

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

VSBC Protest of:

Systematic Innovations, LLC,

Protestor,

Re: Alpha Communications Services LLC

Solicitation No. 36C10B23R0011

U.S. Department of Veterans Affairs

SBA No. VSBC-341-P

Decided: March 13, 2024

APPEARANCES

Jonathan T. Williams, Esq., Meghan F. Leemon, Esq., Joseph P. Loman, Esq., Annie B. Hudgins, Esq., PilieroMazza PLLC, Washington, D.C., for Systematic Innovations, LLC

Damien C. Specht, Esq., James A. Tucker, Esq., Liam M. Bowers, Esq., Morrison & Foerster LLP, Washington, D.C., for Alpha Communications Services LLC

DECISION<sup>1</sup>

I. Introduction and Jurisdiction

On November 7, 2023, Systematic Innovations, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Alpha Communications Services LLC (ACS), in connection with U.S. Department of Veterans Affairs (VA) Request for Proposals (RFP) No. 36C10B23R0011. ACS is a joint venture between American Communications Solutions, Inc. (American) and its mentor, By Light Professional IT Services LLC (By Light). For the reasons discussed *infra*, the protest is denied.

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 Subpart J. Protestor filed its protest within five business days after receiving notification that

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<sup>1</sup> This decision was originally 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. No redactions were requested, and OHA therefore now issues the entire decision for public release.

ACS was an 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 RFP

On March 14, 2023, VA issued RFP No. 36C10B23R0011 for the Transformation Twenty-One Total Technology Next Generation 2 (T4NG2) multiple-award indefinite-delivery indefinite-quantity (ID/IQ) contract. (RFP at 2.) According to the RFP's Performance Work Statement (PWS), the contractors will provide information technology (IT) service solutions in 11 functional areas: “program management, strategy, enterprise architecture and planning; systems/software engineering; software technology demonstration and transition; test and evaluation; independent verification and validation; enterprise network; enterprise management framework; operations and maintenance; cybersecurity; training; [and] IT facilities.” (RFP Amend. 0001, at 14.) The RFP explained that “[t]his PWS provides general requirements . . . [,] [s]pecific requirements shall be defined in individual Task Orders.” (*Id.*)

The RFP stated that VA intended to award up to 30 contracts, with at least 15 awards reserved for SDVOSBs. (*Id.* at 156-57.) The Contracting Officer (CO) assigned North American Industry Classification System (NAICS) code 541512, Computer Systems Design Services, with a corresponding size standard of \$34 million average annual receipts. (*Id.* at 112.) ACS submitted its initial proposal on April 24, 2023, and final proposal revisions on June 12, 2023. On October 31, 2023, the CO announced the identity of the successful offerors. A total of 30 awardees were selected, including 21 SDVOSBs or SDVOSB joint ventures.

### B. Protest

On November 7, 2023, Protestor filed the instant protest with the CO, challenging ACS's status as an SDVOSB joint venture. The CO forwarded the protest to OHA for review.

In the protest, Protestor alleges that ACS's joint venture agreement (JVA) does not comply with 13 C.F.R. § 128.402. (Protest at 3.) More specifically, “SBA's SDVOSB joint venture rules were last revised in late 2022, with an effective date on January 1, 2023.” (*Id.*) ACS was formed in 2018, prior to the issuance of the RFP and the “subsequent SBA rule changes.” (*Id.*) Unless the JVA was updated for the instant procurement, then, the JVA cannot be compliant with applicable SDVOSB joint venture regulations. (*Id.*, citing *Size Appeals of STAcqMe, LLC*, SBA No. SIZ-5976 (2018).) Additionally, ACS's online Dynamic Small Business Search (DSBS) profile does not identify ACS as an SDVOSB joint venture. (*Id.* at 4.)

