U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Richard Group, LLC

File: B-422701.2

Date: September 18, 2025

Thomas O. Crist, Esq., Benesch, Friedlander, Coplan & Aronoff LLP, for the protester.
Aron C. Beezley, Esq., Nathaniel J. Greeson, Esq., Eugene J. Benick, Esq., and Winni Zhang, Esq., Bradley Arant Boult Cummings LLP, for Billy W. Jarrett Construction Company, Inc., the intervenor.
Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency.
Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging protester's elimination from the competition is denied where the protester was not a certified service-disabled veteran-owned small businesses at the time of award, as required by the solicitation.

DECISION

Richard Group LLC, of Chicago, Illinois, protests its exclusion from the competition and the award of a contract to Billy W. Jarrett Construction Company, Inc. (Jarrett), of Prattville, Alabama, under request for proposals (RFP) No. 36C77624R0087, issued by the Department of Veterans Affairs (VA) for construction of an outpatient clinic. The protester argues that the agency improperly eliminated Richard Group from the competition.

We deny the protest.

BACKGROUND

On May 10, 2024, the VA issued the RFP as a full and open solicitation, seeking proposals for the construction of a replacement outpatient clinic at the Coast Guard Air Station Cape Cod, Massachusetts. Contracting Officer's Statement (COS) at 1, 3.[1] On

[1] Citations to the record refer to the documents' internal Adobe PDF pagination.

June 25, before the deadline for submission of proposals, a firm protested the terms and conditions of the solicitation with our Office, asserting that the procurement should have been set aside for competition among service-disabled veteran-owned small businesses (SDVOSBs). *KEE Sols., LLC*, B-422701, Aug. 2, 2024 (unpublished decision). In response, the agency advised our Office that it intended to take corrective action; specifically, the agency proposed to "publish an amendment revising the RFP to be set aside for SDVOSB concerns" and make other changes to the evaluation criteria. *Id.* at 1. The agency would then permit submission of proposals and provide offerors that had already submitted proposals "an opportunity to submit revised proposals."[2] *Id.* Based on the agency's proposed corrective action, we dismissed the protest as academic on August 2. *Id.*

On September 18, the agency issued amendment 8 to the solicitation. COS at 1. The amendment replaced the initial solicitation entirely. *Id.* The stated purposes of the amendment were to, among other things, "reopen" the competition and "change the RFP from unrestricted to a SDVOSB set aside." Agency Report (AR), Exh. 2, RFP at 1. As amended, the RFP contemplated making award to the proposal that represented the best value, considering only past performance and price. *Id.* at 11. Past performance was significantly more important than price. *Id*.

By the October 3 deadline for proposal submission, the VA received proposals from only Richard Group and Jarrett. COS at 1. The VA subsequently issued two more amendments to the solicitation, each time providing an updated wage determination and inviting revised price proposals. *Id.* at 1-2. Final proposal revisions were due by March 25, 2025. *Id.* at 2.

After reviewing the offerors' representations and certifications in the System for Award Management, the contracting officer emailed Richard Group to inquire about the firm's status as an SDVOSB. *Id.* The protester advised the contracting officer that "[e]ntering 2025," the firm was "a large business" but "for projects submitted originally in 2024 through DEC 31st, we are considered a small business SDVOSB per SBA [Small Business Administration] guidelines." AR, Exh. 8, Emails at 4. The VA ultimately found that Richard Group was not eligible for award under the solicitation: "Richard Group was not SDVOSB at time of award. VAAR [VA Acquisition Regulation] 852.219-73 requires SDVOSBs to be eligible at time of submission of offerors and at time of award." AR, Exh. 9, Notice of Award at 2. The VA therefore awarded the contract to Jarrett for $21.8 million. *Id.*

This protest followed.

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[2] At the time, Richard Group and Jarrett were the only firms to submit proposals responding to the RFP.

DISCUSSION

Richard Group argues that the agency unreasonably eliminated its proposal from consideration for award. Protest at 4-10. The agency responds that the protester was properly eliminated from the competition because the firm was not an SDVOSB at the time of contract award, as required by the solicitation. Memorandum of Law (MOL) at 7-12. We have reviewed the protester's arguments, and although we do not specifically address every iteration, we find that none affords a basis to sustain the protest.

According to the protester, an SDVOSB's eligibility for award is dictated by the status of the offeror at the time of proposal submission. Protest at 5-9. That is, because Richard Group was an SDVOSB at the time the firm submitted its initial proposal under the solicitation, it remained eligible for award in 2025 despite the fact that--by its own admission--Richard Group was an SDVOSB only "up through 2024." *Id.* at 2.

Here, the VA set aside the procurement for SDVOSB concerns pursuant to the Veterans First Contracting Program, as implemented in subpart 819.70 of the VAAR. *See* RFP at 2 ("In accordance with 38 U.S.C. § 8127 (Public Law 109-461), this project is a competitive Service-Disabled Veteran – Owned Small Business (SDVOSB) Set-Aside."). With respect to the eligibility of SDVOSB concerns to compete for set-aside awards, the regulation provides the following:

> (b) At the time of submission of offers/quotes, ***and at the time of award of any contract***, the offeror must represent to the contracting officer that it is a -
>
> (1) SDVOSB or VOSB eligible under this subpart;
> (2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the acquisition; and
> (3) Listed as a verified SDVOSB/VOSB on the VA's Vendor Information Pages (VIP) at https://www.vetbiz.va.gov/vip/.

VAAR 819.7003 (emphasis added).

