



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: J Caye Premier Dining, Inc.

File: B-424443

Date: July 15, 2026

Tracey L. Pruiett, Esq., Katherine B. Burrows, Esq., Meghan F. Leemon, Esq., and Timothy F. Valley, Esq., Piliero Mazza PLLC, for the protester.
Walker J. Gray, Esq., Erika L. Whelan Retta, Esq., Joseph M. Cappola, Esq., and C. Brandon Halstead, Esq., Department of the Air Force, 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

Protest challenging solicitation's inclusion of Randolph-Sheppard Act priority is denied where the solicitation's requirements warrant application of the priority.

DECISION

J Caye Premier Dining, Inc. (JCPD), a small business of Houston, Texas, protests the terms of request for proposals (RFP) No. FA481926R0001, issued by the Department of the Air Force, for mess attendant services. The protester challenges the agency's decision to issue the solicitation with a priority pursuant to the Randolph-Sheppard Act (RSA), contending the application of the priority is unreasonable where the underlying work is not for the operation of a cafeteria.

We deny the protest.

BACKGROUND

The Air Force issued the solicitation on January 29, 2026, pursuant to the procedures in Federal Acquisition Regulation (FAR) parts 12 and 15, as a set-aside for 8(a) small business concerns, for mess attendant support services at Tyndall Air Force Base, Florida. Agency Report (AR) Tab 3, RFP at 1.¹ The contractor will provide "all

¹ Our citations to the record correspond to the PDF document page numbers.

personnel, and other items or services necessary to perform food service attendant support services[.]” Tab 22, Revised Performance Work Statement (PWS) at 3. Specifically, the contractor will perform the following tasks:

[S]erving and replenishing food; cleaning interior and exterior of facilities, equipment, and utensils; maintain equipment and repair as required; preparing raw vegetables and fruits for the self-serve bars and for use by military cooks; preparing cold cuts and cheeses for the use by military cooks at the sandwich/deli bar; ensure coverage for ethnic and/or specialty food bars; make and wrap sandwiches; cut and portion pastry items; and provide cashier services.

Id. While the contractor will perform many tasks essential to the proper functioning of the dining facility, the agency will retain “full operational and management control[.]” which will include “all management responsibility, oversight and decision making authority of the day-to-day operations of the dining facility including establishing operational hours, budgeting, accounting and recordkeeping, storeroom management, and other management functions.” *Id.* The RFP further provides that “[a]t no time shall the contractor exercise any operational control of the dining facility in the performance of this contract.” *Id.*

The RFP anticipates the award of a single contract with a 1-year base period of performance and four 1-year option periods. RFP at 20-24. The solicitation provides for award on a best-value tradeoff basis, considering three factors: (1) technical; (2) past performance; and (3) price.² AR, Tab 12, RFP Addendum at 2.

The solicitation also includes a provision that gave priority to state licensing agencies (SLAs) pursuant to the RSA:³

This acquisition is subject to the Randolph-Sheppard Act, 20 U.S.C. 107, *et seq.* The Act requires that the agency give priority, pursuant to the Act and its implementing regulations, at the award of this contract to the State License Agency (SLA), subject to the terms and conditions of the solicitation and the SLA can provide food service at comparable cost and of comparable high quality as that available from other providers of cafeteria services IAW 34 CFR 395.33(b). Accordingly, although the solicitation is an 8(a) small business set-aside, the Florida SLA will be invited to submit a proposal in accordance with 34 CFR 395.33(b).

² The technical factor has four subfactors: staffing plan; technical approach; quality control plan; and mission essential plan. AR, Tab 12, RFP Addendum at 2.

³ State licensing agencies (SLAs) execute the RSA program in a given state, acting under the auspices of the Department of Education’s (DOE) state vocational rehabilitation programs. See *generally* 20 U.S.C. § 107d-3(e); 34 C.F.R. § 395.1.

Evaluation factors are the same for all competing offerors, including the SLA, with the exception of the statutory priority which may be applied.

Id. at 1.

