

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

VSBC Protest of:

Crosstown Courier Service, Inc.,

Protestor,

Re: Caduceus Medical Logistics LLC

Solicitation No. 36C26025Q0661

U.S. Department of Veterans Affairs

SBA No. VSBC-449-P

Decided: December 3, 2025

APPEARANCES

Steven A. Neeley, Esq., Melissa M. Kirby, Esq., Luis Hidalgo, Esq., Husch Blackwell LLC, Washington, DC, for Protestor

David R. Warner, Esq., Heather B. Mims, Esq., Warner PLLC, Reston, Virginia, for Caduceus Medical Logistics LLC

DECISION¹

I. Introduction and Jurisdiction

On July 24, 2025, Crosstown Courier Service, Inc. (Protestor) protested the Service-Disabled Veteran-Owned Small Business (SDVOSB) status of Caduceus Medical Logistics LLC (Caduceus), in connection with the U.S. Department of Veterans Affairs (VA), Solicitation No. 36C26025Q0661. The Contracting Officer (CO) forwarded the protest to the Small Business Administration (SBA) Office of Hearings and Appeals (OHA) for review. Protestor alleges that Caduceus is not a qualified SDVOSB for the subject procurement because it was not controlled by a Service-Disabled Veteran (SDV) as of the time that Caduceus submitted its proposal and because it has not properly been recertified as an SDVOSB after removing its sole SDV CEO and merging with a new entity by the same name. For the reasons discussed *infra*, I DENY this protest.

¹ This decision was originally issued under a protective order. Pursuant to 13 C.F.R. § 134.205, OHA afforded the parties an opportunity to file a request for redactions if desired. No redactions were requested, so OHA now issues the entire decision for public release.

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. Protestor filed its protest within five business days after receiving notification that Caduceus had been awarded the contract, so the protest is timely. 13 C.F.R. § 134.1004(a)(3). Accordingly, this matter is properly before OHA for decision.

II. Background

A. RFQ / Proposal

The RFQ was issued on June 24, 2025 as a total SDVOSB set-aside for pharmaceutical courier services for VA Puget Sound Healthcare System Pharmacy in Seattle, Washington. (RFQ Statement of Work, § D.1.) The NAICS code for the Solicitation is 492210 — Local Messengers and Local Delivery, which has a corresponding \$34 million annual receipts size standard. (RFQ at 1; *see also* 13 CFR § 121.201, Subsector 492.) The RFQ states that award is based on the lowest price offer that meets responsibility requirements with a satisfactory record of past performance. (RFQ at 67.)

The scope of work includes local delivery services to transport pharmaceuticals and supplies between the American Lake and Seattle Divisions of VA Puget Sound. (RFQ Statement of Work, § D.1.) The awardee must provide all labor, materials, supervision, equipment and services required to provide such courier services. This includes furnishing all vehicles, personnel, equipment, supplies, vehicle fuel, uniforms and nametags or badges. (*Id.*)

Protestor submitted its proposal on July 8, 2024. On July 17, 2025, the VA publicly announced award to Caduceus because it was deemed to be a responsible offeror with the lowest proposed price.

B. Protest

On July 24, 2025, Protestor filed the instant protest. Protestor had filed two previous protests against Caduceus in prior years, which OHA adjudicated in *CVE Protest of Crosstown Courier Serv. Inc.*, SBA No. CVE-239 (2022) (*Crosstown I*), and *VSBC Protest of Crosstown Courier Service, Inc.*, SBA No. VSBC-414-P (2024) (*Crosstown II*). However, Protestor contends that the instant protest is based on new information regarding Caduceus's removal of the qualifying service-disabled veteran while *Crosstown II* was still pending. (Protest at 2).