Protestor also alleges that the Mentor-Protégé Agreement (MPA) between ACS's joint venturers may have expired on October 23, 2023, and thus the CO may be obliged to “offramp” ACS from the contract. (*Id.*) In support, Protestor points to SBA's list of approved MPAs and maintains that the MPA between American and By Light was first approved by SBA on October 23, 2017. (*Id.*) Because “the term of a MPA may not exceed six years,” the MPA “would have

expired' on October 23, 2023.” (*Id.*, citing 13 C.F.R. § 125.9(e)(5).) Furthermore, the RFP “requires VA to ‘offramp’ any contract holder that subsequently loses SDVOSB status.” (*Id.*)

### C. ACS's Response

On February 2, 2024, ACS timely responded to the protest, urging that it should be denied.<sup>2</sup> ACS disputes Protestor's claim that ACS's JVA is non-compliant with joint venture regulations. (ACS Response at 4.) Contrary to Protestor's suggestions, the record before OHA contains “an up-to-date and fully compliant [JVA], amended and restated as of April 12, 2023, tailored specifically for the T4NG2 procurement.” (*Id.*) Specifically, ACS's JVA:

- 1) Sets forth the purpose of the joint venture;
- 2) Designates a certified SDVOSB, American, as the managing venturer of the joint venture and designates American's service-disabled veteran owner, Mr. John M. Schleifer, as the manager with ultimate responsibility for performance of the contract;
- 3) States that with respect to a separate legal entity joint venture, the certified SDVOSB must own at least 51% of the joint venture entity;
- 4) States that the certified SDVOSB must receive profits from the joint venture commensurate with the work performed by the certified SDVOSB, or a percentage agreed to by the parties to the joint venture whereby the certified SDVOSB receives profits from the joint venture that exceed the percentage commensurate with the work performed by the certified SDVOSB;
- 5) Provides for the establishment and administration of a special bank account in the name of the joint venture;
- 6) Itemizes all major equipment, facilities, and other resources to be furnished by each party to the joint venture, with a detailed schedule of cost or value of each, 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 major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available;
- 7) Specifies the responsibilities of the parties with regard to negotiation of the contract, source of labor, and contract performance, including ways that the parties

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<sup>2</sup> ACS initially moved to dismiss the protest as non-specific and for lack of standing. OHA denied the motion by Order dated January 18, 2024, and established February 2, 2024 as the deadline for ACS to respond to the merits of the protest.

to the joint venture will ensure that the joint venture and the certified 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 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;

8) Obligates all parties to the joint venture to ensure performance of the SDVOSB contract and to complete performance despite the withdrawal of any member;

9) Designates that accounting and other administrative records relating to the joint venture be kept in the office of the certified SDVOSB managing venturer, unless approval to keep them elsewhere is granted by the District Director (or designee) upon written request;

10) Requires that the final original records be retained by the certified SDVOSB managing venturer upon completion of the SDVOSB contract performed by the joint venture;

11) States that quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the joint venture's principals) must be submitted to SBA not later than 45 days after each operating quarter of the joint venture; and

12) States that a project-end profit and loss statement, including a statement of final profit distribution, must be submitted to SBA no later than 90 calendar days after completion of the contract.

(*Id.* at 5-6 (internal citations omitted).)

ACS contends that Protestor's allegation concerning ACS's DSBS profile is "legally deficient." (*Id.* at 7.) Applicable regulations do not require "checking boxes or being fully described in DSBS an element of SDVOSB compliance." (*Id.*, citing 13 C.F.R. § 128.402.) ACS adds that it has "no editorial access to DSBS," and therefore could not have "answered 'no' to anything in DSBS." (*Id.*) There is no requirement that an SDVOSB joint venture be SBA-certified, so even if ACS were not, such a claim would not constitute valid grounds for a status protest. (*Id.* at 7-8, citing *VSBC Protest of MicroTechnologies LLC*, SBA No. VSBC-328-P, at 2 (2024).) The record, though, reflects that ACS, the joint venture, is SBA-certified. (*Id.* at 8.) American, the managing venturer of ACS, is also an SBA-certified SDVOSB. (*Id.* at 8-9.)

