spader will perform versus those that Elevator Technicians will execute.” (*Id.* at 5.) The teaming agreements Blue Spader produced also do not clearly “articulate an anticipated division of work” between Blue Spader and its subcontractors. (*Id.*) Blue Spader's teaming agreement with Artius is a general agreement, not “calibrated to the Solicitation.” (*Id.*) Furthermore, Artius is “not an elevator company,” but rather an “Administrative Management and General Management Consulting” company, whose services include, among other things, ‘Lawn and Garden Equipment,’ ‘Medical Gasses,’ ‘Computer Hardware,’ ‘Graphic Design,’ and

“Ammunition.”” (*Id.*, fn. 12, Exh. 5.) Blue Spader's teaming agreement with Elevator Technicians, though referencing the instant solicitation, is an unsigned draft and does not “incorporate or outline a statement of work.” (*Id.* at 5.) Protestor posits that the agreement may have been created “after bid submission, perhaps in response to this protest.” (*Id.*)

The only “evidence” that Blue Spader has offered to show how work will be divided between Blue Spader and its subcontractors is the “summary WBS,” a “slanted, artificially engineered-to-appear-favorable division of tasks.” (*Id.* at 6.) But even there, “Blue Spader admits that all tasks requiring elevator mechanics or licensed elevator technicians will be performed by a subcontractor, Elevator Technicians.” (*Id.*) The primary and vital requirements of this procurement are elevator “maintenance and repairs,” and such work must be done by elevator mechanics — “one (1) full time (40 hours per week) journeyman elevator mechanic, and one (1) half time (20 hours per week) apprentice elevator mechanic.” (*Id.*, quoting RFQ at 5.) The roles of Blue Spader and Aritus (“whose responsibilities are vague at best”) are largely administrative in nature, whereas the substantive “hands-on work of maintaining, inspecting, and fixing elevators” will be done solely by Elevator Technicians. (*Id.*) The NAICS code assigned to the RFQ is “not a general construction NAICS code,” thus, “management, supervision, and oversight” are not the primary and vital requirements of the instant RFQ. (*Id.*, fn. 13.)

H. Supplemental Response

On June 26, 2024, Blue Spader supplemented its response. Blue Spader maintains that Mr. Collins does have full control of the company. (Supp. Response at 2.) Blue Spader asserts that because it is a general contractor, it is “not required to have a residential builders' license in the State of Michigan.” (*Id.*) Accordingly, Blue Spader's failure to respond to SBA's inquiry was “accurate.” (*Id.*) Moreover, Jason Collins, the individual identified in the supplemental protest as holder of a critical license for Blue Spader, “is not even . . . associated with Blue Spader.” (*Id.*) In Blue Spader's view, Protestor's allegation is premised upon “misunderstanding of Michigan licensing law,” which then transformed into “a complete case of mistaken identity.” (*Id.*) *9 Next, Blue Spader explains that the date of its application for SDVOSB certification was February 21, 2024. (*Id.*) Blue Next is “an unpopulated 8(a) joint venture,” which was approved by SBA's Michigan District Office in March 2024. (*Id.*) Even after Blue Next was approved as a joint venture, Blue Spader “did not have a duty to” notify SBA because Blue Next has no bearing on Blue Spader's eligibility for SDVOSB certification. (*Id.*) In Blue Spader's view, the notification requirement at 13 C.F.R. § 128.302(e) applies only to changed circumstances due to “size status, ownership, or control, filing of bankruptcy, or calling to active duty,” and does not extend to “[h]aving potential other work under an unpopulated [joint venture].” (*Id.*)

Lastly, Blue Spader maintains that the supplemental protest adds “nothing” to the initial protest allegations pertaining to the ostensible subcontractor rule. (*Id.* at 2-3.) In a concurrent size protest, the Area Office found similar allegations to be “without merit.” (*Id.* at 3-4.)