The instant protest is based upon Protestor's allegations that Caduceus removed its qualifying service-disabled veteran, and replaced him with another. The original Caduceus entity was formed in 2020 by Mark Speight, a former employee of Protestor, as a Georgia limited liability company. Its sole veteran member and former CEO was Brian Kosoris, a Georgia resident. Mr. Speight, a non-SDV, served as the company's President and Partner. (Protest at 3). Mr. Speight's wife, Wipada “Aom” Arunsri — a non-veteran — served as the chief financial officer. Claude Humphrey, another former employee of protestor who is also a non-veteran, served as the chief administrative officer. Mr. Speight, Mrs. Arunsri, and Mr. Humphrey all reside in Massachusetts. (*Id.*)

Protestor asserts that in August 2023, Mr. Kosoris was jailed and later indicted for the commission of serious violent felonies. It was on these grounds, among others, that Protestor protested Caduceus's eligibility for an award in August 2024. Before that decision was ultimately rendered, Caduceus evidently identified a new SDV, Anthony Covalli, and developed a plan to effectively transfer ownership and control of Caduceus from Mr. Kosoris to Mr. Covalli. On October 17, 2024, Mr. Covalli filed a Limited Liability Company Certificate of Organization in the State of Massachusetts for a new entity under the same name — Caduceus Medical Logistics LLC — and with the purpose of carrying on the same business. (Exh. 1 at 1.) That Certificate of Organization was also accompanied by a Letter of Consent purporting to authorize the new Massachusetts entity to operate under the same name as the Caduceus entity formed in Georgia and owned by Mr. Kosoris. (Exh. 1 at 2). However, that Letter of Consent was not signed by Mr. Kosoris; it is signed only by Mr. Speight, as the manager of the Georgia entity. (*Id.*)

On November 13, 2024, approximately one month after its creation, Mr. Covalli filed a Certificate of Merger in Massachusetts. (Exh. 2.) This certificate stated that the original Georgia Caduceus entity had merged into the new Massachusetts entity, which would be the sole surviving concern. The document further stated the merger was duly adopted (*Id.* ¶¶ 4, 8), was effective immediately as of October 30, 2024 (*Id.* ¶ 5), and that the merger agreement was on file in the offices of new Massachusetts entity. (*Id.* ¶ 6.) Following this, on November 20, 2024, OHA issued its decision in *Crosstown II*, finding the concern eligible as an SDVOSB based on Mr. Kosoris holding a 51% ownership and serving as Managing Member.

Despite the alleged merger, the new Massachusetts entity failed to file any record of the action with the State of Georgia. Consequently, on June 18, 2025, the Georgia Secretary of State's Office notified Caduceus of its intent to administratively dissolve the original Georgia entity. This was due to its failure to file an annual registration, pay requisite fees, and/or maintain a registered agent or office for over 60 days. (*See* Exh. 3.) Therefore, according to the State of Georgia, the original entity remains active. (Protest at 4.)

In December 2024 — over 30 days after the claimed merger — Mr. Speight and Mr. Covalli apparently updated the SAM registration for the Georgia Caduceus entity (UEI # EJ3AR6M96JM9). This update removed Mr. Kosoris but allowed the new principals to leverage the old entity's pre-existing status as a self-certified SDVOSB. (Exh. 4). Protestor points out that entities that did not apply for SBA SDVOSB certification by December 31, 2023, are ineligible to self-certify for set-aside contracts like the RFQ in question, pursuant to 13 C.F.R. § 128.200(c)(1). The certification record in SBA's VetCert database only reflects certification for the old Georgia entity, not the new Massachusetts entity. (Protest at 4.) Indeed, the VetCert record indicates that Caduceus' SDVOSB status was last verified by SBA on October 15, 2020, with no corresponding updates or changes in ownership or merger activity. (Protest at 5.)

Protestor argues that — at least based on the available information — the Caduceus Massachusetts entity that received award under the RFQ was not a properly certified SDVOSB at the time it submitted its proposal in July 2025. Effective January 1, 2024, any previously uncertified concern that seeks SDVOSB status must apply to SBA to obtain that certification. 13 C.F.R. § 128.300. While an exception exists for entities that submitted their applications before

that date, under 13 C.F.R. § 128.200(c)(1), Caduceus would not be eligible under this exception by virtue of its being formed in October 2024. (Protest at 5-6.)