Lastly, ACS maintains that Protestor's arguments pertaining to the purportedly “expiring” MPA have no bearing on ACS's status as an SDVOSB joint venture. This allegation is factually inaccurate, but even if it were true, a concern's SDVOSB status normally is assessed as of the date of initial offer including price. (*Id.* at 9.) Furthermore, SDVOSB contractors “generally retain their status for the life of multiple award contracts.” (*Id.* at 10, citing 13 C.F.R. § 128.401(e)(1).) Events transpiring after proposal submission, then, such as an MPA purportedly expiring in October 2023, are legally irrelevant. (*Id.*) Likewise, Protestor's suggestion that the RFP “requires VA to “offramp' any contract holder that subsequently loses SDVOSB status” is meritless. (*Id.* at 10.) Protestor mischaracterizes the off-ramp provision, which is discretionary rather than mandatory, and this issue in any event is not proper grounds for an SDVOSB status protest; instead, it is wholly a “matter of contract administration for the procuring agency.” (*Id.*, citing 13 C.F.R. § 134.1003.) ACS concludes that the MPA “was in place and active on the date of proposal submission” and remains in effect. (*Id.* at 9 fn.2, 11.)

#### D. Case File

The CO forwarded OHA a copy of ACS's proposal, which includes copies of the JVA and MPA.

The JVA was executed by representatives of American and By Light on April 12, 2023. (JVA at 14.) According to the JVA, the purpose of ACS is to compete for, and perform, the T4NG2 procurement. (JVA, Art. I § 3.) The JVA contains the following provisions pertinent to this protest:

#### **Article II.**

#### **INTEREST, AUTHORITY AND LIABILITY**

**Section 1. Percentage of Ownership.** The Members of the Joint Venture are **By Light** and [American]. As of the Effective Date [i.e., April 12, 2023], there are no other Members of the Joint Venture, and no other person has any right to take part in the ownership of the Joint Venture. Each Member's respective interest in the Joint Venture is [American] — 51% and **By Light** — 49%. [American] is the Managing Venturer and **By Light** is the Partner Venturer of the Joint Venture

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**Section 3. Allocation of Profit.** [American] (SDVOSB) will always receive profits at least commensurate with the work performed, and if the work performed is less than 51%, then [American] will receive at least 51% of the profits.

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## ARTICLE III

### CONTRACT PERFORMANCE

**Section 1. Work share Allocation.** The T4NG2 Pool Contract sought by the Joint Venture is a [Government-Wide Acquisition Contract (GWAC)]. Generally, the parties will perform such tasks and work as outlined in Exhibit A. Specific work obligations under the T4NG2 Contract will be established by individual task order. Upon the issuance of workshare under a task order to the Joint Venture, the Responsible Manager, after consultation with the Members and the general workshare distribution listed in Exhibit A, shall determine how to allocate the work to ensure that on each task order:

A. [American] performs at least 40% of the JV Total Workshare, as measured by the total applicable costs, in accordance with 13 C.F.R. § 124.513(d)(2)(i) and its work must be more than administrative or ministerial functions so the Managing Venturer gains substantive experience. For the Contract, the Managing Venturer will perform at least forty percent (40%) of the work. The Venturers will meet monthly to review compliance with this workshare agreement and to ensure the Joint Venture and the Managing Venturer meet their performance and other requirements as stated in this agreement.

B. The Managing Venturer will provide overall executive oversight and will have overall responsibility for managing the Contract to a successful completion. The Responsible Manager will perform the day-to-day management and administration of the Contract. Each of the Venturers will have the right to visit the job site(s) to evaluate the Contract Performance. Regarding the specific Contract tasks, the Managing Venturer will perform major contract functions specifically including those shown in Appendix 1. Said table shows Managing Venturer Responsibilities, Partner Venturer Responsibilities and those anticipated to be shared on a pro rata work share bases among the Venturers.

C. In the event the Responsible Manager cannot allocate the workshare as outlined in Exhibit A and in accordance with either above requirement on a particular task order, the Responsible Manager may seek concurrence of the Members to alter the workshare, provided that the above workshare percentages are maintained for any six-month period, in accordance with the requirements of 13 C.F.R. § 124.513(d).

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**Section 3. Equipment, Facilities and Resources.** Upon award of the Contract, the Managing Venturer and the Partner Venturer will provide the following equipment,

facilities, and other resources to the Joint Venture. The cost or value of such equipment, facilities, and other resources to be provided by the Managing Venturer and the Partner Venturer to the Joint Venture is identified after each item listed below.

[American] shall provide office automation equipment for [American] personnel including laptops, printers. [American] will provide the Deltek Costpoint Accounting Systems and maintain the annual license for its use [estimated value: \$20,000/year]. [American] shall retain ownership to all equipment and resources provided to the joint venture.

