



# Decision

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**Matter of:** Winspear Construction, LLC

**File:** B-423869

**Date:** December 30, 2025

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Natica Chapman Neely, Esq., Department of Veterans Affairs, for the agency. Michael P. Grogan, Esq., and Evan D. Wesser, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Challenge to the agency's determination that the protester's proposal was ineligible for award, based on the omission of the correct version of the required certification regarding compliance with a contractual limitation on subcontracting, is denied where the solicitation required the submission of a specific version of the certification with the proposal and advised that a failure to submit that specific version of the certification would make the proposal ineligible for award.

## DECISION

Winspear Construction, LLC, a small business of Boise, Idaho, protests its elimination from the competition under request for proposals (RFP) No. 36C26024R0087, issued by the Department of Veterans Affairs (VA), for construction, maintenance, alteration, and repair services in support of VA medical facilities. The protester contends the agency's elimination of Winspear's proposal from the competition for failing to comply with the solicitation's proposal submission requirements was unreasonable.

We deny the protest.

## BACKGROUND

The agency issued the solicitation on April 1, 2025, as a service-disabled veteran-owned small business (SDVOSB) set-aside, pursuant to the procedures in Federal Acquisition Regulation (FAR) part 15, for a multiple award task order contract (MATOC), with a 1-year based period of performance and two, 1-year option periods. Agency

Report (AR), Exh. 2, RFP at 1.<sup>1</sup> The RFP sought construction, maintenance, alteration, and repair services in support of the VA medical facilities located in Washington, Oregon, Idaho, and Alaska. *Id.* The solicitation provided for award on a best-value tradeoff basis, considering three evaluation factors: (1) past performance; (2) technical; and (3) seed project price proposal. *Id.* at 97.

The agency received multiple proposals by the July 17 due date, to include a submission from Winspear. Memorandum of Law (MOL) at 4. On August 19, the contracting officer notified the protester that the firm's proposal "has been excluded from further consideration." AR, Exh. 5, Rejection Letter at 3. The agency explained because Winspear failed to include in its proposal the proper version of a certification required under the terms of the RFP--that is, certification pursuant to Veterans Affairs Acquisition Regulation (VAAR) clause 852.219-75, which concerns limitations on subcontracting--the protester's proposal "is excluded from further consideration and is ineligible for award." *Id.* On August 29, Winspear filed the instant protest challenging its elimination from the competition.

## DISCUSSION

The sole issue in this protest concerns the reasonableness of the VA's decision to exclude Winspear's proposal from consideration. The protester concedes that it did not submit the correct version of the VAAR clause 852.219-75 certification required by the RFP. However, Winspear argues the agency should have deemed its certification (pursuant to a prior version of VAAR clause 852.219-75) as sufficient to comply with the solicitation's requirements. Alternatively, Winspear contends the VA unreasonably failed to seek clarification from the firm regarding its VAAR clause 852.219-75 certification. In response, the agency argues both its decision that the proposal was ineligible and not to conduct clarifications were reasonable and consistent with the terms of the RFP and applicable procurement law and regulation. For the following reasons, we find no basis on which to sustain the protest.<sup>2</sup>

Before turning to the merits of the protest, we briefly discuss the relevant pertinent statutory and regulatory background. The VA set aside the procurement for SDVOSB concerns pursuant to the Veterans First Contracting Program, as implemented in VAAR subpart 819.70. 38 U.S.C. §§ 8127- 8128; VAAR § 819.7004. The regulation provides, among other things, that "a contracting officer may award a contract under this subpart only after obtaining from the offeror a certification that the offeror will comply with the limitations on subcontracting requirement as provided in the solicitation and which shall

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<sup>1</sup> Our citations to the record correspond to the Adobe PDF page numbers for each document.

<sup>2</sup> Winspear raises other collateral allegations. Although our decision does not specifically address them all, we have considered each argument and find that none provides a basis on which to sustain the protest.

be included in the resultant contract.” VAAR § 819.7004(b). In this regard, the regulation requires that “[t]he formal certification must be completed, signed and returned with the offeror’s bid, quotation, or proposal,” and “[t]he Government will not consider offers for award from offerors that do not provide the certification with their bid, quotation, or proposal, and all such responses will be deemed ineligible for evaluation and award.” VAAR § 819.7004(b)(1), (b)(2).