While the surviving Massachusetts Caduceus entity may properly qualify as an SDVOSB based on Mr. Covalli's asserted status as an SDV, it is nevertheless required to apply for SBA certification and permit SBA to verify the claimed status. Moreover, nothing in SBA's regulations permit an exception to the application requirement and self-certification time limitations in the event of a merger.

Protestor further asserts there is currently no documentation confirming that Mr. Kosoris agreed to sell or transfer his ownership interest in the Georgia Caduceus entity to Mr. Covalli or the new Massachusetts entity. The only related evidence available is a Letter of Consent signed by Mr. Speight — not Mr. Kosoris — allowing the new Massachusetts entity to use the Georgia entity's name. Furthermore, the original Georgia entity appears to remain in existence according to the State of Georgia's records. Regardless of any potential transfer documentation, the Massachusetts Caduceus entity is a distinct legal entity — one which was not certified as an SDVOSB and was therefore ineligible to self-certify when it submitted its quotation. (Protest at 6.)

Protestor maintains OHA precedent upholds this interpretation. In *CVE Appeal of Oasys Intl. Corp.* SBA No. CVE-126 (2019) (*Oasys*) VA decertified the concern as a SDVOSB entity following a merger and retirement of the former SDV owner. While OHA held that CVE should have recognized the surviving entity as a SDVOSB because its new owner was also a SDV, crucially, in that matter the surviving entity was the original, certified SDVOSB, as the new entity with new owner was merged into the original SDVOSB entity, just with a new name. (Protest at 6-7.)

Finally, there is significant evidence Caduceus is actually controlled by Mr. Speight, a non-SDV. (Protestor makes a point to note that it has long made this claim in its previous protests as well.) To be eligible as a SDVOSB, a concern must show that its SDV owner: (1) conducts the company's "long-term decisions making"; (2) conducts the company's "day-to-day management and administration of the business operations"; (3) holds the company's highest officer position; (4) serves as the company's managing member; and (5) controls "all decisions of the limited liability company." (Protest at 7, citing 13 C.F.R. § 125.13(a), (b), (d); *see also* RFQ at 70.)

Here, however, Mr. Speight appears to co-manage the new Massachusetts Caduceus with Anthony Covalli, as each name carries the title "Manager" on the Massachusetts LLC organization documentation. (*See* Exhs. 1 and 2.) The authority of the SDVOSB qualifying individual cannot be equally shared with a non-veteran who has an equal vote in the concern's management. *See, e.g., XOtech, LLC v. United States*, 142 Fed. Cl. 313, 320 (2019), *aff'd*, 950 F.3d 1376 (Fed. Cir. 2020). (Protest at 7.) Protestor argues Caduceus is not an eligible SDVOSB.

C. Protest Response

On August 14, 2025, Caduceus responded to the protest. Caduceus concedes that, while its ownership and management has changed since the last time Crosstown protested its status, the operative facts remain the same: at all relevant times to this protest, Caduceus has been owned by a service-disabled veteran who manages the long-term decision-making and the day-to-day operations of Caduceus. (Response at 1.) At the specific times relevant to this protest, Anthony Covalli, the SDV upon whom Caduceus's claim of eligibility was based, was the majority (51%) owner and Chief Executive Officer and Secretary of the concern. (*See* Resp. Exh. 1, Operating Agreement of Caduceus at § 3.2.)

