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**Comptroller General  
of the United States**

**United States Government Accountability Office  
Washington, DC 20548**

# Decision

**Matter of:** Corners Construction

**File:** B-402465

**Date:** April 23, 2010

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Rachele Brewer for the protester.

Lindsay C. Roop, Esq., Department of Veterans Affairs, for the agency.

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Department of Veterans Affairs' (VA) determination that vendor not listed in VA database of eligible service-disabled, veteran-owned small business concerns on date of award was not eligible for award was unobjectionable where determination was consistent with VA's applicable statute and regulations.

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## **DECISION**

Corners Construction, of Chico, California protests the rejection of its bid under Department of Veterans Affairs (VA) invitation for bids (IFB) No. VA-263-09-RA-0250, issued as a set-aside for service-disabled, veteran-owned small businesses (SDVOSB) for carpet replacement. Corners asserts that VA improperly rejected its bid on the basis that Corners was not an eligible SDVOSB.

We deny the protest.

The IFB was issued on November 25, 2009. Bids were opened on December 30, and Corners was the apparent low bidder. However, on January 25, 2010, when VA accessed its database of SDVOSBs to determine whether Corners was an eligible SDVOSB, it found that Corners was not listed.<sup>1</sup> Agency Report (AR) at 2. In this regard, VA maintains a database of SDVOSBs that are eligible to receive contracts under solicitations issued by VA as SDVOSB set-asides. 38 C.F.R. part 74 (2009). Eligible businesses are placed on the list for 1 year, after which they must re-apply to

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<sup>1</sup> This data base is contained in the vendor information pages at Internet website [www.vetbiz.gov](http://www.vetbiz.gov).

be included on the list again. 38 C.F.R. § 74.15. The record shows that Corners was listed in the database on January 16, 2009 for a period of 1 year. Corners was removed from the database before January 25, 2010, when the agency checked the database in anticipation of making award under the IFB. AR at 2. Because Corners was not listed, VA determined that Corners was not eligible for award, and made award to the next low bidder.

Corners maintains that it should be considered an eligible SDVOSB, and that it therefore should have received the award, because it was listed in the database on both the date the IFB was issued and the date of bid opening.<sup>2</sup>

The statute granting VA authority to set aside procurements for SDVOSB concerns provides that “[a] small business concern may be awarded a [SDVOSB set-aside] contract . . . only if the small business concern . . . [is] listed in the database of veteran-owned businesses. . . .” 38 U.S.C. § 8127(e) (2006). The VA regulation implementing this statute similarly provides that, “all . . . SDVOSBs must be listed in the . . . database . . . to receive contract awards under VA’s Veteran-owned Small Business. . . [set-aside] program.” VA Acquisition Regulation (VAAR) § 804.1102. VA asserts that, based on this language, a small business concern is eligible for award under a VA SDVOSB set-aside only if it is listed in the database on the date of award; thus, even though Corners was listed in the database at the time of bid opening, it was ineligible for award because it was no longer listed at the time of award.

We will uphold an agency’s reasonable interpretation of a statute that it is responsible for implementing. Blue Rock Structures, Inc., B-293134, Feb. 6, 2004, 2004 CPD ¶ 63 at 8. VA’s interpretation here is reasonable. While the statute and regulation do not expressly provide that small businesses must be “listed in the database” at the time of award, neither do they provide that listing is to be at the time of solicitation issuance or bid opening. We think the relevant language supports VA’s interpretation, since it relates to a concern’s status for purposes of receiving an award, suggesting that status at the time of award is contemplated. Moreover, this interpretation is consistent with the underlying purpose of SDVOSB set-asides-- i.e., providing contracting opportunities to eligible SDVOSBs, see 38 U.S.C. § 8127(a)--and we think VA reasonably could determine that this purpose is best served, and that an eligible SDVOSB concern will actually perform the contract, if it satisfies the prerequisite to receiving award (listing) at the time award is made. Accordingly, there is no basis for us to question VA’s determination that Corners, which was not listed in the database on the date of award, was ineligible for award. Compare CMS Info. Servs., Inc., B-290541, Aug. 7, 2002, 2002 CPD ¶ 132 at 2 (where request for quotations under Federal Supply Schedule was limited to small business concerns, agency reasonably required recertification of small business status to

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<sup>2</sup> The Small Business Administration advised our Office that it does not consider the status of bidders as SDVOSBs under solicitations issued by VA.

ensure that order would be issued to concern that currently qualifies as small business).

The protest is denied.

Lynn H. Gibson  
Acting General Counsel