

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

VSBC Protest of:

Beshenich Muir & Associates, LLC and  
Resilient Innovations, LLC.,

Protestors,

Re: ELB Services, LLC

Solicitation No. FA8217-22-R-0001

U.S. Department of the Air Force

SBA No. VSBC-399-P

Decided: September 25, 2024

APPEARANCES

Jonathan T. Williams, Esq., Meghan F. Leemon, Esq., Joseph Loman, Esq., Daniel J. Figenick, III, Esq., PilieroMazza, PLLC, Washington, D.C., for ELB Services, LLC

Edmund M. Bender, Esq., Office of General Counsel, Small Business Administration, Washington, D.C.

DECISION<sup>1</sup>

I. Introduction

This dispute arises from a remand of the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decision in *VSBC Protests of Beshenich Muir & Associates, and Resilient Innovations, LLC*, SBA No. VSBC-343-P (2024) (*BMA II*). In that decision, OHA denied Resilient Innovations, LLC (RI)'s protest, but granted Beshenich Muir & Associates, LLC's (BMA) protest, finding that ELB Services, LLC (ELB) has failed to establish that it is an eligible Service-Disabled Veteran-Owned Small Business (SDVOSB) joint venture for Solicitation FA8217-22-R-0001, as required under 13 C.F.R. § 128.402(c)(7).

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<sup>1</sup> This Decision originally was issued on September 25 under a Protective Order. At that time, I ordered each party to file a request for redactions if that party desired any information redacted from the published Decision. 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.

ELB challenged *BMA II* at the U.S. Court of Federal Claims (COFC), and on July 1, 2024, the Court issued an Opinion and Order remanding to OHA for proper application of 13 C.F.R. § 128.402(c)(7) to ELB's Joint Venture Operating Agreement (JVOA) and Addendum, consistent with its opinion. *ELB Servs., LLC v. United States*, 172 Fed. Cl. 233 (2024) (hereafter The COFC Decision or Opinion), at 26. The Court found that OHA committed legal error by applying 13 C.F.R. § 128.402(c)(7) contrary to the plain language of that regulation when the Solicitation is indefinite in nature, and OHA's decision was arbitrary and capricious because it failed to address relevant evidence with respect to the sufficiency of ELB's JVOA. *Id.*, at 26-27. This decision responds to the Court's remand order.

## II. Background

A complete procedural background is found in *VSBC Protests of Beshenich Muir & Associates, and Resilient Innovations, LLC*, SBA No. VSBC-343-P (2024).

Briefly, on June 6, 2023, the Air Force issued a Request for Proposals (RFP) for an Indefinite Delivery Indefinite Quantity (IDIQ) contract to procure services for the Mission Planning Support Contract (MSPC) IV, to ensure sustainment infrastructure is established to support all Mission Planning Environments and future Joint Mission Planning System Open Mission Systems deployment environments. (*See* Solicitation; Performance Work Statement (PWS).) The Solicitation was set aside entirely for Service-Disabled Veteran-Owned Small Business (SDVOSB) concerns. The designated North American Industry Classification System (NAICS) code was 541513, Computer Facilities Management Services, with a corresponding \$30 million annual receipts size standard. Offers were due July 27, 2022, and final proposal revisions were due January 18, 2023. (CO's Memorandum.) On August 31, 2023, the Air Force notified unsuccessful offerors that ELB was the apparent successful offeror.

The protests raised a number of issues challenging the SDVOSB status of ELB. OHA's decision upheld only one of them. ELB is a mentor-protégé joint venture between E.L. Blake, Inc. (Blake), the protégé, and Summit Technologies, Inc. (Summit), its large business mentor. SBA approved the mentor-protégé relationship on September 17, 2018. Thereafter, ELB was formed on December 29, 2020, in the State of Alabama. The current Joint Venture Operating Agreement is dated March 31, 2021. The venturers executed an Addendum to the JVOA as of July 22, 2022.

An SDVOSB may enter into a joint venture agreement with one or more other small business concerns or its mentor for the purpose of performing an SDVOSB contract. 13 C.F.R. § 128.402(a). “The [joint venture] itself need not be a certified VOSB or SDVOSB” so long as the managing member of the joint venture is certified. 13 C.F.R. § 128.402(a). The regulations require every joint venture agreement to include certain required provisions. 13 C.F.R. § 128.402(c). The protestors charged that ELB's JVOA was deficient in several respects. OHA upheld only one of the charges. OHA found ELB's JVOA did not meet the requirement of 13 C.F.R. § 128.402(c)(7) which requires that a JVOA contain a provision specifying the responsibilities of the parties with regard to contract negotiation, source of labor, and contract performance.

In particular, the relevant portions of the Addendum of ELB's JVOA are:

### **3.0 Responsible Manager**

The Responsible Manager of this Joint Venture shall be an employee of the Managing Venturer. The Responsible Manager for the 1st Contract shall be [REDACTED]. He is responsible for performance of and day-to-day and administrative responsibilities under the 1st Contract, overseeing the jobsite, and reporting to and implementing the instructions of the Managing Venturer. The Joint Venture's proposal uses the term Senior Program Manager for the position that is responsible for 1st Contract performance. Accordingly, [REDACTED's] official title for the Contract shall be Senior Program Manager, but at all times shall be viewed as the "Responsible Manager," as that term is defined in SBA's applicable joint venture regulation. The resume of the Responsible Manager is attached hereto as Appendix A.

### **4. Deputy Responsible Manager**

Summit may appoint a Deputy Responsible Manager to assist the Responsible Manager in managing the Company's performance of its day-to-day responsibilities under the 1st Contract. The Joint Venture's proposal uses the term Program Manager for the Deputy Responsible Manager. At all times, the Deputy Responsible Manager shall work at the direction of and shall report to the Responsible Manager. The Deputy Responsible Manager shall serve at the pleasure of Summit and may be removed by either Venturer at any time, with or without cause. If the Deputy Responsible Manager is removed, Summit, with approval from E.L. Blake, may appoint a replacement.

### **7.0 Responsibilities of the Parties for the 1st Contract**

7.1 Source of Labor. The 1st Contract will be staffed with existing employees of the Managing Venturer and the Partner Venturer and by new hires, as needed. Such employees shall remain employees of the Managing Venturer and Partner Venturer, respectively. As task orders are received, the Managing Venturer will assess the staffing needs and assign personnel between the companies to accomplish the work consistent with the Agreement and this Addendum, SBA's regulations, and the Joint Venture's proposal. The Managing Venturer will also utilize existing labor markets to maintain the necessary staffing throughout the duration of the 1st Contract performance. The Venturers recognize that the exact division of work as between themselves will be defined in the Joint Venture's response to the Solicitation, the resulting 1st Contract and task orders awarded thereunder. The full recruiting resources of both Venturers will be used, as necessary, to fill any vacancies on the project. The staffing diagram below reflects the Responsible Manager as the Senior Program Manager and the Deputy Responsible Manager as the Program Manager.

[IMAGE REDACTED].

7.2 Negotiating the 1st Contract. The Responsible Manager, on behalf of the Managing Venturer, will be responsible for negotiating the 1st Contract and any subsequent negotiations such as for modifications to the 1st Contract or task orders issued thereunder, and the Responsible Manager shall act in good faith and give due consideration to reasonable input from the Partner Venturer.

### 7.3 Performance of Work.

7.3.1 The Venturers agree and understand that, for any contract performed by the Joint Venture, the Joint Venture must comply with the applicable limitation on subcontracting. For the 1st Contract, the applicable limitation on subcontracting is fifty percent (50%). Therefore, of the total amount the Client pays to the Joint Venture on the 1st Contract, the Joint Venture will not pay more than fifty percent (50%) to firms that are not similarly situated. The Venturers further agree and understand that the Managing Venturer must perform at least forty percent (40%) of the work performed by the Joint Venture and its work must be more than administrative or ministerial functions so the Managing Venturer gains substantive experience. For the 1st Contract, the Joint Venture anticipates subcontracting a small percentage. For the 1st Contract, the Managing Venturer will perform **[less than half]** of the work performed by the Joint Venture on the 1st Contract and the Partner Venturer shall perform **[more than half]** of the work performed by the Joint Venture on the 1st Contract, minus the **[small percentage]** of the 1st Contract that is anticipated to be subcontracted. The Venturers will meet **[periodically]** to ensure the Joint Venture and the Managing Venturer meet their performance requirements.

