U.S. GOVERNMENT ACCOUNTABILITY OFFICE
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Comptroller General
of the United States

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Decision

Matter of: Potomac Valor Healthcare-2, LLC

File: B-423195.2; B-423195.3

Date: August 12, 2026

Amy C. Hoang, Esq., Ken M. Kanzawa, Esq., and Ashton P. Jones-Doherty, Esq., Seyfarth Shaw LLP, for the protester.
David A. Rose, Esq., Rose Consulting Law Firm, for Primary Care Solutions, LLC, the intervenor.
Jared M. Levin, Esq., Department of Veterans Affairs; and Edmund M. Bender, Esq., Small Business Administration, for the agencies.
Hannah G. Barnes, Esq., and April Y. Shields, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the agency unreasonably eliminated the protester from consideration for award is denied where the agency reasonably determined that the protester failed to qualify as a service-disabled veteran-owned small business at the time of award and was therefore ineligible under the terms of the solicitation and applicable regulations. Moreover, the protester is not an interested party to further challenge the agency's evaluation and award decision.

DECISION

Potomac Valor Healthcare-2, LLC (PVH2), a joint venture comprised of Potomac Healthcare Solutions, LLC--the managing member--and Valor Healthcare, Inc., of Woodbridge, Virginia, protests the Department of Veterans Affairs' (VA) determination that PVH2 was not eligible for award of a contract under request for proposals (RFP) No. 36C25623R0002, issued for outpatient clinic services. The protester primarily challenges the agency's decision to eliminate PVH2 from consideration for award because it determined that the protester was not an eligible service-disabled veteran-owned small business (SDVOSB) at the time of award. The protester further challenges various aspects of the agency's evaluation and award to Primary Care Solutions, of Dallas, Texas.

We deny the protest and dismiss it in part.

BACKGROUND

The VA issued the RFP on October 18, 2023, pursuant to the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, for primary care and mental health services. Memorandum of Law (MOL) at 2; Agency Report (AR), Exh. 2, RFP at 1, 11. The agency initially issued the solicitation on an unrestricted basis; however, the agency subsequently issued six amendments to the RFP, the second of which set aside the solicitation for SDVOSBs.[1] Contracting Officer's Statement (COS) at 1-2; RFP at 190. The VA set aside the procurement for SDVOSB concerns pursuant to the Veterans First Contracting (Vets First) Program, which provides the VA with authority to set aside procurements for SDVOSB and veteran-owned small business (VOSB) concerns when 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; *Millbrook Support Servs., Inc.*, B-424107, Feb. 23, 2026, at 3; *Buy Rite Transp.*, B-403729, B-403768, Oct. 15, 2010, at 2-3; MOL at 3 n.4.

The RFP contemplated the award of a fixed-price indefinite-delivery, indefinite-quantity contract with a 12-month base period and four 12-month ordering periods. RFP at 7-9. The RFP provided that award would be made on a best-value tradeoff basis, considering four factors, listed in descending order of importance: (1) technical capabilities, (2) geographic location/accessibility, (3) past performance, and (4) price. *Id*. at 193-194. The solicitation advised that all non-price factors, when combined, were "significantly more important" than price. *Id*. at 194.

As relevant here, the solicitation incorporated by reference Department of Veterans Affairs Acquisition Regulation (VAAR) clause 852.219-73, also known as the VAAR SDVOSB set-aside clause. *Id*. at 189; MOL at 3. As explained by the agency, this clause "implements the new policy regarding the [Small Business Administration (SBA)] Veteran Small Business Certification Program (also referred to as 'VetCert')." MOL at 4. VAAR clause 852.219-73 implements VAAR section 819.7003,[2] which establishes the following conditions for offeror eligibility when a procurement is set aside for SDVOSBs:

> (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--

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[1] The agency explained that on October 31, it issued a sources sought notice to assess the potential for SDVOSBs to participate in the acquisition, and based on the answers to that notice, the contracting officer determined that "this requirement can be set aside for eligible, capable and certified SDVOSB firms." RFP at 188; MOL at 3.