Caduceus lays out a timeline of the relevant actions in this matter:

- August 23, 2024: Transfer of former SDV-owner, Brian Kosoris', 51% interest to the Georgia-based Caduceus entity. (*See* Resp. Exh. 2.)
- August 23, 2024: On the same day as Mr. Kosoris' transfer of his ownership interest to Caduceus, Caduceus transfers that same 51% ownership interest to Mr. Covalli. (*See* Resp. Exh. 3.)
- August 23, 2024: Simultaneous with the above transfers, Caduceus adopts the Third Revised Operating Agreement of the Georgia Caduceus entity and further resolves that Mr. Covalli shall be the managing member and Chief Executive Officer of the Company in addition to being the majority owner. (*See* Resp. Exh. 4).
- October 17, 2024: Certificate of Organization of Caduceus Medical Logistics LLC is filed in Massachusetts and signed by Mr. Covalli. (*See* Resp. Exh. 5).
- October 30, 2024: Certificate of Merger is signed by Mr. Covalli, merging the Georgia Caduceus entity into the Massachusetts Caduceus entity. This document was filed in Massachusetts on November 13, 2024. (*See* Resp. Exh. 6.)
- November 13, 2024: Caduceus adopts the Operating Agreement of the surviving Massachusetts Caduceus. (*See* Resp. Exh. 1.)
- January 8, 2025: SBA confirms review and acceptance of the material changes to Caduceus and further confirms that Caduceus “remains certified by the Veteran Small Business Certification Program (VetCert) at SBA,” confirming its “eligibility to compete for set-aside contracting opportunities, as well as other benefits, as a Service-Disabled Veteran-Owned Small Business (SDVOSB).” SBA's letter established that Caduceus' certification remains valid until October 15, 2025. (*See* Resp. Exh. 7.)
- June 24, 2025: Solicitation issued.
- July 8, 2025: Offers due.

- July 17, 2025: Notice of award posted.

(Response at 2-3).

Accordingly, the merger was in effect well before the solicitation at issue was even released.

From there, Caduceus argues this protest should be barred by issue preclusion — collateral estoppel — as this represents, at a minimum, Protestor's fifth attempt to challenge Caduceus' SDVOSB status. Caduceus speculates that Protestor's many attempts to overturn any and all of Caduceus' contract awards are motivated by its desire to “get back” at its former employees. Indeed, Protestor's discussion of Caduceus's background specifically identifies two “former [Protestor] employee[s]” — Mark Speight and Claude Humphrey — who are now employed at Caduceus. (Protest at 3). [Moreover, Caduceus also notes that — likely knowing this challenge would again fail — Protestor simultaneously filed a GAO protest against this same procurement.]

Since Protestor raises substantially similar arguments to those addressed in the prior protests, all of which were previously rejected by OHA, the same outcome — denial of the protest — should occur here. (Response at 6.)

Caduceus further argues that in order to qualify as an eligible SDVOSB, an entity must be a small business that is unconditionally owned and controlled by one or more SDVs. In this matter, the Joint Resolution of the Caduceus members clearly provides that the “Chief Executive Officer is the highest-ranked officer in the Company, and responsible for the management of its daily and long-term operations,” thereby demonstrating that the CEO — Mr. Covalli — has complete control over the business. (Resp. Exh. 4, Response at 7.) Moreover, Caduceus also adopted a Third Amended and Restated Operating Agreement (“Third OA”), which confirmed the same membership interests noted above and designated Mr. Covalli as the Managing Member or Manager which was defined as the “individual tasked with managing the daily and long-term operations of the Company and also responsible for taking Company Actions.” (Resp. Exh. 4 at § 1.4.)

Moreover, in accordance with the Third OA, Mr. Covalli subsequently formed the Massachusetts entity as Massachusetts is his home state (*See* Resp. Exh. 5) and subsequently determined it appropriate to merge the Massachusetts and Georgia entities. (*See* Resp. Exh. 6.) (*See also* Resp. Exh. 8 at ¶¶ 6-8.)

In light of these developments, on January 8, 2025, the SBA informed Caduceus that it “has reviewed and accepted the material change(s) submitted on November 29, 2024 for Caduceus Medical Logistics LLC” and that the business “remains certified by the Veteran Small Business Certification Program (VetCert) at SBA.” (*See* Resp. Exhibit 7.) In the same letter, the SBA confirmed both Caduceus' “eligibility to compete for set-aside contracting opportunities, as well as other benefits, as a Service-Disabled Veteran-Owned Small Business” and that Caduceus' certification remains valid until October 15, 2025. (*Id.*) Therefore, not only did SBA's letter review and approve the changes to Caduceus' ownership and business, it confirmed that, as of

January 8, 2025, Caduceus remained an eligible SDVOSB through October 15, 2025. (*Id.*) Protestor has not alleged any changes to Caduceus' status subsequent to January 8, 2025 that could implicate or call into question the SBA's confirmation of eligibility — which is to say, Protestor's arguments relate to actions that occurred months earlier in October 2024 and were approved by SBA. (Response at 8-9.)

The points advanced by Protestor about the Letter of Consent being signed by Mr. Speight are also irrelevant. As CEO, Mr. Covalli legitimately exercised his authority in delegating this task to Mr. Speight for the benefit of the business, particularly when Mr. Covalli clearly approved of the formation of the Massachusetts entity, as evidenced by his signature and filing of the document. (Resp. Exh. 8, at ¶¶ 6-8, cited in Response at 9.)

Protestor's arguments relying on *Oasys* are inapposite. Indeed, they actually support Caduceus's position, as the concern at issue remained an eligible SDVOSB as due to transferring ownership and management from one eligible SDV to another, and the Appellant in that case went through the proper channels in notifying the Agency. (Response at 11).

Finally, the argument that Caduceus is not actually controlled by a SDV is rebutted by a wide variety of the different Exhibits which accompany the Response, many of Caduceus has already discussed. (*See generally* Response 11-15, Resp. Exhs. 1-9).

D. Supplemental Protest

On September 10, 2025, Protestor filed a Supplemental Protest. Protestor contends Caduceus's response to the protest mischaracterizes the underlying ownership change transactions and fails to rebut a central allegation in the initial protest, that the current Caduceus is a different legal entity than its predecessor and could not, under SBA regulations, rely on its predecessor entity's self-certification. (Supp. Protest at 1). Protestor also contends that record also gives rise to two supplemental grounds of protest: that the predecessor Caduceus entity forfeited its SDVOSB status when Mr. Kosoris transferred his shares to the other members of the predecessor entity, and that Mr. Covalli's ownership of the predecessor entity, which merged into the current Massachusetts entity, was not unconditional, as required under 13 C.F.R. § 128.202. (*Id.*)

Protestor contends the predecessor Caduceus entity forfeited its SDVOSB status on August 23, 2024. (Response at 2). On that day, Mr. Kosoris signed an Interest Purchase Agreement between himself and the predecessor Caduceus entity to sell his shares back to the company. In so doing, the predecessor entity then became 100% owned by Mr. Speight, his wife (Wipada Speight), and Claude Humphrey — none of whom are SDVs. The records further show that Mr. Covalli did not actually take ownership of the predecessor entity until he signed his separate Interest Purchase Agreement on September 5, 2024. Nothing in SBA's regulations allow an entity to back-date the effectiveness of a purchase agreement for purposes of maintaining SDVOSB status. Indeed, while the regulations allow changes of ownership to occur, they expressly require that “one or more qualifying veterans own and control it *after the change*.” (emphasis supplied in Supp. Protest, at 3, citing 13 C.F.R. § 128.202(f).)

Protestor relies on *VSBC Protest of Elevated Tech., Inc.*, SBA No. VSBC-393-P (2024), 2024 WL 4285560, to contend that OHA has previously considered status forfeiture arguments in the context of an ownership change. While Protestor concedes in that matter OHA held that a prior alleged forfeiture of status is not relevant to whether an entity qualifies as a SDVOSB at the time of its quotation submission, the circumstances here are different. This is because, as outlined in the initial protest, effective January 1, 2024, a concern could no longer self-certify for SDVOSB status. *See* 13 C.F.R. § 128.300. Thus, Caduceus could not lose its status after January 1, 2024, and then simply self-certify again as a SDVOSB after acquiring its new SDV owner — Mr. Covalli. Simply put, the predecessor Caduceus entity was a wholly non-SDV owned entity from August 23, 2024 to September 5, 2024. When Mr. Covalli signed the purchase agreement on September 5, the predecessor Caduceus entity was required to reapply for the certification from the SBA, which it did not do. (Supp. Protest at 3-4).