By Light shall provide the Joint Venture with (a) secured compartmented facility space [estimated value: \$6,250/year]; (b) administrative and office space in the National Capital Region [estimated value: \$9,375/year1]; and (c) use of its Quickshare recruiting process with access to TS/SCI/CI Poly resumes, organic recruiting resources and outsourced third party recruiters [estimated value: \$17,600/year2]. The value of these contributions is not considered a Capital Contribution, as defined in Article I, Section 11. By Light shall retain ownership to all facilities and resources provided to the Joint Venture.

**Section 4. Source of Labor.** The Managing Venturer has submitted a staffing plan outlining its method of maintaining a labor pool throughout the duration of the Contract performance. A copy of the staffing plan is attached hereto as Exhibit B. The Joint Venture will be staffed with existing employees of the Managing Venturer and the Partner Venturer and by new hires that will be made in accordance with the requirement under Executive Order 13495 to provide a right of first refusal to the incumbent contract personnel, as applicable. The Managing Venturer will also utilize existing labor markets to maintain the necessary staffing throughout the duration of the 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 and the resulting Contract. They, therefore, agree that the actual allocation of work and staffing between them will be consistent with their proposal and the provisions of SBA's regulations.

**Section 5. Limitations on Subcontracting.** Subcontracting is contemplated for the T4NG2 effort. [ACS] will not subcontract more than 49% of the contemplated workshare for the T4NG2 effort.

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**Section 7. Contract Negotiation.** The Responsible Manager will be responsible for negotiating the T4NG2 Contract, should negotiations be required by the Customer, and any other subsequent negotiations regarding the T4NG2 Contract with the Customer.

**Section 8. Ensured Performance.** The Members are each obligated independently to ensure performance of any contracts entered into by the Joint Venture and are each obligated independently to complete performance of any contracts entered into by the Joint Venture despite the withdrawal of any Member of the Joint.

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## ARTICLE IV

### FINANCIAL OPERATIONS

**Section 1. Bank Accounts.** The operating account (“Operating Account”) shall be [XXXX]. Unless otherwise determined by the Members, the Operating Account and any other bank accounts deemed necessary by the Members shall be held at financial institutions that are federally insured. In accordance with 13 CFR § 125.18(b)(2)(v), the Operating Account shall be established in the name of [ACS].

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**Section 2. Accounting.** The Managing Venturer shall keep the books of account of the Joint Venture on the accrual method in accordance with generally-accepted accounting practices consistently applied utilizing, as long as consistent with the foregoing, the accounting practices and policies of the Managing Venturer. . . .

**Section 3. Books and Records.** The Managing Venturer shall keep and maintain accounting and other administrative records including the Joint Venture's books, and any other records relating to the Joint Venture at the principal place of business of the Managing Venturer. . . . Accounting and other administrative records relating to the Joint Venture will be kept in the offices of the Managing Venturer, unless written approval to keep them elsewhere is granted by the SBA District Director or his/her designee upon written request. Upon completion of the Contract, the final records of the Joint Venture will be retained by the Managing Venturer.

**Section 4. Financial Statements and Financial Reporting.** The Managing Venturer shall produce quarterly financial statements showing cumulative contract receipts and expenditures (including salaries of the Joint Venture principals, if any). These quarterly financial statements shall be submitted to the SBA not later than forty-five (45) days after each operating quarter of the Joint Venture.

The Managing Venturer shall prepare an audited balance sheet for each fiscal year within forty-five days of the end of such fiscal year. The Managing Venturer also shall prepare an audited summary of the Joint Venture's receipts and disbursements for each fiscal year.

At the end of each contract entered into by the Joint Venture, the Managing Venturer shall prepare a project-end profit and loss statement including a statement



of final profit distribution. The project-end profit and loss statement shall be submitted to the SBA not later than 90 days after completion of the contract.

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## ARTICLE V.

