



DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Decision

Matter of: Millbrook Support Services, Inc.

File: B-424107

Date: February 23, 2026

Meghan F. Leemon, Esq., Timothy F. Valley, Esq., Eric A. Valle, Esq., and Kristine E. Crallé, Esq., Piliero Mazza, PLLC, for the protester.
Natica C. Neely, Esq., Department of Veterans Affairs, for the agency.
Michael P. Grogan, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Challenge to agency's decision to rescind an order issued to the protester because the agency subsequently found the protester was not an eligible service-disabled veteran-owned small business is denied where the agency's decision was consistent with applicable regulations and the terms of the solicitation.

DECISION

Millbrook Support Services, Inc., a service-disabled veteran-owned small business (SDVOSB) of Manhasset, New York, protests the Department of Veterans Affairs' (VA) decision to rescind an order issued to the firm, under request for quotations (RFQ) No. 36C25625Q0397, for nursing services. The protester challenges the agency's decision to rescind the award based on the VA's subsequent determination that the protester was not an eligible SDVOSB at the time of award.

We deny the protest.

BACKGROUND

The agency issued the solicitation on April 1, 2025, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 (Federal Supply Schedules) and part 12 (Acquisition of Commercial Products and Commercial Services), to SDVOSB firms holding the General Service Administration's (GSA) multiple award federal supply schedule (FSS) contract under North American Industry Classification System (NAICS)

code 561320 (Temporary Help Services). Agency Report (AR) Exh. 2, RFQ at 1.¹ The solicitation contemplated the issuance of an order, where subsequent sub-orders would be placed on a fixed-price basis, with five, 1-year ordering periods. *Id.* at 4-7. Through the RFQ, the VA sought various nursing services at Southeast Louisiana Veterans Health Care System in New Orleans, Louisiana. *Id.* at 1. The solicitation advised that award would be made on a best-value tradeoff basis, considering three factors: (1) past performance; (2) technical capability; and (3) price. *Id.* at 61.

The agency received multiple quotations by the submission due date, to include a quotation from Millbrook. Memorandum of Law (MOL) at 3. On November 10, the VA issued the order to Millbrook. AR, Exh. 12, Award Notice at 1. That same day, an unsuccessful vendor notified the agency that Millbrook was potentially ineligible for award because the firm was not small under the applicable NAICS code, per online public representations. Contracting Officer's Statement (COS) at 2. The contracting officer explains that he and the contract specialist "reviewed the entire contents of all prior small business certification search results as well as the contractor responsibility assessment report for Millbrook Support Services." *Id.* He further explains that the agency, on November 10, rescinded the award to Millbrook:

[T]he Contract Specialist called Millbrook Support Services to advise it that the task order award decision was rescinded because Millbrook Support Services was ineligible for award. Millbrook Support Services disagreed and responded that it was eligible for award because, although no longer a small business for the applicable NAICS code and no longer an SDVOSB for the applicable NAICS code, it was a small business and an SDVOSB for the applicable NAICS code at the time it was awarded its FSS contract.

Id. Following communication with various VA officials regarding the firm's eligibility, the agency, on November 13, explained to the protester that "Millbrook Support Services is not considered eligible for award in accordance with VAAR [Veterans Affairs Acquisition Regulation] Clause 852.219-73" because the Small Business Administration's (SBA) certification database "indicates that Millbrook Support Services [is] no longer a SDVOSB under NAICS [code] 561320." AR, Exh. 13, Email Communication with Millbrook at 1. On November 21, Millbrook filed the instant protest.