Protestor also contends Mr. Covalli's ownership of the predecessor Caduceus is not unconditional. The regulation requires that ownership of an SDVOSB may not be subject to “any conditions, executory agreements, voting trusts, restrictions on or assignments of voting rights or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity).” (Supp. Protest at 4, citing 13 C.F.R. § 128.202(b).) In the Interest Purchase Agreement, however, if Mr. Covalli is “unable” to dedicate himself to the business, he must voluntarily relinquish his shares of the subject concern. Moreover, this voluntary relinquishment is not limited to circumstances of death or incapacity as permitted by the SBA regulations but rather is subject to the “good faith determination” of the non-SDV members of the board. (Supp. Protest at 4-5.)

Simply put, Caduceus is controlled by its non-SDV owner (specifically, Mr. Speight), who seek to simply replace one SDV owner for another, as needed, to retain the competitive advantage of SDVOSB set-aside contracts. As a policy matter, this is inconsistent with the goals and objectives of the SDVOSB program. This protest should accordingly be sustained. (Supp. Protest at 6.)

E. Response to Supplemental Protest

On September 26, 2025, Caduceus responded to the Supplemental Protest. Caduceus argues that the Supplemental Protest misconstrues the underlying facts of the matter, and that the operative documents demonstrably show an effective date of August 23, 2024 as to when Mr. Covalli took his majority ownership share of the subject concern. The Joint Consent of the Members of Caduceus Medical Logistics, LLC, was adopted and approved by unanimous consent by the board members on that day.

Caduceus argues Protestor's reliance upon 13 C.F.R. § 128.202(f) is inapposite. As Protestor itself noted in its own supplemental pleading, the regulation merely requires “one or more qualifying veterans own and control [the entity] after the change.” Here, all the documentation clearly shows that Mr. Covalli's ownership interest was effective as of August 23, 2024. Caduceus concedes that, had Mr. Covalli refused to sign his Interest Purchase Agreement on September 5, 2024, that might lend itself to support Protestor's conclusion, but such an event did not occur, so there is no need to entertain such a hypothetical. (Supp. Resp. at 3.)

Protestor's citation to the *Veteran Elevated* case also does not rescue its argument. This is because “in an SDVOSB status protest pertaining to a procurement, OHA determines SDVOSB eligibility as of the date of the concern's initial response to the solicitation including price.” *Veteran Elevated* at 6. The record clearly shows that Mr. Covalli was the majority owner and manager of Caduceus at the date of proposal submission. Beyond this, Protestor has provided no support for its assertions that Caduceus “forfeited” its status besides its arguments about the perceived delay in executing the relevant documentation. (Supp. Resp. at 3.)

As for the second argument, Caduceus maintains Protestor plainly either misconstrues or misrepresents the consideration language of the Interest Purchase Agreement. While Protestor argues that the “non-SDV members of the entity could seek to force a relinquishment, that is inconsistent with the plain language of the agreement as admitted even by Protestor itself in its pleading. (Supp. Resp. at 4). Rather, the agreement provides for Mr. Covalli's determination whether or not to voluntarily relinquish his ownership interest in the event that he is unable to fulfill his duties. There is nothing in this provision causing or potentially causing ownership benefits to go to another as prohibited by 13 C.F.R. § 128.202(b). If anything, the language in the agreement is more akin to a right of first refusal that is expressly permitted by subsection (b)(3) of that very same regulation. (Supp. Resp. at 4.)