### MANAGEMENT AND MANNER OF ACTING

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**Section 2. Managing Venturer.** In accordance with 13 C.F.R. § 125.18(b)(2)(ii), [American] shall be the Managing Venturer of the Joint Venture. As Managing Venturer, [American] has the power to execute all obligations delegated to the Managing Venturer by this Agreement. The Managing Venturer will make all decisions regarding the management of the Company with the exception of those requiring the consent of the Members. Meetings of the Members shall be held at the principal office of the Company or at any other place that the Managing Venturer determines. Meetings may be held by communicating simultaneously by conference telephone or similar communications equipment. The presence of the Managing Venturer shall constitute a quorum for the transaction of business at a meeting of the Members, and [American] (SDVOSBC) has unilateral control over voting in Members' meeting, except as may be otherwise specifically provided by law. Any Member may convene a meeting upon at least ten (10) business days notice to the other Member(s). A Member waives notice if before or after the meeting the Member signs a waiver of the notice which is filed with the records of the Managing Venturer, or attends the meeting in person or by proxy without objection to the lack of notice at the beginning thereof. Minutes of each meeting and a record of each decision shall be kept by an individual designated by the Managing Venturer.

**Section 3. Responsible Manager.** [American] shall select an employee of [American], after consultation with **By Light**, to act as Responsible Manager to manage performance of the T4NG2 Contract. The Responsible Manager for the Contract shall be John M. Schleifer. He is responsible for performance of the Contract, overseeing the jobsite, and reporting to and implementing the instructions of the Managing Venturer. The resume of the Responsible Manager is attached hereto as Exhibit C. The Responsible Manager shall serve at the pleasure of the Managing Venturer and may be removed at any time, with or without cause. If the Responsible Manager is removed, the Managing Venturer may replace such Responsible Manager, provided that the replacement possesses the necessary qualifications required under the Contract, satisfies applicable SBA regulations, and is approved by the Client, if such approval is required.

**Section 4. Obligations of Responsible Manager.** The Responsible Manager shall (i) allocate workshare upon receipt of a new task order under the T4NG2 Contract

in accordance with Article III, Section 1; (ii) review and approve all invoices; (iii) routinely interface with Client personnel, including the Contracting Officer, the Contracting Officer's representatives, and other stakeholders, monitor contract performance; and (iv) approve all contract modifications after consultation with the Members.

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(JVA at 2, 4-9.)

JVA Exhibit A, “General Workshare Distribution Guidelines,” reflects that American will be solely responsible for “Program Management, Oversight,” while both joint venturers will be responsible for performance and execution of: “4.1 Program Management, Strategy, Enterprise Architecture and Planning Support”; “4.2 Systems/Software Engineering”; “4.3 Software Technology Demonstration and Transition”; “4.4 Test and Evaluation”; “4.5 Independent Verification and Validation”; “4.6 Enterprise Network”; “4.7 Enterprise Management Framework”; “4.8 Operations and Maintenance”; “4.9 Cybersecurity”; “4.10 Training”; “4.11 Information Technology Facility”; and “Staffing.” (*Id.* at 16.)

ACS's proposal includes a letter, dated October 23, 2017, from the Director of SBA's All-Small Mentor-Protégé Program (ASMPP), approving the MPA between American and By Light for a three-year period until October 23, 2020, and thereafter potentially renewable for an additional three years. An e-mail chain from October 2020 between American's President and ASMPP personnel reflects that the MPA was at that time “automatically” renewed for an additional three years.

### III. Discussion

#### A. Burden of Proof

As the protested concern, ACS 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 an SDVOSB status protest pertaining to a procurement, OHA determines a joint venture's compliance with 13 C.F.R. § 128.402 as of the date of final proposal revisions. 13 C.F.R. §§ 128.500(c) and 134.1003(e)(1). Here, ACS submitted its final proposal revisions on June 12, 2023. Section II.A, *supra*. Therefore, OHA must examine ACS's eligibility as of this date, using the version of SBA regulations contemporaneously in effect.

#### C. Analysis

SBA regulations permit that a certified SDVOSB may enter into a joint venture with one or more small businesses, or with an SBA-approved mentor, for the purpose of performing an SDVOSB contract. 13 C.F.R. § 128.402(a). So long as the SDVOSB member of the joint venture is certified, “[t]he joint venture itself need not be a certified VOSB or SDVOSB.” *Id.* When

competing for an SDVOSB procurement, though, the joint venturers must enter into a written joint venture agreement (JVA) that meets the requirements set forth at 13 C.F.R. § 128.402. 13 C.F.R. §§ 128.401(b) and 128.402(c).