7.3.2 The Managing Venturer will provide overall executive oversight and will have overall responsibility for managing the 1st Contract to a successful completion. The Responsible Manager will perform the day-to-day management and administration of the 1st Contract. Each of the Venturers will have the right to visit the job site(s) to evaluate performance of the 1st Contract.

7.3.2.1 Regarding the specific tasks for the 1st Contract, the majority of the 1st Contract labor will be performed by system support representatives (“SSR”). The Managing Venturer will perform major contract functions including providing **[less than half]** of the SSR work and the Program Management Office. The Partner Venturer will perform **[more than half]** of the SSR work, including all OCONUS SSR work, and will assist with the management work, as directed by E.L. Blake. As contemplated under 13 C.F.R. § 125.18(b)(2)(ii), the managers responsible for orders issued under an IDIQ contract need not be employees of the protégé, so long as they report to and are supervised by the Responsible Manager, as will be the case here.

7.3.2.2 The Partner Venturer will be responsible for all MPSC IV accounting functions until **[a further specified date]**.

7.3.2.3 The Partner Venturer will **[ensure that there is the]** operating capital necessary for the execution of the 1st Contract as approved by the Partner Venturer.

(Case File (CF), Tab 13, Addendum, at 2-5.)

### III. The COFC Decision

The Court upheld OHA's decision on nearly every other point, except the issue of whether ELB's JVOA complied with 13 C.F.R. § 128.402(c)(7). (Opinion, at 26 (citations omitted).) The Court first described the regulation as having two parts: the first sentence requiring the JVOA to specify the responsibilities of the parties; and the second sentence pertaining to indefinite contracts. The Court then interpreted this sentence as imposing a more lenient standard for the level of detail expected within a joint venture agreement for indefinite contracts. (*Id.*, at 20.)

Addressing the plain language of § 128.402(c)(7), the Court found the first sentence instructs joint ventures to provide information about the responsibilities of each joint venturer as they relate to the contract being bid on, whereas the second sentence provides an alternative more lenient standard for contracts “indefinite in nature.” The Court interpreted this as a more lenient standard, requiring “a general description of the anticipated responsibilities of the parties.” Read together, the Court found these sentences set up an either/or framework for the level of specificity required of a joint venture agreement, either the first sentence applies, or, if the contract is indefinite, the second sentence does. (*Id.*, at 21-22.)

The Court observed that this regulation gives two examples of indefinite contracts. The first is the “indefinite quantity contract,” and the second is “a multiple award contract where the level of effort or scope of work is not known.” The Court found the phrase “level of effort or scope of work” does not qualify the term “indefinite quantity contract” in the first example, nor does the preceding phrase referring generally to a contract “indefinite in nature.” The modifier “level of effort or scope of work is not known” is stopped by the determiner “a multiple award contract” and does not reach back to “an indefinite quantity contract.” An IDIQ may be a multiple award contract, but a multiple award contract is not always an IDIQ. (*Id.*, at 22-23.)

Therefore, when applying the regulation, the Court determined that one must first ask if the contract at issue is indefinite in nature. If so, then one must determine under the more lenient standard of the second sentence whether the joint venture agreement in question provides a general description of anticipated responsibilities for: (1) negotiation of the contract, (2) source of labor, and (3) contract performance. If a solicitation is for an IDIQ contract, the second sentence applies. That some information about the scope of work is known does not foreclose application of the general-description standard nor require the application of the specific-responsibility requirement of the first sentence. (*Id.*)

With this rationale, the Court found that OHA incorrectly applied the regulation in this case. The Opinion found the instant contract is an IDIQ contract and the more lenient standard applies. However, OHA erred in faulting ELB for not laying out the specific responsibilities of

the venturers as to contract performance. OHA found that ELB's Addendum did not address the various types of tasks identified in the PWS. OHA further found the specific tasks could not be known, but the categories of work were known, and the Addendum could have addressed how these categories of work would be divided among the venturers. (*Id.*, at 23-24.) However, the Court held that for an IDIQ solicitation, the level of detail known about the scope of work does not determine the standard OHA should apply in reviewing a JVA for compliance with 13 C.F.R. § 128.402(c)(7). Only a general description of anticipated responsibilities was required. (*Id.*)