DISCUSSION

At issue in this protest is the propriety of the agency's rescission of Millbrook's award. The VA argues its decision was consistent with the terms of the solicitation and was required by the agency's own regulations. In this regard, the VA contends that notwithstanding SBA's general regulations, this procurement was conducted under the VA's own statutory authority to conduct SDVOSB set-aside procurements, and, therefore, the VA's own regulations in this regard are controlling. In retort, the protester

¹ All citations to the record are to the corresponding PDF page numbers.

avers that the agency's actions run contrary to law and regulation, as the VA's decision was rooted in a determination as to Millbrook's size status, but that responsibility lies exclusively with the SBA. Moreover, the protester contends that under applicable regulations, Millbrook qualifies as an SDVOSB under the RFQ's NAICS code, and thus was, in fact, eligible for award under the RFQ. For the reasons that follow, we find no basis to sustain the protest.²

As explained by the agency, the VA's requirement was an SDVOSB set-aside, made pursuant to the Veterans First Contracting (Vets First) Program, established by the Veterans Benefits, Health Care, and Information Technology Act of 2006, *codified at* 38 U.S.C. § 8127, which provides the VA with independent authority to set aside procurements for SDVOSB and veteran-owned small business (VOSB) concerns. 38 U.S.C. § 8127; *Buy Rite Transport*, B-403729, B-403768, Oct. 15, 2010, at 2-3. Under this authority, the VA is required to set aside all acquisitions for SDVOSB or VOSB concerns where the agency's market research leads it to conclude that there is a reasonable expectation that two or more such concerns are likely to submit offers, and that award can be made at a fair and reasonable price (commonly known as the "rule of two"). 38 U.S.C. § 8127(d)(1).

Section 819.7006 of the VAAR establishes procedures for when the VA sets aside a requirement for SDVOSBs. Relevant to this protest, VAAR section 819.7006(b) explains:

(b) When conducting SDVOSB set-asides, the contracting officer shall ensure that--

(1) Offerors are certified SDVOSBs listed in the SBA certification database at the time of submission of offers and at time of award; and

(2) Offerors affirmatively represent their SDVOSB and small business status based on the size standard corresponding to the North American Industrial Classification System (NAICS) code assigned to the solicitation/contract, as set forth in [VAAR] 819.7003(b) and (c).

In turn, VAAR section 819.7003 sets certain conditions for offeror eligibility when a procurement is set aside for SDVOSBs. Section 819.7003(b) of the VAAR provides:

(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--

² Millbrook raises other collateral allegations, and although our decision does not specifically address every argument presented, we have considered each argument and find that none provides a basis on which to sustain the protest.

- (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) Certified SDVOSB/VOSB listed in the SBA certification database at <https://veterans.certify.sba.gov/> (see 13 CFR 128).

Section 819.7011 of the VAAR identifies the contract clauses to include in a solicitation that is set aside under the Vets First authority, to include VAAR clause 852.219-73 (VA Notice of Total Set-Aside for Certified Service-Disabled Veteran-Owned Small Businesses). See VAAR 819.7011(a).

VAAR clause 852.219-73 provides, in relevant part:

(a) *Definition.* For the Department of Veterans Affairs, “*Service-disabled Veteran-owned small business concern or SDVOSB*”:

(1) Means a small business concern--

* * * * *

(iii) The business meets Federal small business size standards for the applicable North American Industry Classification System (NAICS) code identified in the solicitation document;

* * * * *

(b) *General.* In order for a concern to submit an offer and be eligible for the award of an SDVOSB set-aside or sole source contract, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract and be listed as an SDVOSB participant in the SBA certification database as set forth in 13 CFR 128.

(1) Offers received from entities that are not certified SDVOSBs and listed in the SBA certification database at the time of offer shall not be considered.

(2) Any 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.

(3) The requirements in this clause apply to any contract, order or subcontract where the firm receives a benefit or preference from its designation as an SDVOSB, including set-asides, sole source awards, and evaluation preferences.

(c) Representation. Pursuant to 38 U.S.C. 8127(e), only certified SDVOSBs listed in the SBA certification database are considered eligible to receive award of a resulting contract. By submitting an offer, the prospective contractor represents that it is an eligible and certified SDVOSB as defined in this clause, 13 CFR 121, 125, and 128, and VAAR subpart 819.70.