[2] While the solicitation expressly incorporates VAAR clause 852.219-73, which implements VAAR section 819.7003, the solicitation does not expressly reference VAAR section 819.7003. *See generally* RFP.

> (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 [].

(c) A joint venture may be considered eligible if it meets the requirements in 13 CFR part 128, and the managing joint venture partner makes the representations under paragraph (b) of this section.

VAAR 819.7003; *see* MOL at 11-12.

Also relevant here, the RFP instructed offerors that "potential contractors must be registered and certified at time of proposal and award as [an] SDVOSB in the SBA [VetCert] Program located at Veteran Small Business Certification (sba.gov)." RFP at 193.

Two offerors--PVH2 and Primary Care Solutions--submitted timely proposals by December 18, 2023. COS at 1. At that time, PVH2 was a verified SDVOSB listed in the SBA VetCert certification database. *Id.*; Protest at 5. On October 16, 2024, the agency awarded the contract to Primary Care Solutions, and on November 16, the agency published the notice of award on the System for Award Management (SAM.gov).[3] COS at 1-2.

On November 25, after receiving a post-award debriefing, PVH2 filed a protest with our Office, which we subsequently dismissed as academic due to the agency's corrective action. The agency indicated that it would reevaluate proposals and either confirm the prior award decision or make a new award. *See Potomac Valor Healthcare 2, LLC*, B-423195, Jan. 10, 2025, at 1 (unpublished decision). Prior to making a new award decision, on February 2, 2026, the contracting officer (CO) "became aware of a series of corporate transactions involving the joint venture partners of PVH2 through a separate requirement and information from VA's Office of General Counsel." COS at 2. That same day, the CO emailed the protester--specifically, Valor Healthcare, a large business--requesting confirmation that Valor Healthcare and Potomac Healthcare Solutions completed a corporate transaction that resulted in Valor Healthcare acquiring 100% equity in Potomac Healthcare Solutions. AR, Exh. 4, Correspondence with Valor Healthcare at 3. The protester confirmed that Valor acquired Potomac on January 5,

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[3] SAM.gov is the current governmentwide point of entry which serves as the single point where government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. FAR 2.101.

and, as a result, "neither Potomac nor PVH2 qualifies as an SDVOSB for *future* set-aside contract awards." *Id*. at 2.

On May 1, the agency notified the protester that it was ineligible for award and was therefore eliminated from the competition because, "[w]hile PVH2 met the eligibility requirements of VAAR 819.7003(b) at the time it submitted its proposal, PVH2 no longer complies with the eligibility requirements of VAAR 819.7003(b) and therefore is ineligible to receive the contract award." Protest, exh. A, Unsuccessful Offeror Letter at 2. The VA stated that because Potomac, the managing partner of PVH2, could not make "the required representation at the time of award that it is [an] SDVOSB[,] . . . per VAAR 852.219-73(f),[4] the JV can no longer qualify for award." *Id*. at 3.

The agency then reaffirmed the award to Primary Care Solutions. MOL at 10-11. On May 6, upon request from PVH2, the agency informed the protester of the award decision. COS at 3. On May 11, this protest followed.

DISCUSSION

The protester primarily argues that the VA unreasonably eliminated PVH2's proposal from consideration for award and misapplied its own regulations in determining PVH2's eligibility. Protest at 7. The protester also challenges various aspects of the agency's evaluation and best-value tradeoff decision. We have considered the parties' various arguments and, for the reasons that follow, we conclude that the agency's decision about the protester's eligibility for award was consistent with the terms of the solicitation and applicable regulations. We also dismiss the remaining allegations as the protester is not an interested party to maintain them.

