



Decision

Matter of: OS-DB-JV-2, LLC

File: B-424382

Date: June 16, 2026

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Jared Levin, Esq., Department of Veterans Affairs, for the agency.
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DIGEST

Protest that the agency unreasonably eliminated the protester's proposal from competition is denied where the record shows the agency reasonably determined that the protester's proposal failed to conform to the terms of the solicitation.

DECISION

OS-DB-JV-2, LLC, a service-disabled, veteran owned small business (SDVOSB) of Toa Baja, Puerto Rico, protests the exclusion of its proposal from the competitive range established under request for proposals (RFP) No. 36C24825R0040, issued by the Department of Veterans Affairs (VA) for janitorial services at the VA Caribbean Healthcare System in San Juan and the VA Mayaguez Out-Patient Clinic in Mayaguez, Puerto Rico. The protester primarily contends that the agency improperly excluded its proposal from the competitive range.

We deny the protest.

BACKGROUND

The RFP was issued on May 7, 2025, pursuant to Federal Acquisition Regulation (FAR) parts 12 and 15, as a SDVOSB set-aside for janitorial services at the VA Caribbean Healthcare System and the Mayaguez Out-Patient Clinic. Agency Report (AR), Exh. 2, RFP at 1, 70.¹ The RFP contemplated the award of a fixed-price contract to be performed over a 1-year base period and four 1-year option periods. RFP, amend.

¹ Page citations are to the Adobe PDF page numbers.

0001, Revised Performance Work Statement (PWS) at ¶¶ 1, 1.4. Award would be made to the offeror submitting the proposal that represented the best value to the government considering price and two non-price factors: technical capability and past performance.² RFP at 80. As relevant here, the evaluation criteria stated that proposals “that failed to meet the minimum requirements – including a material failure to conform with the instructions . . . will be deemed unacceptable and will not be further considered.” *Id.* at 81.

The VA received initial proposals on June 20. On November 13, the agency established a competitive range that included only two offerors, including OSDBJV2, the only joint venture offeror in the competitive range. Contracting Office’s Statement (COS) at ¶¶ 7, 9. The VA proceeded to conduct discussions with these two offerors.

On March 10, 2026, after discussions concluded, the agency issued amendment 0004³ to the two offerors in the competitive range to request revised proposals and to inform joint venture offerors (in this case, OSDBJV2) of the requirements of Title 13 of the Code of Federal Regulations (C.F.R.) § 128.402. COS at ¶ 12. As relevant here, amendment 0004 stated that:

[J]oint ventures [JV] may be eligible so long as the joint venture meets the requirements of 13 C.F.R. [§] 128.402. In order to comply with 13 C.F.R. [§] 128.402(e) JV offerors must include in their offer a certification, signed by an authorized official of each partner to the joint venture, stating that the parties have entered into a joint venture agreement that fully complies with 13 C.F.R. [§] 128.402(c), and that the parties will perform the contract in compliance with the joint venture agreement and with the limitations on subcontracting requirements set forth in 13 C.F.R. [§] 128.402(d).

AR, Exh. 6, RFP, amend. 0004 at 19.

Both offerors submitted FPRs. COS at ¶ 13. The VA reviewed the proposals and noted that OSDBJV2 did not provide a joint venture certification as required by 13 C.F.R. § 128.402(e). As a result, the VA determined that OSDBJV2 was ineligible for award. *Id.*

On March 26, the VA notified OSDBJV2 that it was excluded from the competitive range for failing to submit its joint venture certification. AR, Exh. 8, Notice of Exclusion at 2. The following day, OSDBJV2 submitted a letter titled “Reconsideration Letter,” asking the agency to reconsider its exclusion and stating that if the agency did not reconsider, then OSDBJV2 requested a debriefing. AR, Exh. 9, Email from Protester to Agency, Mar. 27, 2026. The VA rejected OSDBJV2’s request for reconsideration and instead provided a debriefing explaining that OSDBJV2 received an overall rating of outstanding under the technical capability factor and a rating of substantial confidence under the

² These factors are not at issue here.