The VA argues its decision to rescind the order issued to Millbrook was consistent with law, regulation, and the stated terms in the solicitation. In this regard, the agency explains that this procurement--a SDVOSB set-aside under the Vets First authority--required a vendor be eligible (as that term is understood under the VAAR) at the time its quotation was submitted, and at the time of award. MOL at 12. Here, the agency, after award was made to Millbrook, concluded that while the firm was listed as an SDVOSB in the SBA's small business certification database, Millbrook was not identified as a small business under the applicable NAICS code for the procurement.³ AR, Exh. 10, Millbrook SBA Profile at 3. As a result, the VA concluded that because Millbrook, at the time of award, could not affirmatively represent its SDVOSB and small business status for the RFQ's NAICS code, the firm was not eligible for award.

Millbrook, in rebuttal, contends the agency's actions and legal arguments are unreasonable, as the VA misapplies its own programmatic authority and ignores regulations germane to the analysis as to whether Millbrook was, in fact, eligible for award. However, our review of applicable law and regulation supports the reasonableness of the agency's actions.

First, Millbrook argues the agency, contrary to law and regulation, impermissibly determined that the firm was other than small. The Small Business Act gives SBA the conclusive authority to determine matters of small business size status for federal procurements. 15 U.S.C. § 637(b)(6). Under the statute's implementing regulations, SBA has established procedures governing size protests and requests for formal size determinations. 13 C.F.R. Part 121, Subpart A. The protester notes that under these regulations, a contracting officer who receives a protest challenging the size of an awardee is required to forward that protest to the SBA for a formal size determination; the regulation does not allow for a contracting officer to make a size determination on

³ The VA explains that the agency, at the time of initial award, overlooked Millbrook's status as other than small under the applicable NAICS code. MOL at 4. It was only after an unsuccessful vendor contacted the agency about Millbrook's status did the agency identify that the firm was listed as other than small under the relevant NAICS code. MOL at 5.

his own. Comments at 2-3; 13 C.F.R. §§ 121.1006(a), 121.1009(a). Millbrook also notes that the VA's own regulations provide that SDVOSB "certification, size eligibility, challenges, and appeals" are governed by the SBA's regulations, except where otherwise provided for. VAAR 819.7003(a).

Millbrook asserts the VA's actions constitute an impermissible size determination, where the agency received a size protest, but rather than forward it to the SBA for a determination, the VA, on its own initiative, determined that Millbrook was not eligible for award based on its size. Comments at 4-6. However, in our view, such an assertion does not comport with the facts at hand. Indeed, the record does not demonstrate that the agency made any size determination (*i.e.*, whether Millbrook was, in fact, small or not small), at all, but rather, merely cross-checked whether Millbrook met the requirements for award under a SDVOSB set-aside made pursuant to Vets First. See 13 C.F.R. §§ 121.1001-121.1010 (identifying criteria for how SBA determines if a firm is small).

To this point, the VA determined that the protester was not identified as a small business under the RFQ's NAICS code in the SBA's database. AR, Exh. 10, Millbrook SBA Profile at 3; COS at 2. As a result, the agency concluded the firm was not eligible for award under the VA's governing regulations. See VAAR 819.7006(b) (contracting officer shall ensure offerors are certified SDVOSBs in the SBA certification database at the time of award); VAAR 819.7003(b) (at the time of award, offeror must represent it is a small business concern under the solicitation's NAICS code); VAAR clause 852.219-73 (explaining that a SDVOSB is a small business concern that meets the small business size standards for the solicitation's NAICS code, and that award can be made to a certified SDVOSB listed in the SBA certification database who is eligible at the time of award).⁴

