



United States Government Accountability Office  
Washington, DC 20548

## Decision

**Matter of:** 3D Contracting, Inc./Western States Construction JV

**File:** B-406092

**Date:** January 24, 2012

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Bruce P. Babbitt, Esq., Jameson Babbitt Stites & Lombard, PLLC, for the protester. William L. Bruckner, Esq., Bruckner & Walker, LLP, for Kevcon, Inc., the intervenor. David G. Fagan, Esq., Department of Veterans Affairs, for the agency. Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

Protest that the Department of Veterans Affairs failed to notify the protester to apply for verification as a service-disabled, veteran-owned small business (SDVOSB) concern for listing on the agency's database is dismissed because the matter falls within the agency's sole authority to determine SDVOSB status.

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### DECISION

3D Contracting, Inc./Western States Construction JV, of Castle Rock, Washington, protests the award of a contract to Kevcon, Inc., of Escondido, California, under invitation for bids (IFB) No. VA-260-11-IB-1124 issued by the Department of Veterans Affairs (VA) for construction services. 3D/Western argues that the VA improperly rejected its bid because it was not listed in the VA's database of veteran-owned small business concerns.

We dismiss the protest.

The Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. Law No. 109-461, provides the VA with independent authority to restrict competition to service-disabled, veteran-owned small business (SDVOSB) concerns under certain circumstances. 38 U.S.C. § 8127(d) (2006 & Supp. 2011). In this regard, 38 U.S.C. § 8127(e) states that a small business concern may be awarded a contract only if the small business concern and the veteran owner of the small business concern are listed in a database of veteran-owned small business (VOSB) concerns, which the Act requires the Secretary of Veterans Affairs to maintain. The Secretary is required to verify that each small business concern listed in the

database is owned and controlled by veterans, and where a service-connected disability is indicated, to verify the service-disabled status of the veteran. 38 U.S.C. § 8127(f). The VA has designated the Vendor Information Pages (VIP) as the database of businesses approved to participate in VA's veteran-owned small business program, and [www.VetBiz.gov](http://www.VetBiz.gov) (VetBiz) as the Web portal that hosts the VIP. See 38 C.F.R. § 74.1 (2011).

On October 13, 2010, the Veterans Small Business Verification Act amended 38 U.S.C. § 8127, and clarified that no small business concern may be listed in the VIP database unless the VA has verified the VOSB or SDVOSB status of the business concern. Pub. L. No. 111-275, § 104. The statute further provided that, for small business concerns currently listed in the VIP database but not yet verified, the Secretary had 60 days to notify the business concern of the requirement to submit the appropriate information; the business concerns then had 90 days from receipt of notice to submit the documentation. Id. Under these time frames, the VA had to notify the business concerns no later than December 12, 2010, and the business concerns had to submit their applications no later than March 12, 2011.

With regard to the procurement at issue, the IFB was issued on August 22, 2011 as a set-aside for SDVOSB concerns under the Veterans First program and provided for the award of two contracts to the same company for the seismic upgrade and renovation of a building at the American Lake Campus of the VA Puget Sound Healthcare System in Tacoma, Washington.<sup>1</sup> Contracting Officer's (CO) Statement at 1; IFB at 1. The IFB informed bidders that the contracts would be awarded to the company that bid the lowest combined price for the two projects. IFB at 1.

The VA received bids from four offerors, including 3D/Western and Kevcon, by the September 21 due date. Although 3D/Western offered the lowest bid, the Contracting Officer found that the joint venture was not eligible for award because it was not listed in the VIP database. CO's Statement at 1. Contracts were awarded to Kevcon. 3D/Western filed an agency-level protest, and upon learning that its protest was denied, filed a protest with our Office.

3D/Western argues that it was listed in the VIP database at the time the Veterans Small Business Verification Act was passed in October 2010, and therefore the VA should have notified 3D/Western that it was required to submit an application to become verified. Protest at 4. 3D/Western also complains that the VIP database was unavailable in September 2011 and therefore the joint venture was unable to

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<sup>1</sup> One contract will be awarded for renovation of the third floor of the building; the second contract will be awarded for renovation of the first and second floors. IFB at 5.

check the database to determine whether the entity was listed or verified in the database.<sup>2</sup> Protest at 5.

In prior decisions, we determined that a firm's status as an SDVOSB concern and the VA's determination as to whether a firm should be included in the VIP database are not within our jurisdiction, as these have been given to the VA to determine. See TEC/WEST-TEC JV, B-402573.3, July 30, 2010, 2010 CPD ¶ 174 at 2-3; A1 Procurement, JVG, B-404618.3, July 26, 2011, 2011 CPD ¶ 140 at 4. We concluded that GAO does not have jurisdiction to resolve protests of a firm's SDVOSB status under VA's Veterans First program because the Veterans Benefits, Health Care, and Information Technology Act of 2006 requires that SDVOSB eligibility be determined on the basis of a list maintained in the VA-controlled VIP database, and that a firm's inclusion on the list is to be maintained and verified by the VA. A1 Procurement, JVG, supra. In our view, the protester's allegations fall within the purview of the VA's sole authority with regard to the maintenance of the VIP database and determinations of eligibility of SDVOSB status, and therefore are not within our jurisdiction.

We dismiss the protest.

Lynn H. Gibson  
General Counsel

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<sup>2</sup> 3D/Western in its initial protest had also argued that the deviation to VA Acquisition Regulation § 804.1102 included in the IFB required the VA to expedite its review of 3D/Western's verification application. Protest at 7. However, the protester did not address the agency's response to this argument in its comments on the agency report; we therefore deem this protest ground to have been abandoned. Cedar Elec., Inc., B-402284.2, Mar. 19, 2010, 2010 CPD ¶ 79 at 3 n.4.