These requirements, both statutory and regulatory, are reflected in VAAR clause 852.219-75. The RFP, as originally issued, included the November 2022 version of VAAR clause 852.219-75, VA Notice of Limitations on Subcontracting--Certificate of Compliance for Services and Construction (NOV 2022). RFP at 55-56. The clause provided, in relevant part:

(a) Pursuant to 38 U.S.C. 8127(k)(2), the offeror certifies that--

(1) If awarded a contract (see FAR 2.101 definition), it will comply with the limitations on subcontracting requirement as provided in the solicitation and the resultant contract, as follows:

(ii) [] *General construction.* In the case of a contract for general construction, the contractor will not pay more than 85% of the amount paid by the government to it to firms that are not VIP-listed SDVOSBs as set forth in 852.219-73 or [veteran-owned small businesses] VOSBs as set forth in 852.219-74. Any work that a similarly situated VIP-listed subcontractor further subcontracts will count towards the 85% subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

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(d) Offeror completed certification/fill-in required. The formal certification must be completed, signed and returned with the offeror’s bid, quotation, or 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.

#### Certification

I hereby certify that if awarded the contract, [insert name of offeror] will comply with the limitations on subcontracting specified in this clause and in the resultant contract. I further certify that I am authorized to execute this certification on behalf of [insert name of offeror].

Printed Name of Signee: \_\_\_\_\_

Printed Title of Signee: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_  
Company Name and Address: \_\_\_\_\_

(End of Clause)

RFP at 55-57.

The RFP contained specific instructions related to the certification requirement contained in VAAR clause 852.219-75 and cautioned that an offeror's "failure to complete and submit VAAR 852.219-75 with the initial offer is considered a 'material' defect and cannot be resolved through clarifications or discussions; therefore, failure to complete and submit VAAR 852.219-75 with your offer will make your offer ineligible for award." *Id.* at 90. Additionally, two solicitation amendments are relevant to our analysis. First, on April 24, the VA issued amendment 0005 to the solicitation, which, among other things, replaced the November 2022 version of VAAR clause 852.219-75 with the updated January 2023 version. RFP at 107. This updated version of the clause contains differences from the prior version, which we discuss more fully, below. Second, on June 18, the VA issued amendment 0010 to the solicitation. This amendment, as relevant to this protest, explained that "[i]n order for your proposal to be considered you MUST: Use the VAAR 852.219-75 (JAN 2023) (DEVIATION) version provided in either amendment 0005 or this amendment." RFP at 120. The solicitation further explained that "[t]he 2022 version of this clause, or any other version/format will not be acceptable." *Id.*

In reviewing protests challenging the rejection of a proposal for consideration for award, it is not our role to reevaluate proposals; rather our Office examines the record to determine whether the agency's judgment was reasonable and in accordance with the solicitation criteria and applicable procurement statutes and regulations. *Wolverine Servs. LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *Id.* at 4. Further, it is the offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Microwave Monolithics, Inc.*, B-413088, Aug. 11, 2016, 2016 CPD ¶ 220 at 6. A protester's disagreement with the agency's judgment does not establish that the evaluation was unreasonable. *LOGMET LLC*, B-405700, Dec. 14, 2011, 2011 CPD ¶ 278 at 3.