The contracting officer explains that in response to the solicitation, which did not initially include the above provision regarding SLA priority, “the Florida Department of Education, Division of Blind Services serving as the SLA submitted a proposal which was unsuccessful due to a significant price premium of 57 [percent] beyond the successful offeror.” Contracting Officer’s Statement (COS) at 9. Before the Air Force made award to another offeror, the Florida SLA filed for arbitration with the Department of Education (DOE), alleging the Air Force failed to follow the process required to determine whether an agency should apply RSA priority.⁴ *Id.*; see also AR, Tab 26, Arbitration Convening Letter at 1. The contracting officer provides that the Air Force entered into a settlement agreement with the Florida SLA, whereby the agency would enter direct negotiations with the SLA or promptly resolicit the requirement. COS at 10; see also AR, Tab 25, Settlement Agreement at 1-3. The settlement also required the solicitation to include a priority to the SLA in accordance with the RSA. AR, Tab 25, Settlement Agreement at 2.

The protester, a non-RSA offeror, filed this protest on April 27, challenging the Air Force’s application of the RSA preference in the solicitation.

DISCUSSION

JCPD argues the Air Force’s application of the RSA priority to this solicitation is unreasonable because the agency retains full operational and managerial control of the mess facility. In response, the agency contends that though the Air Force retains such control, the nature of the duties to be performed by the contractor are integral to the operation of the dining facility, and thus the RSA priority should apply. For the following reasons, we find no basis on which to sustain the protest.⁵

Congress enacted the RSA in 1936 for the purpose of training and employing qualified blind individuals to operate vending facilities in federal buildings.⁶ Pub. L. No. 74-732,

⁴ The RSA provides that the DOE will convene an arbitration panel to hear an SLA’s complaint regarding a federal agency’s compliance with the RSA. 34 C.F.R. § 395.37. The panel’s decisions are final and binding, subject to appropriate appeal and review. 34 C.F.R. § 395.37(b); see also 20 U.S.C. §§ 107d-1, 107d-2.

⁵ The protester 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.

⁶ By later amendment, the RSA broadened the applicability of the RSA to federal “properties.” Pub. L. No. 83-565, 68 Stat. 663 (1954).

49 Stat. 1559 (1936) (*codified as amended* at 20 U.S.C. §§ 107-107f). In 1974, Congress amended the RSA, establishing a clear federal-state relationship; while the RSA is under the authority of and administered by DOE, the states participating in the program are primarily responsible for program operations through the SLAs. Rehabilitation Act Amendments of 1974, Pub. L. No. 93-516, 88 Stat. 1617. The 1974 amendments also broadened the applicability of the RSA to vending machines, snack bars, and cafeterias. *Id.* at § 207 (*codified* at 20 U.S.C. § 107e). The RSA specifies the Secretary of the DOE has the authority to prescribe regulations to implement the RSA. 20 U.S.C. § 107(b). DOE's implementing regulations provide:

Priority in the operation of cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines, on an individual basis, and after consultation with the appropriate property managing department, agency, or instrumentality, that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided employees, whether by contract or otherwise.

34 C.F.R. § 395.33(a).

The protester advances a straightforward argument--the RSA priority should not apply because the prospective contractor will not, as is required by the statutory and regulatory framework, be operating the cafeteria. See Protest at 8 (noting "the subject RFP does not contemplate the operation of dining facilities/cafeterias."). In support of its view, JCPD points to the nature of the tasks to be performed, and the explicit language in the solicitation. In terms of the scope of work, the protester argues the work amounts to services in support of the cafeteria, but not the operation of the facility. *Id.* Comments at 2-4. For example, JCPD explains that the contractor will only perform limited food-related services, and will not provide cooks as part of the agency's requirement. *Id.* at 4. Moreover, the protester notes that the only managerial responsibilities stem from an on-site contract manager, who "shall be responsible for the performance of the contractor's work under this contract." PWS at 21.

JCPD also argues the plain text of the solicitation is dispositive to the question of whether the contractor will operate the cafeteria, and thus whether the RSA priority should apply. In this regard, the protester explains that the solicitation expressly provides that the cafeteria "will remain under the full operational and management control" of the Air Force, not the contractor, and that "[a]t no time shall the contractor exercise any operational control of the dining facility in the performance of this contract." PWS at 3. Indeed, in response to questions from potential offerors, the Air Force confirmed that the Air Force, not the contractor, will maintain operational and managerial control. AR, Tab 23, Questions and Answers Table, at 2 (stating that "[o]fferors performing under this contract will not assume 'operational' control of the dining facility in any capacity as outlined in the Randolph-Sheppard statute[.]"). Without having managerial and operational control, the protester concludes the RSA priority should not apply to the Air Force's requirement.

