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VETS FIRST? AN EXAMINATION OF VA'S RESOURCES FOR VETERAN-OWNED SMALL BUSINESSES

HEARING

BEFORE THE

SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT, AND REGULATIONS

OF THE

COMMITTEE ON SMALL BUSINESS
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VETS FIRST? AN EXAMINATION OF VA'S RESOURCES FOR VETERAN-OWNED SMALL BUSINESSES

THURSDAY, JUNE 7, 2018

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SMALL BUSINESS,
SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT, AND REGULATIONS,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:23 p.m., in Room 2360, Rayburn House Office Building, Hon. Trent Kelly [chairman of the Subcommittee] presiding.

Present: Representatives Kelly, Chabot, Blum, Marshall, and Adams.

Chairman KELLY. All right. We got our Ranking Member here, Ms. Adams, who is such a great friend. Good morning. I call this hearing to order.

First of all, I just want to thank my Ranking Member, who does such a great job on this Subcommittee and the Committee in full. And this is truly one of those committees that is left in Congress where I feel like we do a whole lot of bipartisan stuff. And I think that is important for America, that we work together on issues that affect small businesses. So I am very glad that she is here and the rest of our Committee.

I would also like to recognize our Chairman, Chairman Chabot, who is here. And we appreciate the full Committee Chairman. And should the Ranking Member show up, Ms. Velázquez, I hope I will remember to recognize her, but she also does a great job.

As this Committee is aware, our Nation's veterans make up a significant percentage of the American workforce. Many of our Nation's heroes exit military service and choose to begin a new mission: opening a business. Some even own and maintain a business while serving in the military Reserves.

The majority of veteran-owned businesses are small businesses, and these businesses employ approximately 5 million workers and account for more than $1 trillion in annual business receipts.

However, as a member of the Army National Guard, I am aware that veteran business owners experience challenges that non-veteran colleagues do not, such as a potential employer's difficulty in understanding a military resume and converting that to civilian skill sets or the result of a service-connected disability.

That is why programs like the Veterans First Contracting Program, or Vets First, at the Department of Veterans Affairs is so important.

The Veterans First Contracting Program was established by Congress in 2006 to assist the VA in carrying out their mission of serving America's veterans. This program gave the VA a unique authority to award direct, sole-source contracts to veteran-owned and service-disabled veteran-owned small businesses as long as the firm meets three criteria: the firm is a responsible source, the award falls between $150,000 and $5 million, and the award can be made at a fair and reasonable price.

However, despite this authority, the VA has continued to impede its own authority and work against the intentions of Congress by creating internal regulations and policies that make it harder to award contracts to veteran-owned small businesses.

A striking example of this occurred just 2 months ago when the VA filed a justification and approval to move thousands of medical products under the control of just four prime vendors as part of their Medical/Surgical Prime Vendor Program. Many of these products could be and often were purchased directly from small businesses.

Instead, the VA has said that veteran-owned businesses will be included at only the subcontracting level, and, unfortunately, they have yet to provide any details for a subcontracting plan.

The VA has used many excuses for these actions, the most common being that it is too burdensome or too expensive to work with veteran-owned small businesses. I hope our panel today will help to demonstrate that this is simply not true.

I thank our witnesses for being here today, and I look forward to the conversation.

I now yield to the Ranking Member, Ms. Adams, for her opening statement.

Ms. ADAMS. Thank you, Mr. Chairman.

And before I begin, I wanted to just introduce two interns: Jameia Booker from Johnson C. Smith University and Tony Watlington from North Carolina A&T. These two young people are part of the Bipartisan HBCU Caucus that Congressman Walker and I do each summer. So I just wanted to thank them for being here.

And thank you, Mr. Chairman, and thank you to our witnesses today.

One of the most important tools that we have to provide courageous individuals who served our country with a new life after their military service is the contract preferences to ensure their participation in the Federal marketplace.

The Service-Disabled Veteran-Owned Small Business Procurement Program disbursed almost $18 billion through over 17,000 contracts in fiscal year 2017. SDVOSB awards accounted for approximately 4.5 percent of Federal contracts, meeting the 3-percent statutory goal.

Notably, the government awarded 5.29 percent, or $23.4 billion, of its prime contracts to VOSBs. And while this accomplishment should be applauded, it should also be pointed out that it comes with calls for higher utilization of emerging veteran-owned small

businesses from the Department of Veterans Affairs and throughout the government.

While the SBA's program allows SDVOSBs to receive contracting preferences, these businesses do not have priority over other small-business preferences. However, recognizing the importance of getting contracts to not only SDVOSBs but VOSBs as a whole, Congress passed the Veterans Benefits, Healthcare, and Information Technology Act.

Today's hearing focuses on the sole-source authority granted to the Department of Veterans Affairs through the creation of the Vets First Contracting Program and determining what progress has been made to the process since the Committee's last hearing on this issue.

The VA recently issued a justification and approval for other than full and open competition on April 12, 2018, to allow four prime vendors currently performing distribution contracts under the Medical/Surgical Prime Vendor-Next Generation Program to choose potential suppliers.

This presents cause for concern for the SDVOSB community, as many of them rely on doing their business with the government. This particular approach from the VA shrinks the industrial base by limiting opportunities and possibly circumvents their Vets First sole-source authority, cutting out many small, veteran-owned businesses.

The VA says they plan to negotiate subcontracting plans with the prime vendors to include as many small businesses as possible, but this is also concerning given the government's overall lackluster enforcement of subcontracting plans.

Previously, the GAO has found that non-SDV firms have won SDV contracts. This included front companies posing as veterans, pass-throughs, and outright fraud. As a result, millions of dollars were diverted away from legitimate SDV businesses.

Diverting business opportunities away from our veterans by assuming subcontracting is enough to supplement the loss of prime contracts through vehicles such as this is a strategic sourcing approach that has been proven to unfairly hit small businesses the hardest.

Addressing these failings and ensuring SDV procurement programs work as intended is long past due. So, with the current employment environment for veterans of the wars in Iraq and Afghanistan, it is essential that all veterans' resources are properly managed and existing opportunities protected.

Given that entrepreneurship remains a viable career path for many of these men and women, programs like Vets First are critical to reduce the unemployment rate for veterans. I think I can speak for all the members here today in saying that we will do whatever it takes to help service-disabled veterans overcome the challenges they face in today's economy.

And, with that, I want to thank the witnesses again for appearing before our Subcommittee today, and, Mr. Chairman, I yield back.

Chairman KELLY. Thank you again to our Ranking Member.

If Committee members have an opening statement prepared, I ask that they be submitted for the record.

I would like to take a moment to explain the timing lights for you. You each have 5 minutes to deliver your testimony. The light will start out as green. When you have 1 minute remaining, it will turn to yellow. And, finally, at the end of your 5 minutes, it will turn to red.

I ask that you try to adhere as close as possible. Don't make me bang on this gavel, okay? No.

And now I would like to introduce our panel of witnesses.

Our first witness is Scott Denniston, executive of National Veterans Small Business Coalition in Centreville, Virginia. He is also the president and chief executive officer of the Scott Group of Virginia, LLC. Prior to those roles, he directed the Office of Small Business Programs and the Center for Veterans Enterprise at the Department of Veterans Affairs. Mr. Denniston also served our country in the Army.

Thank you for your service and for testifying today.

Our next witness will be Bob Taylor, the founder, owner, and CEO at Alliant Healthcare Products in Grand Rapids, Michigan. Mr. Taylor served in the United States Air Force as a navigator for 17 years and, after leaving Active Duty, held multiple positions within the medical device industry for the past 26 years.

Thank you for your service to our country and being here today.

Our third witness is Ms. Cheryl Nilsson, chief executive officer of First Nation Group, LLC, in Niceville, Florida. First Nation Group is a service-disabled veteran-owned small business, woman-owned small business, and a HUBZone company. Ms. Nilsson is a retired Air Force officer.

And we thank you for your service and for testifying today.

I now yield to the Ranking Member, Ms. Adams, to introduce our next witness.

Ms. ADAMS. Thank you, Mr. Chairman.

It is my pleasure to introduce Mr. Davy Leghorn, assistant director of the National Employment and Education Division for The American Legion, the largest veterans service organization in the country.

In his current capacity, Mr. Leghorn oversees the employment and small-business portfolios and administers The American Legion's National Veterans Hiring Initiative.

Prior to joining The American Legion, he served in the United States Army as both a mortar infantryman and a civil affairs specialist.

Welcome, Mr. Leghorn, and thank you for your service, sir.

Chairman KELLY. We will now do 5-minute questions, and we will try to adhere to that too.

Thank you for your service, Mr. Leghorn. And I also got to visit—oh, I am sorry. We will start with Mr. Denniston. Sorry.

STATEMENTS OF SCOTT DENNISTON, EXECUTIVE DIRECTOR, NATIONAL VETERANS SMALL BUSINESS COALITION, CENTREVILLE, VIRGINIA; ROBERT TAYLOR, FOUNDER, OWNER, AND CHIEF EXECUTIVE OFFICER, ALLIANT HEALTHCARE PRODUCTS, LLC, GRAND RAPIDS, MICHIGAN; CHERYL NILSSON, CHIEF EXECUTIVE OFFICER, FIRST NATION GROUP, LLC, NICEVILLE, FLORIDA; AND DAVY G. LEGHORN, ASSISTANT DIRECTOR, THE AMERICAN LEGION, WASHINGTON, D.C.

STATEMENT OF SCOTT DENNISTON

Mr. DENNISTON. Good afternoon, Chairman Kelly, Ranking Member Adams, and distinguished members of the Subcommittee. On behalf of the over 400 members of the National Veterans Small Business Coalition, the largest nonprofit trade association representing veterans in the Federal market, it is my pleasure to be here today.

On the invitation for the testimony, the question that you had was "Vets First? An Examination of VA's Resources for Veteran-Owned Small Businesses." I would suggest there are no resources.

As the chart attached to my testimony illustrates, VA, through its internal small-business goaling process, has in the last 8 years never raised its goal, in spite of accomplishments which exceed those goals. The chart also shows a decline in accomplishments since the peak year of fiscal year 2010.

So I submit that there is little commitment by senior leadership. I would also submit that Vets First and the Kingdomware Supreme Court decision have had absolutely no impact on VA procurements.

As recently as last October, at a congressional roundtable hosted by the chair and Ranking Member of the Subcommittee on Oversight and Investigations of the House Veterans Affairs Committee, senior VA leadership expressed their opinion that service-disabled vets add no value and cost VA more money.

Also, the policies the VA has established limit the areas of opportunity for service-disabled vets. This was done by VA with no public comment or review and flies in the face of transparent government.

Last August, the National Veterans Small Business Coalition published a paper identifying strategies used by VA to circumvent Vets First. The strategies negatively impact at least 7,000 veteran-owned small businesses attempting to do business with VA each year.

We provided three specific recommendations to Congress to stop this abuse: one, halt VA contracting actions that don't support Vets First; request GAO investigate the VA's disregard of Vets First; and, third, conduct hearings to hold VA accountable.

We are grateful to this Committee for the hearings today, as well as the House Veterans' Affairs Committee, which has also had hearings and a roundtable on these issues.