I. Case File

The Case File indicates that Blue Spader is a corporation established in the state of Michigan. (CF, Exh. 47). Mr. Billy G. Collins, a service-disabled veteran, owns 100% of Blue

Spader, and is Blue Spader's CEO and sole director. (CF, Exhs. 13-14, 42, 45-46.) On July 5, 2023, SBA certified Blue Spader as an SDVOSB for a period of three years. (CF, Exh. 3.) In the certification letter, SBA's Director of Government Contracting (D/GC) instructed that Blue Spader must “inform SBA of any changes to the business that could affect its eligibility for the program, such as: a closure[;] a change to the firm's ownership, business structure, or control[;] a filing of a bankruptcy[;] and a change in a Veteran-owner's active duty status,” within 30 days of the change. (*Id.*) On March 15, 2024, the D/GC found that Blue Spader continues to meet SDVOSB eligibility requirements. (CF, Exh. 41.)

The Case File includes a copy of Blue Spader's Bylaws, which are unsigned and undated. (CF, Exh. 50.) According to the Bylaws, Blue Spader's principal office “shall be at such place within the State of Michigan as the board of directors shall determine from time to time.” (*Id.* § 1.01.) Blue Spader also may have other offices “as the board of directors from time to time determines or the business of the corporation requires.” (*Id.* § 1.02.) For shareholder votes, “[shareholders] of a majority of the outstanding shares of the corporation entitled to vote at the meeting” constitute a quorum, and “[e]ach outstanding share is entitled to one vote on each matter submitted to a vote.” (*Id.* §§ 4.07, 4.09.) A majority of the board of directors “constitutes a quorum for the transaction of business,” and “[t]he vote of a majority of the directors present at any meeting at which there is a quorum constitutes the action of the board.” (*Id.* § 5.07.) An officer may be “removed by the board with or without cause.” (*Id.* § 7.02.) A director or the entire board also may be “removed, with or without cause, by vote of the holders of a majority of the shares entitled to vote at an election of directors.” (*Id.* § 5.02.)

Minutes of an “Annual Board Meeting” meeting held August 7, 2023 list Billy Collins and Jason Collins, Vice President of Operations, as the two attendees. (CF, Exh. 42.) The meeting minutes are signed solely by Billy Collins. (*Id.*)

According to Billy Collins' resume, he is the CEO of Blue Spader and has no other employment. (CF, Exh. 51.) As CEO, Mr. Collins: “own[s] and operate[s] a general contracting firm that offers a number of services including commercial carpentry, flat concrete work, roofing, and remodeling”; is “[r]esponsible for knowing and controlling costs”; “[v]isualize[s], analyze[s], and communicate[s] project scope of work, [and] coordinate[s] cost/means and methods”; “[e]xamine[s] and inspect[s] field conditions and identif[ies] problems, inaccuracies, and cost saving measures that arise or that may be encountered”; and “[p]rovide[s] periodic costs reports, cost projections, work schedules, and monthly metrics reports of operating efficiency on project[s].” (*Id.*) Mr. Collins' resume makes no mention of Blue Next. (*Id.*)

As part of Blue Spader's application for SDVOSB certification, Blue Spader did not respond to a question as to whether it “require(s) licenses or technical expertise to operate.” (CF, Exh. 23, at 1.) Subsequently, Blue Spader responded “NO” to the question of whether Billy Collins has outside obligations “such as holding another job or ownership in another business.” (CF, Exh. 53, at 1.)

While the protest was pending, SBA's Michigan District Office informed OHA that Blue Next is an unpopulated joint venture between Blue Spader and Nexttrinsic Corp. (E-mail from T.

Hammond to M. Choi (July 30, 2024).) The Michigan District Office approved Blue Next's joint venture agreement on March 13, 2024. (*Id.*)

III. Discussion

A. Burden of Proof

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

B. Date to Determine Eligibility

In a SDVOSB status protest pertaining to a procurement, OHA assesses the protested concern's eligibility as of the date of its initial offer including price. 13 C.F.R. § 134.1003(e)(1). However, compliance with the ostensible subcontractor rule is determined as of the date of final proposal revisions. *Id.* Here, Blue Spader submitted its proposal for the instant procurement on March 14, 2024, and there were no subsequent proposal revisions. Sections II.A and II.B, *supra*. Therefore, OHA must examine Blue Spader's eligibility as of this date.