JCPD also contends the non-application of the RSA priority is consistent with our recent decision in *JW Mills Mgmt., LLC*, B-420416, Mar. 24, 2022. In that decision, our Office considered the Navy's application of the RSA priority to a solicitation where the underlying scope of work included cashier, scullery, and housekeeping services, as well as food attendant services (such as packing box lunches and picnic rations, distributing food on the serving line, and replenishing food, condiments, and beverages). We concluded that the Navy erred in applying the statutory preference because the RSA applies to the "operation" of a cafeteria, and the solicitation's requirements do not contemplate the types of activities and level of control to constitute the operation of a cafeteria. Indeed, we explained,

[T]he RSA's statutory preference applies to the "operation of vending facilities on Federal property." 20 U.S.C. § 107(b). While the statute does not specifically define "operation," the plain meaning of such a term connotes some degree of control, management, or administration of the vending facility. In this solicitation, the tasks to be performed are in support of the cafeterias, but do not, in and of themselves, involve operating the cafeterias.

Id. at 8.

The Air Force marshals several arguments in rebuttal. First, the agency explains that contrary to the requirements in *JW Mills*, "the duties here are much more extensive and even more integral to food preparation and distribution[.]" which "necessitates much greater contractor involvement[.]" Memorandum of Law (MOL) at 5. In this regard, the Air Force notes the contractor will perform duties similar to those in *JW Mills*--such as janitorial and cashier services--but will also perform "key tasks that are more central to food preparation[.]" such as preparing fruits and vegetables used by military cooks, cooking pasta and boiling eggs, and preparing all cold food items. *Id.* at 5; *see also* PWS at 4. The Air Force also explains that the contractor could be called on to provide cooks on a temporary basis, to ensure continued service. PWS at 3 ("[I]n the event of a contingency the contractor may be required to provide cooks on a temporary basis to ensure continued service.").

Additionally, the Air Force contends that the protester's interpretation of the statutory/regulatory requirement that the RSA priority applies to the "operation of" cafeterias is unreasonably narrow. That is, the agency avers that "operational control" is not a requirement for the priority to apply, but instead, only that the scope of work "pertains to the operation of cafeterias." MOL at 9. The Air Force asserts federal courts have adopted this reading, and that DOE applied the same in its communications with the Air Force regarding the instant RFP. *Id.* at 9-10.

Here, we find reasonable the Air Force's application of the RSA priority. First, we note that the scope of work to be undertaken pursuant to this requirement is sufficiently robust to constitute "operation" of the cafeteria. Unlike in *JW Mills*, the work to be performed here is integral, not ancillary, to the proper functioning of the cafeteria.

Indeed, while the solicitation in *JW Mills* required cashier, scullery, and housekeeping services, with only tangential food preparation services, the work to be performed here is necessary for both the proper functioning of the cafeteria and intimately related to the provision of food:

Contractor tasks include, but not limited to, the following: serving and replenishing food; cleaning interior and exterior of facilities, equipment, and utensils; maintain equipment and repair as required; preparing raw vegetables and fruits for the self-serve bars and for use by military cooks; preparing cold cuts and cheeses for the use by military cooks at the sandwich/deli bar; ensure coverage for ethnic and/or specialty food bars; make and wrap sandwiches; cut and portion pastry items, and provide cashier services. Lastly, in the event of a contingency the contractor may be required to provide cooks on a temporary basis to ensure continued service.

PWS at 3. Furthermore, the contractor under this RFP would prepare all cold food items and conduct food preparation for hot items. *Id.* at 4. As we explained in *JW Mills*, the RSA priority did not apply where the contractor merely “performs ancillary tasks in relation to providing food.” *JW Mills, supra* at 8. Given that the tasks to be performed here are central and necessary to the provision of food--the heart of operating a mess facility--we conclude the Air Force reasonably determined that the scope of work constituted operation of the cafeteria, thereby requiring the application of the RSA priority.

