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**Comptroller General
of the United States**

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

Decision

Matter of: Aldevra

File: B-406774; B-406857; B-406892; B-406912; B-406913; B-406927;
B-406928; B-406942

Date: August 21, 2012

Rodney Marshall for the protester.

Dennis Foley, Esq., Department of Veterans Affairs, for the agency.

Jacqueline Maeder, Esq., and David A. Ashen, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The Veterans Benefits, Health Care, and Information Technology Act of 2006 requires the Department of Veterans Affairs to determine whether two or more service-disabled veteran-owned small business concerns can meet its requirements at a reasonable price before proceeding with Federal Supply Schedule acquisitions.

DECISION

Aldevra, of Portage, Michigan, a service-disabled veteran-owned small business (SDVOSB) concern, protests the terms of solicitation Nos. VA260-12-Q-0953, VA243-12-Q-1420, VA245-12-Q-0326, 512-12-3-4894-0216, VA244-12-Q-1010, VA244-12-Q-1020, VA244-12-Q-1036, and VA244-12-Q-1056,¹ issued by the Department of Veterans Affairs (VA) for miscellaneous kitchen equipment for VA Medical and Health Care Centers at various locations throughout the United States. The protester asserts that the agency improperly failed to comply with the requirements of the Veterans Benefits, Health Care, and Information Technology Act of 2006, 38 U.S.C. §§ 8127-8128 (2006) (the VA Act), and its implementing regulations to determine whether these procurements should be set aside for SDVOSB (or veteran-owned small business (VOSB)) concerns.

We sustain the protests.

¹ The solicitations were also designated as FedBid Buy Nos. 345736, 355221, 357567, 358367, 359162, 359576, 360259, and 360776, respectively.

The procurements are being conducted pursuant to General Services Administration Federal Supply Schedule (FSS) procedures and implementing regulations, set forth at Federal Acquisition Regulation (FAR) subpart 8.4. In accordance with those regulations, the solicitations were issued on an unrestricted basis to vendors holding FSS contracts.

Aldevra asserts that the VA acted improperly by using FSS procedures without first conducting market research to determine whether the procurements should be set aside for SDVOSB (or VOSB) concerns. Aldevra maintains that if the agency had conducted market research, it would have found that at least two SDVOSBs could meet the requirements at a reasonable price. The agency concedes that it did not conduct market research to determine whether two or more SDVOSB (or VOSB) concerns could meet the requirements at a reasonable price. Agency E-Mail, Aug. 2, 2012.

Previously, we sustained protests filed by Aldevra against VA procurements being conducted pursuant to FSS procedures in which, like here, the protester asserted that the agency failed to comply with the requirements of the VA Act and its implementing regulations. Aldevra, B-406205, Mar. 14, 2012, 2012 CPD ¶ 112; Aldevra, B-405271, B-405524, Oct. 11, 2011, 2011 CPD ¶ 183. The issue raised and the agency's arguments in those Aldevra protests are the same as the issue and the arguments presented here.

For the same reasons that we discussed at length in our recent decisions, we reject the VA's arguments in the current protests. Here, as in the previous Aldevra protests, the VA has not conducted market research to determine if there are two or more eligible SDVOSB (or VOSB) concerns capable of performing the agency's requirements. Consistent with our recent decisions, we conclude that the 2006 VA Act requires that the agency make a determination whether these acquisitions should be set aside for SDVOSB (or VOSB) concerns prior to conducting the procurements using FSS procedures. We therefore sustain Aldevra's protests.

RECOMMENDATION

We recommend that the agency conduct reasonable market research regarding its requirements under these solicitation. If it determines that there is a reasonable expectation that two or more SDVOSB (or VOSB) concerns can meet the agency's requirements at a reasonable price, we recommend that the agency cancel the solicitations and re-solicit its requirements as SDVOSB (or VOSB) set-asides. We also recommend that the agency reimburse the protester the costs of filing and pursuing the protests. 4 C.F.R. § 21.8(d)(1) (2012). Aldevra's certified claims for

costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protests are sustained.

Lynn H. Gibson
General Counsel