Finally, the Court found that OHA failed to address relevant evidence in the record. Where OHA found ELB's JVOA merely set out percentages of work to be performed by each party and was not sufficient to meet the regulatory requirement, the Court found OHA failed to address other information in the Addendum, such as the division of responsibilities under the second part of the PWS § 7.3.2 and the staffing diagram providing job titles and employee names for the Program Management Office (PMO), Mission Planning System Support Facility (MPSSF) and SSR functions at § 7.1, distinguishing from the *VSBC Protest of Beshenich Muir & Associates, and ELB Svcs., LLC*, SBA No. VSBC-292-P (2023) (*BMA I*). The Court also found that here, while ELB does not provide a section-by-section breakdown, it objectively provides some information on the responsibilities for contract performance beyond percentages of work. (*Id.*, at 25-26.)

While concluding that OHA failed to apply the appropriate, more lenient standard of the second sentence of 13 C.F.R. § 128.402(c)(7) because this contract is indefinite in nature, the Court added that OHA also failed to address relevant evidence with respect to the sufficiency of ELB's JVOA. On remand, the Court directed OHA to apply the appropriate standard in adjudicating the protests. (*Id.*, at 26-27.)

#### IV. Responses

On July 3, 2024, I issued an Order directing interested parties to file responses to the COFC Decision. Following this order, on July 8, 2024, I also requested Agency Comments from SBA. On July 10, 2024, I issued an Order granting an extension of time so any interested parties could respond to both the Court's Opinion and the Agency Comments.

##### A. SBA Comments

On July 25, 2024, SBA's Office of General Counsel (OGC) filed its comments. OGC stated SBA amended its regulation in 2016 to provide a “more relaxed approach” to contracts that are indefinite in nature and the scope of work is unknown. SBA believes it unreasonable to expect specificity in a JVA without knowing the scope of the contract. The JVA should provide a general description of anticipated responsibilities as required by the regulation. If some elements of the scope of work are known, the JVA should generally describe how the joint venture intends to manage the negotiation of the contract, source of labor, and contract performance. (SBA Comments, at 1.)

## B. ELB Response

On August 1, 2024, ELB filed its response, arguing that OHA must adhere to the Court's interpretation of 13 C.F.R. § 128.402(c)(7), which found the plain, unambiguous language of the regulation is controlling. Thus, OHA must adhere to it on remand.

ELB points out that the instant solicitation is for a contract indefinite in nature. Therefore, OHA must determine under the more lenient standard whether ELB's JVOA provides a general description of the anticipated responsibilities for contract performance. (ELB's Response, at 10-11.) The Court found OHA should not have faulted the JVOA for not laying out the specific responsibilities of the venturers for contract performance. OHA should not consider whether the solicitation contains categories of tasks that could have been discussed in the JVOA or assess whether the categories are mentioned. The Court found that because the second sentence applies, it does not matter whether the solicitation contained information about the scope of work because all that is required is a general description of the parties' anticipated responsibilities. (*Id.*, at 11-12.)

ELB also maintains its JVOA contains the required general description of the parties' anticipated responsibilities for contract performance. Such a description addresses main elements of contract performance and not specific tasks. "General" means the opposite of "specific," not confined by specialization or careful limitation, relating to main elements rather than limited details. (*Id.*, at 12-13, citing Merriam-Webster.com.) This reflects SBA's regulatory intent to relax the requirement for indefinite quantity contracts "to provide a more relaxed approach." (*Id.*, citing 81 Fed. Reg. 48558, 48590 (Jul. 25, 2016).) Therefore, it does not matter whether the solicitation contains tasks or categories of tasks that could have been addressed in the JVOA. Because the solicitation is indefinite in nature, a definitive scope of work will not be known until task orders are issued. ELB argues OHA must review the Addendum only for whether it contains a general description of anticipated responsibilities for contract performance. (*Id.*, at 14.)

Further, ELB asserts OHA must review all relevant provisions of the JVOA, which unquestionably provide a general description of the parties' anticipated responsibilities for contract performance. The Addendum addresses the limitations on subcontracting percentages but also specifically delineates the parties' responsibilities for the Systems Support Representatives (SSRs) by percentages. The SSRs are functionally indistinguishable and will perform the same work, the main element of the solicitation is to provide SSRs when and where the Air Force wants them. (*Id.*, at 14-17.)

In reference to the Addendum, ELB claims that it addresses more than percentages of SSRs, but it states the Managing Venturer will provide the Program Management Office (PMO) and provide **[less than half]** of the SSR work. The Partner Venturer will perform **[more than half]** of the SSR work including all OCONUS SSR work. (*Id.*, at 18.) It is the PMO which will oversee and be responsible for running the entire contract. (*Id.*, citing CF, Tab 19, ELBS Proposal Vol. IV at 1, 4.) The reference to Summit's responsibility for OCONUS is part of the general description of responsibilities. (*Id.*)

Moreover, the Addendum addresses staffing requirements in the solicitation for professional services, wherein ELB will provide personnel to fulfill indefinite requirements. The Addendum § 7.1 includes an organizational and staffing table covering all the PWS sections. It further states that as task orders are received, the Managing Venturer will assess the staffing needs and assign personnel. (*Id.*) Similarly, ELB asserts the Descriptions of Responsible Manager and the Deputy contribute to the general description. The Responsible Manager will be [REDACTED], and he is responsible for day-to-day management. Blake also controls the ELB Management Committee. (*Id.*, at 19, citing JVOA, § 5.1.) OHA should also confirm its initial ruling on contract negotiation and source of labor, because the Addendum at § 7.2 provides that the Responsible Manager, on behalf of the Managing Venturer, will be responsible for contract negotiation. (*Id.*, at 21, citing *CVE Protest of Eagle Home Medical Corp.*, SBA No. CVE-238-P (2022).)

ELB adds that Addendum § 7.1 is a comprehensive source of labor provision, sufficient to meet the lenient standard of the regulation. ELB intends to staff the contract with existing employees of both concerns and new hires as needed. The proposal states ELB expects to hire [the vast majority of the incoming staff]. (*Id.*, at 22, citing CF, Tab 17, ELBS Proposal Vol. II at 56.) ELB argues that Addendum § 7.1 is identical to the source of labor provision OHA reviewed and found compliant in *Size Appeal of Spinnaker Joint Venture, LLC*, SBA No. SIZ-5964 (2018). It provided that each member would perform with its own employees, subcontractor, and new recruits, and the responsibility for meeting the performance of work requirements rested with the Project Manager. (*Id.*, at 23.)

Further, ELB argues that in *VSBC Protest of Systematic Innovations, LLC*, SBA No. VSBC-367-P (2024), the JVA merely stated as to source of labor “TBD at Task Order Level,” and provided that the Managing Venturer, through the Responsible Manager, would have primary responsibility for ensuring appropriate labor. OHA found the agreement compliant. ELB states OHA must reach the same conclusion here. (*Id.*, at 25-26.)

ELB argues that *CVE Protest of Patriot Strategies, LLC*, SBA No. CVE-243 (2022) and *CVE Protest of KTS Sols., Inc.*, SBA No. CVE-146-P (2020) were inapposite because *Patriot* did not concern an indefinite contract and in *KTS* there was no contract-specific addendum. As the Court held, ELB argues *Thunderyard* is on point because of a similar PWS. OHA found that JVA acknowledged the solicitation's indefiniteness, provided general tasks the Managing Member and Partner Member would perform, divided workshare by percentages, and anticipated preparation of a Schedule B once task orders were issued. OHA should reach a similar conclusion here. ELB further relies on *Systematic Innovations, supra*. (*Id.*, at 27-8.)

ELB also reasserts its argument that the Size Determination found the JVOA compliant, and OHA should follow its reasoning. (*Id.*, at 28-31.)

Finally, ELB raises the underlying reason SBA regulates the content of JVAs. The reason is to ensure that the joint venture is not a front for a large business. OHA findings should be connected to the underlying intent of the regulation, addressing the JVOA holistically, and asking whether the SDVOSB in question would benefit from the joint venture as intended. (*Id.*, at 31-34.)



## V. Discussion

### A. Burden of Proof and Date of Eligibility

As noted in *BMA II*, ELB, the protested firm, has the burden of proving its eligibility by a preponderance of the evidence. 13 C.F.R. § 134.1010. The decision must be based primarily on the Case File and the information provided by the protester, the protested concern, and any other parties. 13 C.F.R. § 134.1007(g). Accordingly, all the evidence submitted by the Protestors and ELB is part of the record.