C. Analysis

SBA regulations governing the SDVOSB program instruct that:

Ostensible subcontractor. Where a subcontractor that is not a certified VOSB or SDVOSB will perform the primary and vital requirements of a VOSB or SDVOSB contract, or where a VOSB or SDVOSB prime contractor is unduly reliant on one or more small businesses that are not certified VOSBs or SDVOSBs to perform the VOSB or SDVOSB contract, the prime contractor is not eligible for award of that VOSB or SDVOSB contract.

13 C.F.R. § 128.401(g).

In the instant case, Protestor argues that Blue Spader's non-SDVOSB subcontractor, Elevator Technicians, will perform the “primary and vital” aspects of the contract, and that Blue Spader will be heavily dependent upon Elevator Technicians to perform the contract. Sections II.C and II.G, *supra*. Protestor highlights that the procurement calls for the maintenance, repair, and inspection of elevators at the Rocky Mountain Regional VA Medical Center in Aurora, Colorado. Section II.A, *supra*. Blue Spader, however, will not self-perform any portion of these essential services with its own employees. Indeed, in response to the protest, Blue Spader concedes that all tasks requiring elevator mechanics or licensed elevator technicians will be performed solely by its non-SDVOSB subcontractor, Elevator Technicians. Section II.D, *supra*.

More specifically, according to a “summary Work Breakdown Structure” (WBS) offered by Blue Spader, Elevator Technicians will be responsible for the substantive aspects of contract performance, including: “Licensed Technician Services”; “Union Approved Major Repairs”; “Safety Compliance and Certification”; “Emergency On-site Response by Licensed

Technicians”; “Critical Repairs and Incident Resolution”; and “Safety and Compliance Checks Post-Repair.” Section II.D, *supra*. Conversely, tasks that Blue Spader will self-perform are administrative in nature, or ancillary to the primary and vital contract requirements, such as: scheduling; “Coordination with Field Technicians”; and procurement of components. *Id.* Furthermore, some of the tasks that Blue Spader maintains it will self-perform — for example, “Modernization” of the elevators, or staffing a “Call Center” — are not mentioned in the RFQ and thus cannot be considered “primary and vital” aspects of this procurement. Section II.A, *supra*.

In its protest, Protestor further alleges, and Blue Spader does not dispute, that Blue Spader, a general construction firm based in the state of Michigan, does not employ elevator mechanics or licensed elevator technicians necessary to perform the essential contract work in the state of Colorado. Sections II.C and II.G, *supra*. In particular, Blue Spader is not a member of the International Union of Elevator Constructors (IUEC) and thus cannot employ union mechanics to perform the repair and maintenance services as required by the solicitation. *Id.* Nor does Blue Spader itself possess “strategically located warehouses near Aurora” to provide necessary parts and components. *Id.* It follows, therefore, that Blue Spader lacks any apparent means to self-perform the substantive contract work with its own employees.

In sum, the record reflects that Blue Spader will delegate the primary and vital requirements of this contract to its non-SDVOSB subcontractor, Elevator Technicians. Although Blue Spader will manage the contract, OHA has consistently held that, in a procurement for services, “a prime contractor does not perform the primary and vital requirements of a contract merely by supervising its subcontractors in their performance of work.” *VSBC Protest of Spartan Med., Inc.*, SBA No. VSBC-366-P, at 7 (2024) (quoting *Size Appeal of Jacob's Eye, LLC*, SBA No. SIZ-5955, at 12 (2018)); *see also VSBC Protest of Elevated Techs., Inc.*, SBA No. VSBC-325-P, at 6 (2023).

In response to the protest, Blue Spader suggests that it is not in violation of the ostensible subcontractor rule, based on the language of 13 C.F.R. § 128.401(g)(2). Section II.D, *supra*. The regulation permits that a prime contractor may be found compliant with the ostensible subcontractor rule by demonstrating that it will adhere to applicable limitations on subcontracting restrictions:

In the case of a contract or order for services, specialty trade construction or supplies, SBA will find that a prime VOSB or SDVOSB contractor is performing the primary and vital requirements of the contract or order, and is not unduly reliant on one or more subcontractors that are not certified VOSBs or SDVOSBs, where the prime contractor can demonstrate that it, together with any subcontractors that are certified VOSBs or SDVOSBs, will meet the limitations on subcontracting provisions set forth in § 125.6 of this chapter.