Eligibility of the Protester

Specifically, the protester argues that an SDVOSB JV's eligibility for award should be determined at the time an offeror submits its proposal, not at the time of award. *Id*. at 7-8. The protester acknowledges VAAR section 819.7003, which states that "[a]t 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 certified SDVOSB. VAAR

[4] VAAR clause 852.219-73(f) states that "[a] joint venture may be considered eligible as an SDVOSB if the joint venture complies with the requirements in 13 CFR 128.402 and the managing joint venture partner makes the representations under paragraph (c) of this clause." VAAR clause 852.219-73(c) states that "only certified SDVOSBs listed in the SBA certification database are considered eligible to receive award of a resulting contract." Additionally, the CO stated that she conducted a search in SBA's VetCert database "and found that Potomac Healthcare Solutions LLC was certified as an SDVOSB by SBA but was listed as 'No' for small business size under NAICS 621498 (All Other Outpatient Care Centers)"; the NAICS code for the RFP at issue is 621498. COS at 2; RFP at 1.

819.7003(b) (emphasis added). However, PVH2 argues that the eligibility requirement with respect to time of award only applies to non-JV offerors, not JVs like itself. Protest at 7-9; Comments and Supp. Protest at 3. PVH2 argues that the following language should instead be considered applicable to JV offerors: "A joint venture may be considered eligible if it meets the requirements in 13 CFR part 128, and the managing joint venture partner makes the representations under paragraph (b) of this section." VAAR 819.7003(c); *see* Comments and Supp. Protest at 4-5. The protester further relies on VAAR clause 852.219-73, which implements VAAR section 819.7003 and includes the following language: "A joint venture may be considered eligible as an SDVOSB if the joint venture complies with the requirements in 13 CFR 128.402 and the managing joint venture partner makes the representations under paragraph (c) of this clause." VAAR 852.219-73(f); *see* Protest at 9-11, Comments and Supp. Protest at 3.

Based on this language, the protester offers a number of alternative interpretations to create a distinct "time of offer" condition for SDVOSB JVs. First, the protester argues that it satisfied the requirements of 13 C.F.R. § 128.402, cited in these VAAR clauses, which requires, among other things, that JVs certify their status as SDVOSBs "at the time of initial offer." 13 C.F.R. § 128.402(e)(1); Protest at 10.

Second, the protester argues that it satisfied the requirements of VAAR clause 852.219-73(c), which states that "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 subpart governing the Vets First program. Protest at 10-11. PVH2 asserts that it met this second requirement when it was certified as an SDVOSB at the time it submitted its offer on December 18, 2023. *Id*. In this regard, PVH2 argues that VAAR clause 852.219-73(c) "makes clear that the representations under VAAR 819.7003(b) with respect to SDVOSB status, size, and database listing are tied to the time of *offer*, not time of *award*[.]" Protest at 8.

Third, the protester interprets VAAR clause 852.219-73 to not require the managing SDVOSB partner of a JV to have SDVOSB status at the time of award. The parties agree that VAAR clause 852.219-73 implements VAAR section 819.7003. Protest at 9; *see* MOL at 14. However, the protester essentially argues that the way to read these two regulations in conjunction, given the fact that the solicitation expressly references VAAR clause 852.219-73 but does not expressly reference VAAR section 819.7003, is by letting VAAR clause 852.219-73(f) control. Protest at 9. The protester argues that VAAR clause 852.219-73(f) imposes two requirements: (1) that a JV comply with the requirements in 13 CFR 128.402, and (2) that the managing JV partner make the appropriate representations under VAAR clause 852.219-73(c). *Id*. at 9-10. As previously stated, the protester argues that it meets both these requirements, which PVH2 asserts tie SDVOSB JV eligibility to the time of offer, not award. *See* Protest at 8-11.