Finally, The Operating Agreement in effect as of the date of bid submission further makes abundantly clear that there are no restrictions or conditions on Mr. Covalli's ownership:

Transfer Rights. Other than the right of first refusal set forth below in Section 10 and subject to Section 5.4 (“Extraordinary Actions”), which requires unanimous approval for purposes of adding an equity stakeholder (i.e., Member), there shall be no restrictions on any Member's (including the Service-Disabled Veteran) ability to transfer his shares to anyone, at any time and at any price he desires.

(Supp. Resp. at 5, citing Exh. 1 at Section 9.1.)

III. Discussion

A. Burden of Proof and Date of Eligibility

As the protested firm, Caduceus 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 Protestor, the protested concern, and any other parties. 13 C.F.R. § 134.1007(g). Accordingly, all the evidence submitted by the Protestor and Caduceus is part of the record. OHA determines the eligibility of the protested concern's SDVOSB status as of the date of the initial offer, including price. 13 C.F.R. § 134.1003(e)(1).

B. Analysis

In order to qualify as an SDVOSB, a concern must be a small business concern which is not less than 51% owned and controlled by one or more service-disabled veterans. 13 C.F.R. §

128.200(b). In the case of an LLC like Caduceus, at least 51% of each class of member interest must be owed by one or more qualifying veterans. 13 C.F.R. § 128.202(d). The management and daily business operations must be controlled by one or more qualifying veterans, who control the concern's long-term decision making and day-to-day operations. 13 C.F.R. § 128.203(a). The qualifying veteran must hold the highest officer position in the firm. 13 C.F.R. § 128.203(b). In the case of a limited liability company, such as Caduceus, the qualifying veteran must serve as the managing member, with control over the company's decisions. 13 C.F.R. § 128.203(d). A concern must be certified by SBA as an SDVOSB pursuant to 13 C.F.R. § 128.200 in order to be awarded an SDVSB set-aside contract. 128.200(c)(1). A concern's eligibility is determined as of the date of its initial offer, including price. 13 C.F.R. § 128.1003(e)(1).

Here, on January 8, 2025, SBA accepted the material changes to Caduceus and informed it Caduceus remained certified as an SDVOSB. The record thus establishes SBA not only reviewed but approved the changes to Caduceus' ownership and business, and in doing so confirmed the concern's eligibility to compete for SDVOSB set-aside contracting opportunities. Response Exh. 7. The date for determining Caduceus's status is July 8, 2025, the date of its submission of its initial offer. This date is thus subsequent to SBA's certification, and well after the completion of the merger. At that time, the qualifying veteran, Mr. Covalli, clearly owned a majority interest in Caduceus. Third Amended and Restated Operating Agreement, ¶ 3.2. The Operating Agreement names him Managing Member and gives him complete power and authority to manage and operate the company and make all decisions affecting its business and affairs. *Id.*, ¶ 5.1. Mr. Covalli is also Caduceus's Chief Executive Officer, the highest officer position in the concern. *Id.*, ¶ 6.1.2.

It is clear that Caduceus was a SDVOSB-certified entity, and met the eligibility requirements, at the time the proposals were due. This protest therefore hinges on whether the 12-day gap in time in formally executing all the relevant documentation for the sale and merger constituted a forfeiture of Caduceus's status, and about the actual degree of control the SDV — Mr. Covalli — has over the concern.

Protestor claims the 12-day gap in the formal execution of the documents constituted a forfeiture of Caduceus's SDVOSB status, and that accordingly under updated SBA regulations it would no longer be allowed to self-certify.

13 C.F.R. § 128.300 provides:

A concern must apply to SBA for certification as a VOSB or SDVOSB. The concern must submit evidence that it is a small business owned and controlled by one or more qualifying veterans. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. If SBA determines that a concern meets the eligibility requirements of a VOSB or SDVOSB, it will notify the concern and designate the concern as a certified VOSB or SDVOSB in the certification database.