13 C.F.R. § 128.401(g)(2); *see generally CVE Protest of U.S. Dep't of Veterans Affairs*, SBA No. CVE-154-P (2020). Because the instant procurement is for services, Blue Spader, the prime contractor, need only comply with the limitations on subcontracting provisions related to services at 13 C.F.R. § 125.6(a)(1). That regulation, in turn, stipulates that the prime contractor

may subcontract no more than 50% of the dollar value of services to entities that are not similarly situated.

Blue Spader, however, has not made any persuasive showing that it will comply with the limitations on subcontracting. Blue Spader's proposal was silent as to how work would be divided between Blue Spader and its subcontractors. Section II.B, *supra*. Indeed, the proposal did not even identify the proposed subcontractors, let alone delineate what work they will perform. *Id.* Nor does Blue Spader explain, in response to the protest, how it would meet limitations on subcontracting restrictions. Section II.D, *supra*. Although Blue Spader, through its “summary WBS,” offers a bulleted list of “tasks” that purportedly will be performed by Blue Spader, Elevator Technicians, and Artius, these “tasks” do not correspond with the descriptions of work set forth in the RFQ, and the summary WBS fails to attach any dollar values, labor hours, or other quantitative information to support the conclusion that Blue Spader, or Blue Spader together with Artius, will be responsible for a majority of the contract work. Section II.D, *supra*. Notably, the summary WBS itself was provided only as part of Blue Spader's protest response, and thus is mere argument, not evidence; Blue Spader offer no supporting evidence, such as sworn statements or subcontracts, to corroborate the accuracy of the summary WBS. *Id.*

An additional obstacle for Blue Spader is that, under limitation on subcontracting rules, “[a]ny work that a similarly situated subcontractor further subcontracts will count towards the 50% subcontract amount that cannot be exceeded.” 13 C.F.R. § 125.6(a)(1). Here, although the summary WBS indicates that Artius, an SDVOSB, is to be responsible for “Specialist Installation Tasks,” “Technical Upgrades and Testing,” and “Integration of Advanced Systems,” Blue Spader does not address whether Artius will, in turn, subcontract such work to one or more non-SDVOSBs. Section II.D, *supra*.

Based on the foregoing, Blue Spader has not shown that it will comply with 13 C.F.R. § 125.6(a)(1). As the record otherwise demonstrates that Elevator Technicians, not Blue Spader, will perform the primary and vital contract requirements, Blue Spader is not eligible for this award due to violation of the ostensible subcontractor rule. 13 C.F.R. §§ 128.401(g) and 134.1003(c).

Apart from the instant procurement, Protestor also questions whether Blue Spader itself qualifies as an SDVOSB. SBA regulations provide that, to be considered an eligible SDVOSB, a concern must be at least 51% owned, and fully controlled, by one or more service-disabled veterans. 13 C.F.R. §§ 128.202 and 128.203. The “control” requirement means that “both the long-term decision-making and the day-to-day operations” must be controlled by service-disabled veterans. 13 C.F.R. § 128.203(a). SBA regulations further indicate that the service-disabled veteran upon whom a concern relies for its SDVOSB status “may not engage in outside employment that prevent[s] [him or her] from devoting the time and attention to the concern necessary to control its management and daily business operations.” 13 C.F.R. § 128.203(i). Normally, the service-disabled veteran “must devote full-time during the business's normal hours of operations.” *Id.* Furthermore, “[w]here a qualifying veteran claiming to control a business concern devotes fewer hours to the business than its normal hours of operation, SBA will assume that the qualifying veteran does not control the concern, unless the concern demonstrates that the

qualifying veteran has ultimate managerial and supervisory control over both the long-term decision making and day-to-day management of the business.” *Id.*

