



## Decision

**Matter of:** Aldevra  
**File:** B-406331; B-406391  
**Date:** April 20, 2012

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Rodney Marshall for the protester.  
Dennis Foley, Esq., Rebecca Tranthem, Esq., and Candice Cornish, Esq.,  
Department of Veterans Affairs, for the agency.  
Jacqueline Maeder, Esq., Scott H. Riback, Esq., and David A. Ashen, Esq., Office  
of the General Counsel, GAO, participated in the preparation of the decision.

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### 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.

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### DECISION

Aldevra, of Portage, Michigan, a service-disabled veteran-owned small business (SDVOSB) concern, protests the terms of solicitation Nos. 554-12-2-081-0038 and VA-248-12-Q-0823,<sup>1</sup> issued by the Department of Veterans Affairs (VA) for, respectively, refrigerators for the Eastern Colorado Healthcare System, Denver, Colorado, and for miscellaneous kitchen equipment for the North Florida/South Georgia Veterans Health System. The protester asserts that the agency improperly failed to comply with the requirement 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.

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<sup>1</sup> The solicitations also were designated as FedBid Buy Nos. 317682 and 321897.

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.

In March, we sustained a protest filed by Aldevra against a VA procurement 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, CPD ¶ 112. The issue raised and the agency's arguments in the recent Aldevra protest are the same as the issue and arguments presented here.

For the same reasons that we discussed at length in our recent decision, we reject the VA's arguments in the current protests. Here, as in Aldevra, supra, 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 decision, 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 protest.

## RECOMMENDATION

We recommend that the agency conduct reasonable market research regarding its requirements under these solicitations. 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) (2011). Aldevra's certified claim 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