

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

VSBC Protest of:

Blue Water Thinking, LLC,

Protestor,

Re: GoldPath Communications JV, LLC

Solicitation No. 36C10G22R0005

U.S. Department of Veterans Affairs

SBA No. VSBC-407-P

Decided: October 24, 2024

APPEARANCES

Nicole D. Pottroff, Esq., Shane J. McCall, Esq., John L. Holtz, Esq., Gregory P. Weber, Esq., Stephanie L. Ellis, Esq., Koprince McCall Pottroff, LLC, for Protester Blue Water Thinking, LLC

H. Todd Whay, Esq., Baker, Cronogue Tolle & Werfel, LLP, for GoldPath Communications, JV, LLC

DECISION¹

I. Introduction and Jurisdiction

On March 27, 2024, Blue Water Thinking, LLC (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of GoldPath Communications JV, LLC (GoldPath), in connection with Department of Veterans Affairs (VA) Solicitation No. 36C10G22R0005. Protestor contends that. 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. Protester filed the protest within five business days of receiving notification that

¹ This decision was originally issued under the confidential treatment provision of 13 C.F.R. § 134.205. OHA received one or more requests for redactions and considered any requests in redacting the decision. OHA now publishes a redacted version of the decision for public release.

GoldPath was the apparent awardee, so the protest is timely. 13 C.F.R. § 134.1004(a)(2)(i). Accordingly, this matter is properly before OHA for decision.

II. Background

A. The Solicitation and Protest

On September 15, 2022, the VA issued Solicitation No. 36C10G22R0005 (the Solicitation) for Program Support Integration (PSI) functions. The Contracting Officer (CO) issued the procurement as a 100% SDVOSB set-aside and designated North American Industry Classification System (NAICS) code 541611 Administrative Management and General Management Consulting Services, with a corresponding \$21.5 million annual receipts size standard as the appropriate code. (The Solicitation listed \$16.5 million, but the higher figure was the actual code as of that date. It is now \$24.5 million.) The VA intends to award one Indefinite Delivery Indefinite Quantity (IDIQ) contract. Initial offers were due October 17, 2022. Final proposal revisions were due August 31, 2023. On February 26, 2024, offerors were notified that GoldPath was the apparent successful offeror.

On March 4, 2024, Protestor filed the instant protest against GoldPath's SDVOSB status and size status.² Protestor argues GoldPath is not an eligible SDVOSB. GoldPath is a mentor-protégé joint venture between Pathways 2 Solutions, Inc. (Pathways) the protégé and JR Reingold & Associates, Inc. (JRR) the mentor. Protestor alleges the responsible manager for the contract is a JRR employee. Protestor further alleges GoldPath's joint venture agreement (JVA) is not in compliance with the applicable SBA regulation. (Protest, at 1-2.)

Protestor notes GoldPath's SAM.gov registrations list the same address as JRR, 1321 Duke St., Alexandria, VA. Protestor alleges it learned that JRR employees would be program executive and responsible/program manager for the contract. Pathways address is a single-family house in Michigan, and another in an apartment in Tennessee. Protestor further alleges Pathways status as a corporation was listed as "Inactive-Revoked" with the Tennessee Secretary of State from October 11, 2021 to June 15, 2022. Protestor asserts this means Pathways was not an active entity when SBA approved its mentor-protégé agreement with JRR. As such, it had ceased to exist as an entity and was not eligible to be a protégé. Therefore, the mentor-protégé agreement was invalid at the time of approval and the mentor-protégé exception for affiliation does not apply. (*Id.*, at 3-4, citing *Size Appeal of Hallmark-Phoenix 8, LLC*, SBA No. SIZ-5046 (2009).)

Protestor alleges Pathways and JRR are affiliated both on a contract-specific basis and generally. JRR will control the joint venture and the contract and perform more than the allowed percentage of the work. Protestor alleges GoldPath's proposed performance plan violates SBA's SDVOSB joint venture regulations. A joint venture to perform an SDVOSB set aside contract must contain a provision designating the SDVOSB concern as the managing venturer of the joint venture and designating a named employee of the SDVOSB as the manager with ultimate responsibility for contract performance. (*Id.*, at 5, citing 13 C.F.R. § 128.402(c)(2).)

² The size protest was referred to the appropriate SBA Area Office.

Protestor further points to the regulations which require the SDVOSB managing venturer be responsible for controlling day-to-day managing and contract administration of the joint venture and the non-SDVOSB partners can only participate in corporate governance as is commercially customary. (*Id.*, citing 13 C.F.R. § 128.402(c)(i).) Further, the Responsible Manager must be an employee of the protégé and cannot be employed by the mentor and become an employee of the protégé for the purposes of performance of the joint venture. (*Id.*, at 5-6, citing 13 C.F.R. § 128.402(c)(2)(ii).) Any joint venture managers not employed by the protégé must report to and be supervised by the Responsible Manager. (*Id.* at 6, citing 13 C.F.R. § 128.402(c)(2)(iii).) Further, the SDVOSB protégé must receive profits from the joint venture commensurate with the work performed. (*Id.*, citing 13 C.F.R. § 128.402(c)(3).) The joint venture's accounting and administrative records must be kept in the office of the managing venturer, and all final records must be retained by the managing venturer. (*Id.*, citing 13 C.F.R. § 128.402(c)(9)&(10).) Finally, all SDVOSB mentor-protégé joint ventures must follow limitations on subcontracting and performance of work requirements. (*Id.* citing 13 C.F.R. § 128.402(d).)

Protestor asserts GoldPath is not compliant with all of these rules. Protestor alleges, based upon information from one its own employees, that JRR employees would be program executive and responsible/program manager. GoldPath's physical address is JRR's address, not Pathways, and so it does not plan to meet the recordkeeping requirements. Protestor alleges Pathway does not have the experience, personnel or capabilities to perform 40% of the work under the Solicitation, let alone manage it. Protestor further asserts given the number of vital personnel JRR is planning to provide, GoldPath cannot meet the performance limitations. (*Id.*, at 7.)

Protestor asserts JRR controls both GoldPath and Pathways. Protestor alleges Pathways lacks the capacity to perform this contract. Pathways brings nothing to the table but its size and socioeconomic status. The joint address indicates JRR controls the joint venture, and Protestor alleges JRR openly admits it will be providing the joint venture's management. Protestor alleges Pathways and JRR work together extensively but provides no specific examples. (*Id.*, at 7-9, citing *Computer World Svcs. Corp.*, B-419956.18 (Nov. 23, 2021).)

Finally, Protestor alleges that the mentor-protégé agreement was invalid at the time of its approval, because Pathways was not an active entity in its domiciled state, had been dissolved, was non-existent, and therefore was not eligible to be a protégé. (*Id.*, at 9.)

B. GoldPath's Response

On March 27, 2024, GoldPath responded to the Protest. GoldPath first refers to the Solicitation as identifying the Contract Program Manager as the sole Key Personnel. This manager is performing the day-to-day management of overall contract operations and is the single point of contact. (Response at 3, citing PWS at 43-44.)

GoldPath asserts Pathways was incorporated in 2012 in Tennessee, an SBA certified SDVOSB, whose current registration expires August 24, 2026. Michael Jones, a Service-Disabled Veteran, is its 100% owner. On June 21, 2021, Pathways and JRR applied to SBA's

mentor-protégé program by submitting a mentor-protégé agreement and other documents. On October 25, 2021, SBA approved the mentor-protégé agreement. Pathways employees work remotely on-site or at the client. Pathways thus avoids the unnecessary overhead of office space. Pathways asserts it has performed numerous prime contracts and subcontracts related to the work required by this Solicitation. (*Id.*, at 3-4.)