We reach this result despite the solicitation’s express provision that the mess facility will “remain under the full operational and management control” of the Air Force. PWS at 3. As we explained in *JW Mills*, the RSA statute and implementing regulations do not define what services are required to be performed for a contractor to be considered to be in “operation of” a cafeteria on federal property. See 20 U.S.C. § 107(b); 34 C.F.R. § 395.33. Our Office reasoned that the plain meaning of “operation of” a vending facility “connotes some degree of control, management, or administration of the vending facility[.]” and that “[i]mplicit in this phrasing is not only that the contractor will have some degree of management or control over the cafeteria, but also that it will do so in relation to providing food.” *JW Mills, supra* at 8.

Other fora have also grappled with what types of contracts constitute “operation of” a federal dining facility. See *id.* at 11, n.15 (explaining that courts have reached different conclusions as to what type of work constitutes “operation of” a cafeteria). Persuasive to our analysis here is the interpretation of two circuit courts addressing the applicability of the RSA to similar types of requirements. See *Integrated Fin. & Accounting Sols., LLC*, B-420526, B-420526.2, May 19, 2022 (we may consider other courts’ decisions as persuasive, but not controlling, authority in reaching our decisions). The Courts of Appeals for both the Fifth and Ninth Circuits have concluded that the RSA priority applies to dining facility attendant contracts, where although military personnel would be responsible for preparing the food, and the contractor would provide other services.

See *Texas Workforce Comm'n v. U.S. Dep't of Educ., Rehab. Servs. Admin.*, 973 F.3d 383, 390 (5th Cir. 2020) (opting for a broad application of "operation of" under the RSA, and concluding that the RSA applies to a dining facility attendant service contract for custodial services because such services are integral to the operation of a cafeteria); *State of Haw., Dep't of Human Servs. v. U.S. Dep't of Educ., Rehab. Servs.*, 46 F.4th 1148, 1156 (9th Cir. 2022) (also adopting a broad reading of "operation of" under the RSA, and concluding that "sanitation duties are seen as a vital part of vending facilities contracts for which blind vendors should receive priority.").

In addition to the fact that two circuit courts have adopted a broad application of the RSA priority, DOE has also adopted this approach, as well. See *Kansas v. SourceAmerica*, 826 F. App'x 272, 279 (4th Cir. 2020) (quoting from the below described letter from the Secretary of Education that asserted that "[n]othing in the [RSA] requires a vendor to participate in every activity of the cafeteria in order to 'manage' or 'direct the working of' the cafeteria"). As we explained in our decision in *JW Mills*, the then Secretary of Education, in a letter to an individual Member of Congress, took an expansive application of the RSA to these types of dining support contracts, concluding that the RSA would apply where a contractor manages aspects of the cafeteria besides food preparation because the cafeteria would not be able to operate without the vendor performing those functions.

While our decision in *JW Mills* concluded this letter was of little interpretive value--the letter is not a product of formal rulemaking, is addressed to an individual Member, rather than a committee of jurisdiction, and DOE had not uniformly adopted such an interpretation--DOE in response to the Air Force's request for a determination of the RSA's applicability relies on the letter's interpretation of RSA applicability. Cf. 34 C.F.R. § 395.33(a) ("Priority in the operation of a cafeterias by blind vendors on Federal property shall be afforded when the Secretary determines . . . that such operation can be provided at a reasonable cost, with food of a high quality comparable to that currently provided [by] employees, whether by contract or otherwise."). Indeed, for this procurement, the Air Force sought DOE's views as to whether its solicitation required the application of the RSA priority. AR, Tab 29, Email Exchange between the Air Force and DOE. DOE, relying on both the then-Secretary's letter and the circuit court decisions mentioned above, found that "[b]ased on the performance work statement provided, the Randolph-Sheppard priority applies to this opportunity" because "[w]ithout the services being sought by the Government, the cafeteria would not be able to operate." *Id.* at 1.

While we do not believe JCPD advances an irrational view, given the totality of the circumstances, we find the Air Force's application of the RSA priority to be consistent with the RSA. The nature of the duties to be performed by the contractor are integral to the operation of the mess facility, and are substantially related to food preparation. As

such, we conclude the contractor's responsibilities fall within the ambit of "operation" of the dining facility, for purposes of the RSA.

The protest is denied.

Edda Emmanuelli Perez
General Counsel