In a SDVOSB status protest pertaining to a concern's compliance with the joint venture regulations at 13 C.F.R. § 128.402(c), OHA determines the eligibility of the protested concern's SDVOSB status as of the date of the joint venture's final proposal revisions. 13 C.F.R. § 134.1003(e)(1). Here, final proposal revisions were due January 18, 2023, and thus, I must determine ELB's compliance with the joint venture agreement requirements as of January 18, 2023.

### B. Analysis

As noted in *BMA II*, 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 SDVOSB contract. 13 C.F.R. § 128.402(a). “The [joint venture] itself need not be a certified VOSB or SDVOSB” so long as the managing member of the joint venture is certified. 13 C.F.R. § 128.402(a). Here, Blake, the Managing Venturer, is an eligible SDVOSB. Thus, the issue here is whether ELB's JVOA and Addendum comply with SBA regulations for joint ventures. The regulations require that twelve specific provisions be included in each of such joint venture agreement. 13 C.F.R. § 128.402(c). In *BMA II*, I held that ELB's JVOA and Addendum did comply with all but one of the twelve requirements. This was the requirement set out at 13 C.F.R. § 128.402(c)(7).

The Court remanded *BMA II* to OHA for further consideration of ELB's compliance with 13 C.F.R. § 128.402(c)(7), as interpreted in the Opinion, with respect to ELB's JVOA and Addendum. *See* Section II, *supra*.

The regulation in question states:

Specifying the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties to the joint venture will ensure that the joint venture and the certified VOSB or SDVOSB partner(s) to the joint venture will meet the limitations on subcontracting requirements set forth in paragraph (d) of this section, where practical. If a contract is indefinite in nature, such as an indefinite quantity contract or a multiple award contract where the level of effort or scope of work is not known, the joint venture must provide a general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract

performance, not including the ways that the parties to the joint venture will ensure that the joint venture and the certified VOSB or SDVOSB partner(s) to the joint venture will meet the limitations on subcontracting requirements set forth in paragraph (d) of this section, or in the alternative, specify how the parties to the joint venture will define such responsibilities once a definite scope of work is made publicly available.

13 C.F.R. § 128.402(c)(7).

OHA has consistently applied 13 C.F.R. § 128.402(c) and its twelve provisions as required elements for a JVA to be compliant. The Court directs OHA to apply a more lenient approach to 13 C.F.R. § 128.402(c)(7) when it comes to contracts indefinite in nature and has ruled that the “general description of the anticipated responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance” is sufficient, irrespective of whether some information about the scope of work is known. Section III, *supra*. ELB advocates for the Court's interpretation of this regulation and SBA has not opposed it.

OHA has consistently recognized and adopted 13 C.F.R. § 128.402(c)(7), in the context of contracts indefinite in nature. In *Size Appeal of Spinnaker Joint Venture, LLC*, SBA No. SIZ-5964 (2018) involved an ID/IQ contract for training devices. The JVA in question provided that as to source of labor and contract performance, the joint venture members would perform the contract with their own employees, approved subcontractors, and recruited personnel, either from incumbents or elsewhere. The types of tasks to be performed were listed on a separate schedule, but specific responsibilities would await task orders. OHA noted that the rule, as revised in 2016, was making provision for ID/IQ contracts where the Government's requirements were not known at the time of the proposal but would be set out later in task orders. Thus, OHA then found the JVA compliant, because it provided as much detail as it could, given the lack of substantive detail in the RFP.

More recently, in *VSBC Protest of Thunderyard Liberty JV II, LLC*, SBA No. VSBC-264-P (2024), the U.S. Department of Veterans Affairs issued an ID/IQ RFP for Information Technology. The level of effort and scope of work were not known. The challenged concern's JVA addressed source of labor by noting the Managing Member would provide a Project Manager who would use a combination of existing employees and new hires to staff the project. The Partner Member would do the same. An Addendum acknowledged the indefinite solicitation when it stated, “the level of effort and scope of work is not yet known” and provided general tasks the Managing Member and Partner Member would perform, divided the workshare by percentages, and anticipated preparation of a Schedule B once individual task orders were issued. OHA found the JVA complied with the regulations and held that under circumstances where the solicitation provides no details on the scope of work, the joint venture agreement is sufficient when it (1) states that each member will perform with employees from its respective organization, (2) lists the general types of tasks each member will perform, and (3) acknowledges the indefiniteness of the solicitation.