To implement these regulatory requirements, the amended RFP included VAAR clause 852.219-73, VA Notice of Total Set-Aside for Certified Service-Disabled Veteran-Owned Small Businesses (Jan 2023) (Deviation). RFP at 69-72. The clause states, in relevant part, "[a]ny award resulting from this solicitation shall be made to a certified SDVOSB listed in the SBA certification database who is eligible at the time of submission of offer(s) and at the time of award." *Id.* at 70.

Richard Group acknowledges that the solicitation included VAAR clause 852.219-73. Protest at 5. The protester argues, however, that the "plain reading of the VAAR section cited to and relied on focuses on eligibility," and the "SBA determines a company's size as of its initial offer date." *Id.* Therefore, citing "SBA Rules," the protester asserts that even under this solicitation, "an SDVOSB is eligible (and remains eligible) for an award so long as it was an SDVOSB at the time it made its proposal." *Id.* at 7.

In response, the VA asserts it "does not dispute that the SBA's regulations govern whether a firm qualifies as an SDVOSB." MOL at 9. Instead, the agency argues that the VA relied on its independent authority under the Veterans First Contracting Program to set aside this solicitation for SDVOSB concerns, and that the associated eligibility requirements under the VAAR "go beyond the SBA's determination of eligibility."[3] *Id.* at 9 n.6. According to the agency, VAAR clause 852.219-73 is properly interpreted to authorize award to a concern that is not only an SDVOSB at the time of proposal submission, but the firm must also remain an SDVOSB at the time of award. *Id.* at 12 n.7.

Where parties disagree as to the interpretation of a regulation, our analysis begins with the language of the disputed provision. *TLS Joint Venture, LLC*, B-422275, Apr. 1, 2024, 2024 CPD ¶ 74 at 3. If the regulation has a plain and unambiguous meaning, the inquiry ends with that plain meaning. *Coast to Coast Comput. Prods.*, B-419624.2, June 28, 2021, 2021 CPD ¶ 237 at 10. Further, it is a fundamental canon of interpretation that words contained with the regulation, unless otherwise defined, will be interpreted consistent with their ordinary, contemporary, common meaning. *See ESCO Marine, Inc.*, B-401438, Sept. 4, 2009, 2009 CPD ¶ 234 at 5.

Here, we find that the VAAR clause 852.219-73 unambiguously provides that an offeror is only eligible for award if it is a verified SDVOSB concern at the time of proposal submission and remains a verified SDVOSB concern at the time of award. We note that the ordinary and common meaning of the phrase "a certified SDVOSB listed in the SBA certification database who is eligible at the time of submission of offer(s) and at the time of award" provides for award eligibility to be determined based on status at the time of proposal submission and again at the time of award. The protester does not argue otherwise; instead, Richard Group merely points to other SBA regulations that define eligibility for award in different ways. Comments at 4-5.

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[3] As the agency notes, VAAR clause 852.219-73 specifically provides that the Veterans First Contracting Program "and this clause, takes precedence over any inconsistencies" with the SBA's regulations regarding SDVOSBs. MOL at 8. The protester denies that this is relevant to the analysis, because nothing in the clause "provides that the VAAR takes precedence over the Code of Federal Regulations," seemingly suggesting that the VAAR is mere agency internal guidance. Comments at 4. The protester's argument here makes little sense, given that the VAAR--like the SBA's regulations--has also been properly promulgated and codified within the Code of Federal Regulations. *See* 48 C.F.R. Chapter VIII; 48 C.F.R. § 801.301(a)(1) ("VA implementation and supplementation of the FAR is issued in the Veterans Affairs Acquisition Regulation (VAAR) under authorization and subject to the authority, direction, and control of the Secretary of Veterans Affairs."). As such, we find no merit to this argument.

In the protester's view, the regulation need not refer to the time of award at all, because eligibility is determined once, at the time of proposal submission only. *See* Comments at 5. In other words, adopting the protester's position and interpreting the phrase to mean that an SDVOSB concern remains eligible for award based only on its status at the time of proposal submission would improperly render superfluous the regulation's language referring to eligibility "at the time of award." *See J. Caye Premier Dining, Inc.*, B-421890, Nov. 2, 2023, 2023 CPD ¶ 244 at 5 ("It is a cardinal principle of statutory construction that a statute ought to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.").

The protester argues that applying the regulation as the VA has here "would have a chilling effect on the bid process" and would mean that SDVOSBs "would have to stop responding to solicitations on an arbitrary date" or risk spending funds on a proposal for a procurement that may be awarded after the SDVOSB is no longer eligible. Comments at 5 n.3. We do not find that this argument provides us with a basis to sustain the protest. Our role in resolving protests is to review whether a procurement action constitutes a violation of a procurement statute or regulation; our Office does not weigh the burdens and benefits of a particular procurement regulation. *TLS Joint Venture, LLC*, *supra* at 5.

Here, the offerors submitted final proposal revisions on March 25, 2025, and the VA ultimately awarded the contract on June 12. COS at 2; MOL at 11. The protester concedes that, as of January 1, 2025, it is no longer an SDVOSB. *See* Protest at 2; *see also* AR, Exh. 7, Richard Group 2025 System for Award Management Certifications and Representations at 29 (representing that Richard Group is not a small business concern). The solicitation, set aside for SDVOSB concerns under the Veterans First Contracting Program and incorporating VAAR clause 852.219-73, required offerors to be certified as an SDVOSB at the time of award to be eligible for the contract. RFP at 69-72. As a result, we find no basis to disagree with the agency's determination that Richard Group was not eligible for award under this solicitation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel