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Decision

Matter of: Sigo Valiant JV, LLC

File: B-424103

Date: February 24, 2026

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Diana Parks, Esq., and Hadeel N. Masseoud, Esq., Curran Legal Services Group, Inc., for KMC Solutions, LLC, the intervenor.

Marcia McCree, Esq., Department of Veterans Affairs, for the agency.

Christopher Alwood, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the awardee materially misrepresented that it would comply with the solicitation's limitations on subcontracting clause is dismissed where the allegation is speculative and based on unsupported evidence.

DECISION

Sigo Valiant JV, LLC, a service-disabled veteran-owned small business (SDVOSB) joint venture of Louisville, Kentucky, protests the award of a contract to KMC Solutions, LLC an SDVOSB of Hampton, Virginia, under invitation for bids (IFB) No. 36C78625B0035, issued by the Department of Veteran Affairs (VA) for the construction of new burial land at the Marion National Cemetery, Marion, Indiana. Sigo Valiant contends that the awardee's bid contained a material misrepresentation.

We dismiss the protest.

BACKGROUND

On June 30, 2025, the VA issued the IFB pursuant to the sealed bidding procedures of Federal Acquisition Regulation (FAR) part 14, seeking bids for construction to expand the Marion National Cemetery in Marion, Indiana. Agency Report (AR), Tab 3, IFB at 1,

6, 19.¹ The IFB provided that award would be made to the responsible bidder whose bid conformed to the solicitation and had the lowest price. *Id.* at 19 (incorporating FAR provision 52.214-19, Contract Award--Sealed Bidding--Construction). The solicitation was issued as an SDVOSB set-aside and included Veterans Affairs Acquisition Regulation (VAAR) clause 852.219-75, which concerns limitations on subcontracting.² IFB at 56-57. The clause states, in relevant part:

(a) Pursuant to 38 U.S.C. 8127(l)(2), the [bidder] 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 [percent] of the amount paid by the government to it to firms that are not certified SDVOSBs listed in the [Small Business Administration (SBA)] certification database as set forth in 852.219-73 or certified [veteran-owned small businesses (VOSBs)] listed in the SBA certification database as set forth in 852.219-74. Any work that a similarly situated certified SDVOSB/VOSB subcontractor further subcontracts will count towards the 85 [percent] subcontract amount that cannot be exceeded. Cost of materials are excluded and not considered to be subcontracted.

* * * * *

(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.

Id. The certification included with the clause required the bidder to agree to comply with the terms of the limitations on subcontracting clause. *Id.* at 57.

The VA received six bids by the IFB's September 10 bid opening date. Contracting Officer's Statement (COS) at 1. KMC's bid was the lowest-priced at \$20,383,000, while

¹ The VA amended the solicitation three times. See AR, Tab 6, IFB amend. 0003. Unless otherwise noted, citations to the IFB in this decision are to the initial solicitation

² The full title of the clause included in the solicitation is "VAAR 852.219-75 VA Notice of Limitations on Subcontracting--Certificate of Compliance for Services and Construction (JAN 2023) (DEVIATION)." IFB at 56.

Sigo Valiant submitted the second-lowest bid at \$21,788,648. AR, Tab 9, KMC Bid at 2; AR, Tab 10, Sigo Valiant Bid at 10; Protest, exh. 3, Bid Tabulation. KMC's bid included a VAAR clause 852.219-75 certification form, which the firm had completed and signed, affirming that the firm would comply with the limitations on subcontracting specified in the clause. AR, Tab 9, KMC Bid at 36. The VA determined that KMC's bid was responsive to the solicitation and that the firm was responsible. COS at 1.

On September 30, the agency awarded the contract to KMC. AR, Tab 23, Award Letter. On October 2, the agency informed Sigo Valiant of the award. AR, Tab 22, Sigo Valiant Unsuccessful Bid Notice. On November 20, this protest followed.

DISCUSSION

Sigo Valiant alleges that KMC's bid should have been rejected because it misrepresented KMC's intention to comply with the subcontracting limitation provisions.³ Protest at 9-11; Comments at 5-10. Specifically, the protester asserts that KMC misrepresented that it would perform at least 15 percent of the work in accordance with the IFB's limitations on subcontracting clause. The protester alleges that KMC instead plans to subcontract most of the work to a non-SDVOSB firm.⁴ Protest at 10; Comments at 8.

The agency requests dismissal of the protest as legally and factually insufficient. MOL at 4-7. The agency argues that the protester has not provided sufficient evidence that the awardee does not plan to meet the requirements of the limitations on subcontracting clause and will instead pay one or more non-SDVOSB firms more than 85 percent of the amount paid by the government under the contract. *Id.* at 7.

³ Sigo Valiant also initially raised arguments that (1) KMC's bid contained a material misrepresentation regarding the entity that would be performing as the prime contractor and that (2) KMC submitted a materially deficient bid that failed to comply with the limitations on subcontracting clause. Protest at 7-9, 11-12. Although the agency responded to these issues in its report, Memorandum of Law (MOL) at 4 n.2, 6; AR, Tab 16, KMC Certification, Sigo Valiant did not address these issues in its comments. See Comments. Accordingly, we dismiss the protest grounds on which Sigo Valiant did not comment as abandoned. See *Tec-Masters, Inc.*, B-416235, July 12, 2018, at 6.

⁴ To the extent Sigo Valiant alleges more generally that KMC will not comply with the limitations on subcontracting clause, we dismiss such arguments. See Comments at 5-6. An agency's judgment as to whether a small business will comply with the limitations on subcontracting clause is a matter of responsibility, and the contractor's actual compliance is a matter of contract administration. *Newt Marine Serv.*, B-419741, B-419741.2, Jul. 12, 2021, at 4. Our Office has explained that we will generally not review such issues unless a bid, on its face, should lead an agency to conclude that a bidder has not agreed to comply with the subcontracting limitations because then such an allegation is a matter of bid acceptability. *Id.* Since the protester has made no such showing here, we dismiss this protest ground. 4 C.F.R. § 21.5(a), (c).

Our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest and that the grounds be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). This requirement contemplates that protesters will provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. Protesters must provide more than a bare allegation; the allegation must be supported by some explanation and evidence that establishes the likelihood the protester will prevail in its claim of improper agency action. *Warfighter Focused Logistics, Inc.*, B-423546, B-423546.2, Aug. 5, 2025, at 4.

Here, Sigo Valiant's allegations regarding KMC's intentions are based on a declaration from the president of Sigo Enterprises LLC, one of the members of Sigo Valiant's joint venture.⁵ Protest, exh. 1, Sigo Valiant Decl. at 1. The declaration states that an unnamed representative of an unidentified potential subcontractor that the protester worked with on its bid contacted Sigo Valiant on September 12 to discuss this procurement. *Id.* at 1. The declaration states that this individual told Sigo Valiant that he met with a non-SDVOSB firm ("Company Y") that represented it would be working on the Marion National Cemetery contract. *Id.* The declaration states that Company Y informed the unnamed individual that Company Y had been responsible for all bidding activities on KMC's behalf, would be acting as a "super sub" for KMC, and would "be performing the actual construction work for the project." *Id.*

On this record, we conclude that Sigo Valiant's allegations are not supported by a sufficient factual basis. As an initial matter, the declaration relies on a conversation with an unnamed individual from an unidentified firm, which in turn relies on that individual's recollections of a meeting between himself and an alleged subcontractor to KMC that is not in the procurement record.⁶ See e.g., AR, Tab 9, KMC Bid; see also AR, Tab 21, Executed Contract. Our Office has explained that such third-hand information lacks both specificity and any indicia of reliability. See *Triple Canopy, Inc.*, B-400437, Nov. 13, 2008, at 7 (finding to be unreliable, "declarations [that] consist primarily of what the declarants themselves acknowledge is second and third-hand hearsay from unidentified sources"); see also *Valiant Global Defense Servs., Inc.*, B-421550.2 *et al.*, Jun. 27, 2023, at 8-9.

⁵ Nothing in the record identifies the other members of the joint venture or explains the relationship or responsibilities of the members.

⁶ The contracting officer notes that he does not currently know the identity of any KMC subcontractors. COS at 2. The contracting officer explains that "standard contracting protocol" on similar contracts is to request a subcontractor list post-award, but due to a stay of performance following this protest (and a 2-week delay due to an SBA size protest also filed by Sigo Valiant) the VA has not yet held its kick-off meeting with KMC. *Id.* at 1-2.

Further, even if we found the protester's declaration to be credible evidence--which we do not--the protester has not provided sufficient evidence to demonstrate that the awardee made a material misrepresentation in its bid. For a protester to prevail on a claim of material misrepresentation, the record must show that the representation made by the awardee is false. *Health Net Fed. Servs., LLC*, B-421405.2, B-421405.3, Aug. 4, 2023, at 30; see also *J&J Maintenance, Inc.*, B-251355.2; B-251355.4, May 7, 1993, at 3 (applying our standard of review for allegations of material misrepresentations from negotiated procurements to sealed bidding procurements).

Here, the alleged statements of Company Y do not demonstrate that KMC falsely certified that it would comply with the IFB's limitations on subcontracting clause. The IFB's limitation on subcontracting clause, discussed above, only requires that the awardee "not pay more than 85 [percent] of the amount paid by the government to it to firms that are not certified SDVOSBs[.]" IFB at 56. Contrary to the protester's argument, there is nothing in the plain language of the clause requiring the awardee to perform a certain percentage of the work. Accordingly, while the statements allegedly made by Company Y allude to what scope of work Company Y would be performing, they do not address how much Company Y would be paid for its efforts.

In addition, we do not find the statements that a firm would be a "super sub" that performs the "actual construction work" of the contract to be necessarily inconsistent with an 85 percent share of the contract's scope. See Protest, exh. 1, Sigo Valiant Decl. at 1. Absent any credible evidence that KMC intended to subcontract to Company Y in excess of the IFB's limitations on subcontracting, Sigo Valiant's bare assertions, without more, fail to state a sufficient factual or legal basis for protest. Accordingly, the protest is dismissed.⁷ 4 C.F.R. § 21.5(f).

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

⁷ The intervenor and agency request that we dismiss the protest as untimely because it was filed more than 10 days after Sigo Valiant became aware that KMC was the awardee. Req. for Dismissal at 2-3; MOL at 4. Our timeliness rules provide that protests, other than those based on alleged solicitation improprieties, shall be filed not later than 10 days after the basis of the protest is known or should have been known. 4 C.F.R. § 21.2(a)(2). Here, the protester's declaration states that it first learned the basis for its protest in its November 12 conversation with the above-mentioned, unnamed individual. Protest, exh. 1, Sigo Valiant Decl. at 1. Accordingly, we find the protester timely filed its protest on November 20, within 10 days of the alleged November 12 conversation with the unnamed individual.