



Decision

Matter of: AAA General Contractors, LLC

File: B-423842

Date: November 18, 2025

Edgar Skertchly for the protester.
Natica C. Neely, Esq., Department of Veterans Affairs, for the agency.
Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency unreasonably rejected protester's proposal based on omission of a certification regarding compliance with a contractual limitation on subcontracting is denied where the solicitation specifically required submission of the certification with the proposal and advised that a failure to submit a certification would make the proposal ineligible for evaluation and award.

DECISION

AAA General Contractors, LLC, of El Paso, Texas, a service-disabled veteran-owned small business (SDVOSB), protests the rejection of its proposal under request for proposals (RFP) No. 36C25723R0013, issued by the Department of Veterans Affairs (VA) for the award of indefinite-delivery, indefinite-quantity contracts to provide construction and two-phase design-build services for VA medical facilities in Veterans Integrated Service Network 17, which covers portions of Texas, New Mexico, and Oklahoma. The protester contends that the VA unreasonably rejected the firm's proposal because it did not include a certification with the proposal.

We deny the protest.

BACKGROUND

The VA issued the RFP on April 24, 2025, seeking proposals from SDVOSB firms to provide maintenance, repair and new construction services under orders placed over a 5-year ordering period. Up to 15 contracts would be awarded to the firms whose

proposals provided the best value under a past performance-price tradeoff. Agency Report (AR), Tab 2, RFP at 95.¹

In addition to instructions about the contents of four proposal volumes that offerors were required to submit, the RFP included the clause at VA Acquisition Regulation Supplement (VAAR) 852.219-75. RFP at 156-157. Implementing the statutory requirement in 38 U.S.C. § 8127(l)(2), the clause directs offerors to include with their proposals a certification that is provided in the text of the clause. In the certification, the offeror certifies that its performance will comply with the applicable limitation on subcontracting. 48 C.F.R. § 852.219-75(a)(ii). Importantly, the text of the clause included in the RFP also provides, in relevant part, as follows:

The formal certification must be completed, signed and returned with the offeror's . . . proposal. The Government will not consider offers for award from offerors that do not provide the certification, and all such responses will be deemed ineligible for evaluation and award.

RFP at 157 (VAAR clause 852.219-75(d)).

The RFP advised offerors more generally that all proposal submission requirements would be strictly enforced, that failure to comply would result in the proposal being rejected, and that the agency did not intend to conduct discussions with offerors. RFP at 96.

The VA received proposals from multiple firms, including AAA, which submitted a proposal by the September 2, 2024, closing date for receipt of proposals. Memorandum of Law (MOL) at 3. On February 26, 2025, the VA issued amendment 10 to the RFP, which permitted the submission of revised proposals by March 7 and stated that all proposals “shall be good through June 2, 2025.” RFP at 52 (RFP amend. 10 cover page).²

During the initial review of AAA’s proposal, the contracting officer determined that it did not include the certification required by VAAR clause 852.219-75. The contracting

¹ Citations to documents in the record are to the Adobe PDF pagination.

² Although the VA also argues that AAA failed to acknowledge amendment 10, and contends that this rendered the proposal unacceptable, MOL at 3, we do not address this issue because, as discussed above, the proposal was properly rejected as unacceptable without regard to whether amendment 10 had to be acknowledged. We also need not consider the protester’s argument that issuance of amendment 10 was improper. Comments at 1.

officer determined that the omission rendered AAA's proposal unacceptable and notified the firm on August 15 that its proposal had been rejected on that basis.

AAA immediately filed an agency-level protest, arguing that the RFP had not identified submission of the certification as a proposal requirement, and that if the certification was required, the VA should have allowed the firm an opportunity to submit the certification as a clarification of its proposal. The contracting officer denied the protest on August 20, whereupon AAA filed this protest with our Office.

DISCUSSION

AAA argues that the rejection of its proposal was improper because the RFP instructions did not reasonably inform offerors that the VAAR clause 852.219-75 certification had to be submitted with their proposals, and therefore rejection of a proposal based on omission of the certification was improper. Protest at 2; Comments at 1. AAA also contends that the certification is immaterial because the terms of the contract require compliance with the limitation on subcontracting clause at VAAR 852.219-74, regardless of whether the firm acknowledged that requirement in a VAAR 852.219-75 certification. As a result, AAA argues that submitting the certification with its proposal was not a material requirement and should have been waived as a minor informality. Protest at 2; Comments at 2. Lastly, the firm argues that the rejection of its proposal without offering a further opportunity to submit the certification was unfair. Protest at 2.

The VA argues that the RFP clearly advised offerors that submission of the VAAR clause 852.219-75 certification with each offeror's proposal was required and expressly stated that a failure to do so would result in rejection of the proposal. MOL at 8-9. The agency contends that AAA's failure to submit the completed, signed certificate rendered the firm's proposal unacceptable and therefore the contracting officer properly rejected it. *Id.* at 8. The VA also argues that AAA's omission could not be remedied by allowing the firm to submit a clarification, the contracting officer was not required to seek such a clarification and, more broadly, the agency's actions were fair and consistent with law and regulation. *Id.* at 13.

The record shows that the RFP advised offerors in the text of VAAR clause 852.219-75 that they were required to complete and return the certification in the clause with their proposals and that a failure to do so would render that proposal unacceptable. Contrary to the protester's arguments, our Office has concluded that not only is a contractor's compliance with the limitation on subcontracting clause a material term of a contract, the requirement to submit the certificate in VAAR clause 852.219-75 addressing compliance with the limitation is also a material term of a solicitation. *Excelsior Def., Inc.*, B-423106, Jan. 16, 2025, 2025 CPD ¶ 3 at 5 (citing *Hamilton Pac. Chamberlain*,

LLC, B-422568.2, Aug. 14, 2024, 2024 CPD ¶ 193 at 3).³ Consequently, by failing to submit the certificate with its proposal, AAA failed to meet a material proposal submission requirement and rendered its proposal ineligible for award under the terms of the RFP. Therefore, we have no basis to question the contracting officer's rejection of AAA's proposal.

There is also no basis to question the agency's action in proceeding to award contracts without holding clarifications (or discussions) with offerors and, in particular, with the protester, over its omission of the VAAR clause 852.219-75 certification. Given that submission of this certificate with a proposal was a material requirement, as explained above, the omission of the certificate could not have been corrected by offering AAA an opportunity to submit a clarification. *Excelsior Def., Inc.*, *supra* at 6. Rather, allowing an offeror to correct a material proposal defect--including the material defect of omitting this specific certification, specifically--would have constituted discussions, which this RFP advised offerors the agency did not intend to hold.⁴ *Id.* Accordingly, the contracting officer's action in not offering AAA an opportunity to submit the certification, under an inapplicable label of clarification, was proper.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

³ We recognize that the procurement at issue in our decision in *Excelsior Defense* was conducted under subpart 8.4 of the Federal Acquisition Regulation (FAR), which relates to purchases under the Federal Supply Schedule program, while the procurement at issue here was conducted under the negotiated acquisition procedures of FAR part 15. Nevertheless, we find that the same standard applies here regarding the materiality of the requirement to submit the certification and whether the omission could be remedied by clarifications, as we discuss below.

⁴ As indicated, the RFP stated that the VA did not intend to conduct discussions with offerors. RFP at 96. Given that statement, a contracting officer's discretion in deciding not to hold discussions is quite broad and there is no requirement to document the decision not to initiate discussions. As a result, our Office generally will not review the contracting officer's decision. *Midnight Sun-Centennial Kirratchiaq JV, LLC*, B-419934 *et al.*, Oct. 4, 2021, 2021 CPD ¶ 336 at 6. AAA's contention that not allowing it to submit a certification after proposals were due was unfair does not provide a basis to question the contracting officer's discretion here in not holding discussions.