



DEPARTMENT OF VETERANS AFFAIRS
Center for Veterans Enterprise
Washington, DC 20420

October 24, 2011

10/24/2011 10:10:10 AM

Ms. Lisa Wolford
CSSS.net
3906 Raynor Pkwy
Bellevue, NE 68123

Dear Ms. Wolford:

On behalf of the U.S. Department of Veterans Affairs (VA), Center for Veterans Enterprise (CVE), I am writing to inform you that your service-disabled Veteran-owned small business (SDVOSB), CSSS.net, has been denied for inclusion in the VA VetBiz Vendor Information Pages (VIP) Verification Program.

The decision is based upon the results of a CVE review your submitted documentation, publicly available information, and a review of the correspondence between the applicant and CVE.

Pertinent Regulatory References

According to 38 Code of Federal Regulations § 74.1, a service-disabled Veteran-owned small business concern is "a business not less than 51 percent of which is owned by one or more service-disabled veterans, or in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; the management and daily business operations of which are controlled by one or more service-disabled veterans..."

According to 38 CFR § 74.3, "[a]n applicant or participant must be at least 51 percent unconditionally and directly owned by one or more veterans or service-disabled veterans." The regulations state "[o]wnership by one or more veterans or service-disabled veterans must be unconditional ownership. Ownership must not be subject to conditions precedent, conditions subsequent, executor agreements, voting trusts, restrictions on assignments of voting rights, or other arrangements causing or potentially causing ownership benefits to go to another..." 38 CFR § 74.3(b).

According to 38 CFR § 74.4(a), "[c]ontrol means both the day-to-day management and long-term decision-making authority for the [SD]VOSB." Additionally, CVE "regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations." 38 CFR § 74.4(b). In addition, "[i]ndividuals managing the concern must have managerial experience of the extent and complexity needed to run the concern." 38 CFR § 74.4(b).

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According to 38 CFR § 74.4(c)(1), "[a]n applicant or participant must be controlled by one or more veterans or service-disabled veterans who possess requisite management capabilities. Owners need not work full-time but must show sustained and significant time invested in the business. An owner engaged in employment or management outside the applicant concern must submit a written statement supplemental to the applicant which demonstrates that such activities will not have a significant impact on the owner's ability to manage and control the applicant concern."

According to 38 CFR § 74.4(c)(3), "[o]ne or more veterans or service-disabled veteran owners who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business."

According to 38 CFR § 74.4(g)(3), non-Veterans may not "[r]eceive compensation from the applicant or participant in any form as directors, officers or employees, including dividends, that exceeds the compensation to be received by the highest officer (usually chief executive officer or president). The highest ranking officer may elect to take a lower salary than a non-veteran only upon demonstrating that it helps the applicant or participant."

Findings

Your VIP profile lists your business as a SDVOSB, and the VA Form 0877 Verification Application you submitted lists you, the service-disabled Veteran, as 100% owner of CSSS.net. CVE has confirmed that you have valid service-disabled Veteran status from VA and own at least 51% of CSSS.net, as required by the regulations. However, CVE is unable to conclude that you satisfy the control requirements set forth in 38 CFR § 74.4.

You failed to provide a résumé, which raises an issue of whether you have management expertise to run this concern. The applicant is an information technology-consulting firm. You have failed to provide any information to CVE as to your experience or expertise in this field. As such, CVE cannot reasonably determine that you have "managerial experience of the extent and complexity needed to run the concern," as required by 38 CFR § 74.4(b).

Additionally, you provided three years of tax returns for a real estate company called FOF & N, LLC, for years 2007, 2008, and 2009. You are the 99% owner of this partnership, and your daughter Natalie O'Barr is the 1% owner. According to the tax forms, this company is a real estate company, and it shares the same address as the applicant. You did not provide a résumé and that company does not have a website, so