Here, the record reflects that American, a certified SDVOSB, owns 51% of ACS and is the Managing Venturer. Section II.D, *supra*. The other joint venturer, By Light, is American's SBA-approved mentor under the ASMPP. *Id.* The key question presented, then, is whether ACS's JVA meets the requirements for SDVOSB joint ventures specified at 13 C.F.R. § 128.402. Having reviewed the JVA, I find that ACS has persuasively shown that its JVA is compliant with 13 C.F.R. § 128.402, and thus, I must deny the protest. ACS is an eligible SDVOSB joint venture for this procurement.

Protestor questions the validity of ACS's JVA, highlighting that ACS was established in 2018, whereas the RFP was not issued until March 2023. Section II.B, *supra*. ACS counters that its joint venturers updated the JVA in April 2023, to more specifically delineate American's and By Light's respective responsibilities for the T4NG2 procurement. Section II.C, *supra*.

Furthermore, when, as here, the underlying procurement is indefinite in nature, SBA regulations are less stringent as to the level of detail that must be included within a JVA. *VSBC Protest of ThunderYard Liberty JV II, LLC*, SBA No. VSBC-332-P, at 11-12 (2024). The regulations thus provide that:

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 major equipment, facilities, and other resources to be furnished by each party to the joint venture, without a detailed schedule of cost or value of each, or in the alternative, specify how the parties to the joint venture will furnish such resources to the joint venture once a definite scope of work is made publicly available[.]

13 C.F.R. § 128.402(c)(6). And similarly:

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).

ACS's JVA meets the requirements of 13 C.F.R. § 128.402. The JVA includes a general description of the “anticipated major equipment, facilities, and other resources” to be furnished by American and By Light, and broadly describes the source of labor and the respective contract responsibilities of each joint venturer, in compliance with § 128.402(c)(6) and (7). Section II.D, *supra*. In accordance with § 128.402(c)(2), the JVA designates American, a certified SDVOSB, as Managing Venturer of ACS, and designates a named employee of American, Mr. Schleifer, as Responsible Manager with ultimate responsibility for performance of the T4NG2 contract. *Id.* The JVA properly obligates the joint venturers to ensure performance of the contract in the event of withdrawal of the other joint venturer, in accordance with 13 C.F.R. § 128.402(c)(8). *Id.* The JVA requires American to retain records upon completion of the contract and to prepare quarterly financial and project-end profit and loss statements to SBA within the allotted time, in accordance with § 128.402(c)(10)-(12). *Id.* Furthermore, in accordance with § 128.402(c)(9), the JVA appropriately provides that, unless otherwise authorized by an SBA District Director, administrative records will be kept at American's offices. *Id.* Accordingly, ACS has shown that its JVA satisfies the requirements of 13 C.F.R. § 128.402.

Protestor's remaining contentions are devoid of merit. Protestor complains that ACS's DSBS profile does not identify ACS as an SDVOSB joint venture, and alleges that the MPA between American and By Light may have expired in October 2023. Section II.B, *supra*. SBA regulations, however, contain no requirement that an SDVOSB joint venture must be identified as such in a DSBS profile, and ACS reasonably explains that lacks control over information in the DSBS profile in any event. Section II.C, *supra*. ACS disputes that the MPA between American and By Light expired in October 2023, and SBA's list of active ASMPP participants still includes American and By Light.<sup>3</sup> Moreover, even if Protestor were correct that the MPA has now expired, there is no dispute that the MPA was in effect on June 12, 2023, the applicable date for assessing eligibility. Section III.B, *supra*. Any subsequent expiration of the MPA is thus not relevant to whether ACS was an eligible SDVOSB joint venture as of June 12, 2023.

#### IV. Conclusion

ACS has proven its eligibility as an SDVOSB joint venture by a preponderance of the evidence. The protest therefore is DENIED. This is the final agency action of the U.S. Small Business Administration. 15 U.S.C. § 657f(f)(6)(B)(i); 13 C.F.R. § 134.1007(i).

KENNETH M. HYDE  
Administrative Judge  
Administrative Judge

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<sup>3</sup> Active mentor-protégé agreements | U.S. Small Business Administration (sba.gov) (published Mar. 5, 2024.)