³ The agency published several amendments before final proposal revisions (FPRs) were submitted, most of which are not relevant here.

past performance factor. AR, Exh. 10, Debriefing at 4-5. The VA further explained that, despite these ratings, OSDBJV2's proposal was eliminated from competition because it failed to comply with the requirements of 13 C.F.R. § 128.402(e). Specifically, OSDBJV2 failed to submit a certification signed by an authorized official of each partner to the joint venture stating that the parties have entered into a joint venture agreement that fully complies with 13 C.F.R. § 128.402(c), and that the parties will perform the contract in compliance with the joint venture agreement and with the limitations on subcontracting requirements in 13 C.F.R. § 128.402(d). *Id.* at 5. This protest followed.

DISCUSSION

OSDBJV2 primarily asserts that the VA improperly excluded its proposal from the competitive range because the agency was required to seek clarification regarding the missing joint venture certification.⁴ Comments at 8-10.

The VA responds that it properly excluded OSDBJV2's proposal from the competitive range. The agency asserts that the requirement to submit the joint-venture certification was a material term of the solicitation and the protester failed to meet this term. As a result, the protester's proposal was unacceptable and could not be considered for award. The VA also argues that it was not obligated to seek any clarification about OSDBJV2's proposal and, in any case, its failure to submit the certification was a material defect and permitting the protester to cure it would have constituted discussions.⁵ Memorandum of Law (MOL) at 11-12, 16.

We find that the VA reasonably determined that OSDBJV2's proposal failed to conform to a material term of the solicitation and therefore the agency had a reasonable basis to exclude OSDBJV2 from the competitive range. 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. *Winspear Construction, LLC*, B-423869, Dec. 30, 2025, at 4. In a negotiated procurement, a proposal that fails to conform to the

⁴ The protester provides several additional reasons to support its argument that the exclusion of its proposal was improper. While we do not address them all herein, we have considered them all and find that none provide us a basis to sustain the protest. We note that none of the protester's additional arguments demonstrate that the joint venture certification was not a material requirement or that the protester did in fact submit the certification.

⁵ The agency also stated that, even if OSDBJV2 had submitted the certification, the other offeror in the competitive range submitted a proposal as highly rated as OSDBJV2's but significantly cheaper, and therefore OSDBJV2's proposal would not have been selected as the best-value to the agency. AR, Exh. 10, Debriefing at 5.

material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *Id.*

As described above, the solicitation was issued as a SDVOSB set-aside and offerors were required to be certified SDVOSBs to be eligible for award. After the conclusion of discussions, the agency issued amendment 0004 to the RFP, which stated that it was issued in part to “inform joint venture offerors of the requirements of 13 C.F.R. [§] 128.402.” RFP, amend. 0004 at 19. Title 13 of the Code of Federal Regulations, section 128.402, details the requirements that must be met for a joint-venture partnership to submit an offer for a procurement that has been set aside for SDVOSBs. The amendment stated that “joint ventures may be eligible so long as the joint venture meets the requirements of 13 C.F.R. [§] 128.402,” and that:

In order to comply with 13 C.F.R. [§] 128.402(e) **JV offerors must include in their offer a certification**, signed by an authorized official of each partner to the joint venture, stating that the parties have entered into a joint venture agreement that fully complies with 13 C.F.R. [§] 128.402(c), and that the parties will perform the contract in compliance with the joint venture agreement and with the limitations on subcontracting requirements set forth in 13 C.F.R. [§] 128.402(d).

RFP, amend. 0004 at 19 (emphasis added).

Our Office has explained that clearly stated requirements are considered material to the needs of the government and 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. *Wolverine Services, LLC*, B-409906.3, B-409906.5, Oct. 14, 2014, at 5. Here, it is clear from the language of amendment No. 0004 that joint venture offerors were required to submit the above-referenced certification with their offers and therefore this requirement was a material term. Additionally, the evaluation criteria stated that proposals “that failed to meet the minimum requirements – including a material failure to conform with the instructions . . . will be deemed unacceptable and will not be further considered.” RFP at 81. As a result, joint venture offerors such as OSDBJV2 were required to submit this certification for their offers to be considered for award.