In October of 2017, the Subcommittee on Oversight and Investigations had a roundtable where, after it was over, the National Veterans Small Business Coalition made eight specific recommendations to the VA as to how to improve the program. And a copy of that letter is attached to my testimony.

One of the topics from your introductions that is of interest to this Committee is the VA Med/Surg Prime Vendor Program. The Strategic Acquisition Center of VA was established over 3 years ago to develop an effective Med/Surg Prime Vendor Program. It has been a failed program for the last 3 years.

On April 12, the SAC issued, as you mentioned, a class justification for less than full and open competition to change the contracts from distribution contracts to distribution and supply contracts for four large, for-profit entities that are in the business of leveraging their own operations to increase their own bottom lines, not to be concerned about the health of veteran patients.

These four entities will now determine which vendors get to supply what products to VA and at what price. All veteran small businesses are relegated to subcontractors, with no protections offered by the Vets First program.

On April 14, the four prime vendors received the modifications directing them to negotiate between the suppliers and themselves to provide products to the VA. VA did not at that time require an approved subcontracting plan, as required by the FAR. And just as the policies and faulty interpretations led to the unanimous Supreme Court decision in Kingdomware, VA's position was that this was a, quote, "modification" to an existing contract and a subcontracting plan was not required.

I also want to bring to the Committee's attention another disturbing action of the VA last year. Former VA Secretary David Shulkin announced that he was going to make a directed sole-source award, estimated at approximately $4 billion, to the Cerner Corporation to install an electronic health record, as it had done at DOD. The contract was recently awarded by the VA.

We have requested a copy of the subcontracting plan under the Freedom of Information Act. VA has acknowledged our request but has yet to provide a copy of the plan.

Given VA's abysmal record in subcontracting—which, over the last 10 years, the VA has never met its subcontracting goal of 3 percent to service-disabled vets, and only in 2 of those 10 years did they even make half of that goal—we have great concerns about the subcontracting plan that may or may not exist for the Cerner contract.

But to let you know that everything is not negative at the VA, we have worked with the VA for the past year to develop an electronic ordering system for micropurchases for the VA called GoVets. It was developed by one of our members, Veratics in Florida. And that now has the ability to have electronic ordering of micropurchase products to the VA.

Remember, the SAC has worked 3 years to get 7,000 products onto the formulary. In the 6 months that we have been working at this full-time, we have over 50 companies on there with over 50,000 products for the VA. So it makes you wonder why the SAC, with all their people, can't do what they are entitled to do.

That is the end of my oral testimony. I would ask that my written comments be submitted for the record with attachments.

Chairman KELLY. Without objection.

Thank you for your testimony.

And we now recognize Mr. Taylor for 5 minutes.

STATEMENT OF ROBERT TAYLOR

Mr. TAYLOR. Thank you.

Good afternoon, Chairman Kelly, Ranking Member Adams, and other distinguished members of the Subcommittee. Thank you for the opportunity for me to be here today. And it is my honor to be able to be here to testify to this Committee about the important value that we provide to the VA.

My name is Bob Taylor, and I am here to testify on behalf of my company and the 39 employees of Alliant Healthcare Products. Alliant Healthcare is a Grand Rapids, Michigan-based service-disabled veteran-owned small business.

As background, in my 17-year military career leading to the rank of major, I served my first 6 years in the Air Force on Active Duty as a navigator and radar navigator on B-52 bombers. In my much younger years, as a first lieutenant, I flew 11 combat missions in the first Gulf War from an island called Diego Garcia in the Indian Ocean. I clearly remember one day when we learned that one of our B-52s had crashed and we had lost three of our crewmates.

I would never do anything with my business to disrespect their sacrifices or those of any other veterans. The fact that this hearing is a little over 1 week following Memorial Day reminds us all that there are veterans that have sacrificed far more than me or more than anyone else here today.

So, to me, it is not only a business matter but it is with a sense of purpose that I have always tried to set high standards in all of my business dealings. I refuse to operate as a simple pass-through or what is referred to as a rent-a-vet. I constantly remind people that we are not just selling widgets to consumers but we are often selling lifesaving healthcare products to care for our warfighters and for other veterans that have served our country.

Now, how do we add value? Alliant Healthcare Products focuses on helping companies navigate the complexities of the Federal market. We assist large and small businesses who provide market-leading and innovative healthcare technologies to the VA. We have earned a strong reputation as an exceptional Federal market expert who provides value throughout the supply chain of the VA.

Our most important benefit to the government is that we do not increase our prices on the clear majority of the products that we sell to the VA. We allow the VA to negotiate their price, the fair and reasonable pricing, as though they were buying directly from the manufacturers themselves, and then we honor those prices. Manufacturers pay us for the services that we provide them, but the government does not pay us for any of our services.

In the words of one contracting officer, and I quote, "We love working with Alliant because you offer the same exact pricing and your team understands the government procurement process better than the manufacturers," unquote.

Selling to the VA is quite different than selling to the commercial hospitals, and manufacturers' representatives are often ill-prepared to deal with the complexities of acquisition regulations. As a service, Alliant has our own area vice presidents who cover the United States. They provide support to make sure acquisition regulations are followed and help contracting officers get what they need in a timely manner.

From another contracting officer, and again I quote, "Alliant is able to attend in-person meetings with clinical representatives. Having someone in meetings that understands how to speak government language is incredibly beneficial," unquote.

At Alliant, we are also very creative problem-solvers. For example, a VA wanted to receive high-value endoscopes kitted together, because if they received them separately, they can often not find each other once they are inside the hospital, and this can cause reordering of very expensive, high-priced components. In this case, the large manufacturer was unable to provide these kits due to their internal policies. Well, we purchased the same components and placed them together at our manufacturing site in a single package and delivered to the VA exactly what they wanted.

In conclusion, Alliant does provide value to the VA, to their contracting officers, and to the patients who are treated by the best technology available.

My question to this Committee and to the VA itself is this: What is the possible downside to working with SDVOSBs if the hospitals receive what they need in a faster manner, with a more efficient process, with cost-effective, creative solutions, more accurate transactions, and delivered with better outcomes? And that is exactly Alliant Healthcare's mission.

This concludes my testimony. Thank you very much for the time.

Chairman KELLY. Thank you for your testimony, Mr. Taylor.

And Ms. Nilsson is recognized for 5 minutes.

STATEMENT OF CHERYL NILSSON

Ms. NILSSON. Chairman Kelly and distinguished members of the Subcommittee, I would like to express my sincere thanks for the invitation to submit testimony today at this hearing. I am honored to be here.

My name is Cheryl Nilsson, and I am the CEO of First Nation Group. I served on Active Duty as an Air Force judge advocate for 23 years, specializing in government procurement, and retired in the rank of colonel.

First Nation is a service-disabled veteran-owned, HUBZone, woman-owned small business. We employ 100 people, 100 employees, and 40 percent live in the HUBZone, are from the HUBZone, and 14 percent are veterans.

We distribute respiratory products to VA hospitals nationwide, to hundreds of thousands of veterans each year. We ship over 1,700 orders a day. Ninety-nine percent of those orders ship within 24 hours. We maintain a huge inventory with over 4,000 SKUs at 3 strategically located warehouses, including 1 at our HUBZone location in Detroit. This enables us to quickly meet urgent and emergency VA needs.

What value does an SDVOSB like First Nation bring to the VA? There are many.

One, experience. For over 30 years, we have specialized in serving in the Federal market. We are laser-focused on the VA. Ninety-nine percent of our business is with the VA.

We are the VA's corporate knowledge for anything related to sleep therapy. We do business with over 1,700 purchasing agents around the country and probably know over half of them by name.

We are a one-stop shop. We carry large inventories with a full range of sleep products from all major manufacturers. We provide customized, multivendor patient solutions. One order could include products from three or four manufacturers, significantly streamlining the VA ordering process.

First Nation does what most large vendors can't or won't do: We sweat the small stuff. We fill hundreds of thousands of orders a year. Over 95 percent are under $3,500. Seventy percent are small-box deliveries under $200 that are shipped directly to the veterans' homes all over the Nation. These small purchases are a nuisance for most large businesses, and for us it is core.

The VA is our only focus and passion. Few large businesses could risk being so specialized. Their focus must be in the larger commercial marketplace. We are the experts in this complex market. Manufacturers and the VA depend on this expertise to get the state-of-the-art products established in the VA.

We are nimble. We can and do customize orders, large or small, even with 1,700 a day. We can easily pivot to make immediate and last-minute changes. We are a non-manufacturer. There is no conflict of interest over brand preference. We represent all the leading manufacturers. We can sell to the VA whatever the VA wants, when they want it, multi-brands, on large and small orders.

Cost savings. We nurture and establish long-term OEM relationships. We buy in large order quantities to get top-tier pricing and pass the savings onto the VA.

Just-in-time shipments. We preposition inventory in three strategically located warehouses. The morning mantra for our First Nation warehouses: "Order in, order out." Ninety-nine percent of the time, they make it. Orders are shipped and invoiced in 2 days.

First Nation's success as a VA supplier has afforded us the opportunity and privilege to give back to the communities. First Nation was founded with the goal of building a sustainable social enterprise to benefit the company's employees, the veterans, and the underserved in the community where we live and work.

Some examples of these steps in the journey towards a social enterprise:

Our focus with the veterans, like the VA, has been in eradicating veteran homelessness. We joined forces with Veterans Matter 4 years ago and, I am proud to say, have housed over 21 homeless veterans.

We expanded our focus this year to support Paralyzed Veterans of America and are a premier sponsor with UPS for the 2018 Veterans Wheelchair Games.

In employee charitable giving, to encourage and empower employees to embrace the First Nation giving culture, First Nation matches their charitable contribution 10 to 1.

In closing, small companies like ours feel very much at risk. The combination of the abandonment of the FSS, the focus on working only with manufacturers and large businesses, the distrust of VOSBs and an apparent unwillingness to embrace Vets First, and strategies to significantly limit prime contractors threatens veteran-owned businesses like First Nation and presents huge barriers of entry for any veteran who wants to do business with the VA.

We need Congress' continued support of small business and the Vets First program and assistance in overcoming the challenges we are facing today.

Thank you again for the opportunity to testify. I am happy to answer any questions at this time.

Chairman KELLY. Thank you, Colonel, for your testimony.

And I now recognize Mr. Leghorn for 5 minutes.

STATEMENT OF DAVY G. LEGHORN

Mr. LEGHORN. Chairman Kelly, Ranking Member Adams, and distinguished members of the Subcommittee, on behalf of our national commander, Denise Rohan, and the 2 million members of The American Legion, we thank you for the opportunity to testify this afternoon.

This issue is of the utmost importance to The American Legion, because how VA buys medical supplies directly affects the care of the most vulnerable segment of our population, veteran patients.

Public Law 106-50 made all Federal agencies stakeholders in supporting the veterans small-business industrial base. Subsequently, Public Law 109-461 gave VA the authority to set higher agency small-business goals for veterans. Included was a provision requiring VA to set aside contracts for veteran-owned firms as long as the rule-of-two was satisfied. A new procurement hierarchy within VA was created. It is referred to as the Vets First Contracting Program.

Later, the Supreme Court would finetune the Vets First contracting policy with VA with the Kindomware decision in 2016. In 2018, VA launched the MSPV-Next Generation, an IDIQ contracting program which effectively removes 40 percent of the medical supply spend from the rule-of-two, utilizing only four prime vendors as suppliers and distributors.

The master list of items, prices, and suppliers purchased through the MSPV-Next Generation is referred to as the formulary. The formulary is created by running a procurement-like process to discover businesses who can meet the standards and offer the best prices.

VA needs over 80,000 items to support all of the medical centers. The 7,800 items currently on the list is not enough to satisfy the demand, and VA's solution is to grant a 2-year period where prime vendors will determine what supplies VA medical centers need—a drastic departure from the current clinician-driven process.

The American Legion believes that VA is the most qualified to deliver healthcare services to veterans, and we want them to step up to their responsibilities.

The intimation that adherence to the Vets First procurement priorities could potentially cause catastrophic disruption to the healthcare supply chain is markedly false. The American Legion supports the Kingdomware decision and opposes any attempt to subvert the application of the rule-of-two at VA.

In 2016, The American Legion passed Resolution 154 advocating for a reasonable number of Federal set-asides for veteran-owned firms. MSPV-Next Generation not only reduces Federal contracts for veteran-owned businesses but also sidesteps the rule-of-two. Its existence is of great concern to The American Legion.

Privatizing the functions of the VA Office of Acquisitions and Logistics presents a conflict of interest and harms small businesses. The American Legion would like to work with Congress and VA to look at the empirical evidence used for justification to better understand the underlying rationale for the private-sector bailout so another will not be required.

Mr. Chairman, accepting the concept that the only solution is to abdicate responsibility by privatizing the procurement of critical supplies sets an irreversible path for VA to address all of its other problems through privatization as the only alternative.

The American Legion makes the following recommendations:

We believe that prime vendors must not be allowed to decide which healthcare products are to be added to the formulary and checks are put into place to prevent them from systematically displacing SDVOSBs as distributors.

If VA is looking for a solution that meets small-business goals, adheres to the Kingdomware decision, has government-certified fair and reasonable prices, and is FDA-, Trade Agreements Act-, and Buy American Act-compliant, they should look at the utilization of the Federal Supply Schedule. The FSS could be an alternative starting point for market research and a basis for rapidly moving products onto the formulary.

Going forward, since the J&A's implementation, prime vendors are already assuming the distributor's role in the procurement process. The displacement of veteran-owned distributors at VA coincides with a downward trend in distributor utilization within the healthcare supply industry and is exacerbated by GSA's implementation of the 2017 NDAA's section 846, which establishes a program for Federal agencies to buy commercial products through e-commerce portals. Distributors are feeling the pinch across the Federal agencies and in the private sector. All industry indicators thus far present a very bleak future.

Despite the odds stacked against the SDVOSB distributors, The American Legion remains committed to advocating for their utilization and place within the Federal procurement process.

Chairman Kelly, Ranking Member Adams, and distinguished members of the Subcommittee, thank you for the opportunity to explain the position of the 2 million members of The American Legion, and I look forward to answering any questions you may have.

Chairman KELLY. Thank each of you again for your testimony.

And now we will have 5 minutes each to ask you questions. If we have the desire, we will go through a second round, but if not—I couldn't have testified any better than you guys did. I could have been down there sitting and talking, because I agree with what every one of you said pretty much.

So I will start with me.

Colonel Nilsson, First Nation Group is unique in that it is service-disabled veteran-owned, woman-owned, and located in a HUBZone. And you kind of articulated it, so I was listening, but I want you to go over it in about a minute, if you would tell me what your company does for other Federal agencies in the VA that can't be done by a larger business.

Ms. NILSSON. Primarily, we fit in a niche where we, for lack of a better word, kind of take the crumbs. We do what the other com-

panies really don't want to do, and that is dealing directly with the veterans, directly with those purchasing agents. And we get what they want when they want it, ship it out fast.

We are a little like a prime vendor in sleep. We have all the products that the VA needs and wants, and we almost know what they need because we have been doing it so long. So manufacturers come to us because we are the distributors and the supplier of sleep and many respiratory products to the VA.

Chairman KELLY. Thank you very much.

You know, and it is really irritating that the VA, which is there to care for our Nation's veterans—their sole purpose is to care for our Nation's veterans—would not care for our Nation's veterans and not be exceeding all goals instead of halfway meeting those goals. It is very disappointing, but it shows a culture that we have to change. Their primary goal should be to service our American veterans, whether medically or through the contracts as long as we do those.

With that, Mr. Denniston, you mentioned in your testimony that the contract justification and approval submitted by the VA in April mentioned subcontracting opportunities for veteran-owned and service-disabled veteran-owned businesses.

To your knowledge, has the VA provided any details on this?

Mr. DENNISTON. Mr. Chairman, the answer to that is no.

The J&A was done in April. Two days later, the prime vendors got the go-ahead to move forward. When we asked the question about the subcontracting, we were told that that was in the works and that the VA would ask for a plan by the end of June.

The problem is, in those 2 months, the prime vendors will have already made the agreements with the manufacturers, which, in effect, cut out the distributors. So the damage is already done.

Chairman KELLY. I have to be careful, because this stuff infuriates me so much that I have to watch my language up here.

But don't prime vendors usually establish subcontracting opportunities before the prime contracts are awarded?

Mr. DENNISTON. Yes, sir, they do, but remember, when the original contract was written, it was only for the distribution of product. Most of the opportunities for service-disabled vet and small businesses in particularly the distributing world is for the product. None of the product was included in that original subcontract.

So, when we changed the scope of the contract from distribution to distribution and supply, there should have been another subcontracting plan that incorporated the opportunities for the distributors to play as subcontractors, and that has not been done.

Chairman KELLY. I don't believe too much in coincidences, and I believe when you know business and you do things, I think they are intentional. And I think they intentionally are getting to the result that they want to get to. And, again, it goes back to my primary comment: They should be taking care of veterans, not looking at ways to not take care of veterans.

And, Mr. Taylor, unfortunately, there is a misconception about contracting with veteran-owned small businesses, and your testimony touches on this. Can you explain this misconception and talk more about what Alliant Healthcare does to combat this?

Mr. TAYLOR. Well, it is a constant effort to try and combat this. The misconceptions are communicated throughout the VA, so we are always in an effort to try and prove and demonstrate our value.

One of the things that we do that other companies—it is very difficult, sometimes, for a large manufacturer sales rep to go into a VA. It is a much more complicated environment. And I believe, without us, some of these firms would not even promote their products within the VA. So I think we do a good job of helping new technology get to the VA that wouldn't normally get there.

Chairman KELLY. Thank you. And I think that is important. That would be products that were either more expensive or not available for our veterans if you weren't doing your job, is the way I interpret that.

And, with that, I am over my time—or I have a few seconds left, and I yield back my time and now recognize the Ranking Member, Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chairman.

And thank you all for your testimony. Very enlightening.

Mr. Leghorn, in your testimony, you stated that the VA's Medical/Surgical Prime Vendor-Next Generation Program is privatizing the functions of the VA's Office of Acquisitions and Logistics' Strategic Acquisition Center. This presents a significant conflict of interest and inflicts harm on veteran-owned small businesses.

So how can Congress prevent this harm and strengthen the VA's ability to expand the growth of set-aside contracting to small businesses through Vets First?

Mr. LEGHORN. Ranking Member Adams, thank you for your question.

The first thing that Congress can do, I believe, is to just halt the agency from allowing the prime vendors so much power to determine which suppliers and what items go on that list. It is a huge conflict of interest because a few of the prime vendors are actually manufacturers as well. They could easily tool around with the items on the formulary to, in effect, cut out small businesses.

The other thing that we could look at doing is to go back and look at the FSS that VA runs and see if we could rapidly move items onto the formulary that way or to even just utilize the FSS more broadly for medical supplies.

Ms. ADAMS. Okay.

After Kingdomware was decided, the VA used the Ability One list to purchase goods without first applying the rule-of-two, which ensures set-asides for small businesses. This activity was later struck down by a court.

It seems that the VA continues to struggle with putting veteran-owned small businesses and service-disabled veteran-owned small businesses first when purchasing goods.

Is this an indication of the VA's attitude toward veteran small businesses in general?

Mr. LEGHORN. You know, the Ability One issue is really tricky. You know, we are dealing with conflicting authorities. The American Legion believes that the Supreme Court has the Kingdomware decision right in the black letter reading of the law. And the fact that VA continues to employ workarounds around the rule-of-two is really bothersome.

And, as the Chairman said, it doesn't make any sense that an agency whose goal is to help the veterans community would purposely try to tank and bypass the rule-of-two within the Vets First program.

Ms. ADAMS. Thank you.

Mr. Denniston, are there possible unintended questions for small businesses to the VA's MSPV-NG that have not been considered in their approach to this procurement that Congress should act on?

Mr. DENNISTON. I think the answer to that question is fairly broad.

Let me just make a comment. We have been talking about the VA. The VA is 350,000 employees, most of whom want to do the right thing. And the people in the field that actually buy the products that we are talking about I truly believe want to do the right thing. The challenge is that the impediments have been put in their way because of poor policy, poor training, and poor oversight. And my personal opinion is that is how we need to fix these problems.

To your point, historically, VA has done a terrible job of managing the subcontracting program. That is evident over the last 10 years. And VA has given us no assurances that anything is going to change now with the new MSPV program.

In fact, in December of last year, when we were all in St. Louis for the national VA small business conference, when we asked the question of why should we feel you are going to do anything different, the answer from the senior VA leadership was, "You have to trust us." Well you can't trust people after 10 years of evidence to the contrary.

Ms. ADAMS. Okay. Thank you, sir.

Mr. Chairman, I am going to yield back.

Chairman KELLY. I thank the Ranking Member again.

And I now yield to Mr. Blum, the Chairman of the Subcommittee on Agriculture, Energy, and Trade, for 5 minutes.

Mr. BLUM. Thank you, Chairman Kelly.

Thank you to our panelists for being here today, and thank you for your service to our great Nation.

Mr. Denniston—is that correct?

Mr. DENNISTON. Denniston, yes.

Mr. BLUM. Denniston. The chart that accompanied your testimony is interesting. It is flat-lined for the last 8 years. Why do you think it is flat-lined?

Mr. DENNISTON. I think it shows a lack of commitment to the Vets First program. I think it shows——

Mr. BLUM. At what level?

Mr. DENNISTON. At the senior level of the VA.

During the administration of Bush 43, when none of the government was making the goals, there was an executive order, 13360, that said that all Federal agencies had to have a strategic plan and that strategic plan had to be measured by a senior VA official. In the time that I was there during the Bush administration, it was the Deputy Secretary of VA.

There is no strategic plan at VA, and there is no senior leadership that is looking at holding people accountable for the accomplishments. And it is that same level of senior leadership that

should be looking at the difference between the goals and the accomplishments and raising the goal if, in fact, there was a commitment to the program, in my opinion.

Mr. BLUM. You saying under Bush 43——

Mr. DENNISTON. Correct.

Mr. BLUM.—there was a strategic plan——

Mr. DENNISTON. Correct.

Mr. BLUM.—at the VA and there is not today?

Mr. DENNISTON. Correct.

Mr. BLUM. How does that happen?

Mr. DENNISTON. Lack of interest in the program. The real challenge is that the VA does not see as part of its mission helping service-disabled veterans.

Mr. BLUM. I agree with Chairman Kelly. How can that be? I mean——

Mr. DENNISTON. I can't answer that, sir.

Mr. BLUM. That is absurd to me.

Mr. DENNISTON. Yeah. And to all of us sitting here at the table.

Mr. BLUM. Amazing.

You stated in your testimony that the National Acquisition Center ran a successful MSPV program, but after the leadership was transferred to the SAC, they failed. What happened there? Why do you think that is true?

Mr. DENNISTON. The big difference was, when the program was at the National Acquisition Centers, as Mr. Leghorn mentioned in his testimony, the Federal Supply Schedules were the basis for the formulary that was used for the Med/Surg Program. When the program was moved to the Strategic Acquisition Center, the requirement to use the Federal Supply Schedule was dropped. There was a policy change at the VA that said the Federal Supply Schedules, which they run as a delegated procurement from the GSA, are not considered competitive contracts; therefore, they can't be used as the basis for the formulary.

Now, the problem with that is that disagrees with GSA policy. And that issue has been brought up to VA by numerous organizations in Washington that represent large business as well as small business, and every one of us says to the VA, if you want to fix the problem, go back and use the Federal Supply Schedules as your basis. VA won't do that.

Mr. BLUM. I am a career business guy, not a career politician. I look at the VA, you know, our veterans, our national treasures. Would you say the VA—and this is a question for everyone there—is mismanaged? Is the VA mismanaged?

Mr. DENNISTON. Yes, sir. In the procurement acquisition arena, yes.

Mr. BLUM. How about the rest of it?

Mr. DENNISTON. I can't speak to that. That gets a little bit broader than what I focus on with the National Veterans Small Business Coalition.

Mr. BLUM. It sure seems to be that way to me, from what I hear.

Mr. DENNISTON. Yep. I can't argue with you.

Mr. BLUM. And is this a problem at the very top, or is this a midlevel management problem? Where is this mismanagement? I mean, is there accountability? I just find it incredible. Is there accountability there? Why aren't heads rolling? Why aren't people terminated?

Is this middle management? Is this upper management? Where is this problem at?

Mr. DENNISTON. You hit the nail on the head. It is with senior leadership. Because, as we learned in the military, everything starts at the top and comes down. And there has been such turnover at VA.

The other problem is that acquisition is a technical field. It has the Federal Acquisition Regulations that are this high, its own language. The people that come in that are the secretaries and the deputy secretaries don't really understand that, so they rely on the technical experts the VA has hired. And there are a lot of problems there, because it is those people who are making the statements that working with service-disabled vets is administratively burdensome and costs the VA money.

Mr. BLUM. Anybody else want to jump in on either of those questions? Why we flat-lined and/or the VA is mismanaged.

Ms. NILSSON. The VA, as Scott pointed out, especially in the group that we work with, is thousands of people. And at the working level, one, they love working with veteran-owned businesses and really work hard to find them in order to work with them.

At the large acquisition levels that we are talking about with prime vendor, that is where a lot more of the difficulty comes with believing that there is a place for small business or for veteran-owned business. I don't think they really believe that we can do what they expect, do good work at a good price. And so we spend a lot of time trying to convince the leadership that we are worth their time. And that has been challenging.

Mr. BLUM. I agree with Chairman Kelly. You would think the organization should also care tremendously about veteran-owned businesses. I just find it incredible.

But thank you for your testimony today, and thank you for your service.

Chairman KELLY. The gentleman's time has expired.

We are going to do a second round of questions. I will try not to use all 5 minutes, but I am going to start with me and then go to Ms. Adams.

I just want to say I have never met bad soldiers, bad airmen, bad sailors. I have seen—bad units, usually, I have not seen very many of unless there is bad leadership.

Now, that doesn't indict the whole VA. Most of those people go to work there for lesser pay than they could make somewhere else. They work harder, and they go there because their heart wants to help people. And so I am not indicting the whole VA. But I do think there is a leadership issue at some point that we need to get to and critique and make sure that we are doing our mission.

Returning to the MSPV, the VA's argument for restructuring their program relies on the logic that a catastrophic disruption of the VA healthcare supply chain will occur if they do not act.

Mr. Leghorn, what are your thoughts on this?

Mr. LEGHORN. Thank you for your question, Chairman Kelly.

From the J&A, they—that is where that was quoted from, the catastrophic failure will happen if their proposals do not come to pass. But within the same document, they were talking about other ways that the VA procures things. They are not the most effective way of doing it, and it might not yield as much money savings to the VA when they buy in bulk off the MSPV-NG, but those are still viable ways that the agency is procuring medical supplies as we speak.

So to say that if this doesn't come to pass that there is going to be a catastrophic failure, it is clearly not true, because there are only 7,800 items on there right now and VA medical centers are currently still running.

Chairman KELLY. Very good.

And I just want to—I am in a group called the Warrior Caucus. It is bipartisan. And there are members, former servicemembers who—Seth Moulton and Steve Russell co-chair that committee. And we had Secretary-nominee Wilkie in there a couple of weeks ago, and I am going to tell you, you know, he appeared to have his eye on the ball and looking at the right things. And, you know, I am just saying that from the questions that we had, from our bipartisan questions about what they are doing.

So I think good leadership at the top, and I understand it is not necessarily the secretaries, but they can at least delve down in to identify the leadership level at which it is deficient. And so that is what we have to do: identify the deficient leaders at the right level and either remove them or make them do their job in the way that it was intended.

Mr. Denniston, the chart attached to your testimony is interesting. And in a few words—and I want to go back again, because I know you talked about it, but sometimes this—we call those footstompers, you know? We want to touch it again. Would you sum up in a few words what your chart illustrates?

Mr. DENNISTON. Lack of commitment to the program, lack of oversight. And I think that gets back to the points that I made before, that the people in the field that are actually buying the products and serving veterans need to have good, effective policies, good training, and then good oversight.

Chairman KELLY. And, finally—boy, I wish I could ask you all a million questions. It just gets my dander up.

But, Mr. Leghorn, I am going ask you this as the American Legion rep, which is an organization that I am in and a member of and does a lot of good. What are some of the consequences of removing competition from the process of awarding government contracts? Removing the veteran-owned small businesses, removing them from the competition, what are some of the consequences of doing that?

Mr. LEGHORN. Thank you for your question, Chairman Kelly.

The impact that we run into is, you know, a lot of the distributors that currently sell to the VA or would sell medical supplies to the VA are already on the GSA schedule. They are schedule holders. And the abandoning of the GSA Advantage, the FSS, would displace a lot of veteran-owned small businesses and preclude them from contracting directly with the VA as prime contractors.

I wish I had the numbers of people that would be affected for you to see, but perhaps Scott knows what that number is.

Mr. DENNISTON. More than the numbers, to answer your question, sir, the impact would be poor patient care.

I think Bob and Cheryl have done a great job of explaining the hands-on services they provide. We have another one of our members, Mid-Cities Medical, who does home respiratory care for veterans, where they will go into a veteran's home, they determine what is the best products that they have, they bring the products in, they set them up, they train the veteran on how to use them. They provide all the services necessary for warranty, repair, and maintenance.

Those are the kinds of services, hands-on in the local community, that small businesses provide that you are not going to get from four large prime vendors.

Chairman KELLY. Thank you very much. And my time has expired, and I now recognize the Ranking Member.

Ms. ADAMS. Thank you, Mr. Chairman, and I agree with you. Perhaps we need to move some folks.

Let me ask Mr. Leghorn, just to follow up a bit, what should Congress do to make it clear that we do not accept the justification of unnecessary consolidation of contracts at the expense of the industrial base outside of what is already included in statute?

Mr. LEGHORN. Thank you for your question, ma'am.

I think, going back to our recommendations, we have to stop VA from consolidating the prime vendors. Today, they have four identified prime vendors. A lot of us believe that their end game is to, frankly, end up with one, because it is a procurement shortcut, and dealing with one prime vendor is a lot simpler than dealing with four prime vendors or a whole bunch of distributors.

So we have to halt it there, because, in essence, they are trying to create a shortcut that will, in essence, end up as a monopoly. And you will not save money when you are dealing with somebody that could regulate their own prices.

Ms. ADAMS. Yeah. Okay.

So, Mr. Taylor, what are some ways we can incentivize agencies to use the contracting programs that require service-disabled veteran-owned small businesses and veteran-owned small businesses to be hired outside of the goals?

Mr. TAYLOR. Thank you for the question, ma'am.

Really, the incentives aren't the most important thing. When Mr. Bloom asked if there is mismanagement, I don't think the issue has been mismanagement as much as it has been a purposeful effort to work around the VOSB and SDVOSB goals. So, if the goals are out there, we just need to create an environment where the will of Congress is followed by the agencies.

And, like Cheryl provided earlier in her testimony, I think most of the rank-and-file, the people, the acquisition officers, contracting officers, want to deal with SDVOSBs and VOSBs. And so I think we just need to remove the impediment versus providing incentives, if that makes sense.

Ms. ADAMS. Okay. Thank you.

So, while the VA must give preference to service-disabled veteran-owned small businesses and veteran-owned small businesses,

there is still room for improvement given the decline in the number of veteran-owned businesses receiving contracts.

What are some goals that we can set and work to achieve with agencies within the next fiscal year? And any one of the panelists can answer that.

Mr. DENNISTON. I would suggest that the goals are there; I think the issue is oversight.

Agencies do—let me go back. Prime vendors, the private sector does what their customers want. So if VA, as an example, lets prime vendors know that this is important to them, they will make the goals. The businesses are good at that. The problem we have here is the VA has basically said, we don't care about the goals.

So, Madam Ranking Member, to your point, it is an oversight issue. As the Small Business Committee, you have the ability to bring agencies in and ask them how they are doing towards the goals. You have the ability to say, "Executive Order 13360 requires a strategic plan. I want to see your strategic plan, and what are you doing to implement it?" I think it is letting agencies know that, to this body, small business is important.

Ms. ADAMS. Okay. Thank you.

Mr. Chair, we are the Oversight Subcommittee, but I yield back my time.

Chairman KELLY. I want to again thank our witnesses for your testimony, for your service to our veterans and small businesses, and also each of your services to our great Nation.

I also want to thank the Ranking Member for being such an advocate for small businesses and veterans also.

It is clear from today's discussion that the theory that contracting with veteran-owned small businesses is expensive and burdensome is nothing more than a misconception. Therefore, the VA needs to take their responsibility to help America's veterans succeed in all aspects of life seriously by utilizing the authority granted to them by Congress to its fullest potential. We shouldn't try to meet goals for veterans; we should try to exceed them.

I ask unanimous consent that members have 5 legislative days to submit statements and supporting materials for the record. Without objection, so ordered.

We are adjourned.

[Whereupon, at 3:24 p.m., the Subcommittee was adjourned.]

APPENDIX

STATEMENT OF

SCOTT DENNISTON, EXECUTIVE DIRECTOR

NATIONAL VETERAN SMALL BUSINESS COALITION

BEFORE THE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT & REGULATIONS

U.S. HOUSE OF REPRESENTATIVES

June 7th, 2018

Good afternoon, Chairman Kelly, Ranking Member Adams, and distinguished members of the Subcommittee. On behalf of the members of the National Veteran Small Business Coalition and all veteran small business owners (VOSB) and service disabled veteran owned small businesses (SDVOSB) trying to do business with the Department of Veterans Affairs(VA), I sincerely appreciate this opportunity. Your invitation invited testimony on "Vets First? An Examination of VA's Resources for Veteran-Owned Small Businesses." I would suggest THERE ARE NO RESOURCES!

As the chart attached to this testimony illustrates, VA through its internal small business goaling process has in the past 8 years NEVER raised its goals in spite of accomplishments which exceed the goals established for the previous year. The chart also shows a decline in accomplishments since a peak in Fiscal Year 2010. I submit there is little commitment by senior leadership to the Vets First program. VA leadership does not see it as part of their mission to implement Vets First!

Since early in World War II, Congress has recognized and legislated the importance of building and maintaining a small business industrial base for national security. Unfortunately, senior VA leadership, culture and policies do not support the Congressional intent. VA has lost sight of its unique mission to support we who have "borne the battle" and how VA mission outcomes are enhanced by building a veteran owned small business industrial base. As recently as last October at a Congressional Roundtable hosted by the Chair and Ranking Member of the Subcommittee on Oversight and Investigations of the House Veterans Affairs Committee senior VA leadership expressed their opinion that SDVOSBs/VOSBs add no value and cost VA more money. Also, the policies VA has established limit the areas of opportunity for SDVOSBs/VOSBs. This is done by VA with no public comment or review and flies in the face of transparent government.

Public Law 109-461, signed on December 22nd, 2006, established the program commonly known as "Vets First". Vets First requires VA to give special considerations to VOSBs and SDVOSBs in all VA procurement opportunities. VA spent 10 years fighting against Vets First though polices established, acquisition strategies developed, and limited training for VA contracting personnel. For 10 years, many times VOSBs and SDVOSBs were forced to protest VA decisions to the General Accounting Office or file suit in the Federal Court System. In most instances, the protests of the VOSB/SDVOSBs were upheld! On June 16th, 2016, the United States Supreme Court in its decision in the Kingdomware Technologies case, ruled against VA and provided specific guidance to VA as to how VA was expected to implement Vets First.

In August last year, the NVSBC published a paper identifying strategies used by VA to circumvent VETS First. (A copy is attached to my testimony) The strategies negatively impact at least 7,000 VOSBs/SDVOSBs attempting to do business with VA each year. These strategies include:

Requesting other agencies to contract for VA services

Unreasonably tightening specifications to eliminate VOSBs/VOSBs from competition

Contracting out inherently governmental contracting functions

Requiring "higher level" review and approvals

Establishing restrictive procurement policies

Ignoring "market research" requirements

We provided 3 specific recommendations to Congress to stop this abuse of VOSBs/SDVOSBs by VA:

Halt all VA contract actions which do not support Vets First

Request GAO Investigate VA's disregard of Vets First

Conduct hearings to hold VA accountable to follow Vets First

We are grateful to this Committee for this hearing as well as to the House Veterans Affairs Committee which has also held hearings and a "Roundtable" on these issues. We also understand the House Veterans Affairs Committee has requested GAO to investigate VA's performance regarding Vets First. The key issue is the lack of accountability that requires VA leadership to follow the laws as intended by Congress and the U.S. Supreme Court!

As previously mentioned, on October 11th, 2017, the Subcommittee on Oversight and Investigations of the House Veterans Affairs Committee held a roundtable on the Vets First contracting program. At the conclusion of the roundtable, Chairman Bergman and Ranking Member Kuster asked participants for specific recommendations to "fix" the Vets First program. The NVSBC submitted 8 specific recommendations to the Committee. A copy of our letter dated October 17th with the recommendations is attached to my testimony.

I would also like to draw your attention to a copy of my testimony on March 7th, 2018 before the House Veterans Affairs Committee which is also attached to this testimony. One of the topics of that testimony, I understand, is of great interest to this Committee; VA's Medical/Surgical Prime Vendor Program (MSPV). The Strategic Acquisition Center (SAC) a VA acquisition office located in Fredericksburg, VA has attempted for over 3 years to establish an effective MSPV program. Prior to the establishment of the SAC, the VA's National Acquisition Center (NAC) located in Hines, IL managed a successful MSPV program as well as VA's Pharmaceutical Prime Vendor Program. When the SAC was established responsibility for the MSPV Program was transferred to the SAC. The SAC decided to change acquisition strategy for MSPV and this has resulted in a 3 year failed program. On April 12, 2018, the SAC issued a "Class Justification and Approval for Other Than Full and Open Competition" (J&A) to change the current MSPV contracts from "distribution" to "distribution and supply" contracts thereby turning over the sourcing decisions for VA's Med-Surg supply chain to four large "for profit" entities that are in the business of leveraging their own operations to increase their own bottom lines, NOT be concerned

about the health of veteran patients. These four entities will now determine which vendors get to supply what products to VA and at what price. All VOSBs/SDVOSBs are relegated to "subcontractors" with no protections offered by the Vets First program.

By April 14th, 2018, the four prime vendors received the modification directing them to begin negotiations with supplies/manufacturers of products. VA DID NOT at that time require an approved small business subcontracting plan as required by Federal Acquisition Regulations. Just as the policies and faulty interpretations lead to the unanimous U.S. Supreme Court decision in Kingdomware Technologies, VA's position was that as this was a "modification" to an existing contract a subcontracting plan was not required at that time.

When we first learned the SAC was "considering" this approach in the fall of 2107 we asked how Vets First would apply we were told it doesn't as VOSBs/SDVOSBs would be subcontractors. When we asked what type of small business subcontracting plan would be required we were told "don't know yet". When we addressed the fact that in the past 10 years VA has NEVER achieved its subcontracting goals we were told "just trust us"! In addition, relegating VOSBs/SDVOSBs to subcontractors allows VA to avoid the issue of a waiver of the SBA "Non-Manufacturing Rule". VA has established a policy of requiring higher level approval prior to any contracting officer requesting a waiver from SBA. We believe this policy is in direct violation of the Small Business Act, and is another example of VA efforts to circumvent Vets First.

On April 19th, 2018, I met with the VA Deputy Secretary to voice NVSBC members concerns about the SAC's MSPV strategy. Our concerns were based not only on the Vets First issues but as users of the VA healthcare system and as taxpayers. Our concerns dealt with cost, conflicts of interest, no surge capacity, no clinical input, and no oversite to name a few. A copy of the "Briefing Paper" developed for that meeting is also attached to my testimony. Disappointingly, more than 6 weeks later we have no response from VA leadership and VA continues down a flawed path!

Over the past year, NVSBC has met with VA leaders from VHA, SAC, and Office of Small Business Programs (OSDBU) to discuss how to provide more micro-purchase opportunities to VOSBs/SDVOSBs given the recent increase of the micro-purchase threshold from $3,500 to $10,000. These discussions have led NVSBC to develop in conjunction with an NVSBC member, Veratics of Indian Beach, FL, an electronic ordering platform, similar to Amazon, called "GoVets". Our vision is all VA verified VOSBs/VOSBs who can provide products to VA will upload their products on the platform. "GoVets" provides a "one stop, easy button" platform to purchase products using purchase cards. "GoVets" currently has 50 SDVOSBs with over 50,000 products on the platform. We continue to add SDVOSBs and products on a daily basis. We have demonstrated "GoVets" to VA leadership and are working to get the platform into the VA purchasing environment. We believe "GoVets" will be crucial to the survival of VOSBs/SDVOSBs if VA is allowed to relegate VOSBs/SDVOSBs to subcontractors in the MSPV program. We would be happy to demo "GoVets" to the committee and staff at your convenience.

I also want to bring to this committee's attention another disturbing action by VA. Last year, former VA Secretary, Dr. David Shulkin announced that he was going to make a "directed sole source award", estimated to be approximately $4 billion to Cerner Corporation to institute an "Electronic Health Record" (EHR) at VA. Cerner has a similar contract to implement an EHR within the Department of Defense. The contract was recently award by VA. The NVSBC has requested of VA a copy of the approved small business subcontracting plan. VA has acknowledged our request, but has yet to provide

a copy of the plan. Given VA's abysmal record in subcontracting we wonder if a plan was even required. A $4 billion, long term contract should provide numerous subcontracting opportunities for all small businesses including VOSBs/SDVOSBs. We request this Committee's help in obtaining a copy of the small business subcontracting plan.

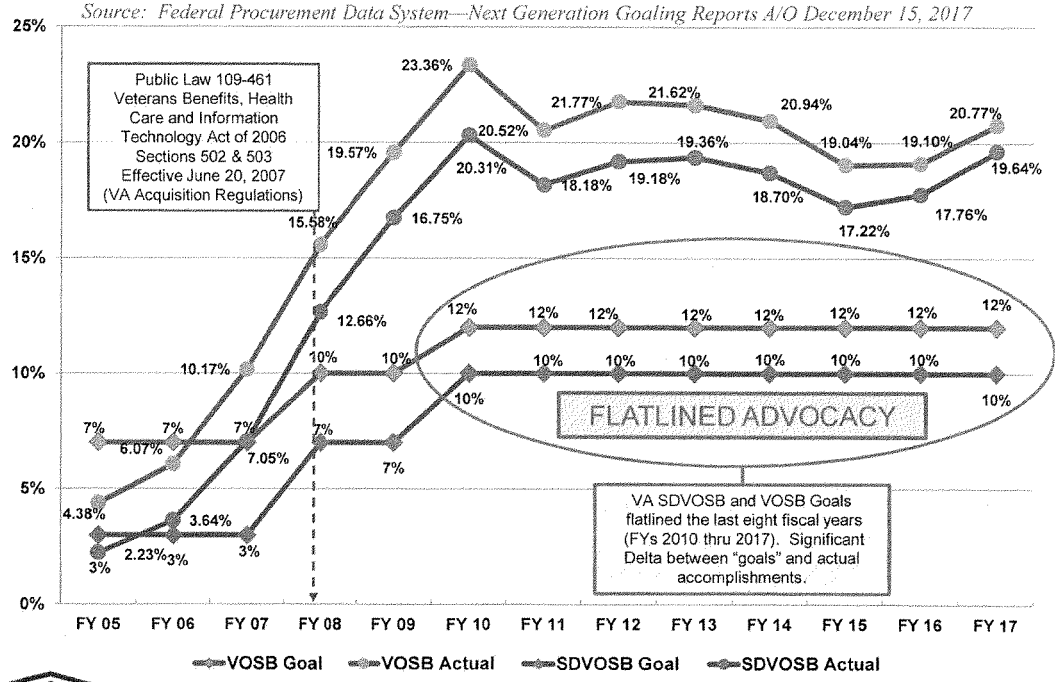
Mr Chairman, Ranking Member, and Members of the Committee this concludes my testimony. I thank you all for your time and interest and am happy to respond to any questions or comments you may have.