The VA responds that it correctly interpreted its own regulations and that, ultimately, its determination that the protester was not eligible for award was consistent with law, regulation, and the terms of the solicitation. Primarily, the agency rejects the protester's argument that VAAR clause 852.219-73(f), which implements VAAR section 819.7003(c), does not require a JV to have SDVOSB status at the time of award. MOL at 11. The VA argues that "VAAR section 819.7003 does not contain *different* rules for JV and non-JV offerors; rather, VAAR section 819.7003 imposes *additional* requirements for JV offerors because of their unique corporation formation." *Id.* at 12. The agency points out that VAAR section 819.7003(c), which the protester argues establishes eligibility rules for JV offerors, explicitly refers to the eligibility requirements in VAAR section 819.7003(b), which direct an offeror to represent itself as a certified SDVOSB both at the time of offer and time of award. *Id*. at 12-13. In sum, the VA contends that the requirements in VAAR clause 852.219-73 can be read "harmoniously" with the requirements in VAAR section 819.7003 and, ultimately, require a JV to be an SDVOSB at the time of award to be eligible. *Id*. at 14.

The agency also addresses the protester's argument that SBA regulations (detailing when a JV may submit an offer on an SDVOSB set-aside) state that an SDVOSB JV's eligibility is determined at the time of offer. MOL at 16; *see* 13 C.F.R. § 128.402(e)(1). The agency argues that SBA's regulations include two different certification requirements: the first requires a JV offeror to submit a certification to the contracting officer about its SDVOSB status "at the time of initial offer," and the second creates an additional certification obligation for an apparent successful offeror to "meet the joint venture agreement requirements set forth in paragraph (c) of this section at the time the joint venture is identified as an apparent successful offeror." MOL at 16; 13 C.F.R. § 128.402(e)(1); 13 C.F.R. § 128.402(e)(2)(ii). As a result, the agency argues that "[a]t the time Protester could have been identified as an apparent successful offeror under the RFP, Protester would have needed to submit additional certifications" to the CO. MOL at 17.

Finally, and in any event, the agency argues that "SBA's regulations establish additional requirements unique to JVs" but "do *not* supplant the VAAR requirements." MOL at 15. The VA points to a decision from our Office, *Millbrook Support Servs.*, *supra*, to assert that VAAR regulations promulgated pursuant to the Vets First program are not subordinate to SBA's regulations. MOL at 14-15.

In *Millbrook*, the protester, which was not a JV, challenged the agency's decision to rescind its award based on the agency's determination that the protester was not an eligible SDVOSB at the time of award because the protester was listed as other than small under the relevant NAICS code for the procurement. *Millbrook Support Servs.*, *supra* at 6; *see* VAAR 819.7003(b)(2) (stating that at the time of award, an offeror must represent it is a small business concern under the solicitation's NAICS code). Our Office concluded that, although 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, the VAAR regulations effectuating the Vets First program are not subordinate to the SBA's more general rules regarding non-Vets First orders. *Millbrook Support*

Servs., *supra* at 7. Rather, we determined that "the Vets First program is a separate and independent statutory authority, with regulations promulgated pursuant to that authority," and the VAAR regulations implementing that program "may include requirements more stringent or otherwise different from those set by the SBA," as was the case in *Millbrook*. *Id*. Because our Office concluded that the protester in *Millbrook* did not meet the requirement of VAAR section 819.7003 to qualify as a certified SDVOSB or a small business concern under the NAICS code assigned to the acquisition at issue, we denied the protest.[5] *Id*. at 7-8. Similarly, the VA argues that our Office should deny the protest at issue. MOL at 15.

Before turning to the issue of the underlying SBA regulations, we address the ways in which the VA's regulations at issue here--VAAR clause 852.219-73 and VAAR section 819.7003--interact together.

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, at 3. If the regulation has a plain and unambiguous meaning, the inquiry ends with that plain meaning. *Richard Grp., LLC*, B-422701.2, Sept. 18, 2025, at 4; *see Coast to Coast Comput. Prods*., B-419624.2, June 28, 2021, at 10. Where the language of a regulation is plain on its face, and its meaning is clear, there is no reason to move beyond the plain meaning of the text. *See Analytica LLC,* B-422681.3, B-422681.4, Nov. 26, 2024, at 7; *ASRC Fed. Data Network Techs., LLC*, B-418028, B-418028.2, Dec. 26, 2019, at 10.