Second, Millbrook avers that under applicable regulations, the firm is, in fact, eligible for award. In reference to SBA's regulations regarding the size of a firm concerning orders placed against the FSS, "size is determined as of the date the business concern submits its initial offer, which includes price, for the GSA FSS [multiple-award schedule] contract." 13 C.F.R. § 121.404(c)(4)(i); *see also Washington Bus. Dynamics, LLC*, B-421953, B-421953.2, Dec. 18, 2023 (providing analysis of SBA's size rules under FSS contracts). As applied to the instant procurement, Millbrook was awarded its FSS contract on July 15, 2021, the period of performance of which runs through July 14, 2026; at the time of award of its FSS contract, Millbrook was an SDVOSB. Protest at 4. Thus, the protester declares that under the SBA's size rules with respect to FSS orders,

⁴ The protester argues the VA's conduct conflicts with VAAR section 819.7003(a), which provides that SDVOSB "size eligibility" is a matter for the SBA. Comments at 5. However, the agency, in our view, did not make an eligibility determination based on Millbrook's size (*i.e.*, small or not small), but instead, whether Millbrook was *identified* as small or not small in the appropriate SBA database. As explained, above, the VA was not permitted to make award to a firm that was not identified as a small business, at the time of award, under the RFQ's NAICS code.

“Millbrook is an SDVOSB under NAICS code 561320 for all orders under its FSS Contract through July 14, 2026, absent an express recertification requirement in a solicitation for such an order.” *Id.* The protester contends “[t]hese rules apply regardless of the inclusion of VAAR 852.219-73 in the RFQ.” *Id.* at 7.

The protester’s argument is not ultimately persuasive. Regardless of Millbrook’s size status for orders placed against its FSS contract under SBA’s general regulations, because the firm could not meet the requirements for award pursuant to a Vets First SDVOSB set-aside, the agency properly determined it could not issue the order to the protester.

We do not disagree with Millbrook that the VA’s regulations regarding procurements set aside under Vets First do rely, to some degree, on SBA’s regulations regarding the status of firms. See *e.g.*, VAAR 819.7003 (“SDVOSB/VOSB certification, size eligibility, challenges, and appeals are governed by the Small Business Administration (SBA) regulations at 13 CFR parts 121, 128, and 134, except where directed otherwise by this part.”). And further, we do not disagree that, where possible, differing regulatory schemes should be read in harmony to avoid an illogical application. See Comments at 7. However, we disagree that, as written, the VAAR regulations effectuating the VA’s specific Vets First authority are subordinate to the SBA’s more general rules regarding non-Vets First orders placed against a firm’s FSS. Indeed, the Vets First program is a separate and independent statutory authority, with regulations promulgated pursuant to that authority. See *Buy Rite Transport, supra* at 2-3. While the SBA’s regulations regarding when a firm’s size status is determined for purposes of orders placed against its FSS contract establish the default eligibility rules, a separate programmatic authorization (such as Vets First) may include requirements more stringent or otherwise different from those set by the SBA. The VAAR regulations do just that.

As applied, we disagree with the protester that “Millbrook merely had to qualify as small under SBA’s regulations and be listed in the database” to be eligible for award. Comments at 9. Instead, Millbrook, to be eligible for award, was required to meet the award requirements established in the VAAR. That is, under VAAR section 819.7003, “at the time of award of any contract, the offeror must represent to the contracting officer that it is a [. . .] [s]mall business concern under the [NAICS] code assigned to the acquisition.” VAAR 819.7003(b)(2). Moreover, pursuant to VAAR clause 852.219-73, “[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[.]” where to “be eligible for the award of an SDVOSB set-aside or sole source contract, the concern must qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract[.]” VAAR clauses 852.219-73(b)(2), 852.219-73(a)(1)(iii).

Because Millbrook was identified as not qualifying as a small business concern under the applicable NAICS code in SBA's database, we find no basis to disturb the VA's decision not to issue the order to Millbrook.

The protest is denied.

Edda Emmanuelli Perez
General Counsel