

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

SIZE Appeal of:

The Povolny Group, Inc.

Appellant,

Re: AMCOR JV One, LLC

Petition for Reconsideration of
Decision No. SIZ-6329

SBA No. SIZ-6348 (PFR)

Decided: April 2, 2025

ORDER DENYING PETITION FOR RECONSIDERATION

I. Background

A. Prior Proceedings

On February 3, 2025, The Povolny Group, Inc. (Petitioner) filed the instant Petition for Reconsideration (PFR) of the U.S. Small Business Administration (SBA) Office of Hearings and Appeals (OHA) decision in *Size Appeal of The Povolny Group, Inc.*, SBA No. SIZ-6329 (2025) (“*Povolny I*”). In that decision, OHA affirmed the dismissal of Petitioner's size protest against AMCOR JV One, LLC (AMCOR JV). AMCOR JV is a joint venture between American First Contracting, Inc. (American First) and its SBA-approved mentor, Cornerstone Contracting, Inc. (Cornerstone), under SBA's All-Small Mentor-Protégé Program.

Petitioner's protest alleged that, notwithstanding their mentor-protégé relationship, American First and Cornerstone are generally affiliated under 13 C.F.R. § 121.103(h) due to their “longstanding inter-relationship and contract dependence.” *Povolny I*, SBA No. SIZ-6329, at 2. In support, Petitioner observed that, following SBA's approval of the Mentor-Protégé Agreement (MPA) on April 28, 2020, American First and Cornerstone created three joint ventures, which collectively have secured 32 contracts worth almost half a billion dollars. *Id.* Petitioner further claimed that the revenues from the joint ventures represent almost 90% of American First's total revenue. *Id.* As such, Petitioner reasoned, American First is “contractually dependent on Cornerstone to sustain its business.” *Id.* The protest further alleged that Cornerstone is affiliated with AMCOR JV because Cornerstone's President was identified in AMCOR JV's Articles of Organization as having “the authority of manager.” *Id.* at 2-3.

The Area Office dismissed the protest, finding that Petitioner's allegations were not sufficiently specific. *Id.* at 3. With regard to the first allegation, the Area Office observed that the contracts in question were awarded to the joint ventures, not to Cornerstone alone. *Id.* The mere

fact that American First is a participant in joint ventures with Cornerstone, its SBA-approved mentor, does not suggest that American First is contractually dependent on Cornerstone. *Id.* As for the second allegation, Petitioner conceded that it did not know whether Cornerstone's President was identified as a manager of AMCOR JV in an operating agreement, or even whether such an operating agreement exists; the Area Office concluded that this portion of the protest therefore lacked sufficient factual predicate. *Id.*

On appeal to OHA, Petitioner reiterated its protest allegations and urged OHA to remand the matter for a new investigation. *Id.* at 3-5. OHA, however, agreed with the Area Office's determination. *Id.* at 6. As an SBA-approved mentor and protégé, American First and Cornerstone cannot be affiliated with one another simply because “the protégé firm receives assistance from the mentor under the [MPA].” *Id.*, quoting 13 C.F.R. § 121.103(b)(6). As such, it was not improper for the companies to have formed three joint ventures, or for those joint ventures to generate significant revenues. *Id.* Additionally, under OHA precedent, “[a] concern is not an affiliate of a joint venture of which it is a member.” *Id.* at 6-7, quoting *Size Appeal of Zin Techs., Inc.*, SBA No. SIZ-6305, at 14 (2024). As a result, AMCOR JV, a joint venture, is not “affiliated” with Cornerstone, one of the joint venture participants. *Id.*

B. Petition for Reconsideration

In the PFR, Petitioner renews its claim that American First and Cornerstone are generally affiliated under 13 C.F.R. § 121.103(h) due to their “longstanding inter-relationship or contractual dependence.” (PFR at 2.) Petitioner questions how, based on the evidence put forth, OHA concluded that American First and Cornerstone are immune from general affiliation. (*Id.*)

Petitioner contends that a longstanding inter-relationship or contractual dependence may be shown by examining the quantity of contracts awarded to joint ventures created by the partners. (*Id.*) Petitioner highlights OHA case law that found a longstanding inter-relationship or contractual dependence based on numerous awards to the joint venture partners. (*Id.* at 2-3, citing *Size Appeal of Robert M. Gomez & Assocs., Inc.*, SBA No SIZ-3921 (1994) (affiliation found with 14 contracts); *Size Appeal of Team Contracting, Inc.*, SBA No. SIZ-3875 (1994) (affiliation found with 19 contracts); and *Size Appeal of Zin Techs., Inc.*, SBA No. SIZ-6305 (2024) (affiliation not found with one contract).) Since the joint ventures created by American First and Cornerstone have been awarded 32 contracts, Petitioner maintains that American First is contractually dependent on Cornerstone. (*Id.* at 3.)

C. AMCOR JV's Response

On February 18, 2025, AMCOR JV responded to the PFR. AMCOR JV maintains that OHA properly affirmed the Area Office's determination that the protest did not raise specific allegations that, if true, would render AMCOR JV ineligible for award. (Response at 1-2.)

AMCOR JV contends that Petitioner “fails to cite to any regulation or case law prohibiting a protégé firm from receiving most of its revenue from contracts awarded to a joint venture between an SBA-approved mentor and protégé.” (*Id.* at 3.) As such, there is no legal basis to conclude that American First and Cornerstone are generally affiliated due to awards

made to AMCOR JV or other mentor-protégé joint ventures. (*Id.*) Additionally, according to AMCOR JV, the cases referenced by Petitioner in its PFR are inapposite, since none of those cases involved joint ventures between an SBA-approved mentor and protégé. (*Id.*) AMCOR JV argues that the PFR is an impermissible attempt to resuscitate meritless arguments that OHA rejected in the original appeal. (*Id.* at 4, citing *Size Appeals of Master Boat Builders, Inc. and Steiner Constr. Co., Inc.*, SBA No. SIZ-6209 (2023) (PFR).)

II. Discussion

A. Jurisdiction and Standard of Review

OHA issued its decision in *Povolny I* on January 15, 2025, and Petitioner filed the instant PFR within 20 calendar days thereafter, so the PFR is timely. 13 C.F.R. § 134.227(c).

OHA's rules of procedure provide that OHA may grant a PFR upon a “clear showing of an error of fact or law material to the decision.” *Id.* This is a rigorous standard. *Size Appeals of Dehler Mnfg. Co., Inc.*, SBA No. SIZ-5995, at 2 (2019) (PFR). A PFR must be based upon manifest error of law or mistake of fact and is not intended to provide an additional opportunity for an unsuccessful party to argue its case before OHA. *Size Appeal of BryMak & Assocs., Inc.*, SBA No. SIZ-5789, at 3 (2016) (PFR); *Size Appeal of Brown & Pipkins, LLC*, SBA No. SIZ-5642, at 2 (2015) (PFR).

B. Analysis

I agree with AMCOR JV that this PFR is without merit. The PFR consists of arguments that OHA considered, and rejected, in *Povolny I*. In particular, Petitioner repeats its claim that the volume of contracts awarded to AMCOR JV and other joint ventures suggests that American First and Cornerstone may be generally affiliated, but OHA squarely addressed this argument in *Povolny I*, and explained that “assistance in performing prime contracts with the Government through joint venture arrangements” is permissible, and indeed encouraged, in the context of an SBA-approved mentor-protégé relationship. *Povolny I*, SBA No. SIZ-6329, at 6 (quoting 13 C.F.R. § 125.9(a)). Furthermore, in *Povolny I*, Petitioner cited no authority that would prohibit a protégé firm from generating the bulk of its revenues from contracts awarded to joint ventures with its SBA-approved mentor. *Id.* As such, Petitioner has not advanced any valid reason to disturb *Povolny I*. It is well-settled that “[a] party cannot prevail on a PFR if it merely repeats arguments raised in the initial decision.” *Size Appeals of Master Boat Builders, Inc. and Steiner Constr. Co., Inc.*, SBA No. SIZ-6209, at 7 (2023) (PFR) (citing *Size Appeal of WISS Joint Venture*, SBA No. SIZ-5755 (2016) (PFR)).

In its PFR, Petitioner points to OHA's decisions in *Size Appeal of Robert M. Gomez & Assocs., Inc.*, SBA No SIZ-3921 (1994) and *Size Appeal of Team Contracting, Inc.*, SBA No. SIZ-3875 (1994) for the proposition that “[i]f the number of contracts awarded to the joint venture partners are ‘numerous,’ a longstanding inter-relationship or contractual dependence exists.” Section I.B, *supra*. As AMCOR JV observes, however, these cases are inapposite here, for two principal reasons. First, neither case involved joint ventures between an SBA-approved mentor and protégé. Second, neither case was decided under the current iteration of SBA joint

venture regulations. Previously, SBA regulations stated that “a specific joint venture entity generally may not be awarded more than three contracts over a two year period, starting from the date of the award of the first contract, without the partners to the joint venture being deemed affiliated for all purposes.” 13 C.F.R. § 121.103(h) (2019). In 2020, though, SBA amended the rule to “eliminate the three-contract limit for a joint venture, but continue to prescribe that a joint venture cannot exceed two years from the date of its first award.” 85 Fed. Reg. 66,146, 66,148 (Oct. 16, 2020). Accordingly, given that Petitioner's protest focused on the quantity of contracts awarded to joint ventures between American First and Cornerstone, and given further that SBA regulations no longer restrict the number of contracts that may be awarded to a joint venture over a two-year period, Petitioner has not shown how OHA's decisions in *Robert M. Gomez* and *Team Contracting* are relevant here.

III. Conclusion

OHA may grant a PFR upon a “clear showing of an error of fact or law material to the decision.” 13 C.F.R. § 134.227(c). In the instant case, Petitioner has not demonstrated any error in OHA's decision. I therefore **DENY** the PFR and **AFFIRM** the decision in *Size Appeal of The Povolny Group, Inc.*, SBA No. SIZ-6329 (2025).

KENNETH M. HYDE
Administrative Judge