On October 11, 2021, due to a clerical error by Pathways' accountant, the Tennessee Division of Business Services listed the company as inactive. Pathways was reinstated on June 15, 2022, and its inactive status changed to "No Value", after reinstatement, the lapse is treated as if it never occurred. (Response at 4, Exh. 2.)

The Mentor-Protégé Agreement (MPA) lists Pathways address as 6000 Ammonette Dr., Suite 6207, Franklin, TN. There is no reference to a Michigan address and GoldPath asserts Pathways has never used it in any filings. (*Id.*, at 5.)

JRR and Pathways founded GoldPath in 2021 as an unpopulated joint venture under the mentor-protégé program. On May 21, 2022, the parties executed a Second Amended and Restated Operating Agreement and a Second Amended and Restated Joint Venture Agreement, with an addendum specific to the Solicitation. (*Id.*, at 5, Exh. 6, 7, 8, Attachments A and B.)

The JVA includes the following terms:

- Pathways is GoldPath's Managing Venturer. (JVA, § 2.0)

- Mr. Jones, Pathways owner, is the Responsible Manager. (JVA, § 2.1.)

- Pathways owns 51% of GoldPath, JRR 49%.

- Pathways and Mr. Jones are responsible for day-to-day contract management and administration. (JVA, § 7.0.)

- Pathways has the right of first refusal for any position required by the contract. (JVA, § 8.0)

- Pathways will perform at least 40% of the work and it will be more than administrative or ministerial. (JVA, § 9.0.)

- Pathways and Mr. Jones are responsible for contract negotiation. (JVA, § 10.0.)

- All accounting and administrative records will be kept and maintained at the Pathways office. (JVA, § 12.0)

- Pathways may amend, supplement or modify the agreement

· The principal office is 6000 Ammonette Dr., Franklin, TN, also the address of GoldPath's SAM.gov registration and the address of its Responsible Member, Mr. Jones (§ 2.5.)

(*Id.*, at 6-7.)

GoldPath asserts its Alexandria, VA office is additional space made available by the mentor for meetings close to the VA office which handles the PSI program. (*Id.* at 7.)

GoldPath asserts Attachment A to the JVA addendum addresses major equipment, facilities and other resources, including what GoldPath anticipates it requires from its JV partners. Because this is an IDIQ contract for services, it is reasonable to omit major equipment details. (*Id.*, at 7, citing 13 C.F.R. § 128.402(c)(6); *VSBC Protest of ThuderYard Liberty JV II, LLC*, SBA No. VSBC-264, at 11 (2024). Attachment B addresses source of labor and performance work requirements. It lists the general types of tasks each joint venture will perform. Pathways will perform work in **[designated areas]**. JRR will provide services in **[other designated areas]**. GoldPath estimates Pathways will have **[a number of]** full time equivalents (FTES) and JRR will have **[a different number]**. Subcontractors are anticipated to have **[a number of]** FTES. (*Id.*)

Attachment B also provides GoldPath will meet the limitations on subcontracting restriction, requiring that the 51/49 workshare requirement is an absolute and will be followed at all times. It also provides the Pathways will perform at least 40% of the work performed by GoldPath. Pathways is working to hire employees of the incumbent and estimates it will hire **[a designated number]**. (*Id.*)

GoldPath submitted its final revised proposal on August 31, 2023. GoldPath proposes for the sole key personnel position, Contract Program Manager, an individual who has worked for Pathways as a consultant since 2022 and has submitted a commitment letter agreeing to work for Pathways in this position. He will perform day-to-day management of the overall contract support operations, ultimately responsible for contract performance. He will be the single point of contact for any matter related GoldPath's contract performance. (*Id.*, at 9-10, citing PWS at 43-44, Tech Proposal at 7, 21 (Table 5) 61.)