We agree with the agency that the VA's regulations unambiguously provide that a JV offeror is only eligible for award if it is a verified SDVOSB concern at the time of proposal submission and is also a verified SDVOSB concern at the time of award. Both the protester and the agency agree that VAAR clause 852.219-73 implements VAAR section 819.7003. *See* Protest at 9; MOL at 11. The protester further argues that VAAR clause 852.219-73--and particularly VAAR clause 852.219-73(f)--controls for the purpose of determining JV eligibility requirements for this procurement because that clause is expressly named in the RFP and VAAR section 819.7003 is not. *See* Protest at 9; Comments and Supp. Protest at 5. However, even if we agreed with the protester's assertion, the plain language of the regulations indicates that a JV claiming to be an SDVOSB must be certified both at the time of offer submission and the time of award.

In other words, even accepting the protester's assertion, described above, we disagree that "[t]he regulations at VAAR 819.7003 and VAAR clause 852.219-73 establish

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[5] After GAO issued the *Millbrook* decision, Millbrook filed a complaint with the U.S. Court of Federal Claims (COFC) raising the same protest grounds. *See* Resp. to SBA Comments at 6. During the pendency of this protest, in July of 2026, COFC dismissed Millbrook's protest, rejecting Millbrook's arguments just as our Office did. *See id*.; AR, Exh. 11, *Millbrook vs. United States*, __ Fed. Cl. __ (Fed. Cl. 2026).

separate and distinct requirements for non-JV offerors as compared to JV offerors, not cumulative requirements." Comments and Supp. Protest at 5. VAAR clause 852.219-73(f), which directly concerns joint ventures, states that "[a] joint venture may be considered eligible as an SDVOSB if the joint venture complies with the requirements in 13 CFR 128.402 and the managing joint venture partner makes the representations *under paragraph (c) of this clause*." VAAR 852.219-73(f) (emphasis added). In turn, paragraph (c) points directly back to VAAR subpart 819.70, implementing the Vets First program. VAAR 852.219-73(c) ("By submitting an offer, the prospective contractor represents that it is an eligible and certified SDVOSB as defined in this clause . . . and VAAR subpart 819.70.").

VAAR section 819.7003, which falls under VAAR subpart 819.70 and which, as previously established, is implemented by VAAR clause 852.219-73, states that "[a] joint venture may be considered eligible if it meets the requirements in 13 CFR part 128, and the managing joint venture partner makes the representations *under paragraph (b) of this section*." VAAR 819.7003(c) (emphasis added). Paragraph (b) states that "[a]t 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) Certified SDVOSB/VOSB listed in the SBA certification database [].

VAAR 819.7003(b) (emphasis added).

In other words, these regulations are necessarily connected and intertwined and support the agency's position that a JV must be certified as an SDVOSB at the time of award to be eligible in a procurement set aside for SDVOSBs. Each time a paragraph mentions requirements explicitly for JVs, as with VAAR section 819.7003(c), the reader is directed to a different area of the regulations, like VAAR section 819.7003(b), which plainly and unambiguously requires SDVOSB status at the time of award. *See Richard Grp.*, *supra* (finding that 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). In other words, we agree with the agency that "[r]egardless of whether Protester wants to describe the eligibility requirements in VAAR clause 852.219-73 as 'different,' 'separate,' or 'distinct,' requirements [] for JV offerors compared to non-JV offerors, the bottom line is that adopting Protester's position 'would improperly render superfluous the regulation's language referring to eligibility 'at the time of award.''" Supp. MOL at 3-4. In sum, we agree that these sections of the VAAR should be read harmoniously and support the agency's plain reading of the regulations. *Id*. at 6; MOL at 14.