ATTACHMENTS TO TESTIMONY OF SCOTT DENNISTON

1. Department of Veterans Affairs Goaling & Accomplishments: FY 2005-FY2017
2. VETS First; Casualty of Friendly Fire: National Veteran Small Business Coalition, August, 2017
3. Letter to Chairman Bergman and Ranking Member Kuster: Subcommittee on Oversight & Investigations, Committee on Veterans Affairs: National Veteran Small Business Coalition, October 17, 2017
4. Statement of Scott Denniston, Executive Director, National Veteran Small Business Coalition, Committee on Veterans Affairs, Subcommittee on Oversight & Investigations, March 7th, 2018
5. Briefing Paper for Veterans Affairs Deputy Secretary, Thomas Bowman, by the National Veteran Small Business Coalition, April 19th, 2018

U.S. Department of Veterans Affairs
FY 2005 – FY 2017 SDVOSB & VOSB Goaling & Accomplishments

Source: Federal Procurement Data System—Next Generation Goaling Reports A/O December 15, 2017



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Federal Marketplace Assistance for Business

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National Veteran Small Business Coalition

VETS First
Casualty of Friendly Fire

VA must immediately halt **ALL** planned solicitations and develop an acquisition strategy complying with VETS First

For over ten years, The VA has been circumventing Vets First, ignoring the U.S. Congress, the Government Accountability Office and the U.S. Supreme Court by allowing large national companies to bid on contracts reserved for Veteran owned small businesses

Why VETS First?

"To care for him who shall have borne the battle."

– Abraham Lincoln

VETS First supports Veteran owned small businesses by prioritizing them- Supporting the U.S. economy, assisting Veterans and fulfilling the agency's mission.

Veteran owned businesses uniquely understand the needs of military contracts, they hire Veterans, are less expensive and have greater quality measures than large, non-Veteran owned companies.

VA's actions **negatively impact over 7,000 Veteran and service disabled Veteran owned small businesses –**

Employing hundreds of thousands of Americans and Veterans.

VA Strategies to Avoid VETS First

- Requesting other agencies contract for VA services
- Illegally tightening specifications to eliminate Veteran-owned small businesses from competition for service
- Hiring out VA contracting functions to large private sector companies
- Actively developing policies that do not support VETS First
- Implementing "Deviations" without public comment
- No oversite of field contracting activities

Positive Multiplier Effect of VETS First:

- Veterans hire Veterans at a higher rate than non-Veteran employers.
- Statistically, the best method of support for a Veteran is to provide a meaningful job.
- Veteran owned small businesses are based in and support their local communities.

National Veteran Small Business Coalition (NVSBC)
14001-C St Germain Drive #652 Centreville, VA 20121
(703) 282-4140 www.nvsbc.org

National Veteran Small Business Coalition

Congress needs to:

Halt all VA contract actions which do not support VETS First

Request GAO Investigate VA's disregard of VETS First

Conduct hearings to hold VA accountable to follow VETS First

History of VA Working Against the Veteran Community

Snapshot

- The Government Accountability Office has ruled multiple times that the VA needs to implement VETS First.
- The Supreme Court Unanimously Ruled that the VA is in violation of the law.
- 41 Members of Congress have signed the Amici Curiae Brief in Support of VETS First.

Overview

Nation invested millions in training these military service members. VETS First is intended to recoup this expense giving veterans an opportunity to continue service to our Nation.

- The VA was not complying.

In 2006, Congress passed Public Law 109-461, The Veterans Benefits, Health Care and Information Technology Act, which contained a provision known as Vets First that established a preference for contracting with Veterans and service-connected disabled Veteran-owned small businesses.

- The VA chose to ignore this provision.

In 2011, the company Aldevra protested to the GAO that the VA failed to follow the law. The GAO found that the VA had violated Vets First. Over the years, the GAO has heard similar claims, and has consistently sided with Veteran-owned small businesses

- The VA refused to follow the GAO's direction.

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In 2012, Veteran owned small business Kingdomware Technologies filed a law suit that went to the U.S. Supreme Court. The court unanimously ruled the VA was not implementing Vets First and directed the department to use the "Rule of Two" before awarding a contract to a non-Veteran supplier. The rule of two is the policy that the VA shall award contracts on the basis of competition restricted to small business concerns owned and controlled by Veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by Veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States

The U.S. District Court in Newark ruled in May 2017 that the VA's Ability One program does not trump the Vets First program; in fact, the opposite is true.

About National Veterans Small Business Coalition

The National Veteran Small Business Coalition (NVSBC) is the voice of the Veteran and service-disabled Veteran owned small business (VOSB and SDVOSB) when addressing the Federal Government. NVSBC works to ensure that Veteran small businesses are given first consideration for federal prime and subcontract procurement opportunities. These Veteran owners continue to serve their country, putting the security of the United States above all else.

National Veteran Small Business Coalition

"One Cause, One Voice"

Board of Directors and Officers
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Eric Dailey, Vice President
Staci Redmond, Secretary
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Headquarters

Headquarters
14001-C St. Germain Drive, #652
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October 17, 2017

Honorable Jack Bergman, Chairman
Subcommittee on Oversight and Investigations
Committee on Veterans Affairs
335 Cannon House Office Building
Washington, DC 20515

Honorable Ann Kuster, Ranking Member
Subcommittee on Oversight and Investigations
Committee on Veterans Affairs
335 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman and Ranking Member:

On behalf of the Board of Directors and members of the National Veteran Small Business Coalition (NVSBC), THANK YOU for hosting the Veterans First Contracting Program Roundtable on October 11th, 2017. Thank you also for inviting the NVSBC to be represented! We believe it important that you hear from actual veteran small business owners as to our challenges working with VA under the VETS First program.

We are glad you saw firsthand the biases of senior VA leadership towards working with service disabled veteran and veteran owned small businesses (SDVOSBs/VOSBs). Their opinions that SDVOSBs/VOSBs add no value and cost more highlight some of our challenges. Also, the policies VA has established which limit the areas of opportunity for SDVOSBs/VOSBs with no public comment or review fly in the face of a transparent government. There are also many examples of VA circumventing Federal Acquisition Regulations to avoid working with SDVOSBs/VOSBs in favor of large business, many of which cost VA more money. Bottom line, VA does not believe it their mission to work with SDVOSBs and VOSBs.

During the Roundtable you asked for specific recommendations to fix the issues at VA. The NVSBC would like to offer the following legislative recommendations for your consideration:

1. Establish that VETS First applies to "micro-purchases. VA spends approximately $4 billion per year in micro-purchases. VA policy exempts micro-purchases from VETS First. The Supreme Court determined that all VA "contract actions" are subject to VETS First. Micro-purchases meet the FAR definition of a "contract action". Also, micro-purchases are a "target rich" environment for startup SDVOSBs/VOSBs trying to break into the VA market.

2. Establish that VA, under VETS First can pay up to a 10% price differential to award to SDVOSBs/VOSBs. This would place VETS First on equal footing with the government-wide HUB Zone Program. This is critically important given VA senior leadership's position that VA only wants to pay "lowest price".

3. Establish a blanket Non-Manufacturer Rule waiver if products can be purchased from SDVOSBs/VOSBs at a price which is fair and reasonable to VA. FAR requires that under any set-aside program a small business, if not the actual manufacturer, must provide the product of another small business manufactured in the United States. FAR also allows the Small Business Administration (SBA) to issue a waiver to that rule, if SBA finds there are insufficient small business manufacturers in the United States. SBA regulations allow the contracting officer and only the contracting officer to request such a waiver. VA has established a policy requiring contracting officers to receive "higher level" authority BEFORE requesting a waiver from SBA. This is illegal and usurps SBA statutory authority. VA established this policy without public comment and in our opinion, to circumvent VETS First.

4. Require VA, when contracting with a large business, to establish as part of the evaluation process a requirement that past subcontracting goals and accomplishments be part of the evaluation requirement for any future awards. Further, this evaluation factor must equal to at a minimum, 20% of the evaluation criteria. VA has NEVER met its' subcontracting goal for SDVOSBs and VOSBs since the establishment of VETS First.

5. Prohibit VA from using Government Wide Acquisition Contracts (GWACs) and Federal Strategic Sourcing Initiative contracts (FSSI), unless VA purchases from SDVOSBs and VOSBs on the contract vehicles. While there are a limited number of SDVOSBs and VOSBs on FSSI, VA continues to purchase millions of dollars of office supplies from large business that could be provided by SDVOSBs/VOSBs.

6. Require the Secretary of VA to establish contracting goals with SDVOSBs/VOSBs at levels higher than the previously year's accomplishments. As evidenced by the chart we provided at the roundtable, VA, for the past 8 years has flat lined goals at less than the previous year's accomplishments. This shows no interest or commitment to supporting SDVOSBs and VOSBs.

7. Require the Secretary of VA to include as part of the yearly performance plans for all senior level officials, contracting officers, purchasing agents and program managers the accomplishment of contracting goals with SDVOSBs and VOSBs. Currently no one in VA is held accountable for meeting reasonable and realistic goals.

8. Require the Secretary of VA to establish "Veteran Friendly" acquisition regulations and policies within 90 days and require all VA personnel, including contracting officers, purchasing agents and program officials, to be trained in the new policies within 6 months.

National Veteran Small Business Coalition

The real issue is VA has never seen working with SDVOSBs and VOSBs as part of its core mission. Yet, every study dealing with TBI, PTSD, homelessness, vocational rehabilitation, etc. concludes that the best way to improve the lives of veterans is thru increased self-esteem, which many times come from meaningful employment. We know veterans hire veterans. If VOSBs and SDVOSBs are provided more opportunities in VA contracting, more veterans will be employed!

We are happy to meet with you at any time to discuss these and other recommendations. Thank you for your leadership in this critically important area.

Very respectfully,

Scott Denniston
Executive Director

Cc: William Mallison
Grace Rodden

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Testimony for US Congressional Hearing

The Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations

"Vets First? An Examination of VA's Resources for Veteran-Owned Small Businesses"

Robert Taylor, Alliant Enterprises, LLC a Service-Disabled Veteran-Owned Small Business (SDVOSB)

June 7, 2018

Chairman Kelly, Ranking Member Adams, Members of the Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations; thank you for the opportunity for me to be here today. It is my honor to provide this committee with my testimony on the important value our company provides to the VA.

My name is Bob Taylor and I am testifying on behalf of my company and the 39 employees of Alliant Healthcare Products, a Grand Rapids, Michigan based Service-Disabled Veteran-Owned Small Business (SDVOSB). I am also here as one representative of the National Veteran's Small Business Coalition.

Background

In my 17-year military career leading to the rank of Major, I served my first 6 years active duty Air Force as a navigator and radar navigator on B-52 Bombers.

In my much younger years, as a First Lieutenant, I flew eleven combat missions in the First Gulf War from the Island of Diego Garcia in the Indian Ocean. I clearly remember one day when we learned that one of our B-52s had crashed and three crew members were lost. I can still see the faces of those young men and I carry their memories with me. I would never do anything with my business to disrespect their sacrifices or those of other veterans who have made such great sacrifices.

The fact that this hearing is a little over one week following Memorial Day, reminds us all that there are veterans who have sacrificed far more than me or anyone else here today.

So, to me, it's not only a business matter, but a sense of responsibility and a with sense of purpose, that I have always tried to make sure that my business sets high standards in all of our business dealings. I refuse to operate as a simple "pass-through" or what's referred to as a "rent-a-vet". I constantly remind people we're not just selling widgets to consumers, but we're providing what are often life-saving healthcare products to care for our war fighters and veterans who have served their country.

How do we add value?