Mr. Jones will work as Corporate Monitor, representing GoldPath's executive leadership and managing quality control. (*Id.* at 10, citing Tech Proposal at 66.) Another Pathways employee will serve as Veteran Perspective Lead. The two JRR employees identified by Protestor as program executive and responsible/program manager for the contract will serve as Deputy Contract Program Manager and Transition Manager. They will report to the Contract Program Manager who will report to Mr. Jones. (*Id.*, at 11, citing Tech Proposal at 7.)

GoldPath asserts Pathways has worked on the incumbent contract as a subcontractor and has received an SBA Certificate of Competency for this procurement.

GoldPath maintains it meets the regulatory requirements for an SDVOSB joint venture. Pathways owns 51% of the company (JVA, § 3.0) is Managing Venturer (JVA, § 2.0) and Mr.

Jones is GoldPath's Responsible Manager (JVA, § 2.1). All accounting and administrative records are kept in Pathways' office (JVA, § 12.0) as well all final records (JVA, § 13.0). The Franklin, TN address is in the JVA (§ 19.1) and is Pathways' principal address. The Franklin address is also GoldPath's SAM.gov address, and the address in GoldPath's Operating Agreement. (*Id.*, at 14-15, citing Response Ex. 2.) Mr. Jones submitted a declaration which states all GoldPath and Pathways records are kept at the Franklin address. (*Id.*, at 15.)

GoldPath asserts Pathways will control the contract. Mr. Jones, the Pathways CEO, will be the Responsible Manager responsible for contract performance, overseeing the jobsite and reporting to and implementing the instruction of the joint venture. (*Id.*, citing JVA §§ 2.1, 7.0.) The JRR employees identified by Protestor as controlling the contract will report to Mr. Jones and [REDACTED], both Pathways employees. (*Id.*, citing Tech Proposal at 7, 21 (Table 5), 61, 66.)

GoldPath further asserts Pathways will perform at least 40% of the work GoldPath will perform, and GoldPath will perform 84% of the contract work, i.e., [REDACTED number] estimated FTEs. Pathways will perform work in three of four functional areas, employing the only Key Personnel position of Contract Program Manager. (*Id.*, Response Exhs. 8, 10, and 11.)

GoldPath asserts Pathways has the relevant experience necessary to perform this contract. Pathways has performed numerous prime and subcontracts related to the work required here. Pathways is a subcontractor under the incumbent contract. Pathways asserts it is providing substantive services as a subcontractor under the incumbent contract similar to the services required here. (*Id.*, at 16-18, citing Jones Declaration ¶¶ 11, 13, Tech Proposal at 54, 56, 58-9, *Size Appeal of Spinnaker Joint Venture LLC*, SBA No. SIZ-5964 (2018).)

Mr. Jones owns 100% of Pathways, and its work with JRR accounts for only 18% of its revenue. Its staff usually works from home or its customer's location. JRR does not control Pathways. Any assistance Pathways receives from JRR is consistent with the SBA's mentor/protégé program. (*Id.*, at 18-19, citing *Size Appeal of Hendall, Inc.*, SBA No. SIZ-5888, at 11 (2018).)

GoldPath asserts Pathways is an eligible SDVOSB. Pathways is a Tennessee corporation. Pathways was temporarily listed as inactive by the Tennessee Division of Business Services due to an administrative error on October 11, 2021, and reinstated as active on June 15, 2022. The Tennessee Secretary of State issued a Certificate of Existence/Authorization showing it was active and in good standing since February 28, 2012. (*Id.*, at 19, Exh. 14.) GoldPath argues that under Tennessee law, a reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred. The statute does not stand for the proposition that once a corporation's charter is revoked it no longer exists and any acts by it are invalid. Reinstatement validates the corporation's existence and privileges from the date of revocation. (*Id.*, at 19-20, citing T.C.A. § 48-24-203(c); *Loveday v. Cate*, 854 S.W.2d 877, 880 (Tenn. App. 1992).)