The record demonstrates that, despite clear instructions within the solicitation--and the unambiguous admonishment that failure to comply would result in rejection of the proposal--Winspear failed to submit the correct VAAR 852.219-75 certification. That is, the protester's certification relied on the outdated version from November 2022, rather than the current January 2023 version. See AR, Exh. 3, Winspear's Proposal at 75-75. Winspear submitted its certification pursuant to an obsolete VAAR clause, even though the solicitation explained that: (a) failure to submit the certification would be considered

a material defect and would render the proposal ineligible for award (RFP at 90); (b) only certification made pursuant to the January 2023 version of VAAR clause 852.219-75 would be acceptable (RFP at 120); and (c) “[t]he 2022 version of this clause, or any other version/format will not be acceptable.” *Id.*

Our Office has consistently concluded that the requirement to submit a certificate in VAAR clause 852.219-75 addressing compliance with the limitation on subcontracting is a material term of a solicitation. See *AAA Gen. Contr., LLC*, B-423842, Nov. 18, 2025, 2025 CPD ¶ 239 at 3; *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). Accordingly, we find no basis to disturb the agency’s decision deeming Winspear’s proposal ineligible for award where the protester failed to comply with a material requirement when it submitted a non-compliant certification.

We find unpersuasive the protester’s arguments in rebuttal. First, the protester concedes that it did not submit the required VAAR clause 852.219-75 certification, but, nonetheless, argues the VA’s ineligibility determination was unwarranted. In this regard, Winspear suggests the certification it did include in its proposal--made pursuant to the November 2022 version of VAAR clause 852.219-75--should have been deemed sufficient because it was consistent with the underlying Veterans First Contracting Program statute, and the text of the actual certification remained the same in the November 2022 and January 2023 versions of the certification. Comments at 2-5. That is, the protester asserts the materiality of the certification under VAAR clause 852.219-75 flows from the substance and purpose underlying the certification, rather than the currentness or form of the clause. *Id.*

The protester’s argument, however, ignores the changes underpinning the VA’s update to the clause. See MOL at 13 (explaining “there are meaningful differences between the VAAR [limitations of subcontracting (LOS)] certification it submitted, and the LOS certification included in the RFP.”). For example, the updated VAAR clause reflects the transfer of certification authority from the VA to the Small Business Administration (SBA), “complies with the new policy regarding the SBA Veteran Small Business Certification Program[,]” and “reflects the revised statutory mandate for LOS certification.”<sup>3</sup> *Id.* at 14. While the four-corners of the text of Winspear’s certification (reproduced above) may be identical, the underlying certification, is not. Indeed, the offeror signing the certification provides it “will comply with the limitations on subcontracting specified in this clause[.]” VAAR 852.219-75 (JAN 2023) (DEVIATION) (emphasis added). Thus, the prescribed limitations are specific to each version of the clause; Winspear, through its proposal submission, never certified it would comply with the limitations on subcontracting (to include the substantive changes since the November 2022 version became obsolete) found in the January 2023 version of the clause. See also MOL at 14 (“By submitting an obsolete VAAR LOS certification,

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<sup>3</sup> The updated clause also reflects changes to the underlying United States Code citation, from 38 U.S.C. 8127(k)(2) to 38 U.S.C. § 8127(l)(2).

Protester not only ignored the regulatory directives and the RFP but also failed to fully account for Congress' newly established Vets First eligibility requirement."). Given the above identified differences between the two versions of the clause, and that the protester failed to make a certification pursuant to the current version of the clause as explicitly required by the solicitation, we find no basis to conclude that Winspear satisfied the RFP's material requirement regarding the limitations of subcontracting certification.

Second, Winspear contends the VA should have engaged in clarifications with the protester concerning its certification submission. Comments at 5-6. We disagree. As an initial matter, agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. *Valkyrie Enterprs., LLC*, B-414516, June 30, 2017, 2017 CPD ¶ 212 at 5. Moreover, by not providing the required certification pursuant to the January 2023 version of VAAR clause 852.219-75, Winspear failed to respond to a material term of the solicitation. Accordingly, clarifications are not appropriate to cure the material proposal deficiency at issue here. See FAR 15.306; *URS Grp., Inc.*, B-402820, July 30, 2010, 2010 CPD ¶ 175 at 5 n.3. As our Office has explained, clarifications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of a proposal or otherwise revise the proposal. *Alltech Eng'g Corp.*, B-414002.2, Feb. 6, 2017, 2017 CPD ¶ 49 at 6. On this record, find no basis to conclude that the VA abused its discretion by failing to seek clarification from Winspear regarding its proposal submission.

The protest is denied.

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General Counsel