In addition, we note that the agency's decision about the protester's non-eligibility was consistent with the terms of the solicitation. The solicitation specifically instructed offerors that "potential contractors must be registered and certified at time of proposal and award as [an] SDVOSB in the SBA Veteran Small Business Certification (VetCert) Program located at Veteran Small Business Certification (sba.gov)." RFP at 193. The CO stated that on March 6, 2026, she conducted a search in SBA's VetCert database "and found that Potomac Healthcare Solutions LLC was certified as an SDVOSB by SBA but was listed as 'No' for small business size under NAICS 621498 (All Other Outpatient Care Centers)"--that is, the NAICS code applicable to this procurement. COS at 2. The CO also reviewed the "Reps and Certs" on SAM.gov for Potomac, "which did not indicate SDVOSB status for the fill-in." *Id*. In other words, the record shows that PVH2 not only failed to satisfy the requirements of the VAAR regulations; it also failed to comply with the terms of the solicitation.

On this record, PVH2 was a verified SDVOSB listed in the SBA VetCert database at the time it submitted its offer on December 18, 2023. COS at 1. However, the protester confirmed that Valor (the large business) acquired Potomac on January 5, 2026, and as a result, "neither Potomac nor PVH2 qualifies as an SDVOSB" subsequently and at the time of award. AR, Exh. 4, Correspondence with Valor Healthcare at 3; Protest, exh. A, Unsuccessful Offeror Letter at 2. The solicitation, set aside for SDVOSB concerns under the Vets First 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. *See* RFP at 189; VAAR 819.7003(b), (c). As a result, the agency properly decided that PVH2 was not eligible for award under the terms of the solicitation and applicable regulations.

Underlying SBA Regulations

As a final matter, we address the parties' arguments about the underlying SBA regulations cited in the VAAR. As noted above, the protester argues that it should be considered eligible for award because it satisfied the requirements of 13 C.F.R. § 128.402, an SBA regulation detailing eligibility requirements for JVs that wish to submit an offer for a procurement set aside for SDVOSBs, which requires, among other things, that JVs certify their status as SDVOSBs "at the time of initial offer." 13 C.F.R. § 128.402(e)(1); Protest at 10.

The VA argues that, if there are any inconsistencies between its regulations implementing the Vets First program and the SBA's regulations, then the VA's regulations "take precedence for VA acquisitions." MOL at 13. Moreover, the VA asserts that the agency properly followed its own regulatory and statutory authority under the Vets First program as applicable to this procurement in finding that the protester was ineligible for award. *See* Resp. to SBA Comments at 7-9.

GAO requested SBA's comments on 13 C.F.R. § 128.402, which, as previously mentioned, is cited in the VA regulations and concerns JV SDVOSB eligibility as to when a joint venture may submit an offer on a VOSB or SDVOSB contract. Specifically, SBA provided input on whether a JV SDVOSB would still be eligible for award if it lost its SDVOSB status after the initial offer submission but prior to award under 13 C.F.R. § 128.402.

SBA asserted that it has sole statutory authority to certify and determine the eligibility of SDVOSB firms. SBA Comments at 1. In SBA's view:

> Inherent in that authority is the determination of the timing of eligibility. SBA regulations at 13 C.F.R. § 128.401(a) state that, for competitively awarded SDVOSB contracts, eligibility is determined at the time of offer. . . . There is no ambiguity in SBA's regulations. Any other interpretation is contrary to SBA's intent. . . . It is SBA's opinion that VA's requirements for joint ventures are in direct conflict with SBA's regulations at 13 C.F.R. § 128.402(e). . . .
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> SBA acknowledges VA's independent authority to set aside contracts for SDVOSB and VOSB firms. . . . However, this authority does not grant VA the power to determine which firms are eligible for SBA's SDVOSB program or to add additional requirements to the timing of when a firm is considered eligible. . . . [E]ligibility is the purview of SBA and [] VA must award to only those firms certified by SBA. 38 U.S.C. § 8127(e).

SBA Comments at 1-3. SBA also added that it disagreed with our Office's decision in *Millbrook*. *Id*. at 3-4.