Alliant Healthcare Products focuses on helping other companies navigate the complexities of the federal market. We assist large and small businesses who provide market-leading and innovative healthcare technologies. We have developed a strong reputation as an exceptional federal market expert who provides value throughout the supply chain of the VA.

Our most important benefit to the government is we do not mark-up prices for the clear majority of the products we sell to the VA. We allow the VA to negotiate fair and reasonable pricing as though they are buying directly from the manufacturer themselves and then we honor those prices. Manufacturers pay us based on the services we provide them, and the government does not pay for our services.

In the words of one contracting officer:

> *"We love working with Alliant because you offer the same exact pricing and your team understands the government procurement process better than the manufacturers"*

Selling to a VA hospital is quite different than selling commercially and manufacturers' representatives are ill-prepared to deal with the complexity of acquisition regulations. As a service, we have our own Area Vice Presidents who cover the United States. They provide support to make sure acquisition rules are followed and help contracting officers get what they need in a timely manner.

From another contracting officer, again, I quote:

> *"Alliant is able to attend in-person meetings with clinical representatives. Having someone in meetings that understands how to speak government language is incredibly beneficial."*

We are also very creative problem solvers. For example, A VA wanted to receive high-value endoscopes kitted together because if they receive them separately the individual pieces seldomly find each other within the hospital causing unnecessary re-ordering of high-priced components. In this case, the large manufacturer was unable to provide these kits due to their internal policies. Our certified quality systems allowed us to purchase the same components and place them together at our manufacturing site in a single package and deliver exactly what the VA wanted.

Conclusion:

Alliant does provide value to the VA, their contracting officers, and the patients who are treated by the best technology available. My question to this committee and to the VA is this: What is the possible downside to working with SDVOSBs if the hospitals receive what they need in a faster manner, with a more efficient process, with cost effective-creative solutions, more accurate transactions, and all delivered with better outcomes? -- And that is exactly our mission.

End of oral testimony

The added benefits of working with Veteran-Owned Businesses

There are many examples I can provide based on Alliant's internal expert resources such as people who: review solicitations, provide telephone support for questions and information, and contract specialist who make sure the right products are on the right contracting tool.

Moreover, there are also more hidden benefits of a Vet's First program. For example, veterans like me, re-invest and develop new and creative ways to serve the Government. In one case, I have re-invested our money into acquiring a cardiovascular surgical business and in research and development of state-of-the-art medical products. A sister company to Alliant Healthcare Products, Surge Cardiovascular, has developed unique products one of which, as we've been told by surgeons, is the only product on the market which can handle the blood flow of larger patients for minimally invasive valve replacement surgeries. I've also re-invested into a medical device contract manufacturer, Medisurge, LLC. I'm hiring more people and providing innovative products like one which mixes silver with micro-sized glass beads to provide a healing matrix for severe wounds. And, there are more products and services in our pipeline.

Another hidden benefit is that we provide focus of our large manufacturer's representatives towards the VA. Given a choice between calling on a large commercial account like Beaumont Hospital System near Detroit, MI or the Detroit VA Medical Center, most representatives will choose the commercial account over the VA, because the VA is harder to navigate, contracting officers can be intimidating, and there are many unknowns to how the VA works. Alliant gives the representatives a reason to go into the VA Medical Centers, we help them overcome their hesitance, and we facilitate the procurement process. Consequently, we assure that the best technologies are now getting represented in the VA and the veterans always benefit from access to better technology. In the words of one of our manufacturing clients:

> *"Alliant Healthcare provides our team the confidence needed to provide veterans access to innovative new products for better healthcare. Without Alliant, our team would likely not pursue VA hospitals due to the complex procurement process that our team is unfamiliar with."*

Veterans also take care of other veterans. That's why in 2015 I founded the Patriot Promise Foundation aimed at helping the 47% of veterans who struggle with reintegration following their service. In 2019, we plan to take the next step with the foundation and create a "Venture Philanthropy" model where 100% veterans work together building a business, supporting each other, and creating new missions and purpose for each veteran associated with the foundation.

In addition, I will be introducing a book later this year titled "From Service to Success." This book presents the information and the tools necessary to better cope with life after service. It will also help veterans create their own mission for a brighter future.

Additional Testimonials not included in oral testimony

From our manufacturing clients:

"Alliant Healthcare helps and ensures that we comply with all government regulations, procurement guidelines, TAA / BAA issues, etc. Without Alliant, we would not know what to look for regarding solicitation language and expectations of Contracting Officers. Alliant fills a clear gap in our knowledge and resource level that is required to successfully sell to the Federal Government."

"Alliant Healthcare can speak the language. Alliant can communicate to Contracting Officers, Logistics officers, and Procurement Specialist in a way that our manufacturing representatives cannot. Their ability to communicate effectively to government personnel usually results in the VA receiving quicker access to the products and solutions they need."

"Alliant Healthcare informs us of regulation changes and new contracting options that are applicable to our products. Without Alliant, our products would not be available to veteran's via ECAT, DAPA, or MSPV. We do not have an internal team monitoring these new contracts and opportunities."

"Alliant Healthcare has the ability to help our company with TAA/BAA[1] compliance issues."

"Alliant Healthcare is one of very few SDVOSB's that employ field-based representatives that physically visit VA facilities across the country. Their knowledge of the facility and purchasing preferences significantly help our clinical representatives find solutions to fit the needs and requirements of the VA doctors."

From other government customers:

"Alliant is so easy to work with, you make my job easy, one phone call my work is complete"

"I am very impressed with your value proposition to the government (same pricing model) – this is extremely refreshing to hear"

"Alliant understands my contracting requirements and can help find creative solutions. This cannot be said in regards to most large manufacturers."

"We love how knowledgeable Alliant Healthcare is with the government purchasing models – you make our jobs easy"

"I appreciate your ability to help my purchasing needs get fulfilled quickly. By having an SDVOSB that understands the government landscape and has regional representatives / support, I'm able to order products quicker and easier than going directly through a large manufacturer"

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[1] TAA/BAA – TAA is an abbreviation for Trade Agreement Act, BAA is an abbreviation for Buy American Act. This is quite difficult for some companies to comply with due to the complexity of their supply chains and the particular sourcing of individual components. Alliant assists in making sure the companies comply with these important Acts.

Other Resources:

Hi Rick, (Rick is one of Alliant's Area Vice Presidents)

It's my pleasure...you and Jamie have been wonderful to work with since I awarded to Alliant the first time.....and I'm always pleased to see a quote/proposal from Alliant even if we're not able to award to you. Hic-ups happen, and I/we understand that....happens with us, too. And Alliant Healthcare is always very responsive and quick in sorting out anything that comes up.

I appreciate your note and look forward to working with you and your team on future projects.

Pete

Edward G. (Pete) Lyke
U.S. Army (Retired)
Contracting Officer
Supply/Equipment Team

End of written testimony

Testimony of Cheryl Nilsson
Chief Executive Officer, First Nation Group, LLC

Hearing entitled:
"Vets First? An Examination of VA's Resources for Veteran-Owned Small Businesses"

Before the U.S. House Committee on Small Business Subcommittee on Investigations, Oversight, and Regulations

June 7, 2018

Chairman Kelly, and distinguished Members of the Subcommittee, I would like to express my sincere thanks for the invitation to submit testimony for this hearing. I am honored to present my views on the value that veteran-owned small businesses provide to the VA, other federal agencies, our communities, and the National economy.

My name is Cheryl Nilsson, and I am the CEO of First Nation Group, LLC. I served on active duty as an Air Force Judge Advocate for 23 years, specializing in government procurement, and retired at the rank of Colonel. Since retiring, I served as an in-house counsel to two defense contractors over the span of 13 years before becoming CEO of First Nation in 2014. First Nation is a woman-owned, SDVOSB, HUBZone, small business with just over 100 employees, over 40% of whom live in HUBZones and 14% of which are veterans.

First Nation has been one of the leading suppliers of medical and surgical products to VA for over 30 years. We have built an exceptional reputation in meeting veteran needs—especially in the area of sleep and respiratory therapy products. We are uniquely able to provide the widest range of sleep products of any company in America. This enables VA clinicians to prescribe the very best possible individual CPAP and mask solution for each veteran.

We distribute respiratory products to VA hospitals nationwide and to hundreds of thousands of veterans each year. We ship over 1,700 orders per day, and 99% of those orders ship within 24 hours. We maintain an inventory of over 4,000 SKUS, often exceeding over $40 million dollars in inventory at three strategically located warehouses, including one at our HUBZone location in Detroit. This enables us to quickly meet urgent and emergency VA needs. First Nation has a FSS contract that allows VA to easily order supplies from us. We work with every major CPAP manufacturer and provide substantial discounts to the VA.

Because we stock so many different products and have extensive experience meeting VA direct-to-patient requirements, we are able to provide VA and our veterans with customized, multi-vendor patient solutions. This avoids having to order and ship multiple packages with different products made by different manufacturers. Additionally, we work with each VA Prosthetics Department to ensure they have the information and product support they need to serve our veterans. Our representatives also work with VA to deliver unique multi-vendor tailored solutions – no other vendor of sleep therapy products provides this direct and on-site support from trained sleep therapy product representatives.

Without First Nation and other small businesses that serve VA, the range of available and affordable medical and surgical supplies and customized patient solutions would be greatly decreased. First Nation, like other small businesses, are more nimble, move more rapidly, offer valuable solutions, and achieve cost savings for VA – all while allowing VA to achieve its small business contracting goals.

First Nation's success as a VA supplier has afforded us the opportunity and privilege to give back to veterans and our communities. Indeed, charitable pursuits are one of the core missions of our company. First Nation was founded with the goal of building a sustainable social enterprise to benefit the company's employees, veterans, and the underserved in our community.

First Nation's FSS contract reflects socio-economic status in 5 separate categories. In particular, our SDVOSB status allows us to pursue VA contracts that are reserved under "Vets First Contracting Program". We and many SDVOSBs and VOSBs like us depend on contracts issued under this program for a significant part of our business.

Congress created the Vets First Contracting Program in 2006 with the Veterans Benefits, Health Care, and Information Technology Act (the "Vets Act"). However, despite VA's efforts, we have experienced several challenges in the application of the VA's current policy on subcontracting, sole source awards and non-manufacturer rule waivers.

Recent changes to the MSPV-NG contracts and other proposed reductions in prime contract opportunities for Small Business also presents concern, because the VA has essentially bundled the acquisition of 80,000 products into one procurement. Limiting SDVOSB and VOSB opportunities to the subcontract level takes the more valuable work away from veterans and small businesses that are so critical to our economy.

In closing, I would like to reiterate that First Nation has enjoyed its partnership with VA over the years and we are honored to support the VA's mission and hundreds of thousands of veterans each year. We know we are providing critical patient care solutions depended on by so many of our veterans, ensuring they get the care they deserve. We are doing so with haste, with cost savings for the tax payers, and with the mission to serve our veterans and give back in our communities. In these ways, First Nation and many other SDVOSBs and VOSBs like us embody the worthy aims of the Vets First Contracting Program. We urgently need Congress' continued support of this program and assistance in overcoming the challenges we are facing to ensure the VA and small businesses like ours can fulfill the important promise of the Vets First Contracting Program, the promise that we will take care of our Nation's veterans returning from active service – both as patients and as small business owners.