The date for determining SDVOSB eligibility for a joint venture's compliance with 13 C.F.R. § 128.402(c) is the date of final proposal revision. 13 C.F.R. § 134.1003(e)(1). GoldPath submitted its final revised proposal on August 31, 2023, well after Pathways was reinstated as a corporation in good standing. Protestor's argument that GoldPath's MPA was invalid because Pathways was not an active corporation is without merit. GoldPath argues Protestor's reliance upon *Size Appeal of Hallmark-Phoenix 8, LLC*, SBA No. SIZ-5046 (2009) is misplaced. There the issue was whether a firm was a “former affiliate” of a challenged concern under 13 C.F.R. § 121.104(d)(4). This category includes a dissolved firm. OHA concluded the company was not dissolved because it had not filed its final documents signaling dissolution. The case has no applicability here. The administrative issue with Pathways Tennessee registration was resolved well before GoldPath submitted its proposal, so there is no defect in the MPA. Finally, approval of MPAs is solely within the purview of SBA's Associate Administrator for Business Development (AA/BD) or his/her designee, and OHA has no jurisdiction to review them. (*Id.*, at 21, citing 13 C.F.R. §§ 125.9(e)(3), *Size Appeal of DCS Night Vision JV, LLC*, SBA No. SIZ-4997, at 8 (2008).)

III. Discussion

A. Burden of Proof and Date of Eligibility

As the protested firm, GoldPath 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 Protestor and GoldPath 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, GoldPath submitted its final proposal revisions August 21, 2023 and thus, I must determine GoldPath's compliance with the joint venture agreement requirements as of that date.

B. Analysis

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 CFR § 128.402(a). Pathways is a certified SDVOSB, with an expiration date of August 24, 2026. CF, Exhs. 18, 24, Response to Protest at 4, Jones Declaration at 1.

Protestor argues that GoldPath is not an eligible joint venture, because Pathways, the SDVOSB, was not a valid corporation at the time the SBA approved the Mentor/Protégé agreement. This argument is meritless. Pathways, through a clerical error, was temporarily listed as inactive by the Tennessee Division of Business Services. Pathways corrected the error and

was reinstated. Tennessee law provides that once reinstated, the reinstatement relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if the dissolution had never occurred. T.C.A. § 48-24-203. The statute does not stand for the proposition that once a corporation's charter is revoked that corporation no longer exists and acts by it are invalid. The reinstatement validates the corporation's existence and privileges from the date of revocation. *Loveday v. Cate*, 854 S.W.2d 877, 880 (Tenn. App. 1992). As GoldPath argues, Protestors' reliance upon *Size Appeal of Hallmark-Phoenix 8, LLC*, SBA No. SIZ-5046 (2009) is misplaced. That case dealt with the issue of whether a concern was a “former affiliate,” it is not applicable here.

Accordingly, Pathways' clerical error, once rectified, had no effect on its existence or ability to conduct business, and thus Protestor's argument the MPA is invalid is meritless.

Further, GoldPath properly notes that approval of MPAs is solely within the purview of SBA's Associate Administrator for Business Development (AA/BD) or his/her designee, and OHA has no jurisdiction to review them. 13 C.F.R. § 125.9(e)(3), *Size Appeal of DCS Night Vision JV, LLC*, SBA No. SIZ-4997, at 8 (2008).

Protestor argues that JRR controls Pathways, but these are mere assertions without support. The assertion that there are common addresses for the concerns are refuted by Mr. Jones's sworn declaration, explaining the concerns actual addresses and that most of Pathways' employees telework or work at customers' place of business. SBA will always give greater weight to specific, signed sworn evidence than to general unsupported allegations. Jones Declaration at 1, *Size Appeal of Crew Training Intl., Inc.* SBA No. SIZ-6128 (2021).

The regulations require every joint venture agreement to include certain required provisions. 13 C.F.R. § 128.402(c). Protestor maintains GoldPath's JVA lacks these.