The critical question here, however, is the authority applicable to this procurement--an SDVOSB set-aside under the Vets First authority--which are controlled by the VAAR regulations discussed above. Therefore, any disagreement about the interpretation of 13 C.F.R. § 128.402 is inapposite.

In considering the issues, we find that *Millbrook*, though certain factual circumstances were different (for example, the protester in question was not a JV), is nevertheless relevant to the protest at issue here. As previously stated, *Millbrook* concerned a protester that was determined to be ineligible for award because it was not a certified SDVOSB and was listed as other than small at the time of award. *Millbrook Support Servs.*, *supra* at 6. Both that decision and the instant protest depend on the interpretation of VAAR section 819.7003 with respect to the "time of offer" or "time of award" question.

Indeed, in *Millbrook*, our Office concluded that, while the VA's regulations cross reference elements of SBA's regulations regarding the status of firms, the VAAR regulations implementing the Vets First program are not subordinate to SBA's more general rules regarding non-Vets First program contracts.[6] *See Millbrook Support Servs.*, *supra* at 7. We find applicable the statement in *Millbrook* that "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." *Id*. Moreover, while the SBA may ultimately disagree with the VA's issuance of regulations to implement the Vets First Act that establish different rules from the SBA's own regulations under the Small Business Act, the fact remains that the VA did in fact promulgate the regulations at issue and they are controlling on this VA procurement.

As a result, we find that, on the record here, and in accordance with the VAAR regulations discussed above, the VA reasonably eliminated PVH2's proposal from consideration for award because it was not certified as an SDVOSB at the time of award. Accordingly, this protest ground is denied.

Remaining Challenges

In its supplemental protest, PVH2 raised a variety of challenges to the agency's evaluation of its proposal, the agency's evaluation of the awardee's proposal, and the agency's best-value tradeoff decision. *See* Comments and Supp. Protest at 13-26. The protester argues that it is an interested party to raise these arguments, despite the fact that PVH2 is ineligible for award, because the protester asserts that Primary Care Solutions--the only other offeror that submitted a proposal--has deficiencies in its proposal that make it unawardable. Comments and Supp. Protest at 2-3. The protester also argues that--assuming its arguments about deficiencies in the awardee's proposal are correct--if the agency did resolicit proposals, then PVH2 could "revive its SDVOSB status" and compete under a new teaming structure by having Valor direct Potomac--the JV managing partner--to sell its interest in the PVH2 JV to an actual SDVOSB. Supp. Comments at 17 n.8.

The agency responds that reopening this competition would not solve the issue of PVH2's ineligibility. Resp. to SBA Comments at 14. The agency also argues that the protester's challenges to the agency's evaluation of the awardee's proposal, even if true, are issues that could be remedied through discussions. *Id*. at 13; *see* RFP at 164

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[6] Similarly, the *Millbrook* July 2026 COFC decision granted the VA's motion to dismiss, where the VA argued that "the VAAR regulations--authorized by a 'separate and independent statutory' scheme--supplement those [SBA] default rules with 'more stringent or otherwise different' eligibility requirements than the ones established by SBA regulations." AR, Exh. 11, *Millbrook vs. United States* at 6. In granting the VA's motion to dismiss, COFC found that "the VA did not err when considering the plain and unambiguous language of the applicable VAAR regulations" and concluded that the SBA regulations "were supplemented with more stringent regulations promulgated by the VA under separate and independent statutory authority." *Id*.

(stating that while the agency intends to award without discussions, it "reserves the right to conduct discussions if it is in the best interest to do so."). The VA contends that the protester's ineligibility, on the other hand, cannot be cured through discussions. Resp. to SBA Comments at 13. The VA further asserts that, under these circumstances, the protester has not established that the agency would have to start over and conduct a new competition. *See id.* at 13-14.