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your role in that company cannot be determined. Without more information, it is unreasonable to assume that you can interrupt your present workday to address problems that might arise, in the performance of your duties in the applicant concern. Even though 38 CFR § 74.4(c)(1), as amended, requires that "[o]wners need not work full-time but must show sustained and significant time invested in the business," the regulations still require that "[o]ne or more veterans or service-disabled veteran owners who manage the applicant or participant must devote full-time to the business during the normal working hours of firms in the same or similar line of business." 38 CFR § 74.4(c)(3). While other outside employment is not necessarily a bar to establishing control of the applicant, you have to demonstrate that employment in another business will not interfere with control of the applicant business, per 38 CFR § 74.4(c)(1). The Government Accountability Office has flagged this issue, and it issued a report, which found that a Veteran cannot control a business when he concurrently has a separate full-time job, which operates during the same normal business hours as the applicant firm. See U.S. Gov't Accountability Office, *Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts*, GAO-10-108 (Oct. 2009). The determination as to whether outside employment will bar establishing control is decided on a case-by-case basis, evaluating the particular facts and circumstances presented. You failed to provide a written explanation as to your role in FOF & N, LLC, as required by 38 CFR § 74.4(c)(1). Additionally, that company is located at the same address of the applicant company. Without an explanation as to what role you have in that other company, if you have one other than owner, CVE cannot reasonably determine that you satisfy the "full-time" control requirements.

Finally, the applicant failed to provide enough information for CVE to determine if you are the highest paid person of the applicant, as required by 38 CFR § 74.4(g)(3). The applicant provided a Payroll report for 2009, but you were not listed on that payroll report. You also provided your 2010 W2 but did not provide the W2s of any other employees. Therefore, CVE cannot determine if you are the highest paid person in the applicant, because CVE does not have a way of comparing you to the other employees. Additionally, even if you are not the highest paid, the regulations permit this as long as you provide a written explanation as to how that helps the applicant. However, you also failed to do this. Therefore, CVE finds that you do not satisfy this element of control.

Conclusion

As the applicant, you bear the burden of establishing with adequate evidence your compliance with the verification program. Therefore, CVE cannot reasonably

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conclude that CSSS.net meets the control requirements of a service-disabled Veteran-owned small business as defined in 38 CFR Part 74.

For the reasons set forth, your application is denied. The specific reasons set forth are contained in the record and support denial of your application. Pursuant to 38 CFR § 74.11(c) "[a]n applicant's eligibility will be based on circumstances existing on the date of application." To the extent additional reasons for denial may be present in the record, CVE is not precluded from raising such reasons at a future point in support of its decision. Your business will be ineligible to participate in Veterans First Contracting Program opportunities with VA, and your profile will be removed from the VetBiz VIP database. Your VIP profile will remain out of public view until this denial is overturned, either on a successful Request for Reconsideration or CVE's processing and approval of a new application. Both options are detailed below.

Request for Reconsideration

According to 38 CFR § 74.13(a), "[a]n applicant may request that the Director, CVE, reconsider his or her decision to deny an application by filing a request for reconsideration with CVE within 30 days of receipt of CVE's denial decision. 'Filing' means a document is received by CVE by 5:30 p.m., Eastern Time, on that day."

If you wish to file a Request for Reconsideration, please submit a letter that clearly and conclusively addresses each of the issues raised. In addition, you must provide official corporate documentation substantiating each claim made in your request. Screen shots or copies of business profiles in self-reporting databases do not qualify as official corporate records. Without adequate supporting documentation, we will have no rational basis for granting your request for reconsideration.

Please email your request to the following address:

va-corecons@va.gov

Pursuant to 38 CFR § 74.13(b), "[t]he Director, CVE, will issue a written decision within 60 days, when practicable, of receipt of the applicant's request." As stated in 38 CFR § 74.13(f), "[e]xcept as provided in paragraph (c) of this section, the decision on the Request for Reconsideration shall be final." Furthermore, "[o]nce an application...[and its] appeal...ha[ve] been denied, the applicant or participant shall be required to wait for a period of 6 months before a new application will be processed by CVE." 38 CFR § 74.14.

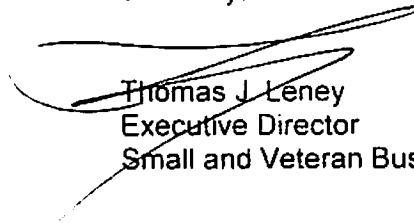
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Reapplication

As stated in 38 CFR § 74.14, if you choose not to file a Request for Reconsideration, you are welcome to submit a new VA Form 0877 Verification Application once you feel that you have corrected the issues raised in this letter. The form must be completed electronically by logging-in to your VIP profile. CVE will process your new application as it would an initial application, in accordance with 38 CFR § 74.11.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas J. Leney", is written over the typed name and title. The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas J. Leney
Executive Director
Small and Veteran Business Programs