In *VSBC Protest of Systematic Innovations, LLC*, SBA No. VSBC-367-P (2024), again dealing with an ID/IQ contract, OHA found the JVA compliant with the regulation where the Managing Venturer was an SDVOSB owning over 90% of the joint venture and would conduct negotiations, while leaving the provisions on source of labor as “TBD at the task order level.” Once a definite scope of work was available, the venturers would jointly review it and determine an appropriate division of labor, generally using their existing workforce. OHA found this JVA compliant, when other specific information was not available.

Under 13 C.F.R. § 128.402(c)(7), when a contract is indefinite in nature, the portion of the JVA which specifies the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, need only be a general description of the anticipated responsibilities. JVAs which seek to perform contracts indefinite in nature are only required to provide a “general” description of the parties' responsibilities with regard to negotiation of the contract, source of labor, and contract performance. That some information about the scope of work is known does not foreclose application of the general-description standard nor require the application of the specific-responsibility requirement of the first sentence. The JVA which contemplates performance of a contract indefinite in nature need only provide a general description of the parties' anticipated responsibilities under the regulation. Section III, *supra*.

In adopting the Court's reading of 13 C.F.R. § 128.402(c)(7), with which SBA concurs, I conclude ELB's JVOA and Addendum complies with the regulation. Here, the instant solicitation is an ID/IQ contract. JVAs which seek to perform contracts indefinite in nature are only required to provide a “general” description of the parties' responsibilities with regard to negotiation of the contract, source of labor, and contract performance.

Further, the instant Addendum explicitly notes the subject contract is an ID/IQ contract, and provides that the Responsible Manager will be Blake, which will provide the Senior Program Manager, and will be responsible for contract negotiation. CF, Tab 13, Addendum, § 7.2. Summitt will be the Deputy Responsible Manager and appoint the Program Manager. Turning to source of labor, the JVOA provides the contract will be staffed by existing employees of the two venturers and by new hires as needed. As task orders are received, the Managing Venturer will assess staffing needs and assign personnel as required, consistent with the JVOA, the Addendum, SBA regulations and ELB's Proposal. The Managing Venturer will also utilize existing labor markets to maintain necessary staffing. *Id.*, § 7.1. On the question of performance of work, the organization chart identifies subordinate managers handling certain tasks, and then lists the SSRs as performing most of the work. The Managing Venturer will perform major contract functions and **[less than half]** of the SSR work, and the Partner Venturer will perform **[more than half]** of the SSR work, including all OCONUS SSR work. CF, Tab 13, Addendum, Organization chart, §§ 7.3.1, 7.3.2.1. Because specific tasks must await the issuance of task orders, ELB's JVOA has provided a general description of its anticipated performance of work. ELB's JVOA thus acknowledges the indefiniteness of the solicitation, provides that each member will perform with employees from its respective organization, and lists the general types of tasks each member will perform. *Thunderyard Liberty JV II, LLC, supra*. Therefore, the JVOA Addendum meets the requirements of 13 C.F.R. § 128.402(c)(7).

Accordingly, after due reconsideration, I conclude that ELB's JVOA and its Addendum meet the standards for compliance with 13 C.F.R. § 128.402(c)(7) when the contract is indefinite in nature.<sup>2</sup>

Accordingly, I must on remand, DENY BMA's Protest.<sup>3</sup>

#### IV. Conclusion

For the above reasons, the protests are DENIED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(B); 13 C.F.R. § 134.1007(i)

CHRISTOPHER HOLLEMAN  
Administrative Judge

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<sup>2</sup> While I sympathize with ELB's argument that a “holistic” approach to determining compliance with 13 C.F.R. § 128.402(c) is appropriate, the regulation precludes it. A JVA must contain every mandated provision to be compliant, and ELB has failed to provide supportive authority for a different approach beyond its mere assertion.

<sup>3</sup> In *BMA II*, I denied in part and dismissed in part RI's protest on all grounds, which was not appealed to any Federal Court. While they were given the opportunity, BMA and RI made no appearances nor submitted any responses to this remand proceeding. Therefore, the issues raised by RI are moot and *BMA II*'s holding as to RI remains the final agency action.