Here, the record reflects that Mr. Billy G. Collins, a service-disabled veteran, owns 100% of Blue Spader, and is Blue Spader's CEO and sole director. Section II.I, *supra*. Blue Spader thus meets the ownership and control requirements of 13 C.F.R. §§ 128.202 and 128.203. Protestor alleges, however, that Mr. Collins cannot maintain control of Blue Spader due to concurrent employment with Blue Next. Section II.C, *supra*. Protestor observes that Blue Spader and Blue Next are co-located and share operating hours, and posits that Mr. Collins must devote “significant time” to Blue Next during Blue Spader's normal business hours. *Id.*

I find no merit to Protestor's allegation, because Blue Spader reasonably explains that Blue Next is not a separate, stand-alone business, but rather an unpopulated joint venture between Blue Spader and Nextrinsic Corp. Sections II.H and II.I, *supra*. The applicable regulation at 13 C.F.R. § 128.203(i) limits a service-disabled veteran from engaging in “outside employment” apart from the SDVOSB, but Mr. Collins here would not be doing so, as Blue Next is merely a mechanism for Blue Spader to pursue additional business opportunities. Moreover, even if involvement with an unpopulated joint venture could be considered a form of “outside employment,” OHA must assess Blue Spader's eligibility in the instant case as of March 14, 2024, the date Blue Spader submitted its offer for the subject procurement. Section III.B, *supra*. Blue Next was established in January 2024, and the joint venture was not approved by SBA's Michigan District Office until March 13, 2024. Sections II.H and II.I, *supra*. Accordingly, since Blue Next apparently would have been awarded no contracts, and would have been performing no work, as of March 14, 2024, I see no basis to conclude that Blue Next might have significantly interfered with Mr. Collins' ability to properly manage Blue Spader. *E.g.*, *CVE Protest of Welch Constr., Inc.*, SBA No. CVE-210-P (2021) (denying status protest when alleged outside commitments were not in effect as of the relevant date for determining eligibility).

Protestor also contends that Blue Spader misled SBA's Veteran Small Business Certification (VetCert) office by declining to answer whether Blue Spader requires any critical licenses to operate. Sections II.G and II.I, *supra*. Protestor reasons that Blue Spader should have responded affirmatively to this question, because a “Residential Builder's License” typically is necessary for a general construction contractor to perform larger-scale construction projects in the state of Michigan. Section II.G, *supra*. Furthermore, Blue Spader's silence on this point was not harmless because, had Blue Spader disclosed that such a license was required, the VetCert office would then have explored whether Mr. Collins personally possesses the required license, or whether he can exert ultimate managerial and supervisory control over those who do. *Id.* In response, Blue Spader denies that a Michigan “Residential Builder's License” is required, and asserts that its non-response to the question was “accurate.” Section II.H, *supra*.

I find Protestor's allegation beyond the scope of OHA's review in an SDVOSB status protest. OHA has explained that the submission of false, or incomplete, information to the VetCert office may be grounds for SBA to pursue decertification under 13 C.F.R. § 128.310, and potentially to impose additional penalties under § 128.600. Such matters are not, however, among the valid grounds for a status protest as set forth at § 134.1003. *E.g.*, *CVE Protest of First Nation Grp., LLC d/b/a Jordan Reses Supply Co.*, SBA No. CVE-185-P, at 19 (2021)

(challenged concern's "negligence in providing required information" was not relevant in a SDVOSB status proceeding).

IV. Conclusion

The record reflects that Blue Spader will subcontract the majority, if not all, of the primary and vital contract requirements to Elevator Technicians, a non-SDVOSB subcontractor, in contravention of the ostensible subcontractor rule. The protest therefore is SUSTAINED to that extent, and Blue Spader is not an eligible SDVOSB for the instant procurement. The protest otherwise is DENIED, as Blue Spader has persuasively shown that it is owned and controlled by Mr. Collins, a service-disabled veteran. This is the final agency action of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(B); 13 C.F.R. § 134.1007(i).

KENNETH M. HYDE
Administrative Judge