- There must a provision setting forth the purpose of the joint venture. 13 C.F.R. § 128.402(c)(1). GoldPath's JVA does this at § 1.
- The certified SDVOSB must be designated the Managing Venturer, and a named employee of that concern must be designated as Responsible Manager, responsible for day-to-day management and administration. 13 C.F.R. § 128.402(c)(2). The JVA designates Pathways as the Managing Venturer, and Mr. Jones as Responsible Manager. JVA, §§ 2.0, 2.1. The sole key employee, the Contract program Manager, will be a Pathways employee who has not been a JRR employee. The documentary evidence thus directly contradicts Protestor's assertions that JRR employees hold these posts. GoldPath's JVA complies with the regulation.
- The SDVOSB must own at least 51% of the joint venture entity. 13 C.F.R. § 128.402(c)(3). Pathways owns 51% of GoldPath. JVA, § 3.
- The SDVOSB must receive profits commensurate with the work performed. 13 C.F.R. § 128.402(c)(4). The JVA provides for this. JVA, § 4.

· There must be established a bank account in the joint venture's name, requiring the signature or consent of all parties for any payments. 13 C.F.R. § 128.402(c)(5). The JVA provides for such an account. JVA, § 5.

· In the case of indefinite contracts, such as here, there must be a general description of the anticipated major equipment, facilities and resources to be furnished by each party. It need not be a detailed list. 13 C.F.R. § 128.402(c)(6). The JVA addresses this at § 6, and then at Attachment A to Addendum No 1, identifying in a general way the equipment and resources each venturer will contribute to contract performance. *VSBC Protest of ThuderYard Liberty JV II, LLC*, SBA No. VSBC-264, at 11 (2024); *CVE Protest of Eagle Home Medical Corp.*, SBA No. CVE-238-P (2022).

· The JVA must specify the responsibilities of the parties with regard to negotiation of the contract, source of labor and contract performance. If the contract is indefinite in nature, as is the case here, the JVA must have a general description of how these responsibilities will be met. 13 C.F.R. § 128.402(c)(7). Here, Pathways and Mr. Jones are responsible for contract negotiation. JVA, § 10.0. Pathways, as Managing Venturer, will be responsible for contract oversight. JVA, § 7. The source of labor will be a blended pool of employees of both parties. JVA, § 8. Because the contract is indefinite, only a general description is necessary, and the JVA here meets this test. *VSBC Protest of Beshenich Muir & Assoc., LLC, et al*, SBA No. VSBC-399-P (2024).

· The JVA must obligate all parties to ensure performance. 13 C.F.R. § 128.402(c)(8). Here, this is provided for in the JVA at § 11.

· The JVA must designate that accounting and administrative records be kept in the office of the SDVOSB managing venturer, and final records be retained by that firm. 13 C.F.R. § 128.402(c)(9) & (10). This JVA provides for this. JVA, §§ 12, 13.

· The JVA [must] provide for quarterly financial statements and a project end profit and loss statement. 13 C.F.R. § 128.402(c)(11) & (12). This JVA does so. JVA, §§ 14 and 15.

The JVA also provides that Pathways will perform at least 40% of the work performed by GoldPath on this procurement, and it will perform more than ministerial or administrative work. JVA § 9.0, Addendum, Attachment B. This meets the limitations on subcontracting requirements of the regulation. 13 C.F.R. § 128.402(d).

I conclude that the Protest here is based upon mere unsupported allegations. Upon examination of the record, including the Joint Venture Agreement and its Addenda, it is clear that GoldPath is a carefully constructed joint venture, which meets all the requirements of the applicable regulation. There is nothing in the record to support the allegation that JRR controls Pathways and GoldPath. Mr. Jones is sole owner of Pathways, and there are no indicia of

affiliation with JRR. GoldPath's JVA meets all the regulatory requirements, and thus GoldPath is an eligible SDVOSB joint venture. I must DENY the protest.

IV. Conclusion

For the above reasons, Blue Water Thinking's protest is DENIED. 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).

CHRISTOPHER HOLLEMAN
Administrative Judge