We need not address these additional arguments because, ultimately, PVH2 is not an interested party to challenge the agency's evaluation. Under our Bid Protest Regulations, only an "interested party" may file a protest. 4 C.F.R. § 21.1(a). That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1). A firm is not an interested party if it is ineligible to receive award under the protested solicitation. *See*, *e.g.*, *Synchrogenix Info. Strategies, LLC*, B-414068.6, Dec. 22, 2017, at 2-3 (a protester that is a large business is not an interested party to challenge the evaluation of a small business awardee's proposal under a small business set-aside; notably, the large business had purchased a small business that originally submitted a proposal and could no longer recertify as small after that corporate transaction, and the protester "concede[d] that it is no longer eligible to participate in this procurement as a small business"); *Trailblazer Health Enters., LLC*, B-407486.2, B-407486.3, Apr. 16, 2013, at 14 (nonresponsible firm is not eligible for award and is not an interested party to challenge the evaluation of proposals and awardee's technical eligibility).

PVH2 is ineligible for award because, as discussed above, it is no longer certified as an SDVOSB and cannot be awarded a contract that was set aside for SDVOSBs.

Further, we do not agree that PVH2 is an interested party because it has claimed the awardee's proposal contains deficiencies and because the protester and the awardee are the only two offerors under this solicitation. *But see CGI Fed., Inc.*, B-410714, Jan. 28, 2015, at 5 n.2 (concluding that a protester was an interested party, even though its proposal was technically deficient, because there were no intervening offerors in line for award and the protester would be eligible to compete on a potential resolicitation). Here, PVH2 has not established that the agency would be required to conduct a new procurement or that it would be eligible to compete on a potential resolicitation. We find the protester's assertion--that it could completely restructure its JV by having Potomac sell its interest in PVH2 to an SDVOSB, apparently solely for the purpose of competing in a hypothetical future resolicitation--to be speculative at best. *See* Supp. Comments at 17 n.8.

In addition, we note and agree with the agency's argument that, before considering the need for a resolicitation, any hypothetical issues with the awardee's proposal could potentially be remedied through the opening of discussions under this solicitation, given that the RFP reserves the right for the agency to hold discussions.[7] *See* Resp. to SBA Comments at 13; RFP at 164. On the other hand, the protester's failure to qualify as an SDVOSB JV could not be remedied through discussions.

In these unique circumstances, we view this situation as different from situations where a protester found technically unacceptable is nevertheless an interested party to challenge the agency's evaluation of the awardee's proposal because there would not be another offeror in line for award ahead of the protester were its protest to be sustained. *See*, *e.g.*, *MicroTechnologies, LLC*, B-415214, B-415214.2, Nov. 22, 2017, at 7 n.10. As previously stated, PVH2 was not found ineligible due to technical unacceptability or some aspect of its proposal that can be remedied; it was found ineligible because it is not an SDVOSB JV. In conclusion, we have no basis to disagree with the agency's decision to eliminate the protester's proposal from consideration for award, and the protester is not an interested party to further challenge the procurement.

The protest is denied in part and dismissed in part.

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General Counsel

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[7] For example, the protester argues that because the awardee submitted two different resumes for two nurse practitioners and incorrectly labeled both resumes with the name of only one of the nurse practitioners, the agency should have assigned a deficiency, instead of a weakness, to the awardee's proposal "for providing ambiguous resume submissions that made it impossible for the Agency to confirm whether providers had applicable required experience." Comments and Supp. Protest at 17; *see* AR, Exh. 5, Source Selection Decision Document at 11. The agency explains that it assessed a weakness, but not a deficiency, in the awardee's proposal because, despite the documentation confusion with the two different resumes, the agency determined that the rest of the information clarified the proposed medical providers in the awardee's proposal and "was sufficient to establish that [the awardee] could satisfy the staffing requirements mandated by the terms of the [performance work statement]." Resp. to SBA Comments at 12; AR, Exh. 12, Declaration at 1. Even if we agreed that this was serious enough to render the awardee's proposal unacceptable, we fail to see how this sort of resume information could not be provided, and the awardee's proposal amended to reflect the correct information, through discussions.