OSDBJV2 concedes several times that it failed to submit the certification, and states that, while the certification was signed and prepared to be submitted, OSDBJV2 failed to submit it due to a clerical error.⁶ Comments at 3. As the record shows OSDBJV2’s

⁶ OSDBJV2 also asserts that amendment 0004 was latently ambiguous regarding whether the certification was a standalone mandatory submission because there was “no statement providing that failure to include the certification will result in removal from consideration.” Comments at 18. A latent ambiguity exists where both the protester and the agency have reasonable interpretations of a solicitation term or requirement. *Mission1st Group, Inc.*, B-419522, Mar. 15, 2021, at 2. Where the protester’s

(continued...)

offer did not include the required certification for joint venture offerors, we conclude that the agency reasonably eliminated OSDBJV2's proposal from the competition. See, e.g., *AAA General Contractors, LLC*, B-423842, Nov. 18, 2025, at 3-4 (finding that the agency reasonably determined the protester's failure to submit its certificate of compliance with the limitation on subcontracting was a failure to meet a material term of the solicitation).

To the extent the protester contends that the agency should have provided an opportunity for clarifications, such an opportunity could not have addressed the failure to provide the required certification. Clarifications are limited exchanges between the agency and offerors that may occur where, as here, contract award without discussions is contemplated. FAR 15.305(b). An agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. *Wolverine, supra* at 6. Therefore, the VA was not required to provide the protester an opportunity to clarify anything in its proposal, and 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. *Winspear, supra*.

In any case, clarifications cannot be used to cure deficiencies or material omissions in a quotation, or materially alter the technical or cost elements of the quotation, or revise the quotation. *Wolverine, supra* at 6. Here, to become acceptable, OSDBJV2 would have had to provide the missing certification; this information exchange would have constituted discussions, not clarifications. *Id.*; *AAA General Contractors, supra* at 4 (explaining that where the submission of a certificate of compliance with the limitation on subcontracting was a material requirement, the omission of the certificate could not have been corrected by offering the protester an opportunity to submit a clarification).

Inaccurate Legal Citations

In the agency report, the agency advised our Office that it was unable to locate four of the GAO decisions cited by the protester. MOL at 12 n.8, 13 n.10, 15 n.11, 16 n.12. We requested that the protester respond to the agency's claims and submit copies of these decisions. In response, the protester acknowledged that the citations could not be verified and explained that the inclusion of these erroneous citations were introduced through software tools used to support research and they were not adequately verified

interpretation of the solicitation is not reasonable, there is no basis for our Office to find that a latent ambiguity exists. *Id.* Here, nothing is ambiguous about the RFP's terms and OSDBJV2's interpretation is not reasonable. As explained herein, the RFP expressly stated that that "joint ventures may be eligible so long as the joint venture meets the requirements of 13 C.F.R. [§] 128.402," and that "[i]n order to comply with 13 C.F.R. [§] 128.402(e) JV offerors must include in their offer a certification." RFP, amend. 0004 at 19.

against our actual published decisions. OSDBJV2's counsel apologized and took full responsibility for the errors. Comments, exh. 10, Citation Supplement at 5.

Parties appearing before our Office have an obligation to accurately summarize factual or legal assertions, including cited decisions. *LOGMET LLC*, B-423066.2, Apr. 15, 2026, at 5 n.7. We note that the erroneous citations in the protest bear the hallmarks of the use of a large-language model or other artificial intelligence (AI). We have found that the use of AI programs to draft or assist in drafting legal filings can result in the citation of non-existent decisions, such that reliance on those programs without review for accuracy wastes the time of all parties and GAO. *Raven Investigations & Sec. Consulting, LLC*, B-423447, May 7, 2025, at 4. As we have explained, our Office necessarily reserves an inherent right to dismiss any protest and to impose sanctions against a protester where a protester's actions undermine the integrity and effectiveness of our process. *Wright Brothers Aero, Inc.*, B-423326.2, July 7, 2025, at 5 n.3. Here, because we deny the protest, we do not exercise our right to impose sanctions for submission of non-existent citations. The protester, however, is advised that any future submission of filings to our Office with citations to non-existent authority may, after a review of the totality of the circumstances, result in the imposition of sanctions. *CVTEK, LLC*, B-423943, B-423493.2, Feb. 12, 2026, at 10.

The protest is denied.

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