13 C.F.R. § 128.202(f) provides:

A Participant may change its ownership or business structure so long as one or more qualifying veterans own and control it after the change. A Participant must notify SBA of a change of ownership in accordance with § 128.307 and attest to its continued eligibility.

13 C.F.R. § 128.307 provides:

Once certified, a VOSB or SDVOSB must notify SBA of any material changes that could affect its eligibility, within 30 calendar days of any such change, and attest to its continued eligibility. Material changes include, but are not limited to, a change in the firm's ownership, business structure, or control, filing of bankruptcy, or change in active duty status. . . .

The plain language of these regulations does not easily lend itself to Protestor's conclusion that document gaps constitute a forfeiture or novation. Indeed, Caduceus's response highlighting that § 128.202(f) merely requires “one or more qualifying veterans own and control [the entity] *after the change*” is by far the more straightforward interpretation of the regulation.

Under Protestor's interpretation, a lapse of a small period of time — Protestor never specified whether it was because there was any gap at all or because that gap was 12 days as the basis for its conclusion — leading to an entity forfeiting its pre-existing SDVOSB status would create a wide array of unintended consequences that would seemingly contradict the core purpose of the regulation. Here, the transaction took place over a short period of time, and not all the documentation was executed simultaneously, but it is clear all the documents are part of one transaction, after which the qualifying veteran Mr. Covalli owned and controlled the company. Caduceus's merger met the requirement that after it was concluded, a service-disabled veteran owned and controlled the company.

Appellant's reliance on *Oasys* is misplaced. That case concerned a properly conducted transfer of ownership from one qualifying veteran to another. This case does so as well. That there was no merger in *Oasys* does not mean the same principle does not apply in the case of a merger. *Elevated Tech., Inc.*, also does not support Appellant, as it holds the important issue is the eligibility of the concern in question as of the date of its initial offer including price, and here Caduceus was eligible as of that date.

Protestor further alleges that Mr. Covalli's ownership of Caduceus is not unconditional, as the regulation requires. The qualifying veteran's ownership “must not be subject to any conditions, executory agreements, voting trusts, restrictions on or assignments of voting rights or other arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity.” 13 C.F.R. § 128.202(b). Protestor points to the provision of the Interest Purchase Agreement, which requires that Mr. Covalli agrees to dedicate himself to Caduceus's operations. He further agrees to voluntarily relinquish his ownership if he is unable to fulfill those duties. He agrees to exercise good faith in making this determination. Interest Purchase Agreement, ¶ 1.3. Nothing in this provision requires that Mr. Covalli's ownership interest go to another without his consent. Rather, Mr. Covalli is to voluntarily make that

decision, it is left to his discretion. This is clearly a provision meant to deal with a possible incapacity of Mr. Covalli, which is explicitly permitted by the regulation.

Further, the Interest Purchase Agreement explicitly provides that the interest Mr. Covalli was about to purchase is to be “free of any restrictions on transfer.” *Id.*, at ¶ 2.4. The Operating Agreement provides that there are to be no restrictions on any Member's transfer rights. Third Operating Agreement, ¶ 9.1. Accordingly, I find that Mr Covalli's ownership interest in Caduceus is unconditional, and in compliance with the regulation. Nothing in any of Caduceus's organizing documents that would permit the non-SDV members to oust Mr. Covalli, as Protestor claims. Indeed, both the Interest Purchase Agreement and the updated version of the Operating Agreement contain explicit language stating that there are no restrictions (besides applicable securities laws) on Mr. Covalli's ownership or his ability to transfer shares.

Accordingly, I conclude Caduceus has met its burden of establishing that it is an eligible SDVOSB. 13 C.F.R. § 134.1010. I must therefore deny the protest.

IV. Conclusion

For the above reasons, the protest is DENIED. This is the final agency action of the U.S. Small Business Administration. 38 U.S.C. § 8127(f)(8)(B); 13 C.F.R. § 134.1007(i).

CHRISTOPHER HOLLEMAN
Administrative Judge