Thank you again for the opportunity to submit this testimony.

STATEMENT OF
DAVY LEGHORN, ASSISTANT DIRECTOR
NATIONAL VETERANS EMPLOYMENT AND EDUCATION DIVISION
THE AMERICAN LEGION

BEFORE THE

SUBCOMMITTEE ON INVESTIGATION, OVERSIGHT AND REGULATION
OF THE COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES

ON

"VETS FIRST? AN EXAMINATION OF VA'S RESOURCES FOR VETERAN-OWNED SMALL BUSINESS"

JUNE 7, 2018

STATEMENT OF
DAVY LEGHORN, ASSISTANT DIRECTOR
NATIONAL VETERANS EMPLOYMENT AND EDUCATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON INVESTIGATION, OVERSIGHT AND REGULATION
OF THE COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"VETS FIRST? AN EXAMINATION OF VA'S RESOURCES FOR VETERAN-OWNED SMALL BUSINESS"

June 7, 2018

Chairman Kelly, Ranking Member Adams, and distinguished members of the Subcommittee on Investigation, Oversight and Regulation, on behalf of National Commander Denise Rohan and the two million members of The American Legion, we thank you for the opportunity to testify at this hearing on the challenges facing veteran-owned small businesses operating as wholesale distributors under the Department of Veterans Affairs' (VA) Medical Surgical Prime Vendor-Next Generation (MSPV-NG) program. This issue is of the utmost importance to The American Legion as it directly affects the care of our most vulnerable constituents: veteran patients.

The American Legion wants what is best for veterans. We believe VA is the most qualified to deliver healthcare services to veterans and we want them to step up to their responsibilities. The intimation that the adherence to the Vets First procurement priorities could potentially cause "catastrophic disruption"[1] to the healthcare supply chain is markedly false.

The American Legion supports the Supreme Court Decision in *Kingdomware Technologies, Inc. v. United States*,[2] and opposes any attempt to subvert or sidestep the application of the rule-of-two in VA's Vets First contracting program. In 2016, The American Legion passed Resolution No. 154[3] to advocate for a reasonable number of federal contracts to be set-aside for businesses that are owned and operated by veterans. MSPV-NG reduces federal contracts for veteran-owned businesses, which is of concern to The American Legion.

Soldiers' homes and veterans' hospitals date back to 1866. VA does not provide supporting data or research for their assertions in the Class Justification and Approval for Other than Full and Open (J&A) document.[4] There is no quantitative evidence showing that the mismanagement of a singular contracting vehicle could potentially result in "catastrophic disruption" to a 150 year old healthcare infrastructure system. If one contracting program has the ability to cripple an entire federal agency, the question becomes whether such a contracting program should exist.

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[1] Exhibit A
[2] Kingdomware Techs., Inc. v. United States, 579 U.S. (2016).
[3] Resolution No. 154: Support Reasonable Set-Aside of Federal Procurements and Contracts for Businesses Owned and Operated by Veterans.
[4] Exhibit A

VA's proposition to avoid this disruption is to grant a two-year period where companies and manufactures will determine what supplies VA Medical Centers' need, moving away from the current clinician-driven process. Privatizing the functions of VA's office of Acquisitions and Logistics' Strategic Acquisition Center (SAC) presents a significant conflict of interest, and inflicts great harm to veteran owned small businesses. The American Legion wants to work with Congress and VA to find empirical evidence and better understand the underlining rational and private sector solution, so another will not be required.

Background

Public Law 106-50[5] made all federal agencies stakeholders in supporting veterans' entrepreneurship. A subsequent law passed in 2006[6] provides VA with the authority in setting higher agency standards for service-disabled veteran owned small business (SDVOSB) and veteran owned small business (VOSB) set-asides. The Veterans Benefits, Health Care, and Information Technology Act of 2006 also included a provision requiring VA to set-aside contracts for veteran-owned firms so long as the rule-of-two[7] is satisfied. A new procurement hierarchy within VA was created, which places the highest priority with SDVOSBs followed by VOSBs. VA refers to this program as the Veterans First Contracting Program (Vets First). The Supreme Court's *Kingdomware* Decision; fine-tuned the Vets First contracting policy within VA. The Court held that the rule-of-two was not limited to those contracts necessary to fulfill the Secretary's goals under Vets First contracting program and applies to orders placed under the Federal Supply Schedule.

In 2018, VA relaunched the legacy MSPV contracting program. MSPV-NG would effectively remove 40 percent of the medical supply procurement from the rule-of-two. The current MSPV-NG program utilizes four regional prime vendors. The list of permissible medical supplies they sell on MSPV-NG is determined by a master-list of items, prices and suppliers, commonly referred to as, "the formulary." The formulary is created by running a procurement-like process to discover the number of businesses who can meet the standard and offer the lowest prices.[8] VA believes low-vendor responses, bid protests and cancelled solicitations are the reasons why there are only 7,800 items on the formulary.[9]

According to a SDVOSB distributor from South Carolina, who responded to these solicitations, VA does not mention they utilize short-window solicitations that were open market, allowing bidders to choose from 150 items. As such, distributors only bid on items they can earn a profit on. This resulted in a situation where there are over 200 bids on a handful of high-margin items, and zero bids on items with a lower or no profit margin.

In another solicitation, VA only ran the process for Schedule 6500 series medical equipment, as opposed to all the MSPV-NG products. Many veteran owned distributors also sell their products

[5] The Veterans Entrepreneurship and Small Business Development Act of 1999.
[6] The Veterans Health Care, Benefits and Information Technology Act of 2006; PL 109-461.
[7] 38 U.S.C. 2187(d).
[8] Exhibit A.
[9] Ibid.

through the General Services Administration's (GSA) online government purchasing service;[10] Before they can submit their bids, the veteran owned business must update their prices and/or add 6500 series products to their schedule. Distributors began the process of adding 6500 series items to the GSA Schedule, but the solicitation ended before they could complete the update. This contributed to why VA did not receive an adequate amount of sample bids for adding items to the formulary.

Through these types of solicitations, VA found the justification needed to create the proposals in the J&A. According to the J&A, VA plans to move 40 percent of their contracting dollars in medical supplies through the MSPV-NG program, consequently bypassing the rule-of-two, disregarding the Supreme Court ruling in the *Kingdomware* Decision.

Many American Legion members who are also small business owners agree that VA's proposals in the J&A would systematically unseat veteran owned small businesses as distributors for manufacturers and give all the selling capabilities to the prime vendors. This is bad for veteran owned small businesses and contrary to The American Legion's call for a reasonable amount of purchases be set aside for veteran owned small businesses in federal procurement.

The American Legion's Small Business Taskforce & Programs

The American Legion focuses our small business programing around three core services, Advocacy, Counseling and Events. As a resolution-based organization, we support small business policy that enables our veterans and their spouses to succeed in their entrepreneurial endeavors. Our counseling services assist veteran entrepreneurs with their disability claims and help them obtain SDVOSB or VOSB status under the Vets First contracting program. The American Legion hosts many small business workshops and conferences on an annual basis, connecting our veteran entrepreneurs with other veteran entrepreneurs and business opportunities.

The Small Business Taskforce is a working group of Legion members and small business owners who meet regularly to discuss the state of the veteran small business industrial base. The American Legion relies on Taskforce volunteers to take on advisory roles in our entrepreneurship programs and services and to lend their expertise in small business advocacy. The Small Business Taskforce is the Legion's voice of the veteran entrepreneur.

The Distributor's Role

Traditionally, VA orders supplies directly from distributors. The distributors then ship the items to a prime vendor who consolidates all the orders for delivery and inventory. The prime vendor then ships the consolidated order to the VA medical facility.

Small businesses add value to MSPV-NG. Service-disabled veteran owned small businesses serve as resellers or distributors, and provide locally sourced maintenance, customer service, account management, order tracking and meticulous reporting requirements in federal contracting. When smaller prime vendors do not have space to keep the requisite 110 percent of the MSPV-NG formulary items in stock, they rely on their distributors to warehouse the additional inventory.

[10] "GSA Advantage!," U.S. General Services Administration, June 4, 2018, https://www.gsa.gov/tools/supply-procurement-etools/gsa-advantage

Keeping inventory of formulary items at 110 percent, ensures that the formulary products are always in stock and available to the VA.

Distributors also absorb the extra costs associated with getting the formulary product from the manufacturer. Because the prices are pre-negotiated, the SDVOSBs sustain these costs, making sure their problems are isolated from prime vendors and the VA. Because these prices are not passed up the chain, it saves money for VA and passes the savings to the taxpayer. As prime vendors take over the distributors' role, they would likely markup pricing or fees to recoup the extra costs associated with getting the product from the manufacturer.

Prime vendors offer one-size fits-all solutions to VA Medical Centers (VAMCs); they cannot duplicate what the distributors offer. Distributors have close working relationships with VA medical facilities; they know how their local VAMCs purchase and what it purchases. Distributors always keep certain formulary items in stock to fulfill their local VAMC's needs.

Legion members who are also wholesale distributors have a moral commitment to the veteran patient and VA. There is one SDVOSB from South Carolina that has worked it into their company policy to sell products (not in stock) at a loss to VA at the pre-negotiated prices. They are willing to lose money to get products delivered to the VA on time, because according to them, it's the right thing to do.

Prime Vendors

VA needs an estimated 80,000 itemed formulary to support all of the 167 medical centers. The current 7,800 items on the list are not enough to satisfy VA's demands for supplies.[11] Running procurements to build the formulary is tedious work. VA's Office of Acquisition and Logistics' Strategic Acquisitions Center (SAC) has decided to outsource their responsibilities to prime vendors.

Giving prime vendors the authority to decide which items to allow into the formulary is problematic. Several of our small business taskforce members fear that prime vendors could abuse their authority in a way that could render small businesses non-competitive. For example, some prime vendors are also manufacturers of medical supplies, meaning they can potentially shut out other brands and competitors from the formulary and create an unfair advantage.

Recommendation 1

According to the J&A, VA forecasts a "catastrophic disruption" of the VA healthcare supply chain if a substantial amount of contract administration is not given to the prime vendors. The J&A does not mention that retaining contract management and oversight is the key to mitigating risks and preventing developing crises or reference alternative solutions. Accepting the concept that the only solution is to abdicate responsibility by privatizing the procurement of critical supplies, sets an irreversible path for VA to address all of its other problems through privatization as the only alternative.

If VA is looking for a viable solution that meets small business goals, has government certified "fair and reasonable" prices, and is Food and Drug Administration, Trade Agreement Act and Buy-American Act compliant, they should look to the utilization of the GSA's Federal Supply Schedule

[11] Exhibit A.

(FSS). The FSS could be an alternative starting point for market research and the basis for moving products on to the MSPV-NG formulary.

Many of the stakeholders agree that GSA is an appropriate entity to run the contract and determine which items, prices and suppliers appears on the formulary. Similarly, many stakeholders also agree that sellers and manufacturers are likely the least appropriate entities to run the contract and should not be given authority to input items on the formulary.

The American Legion believes that VA must not allow prime vendors to decide which medical products are to be added to the formulary. Prime vendors should not be authorized to displace SDVOSBs as distributors. Lastly, VA should use the FSS as the basis for market research when it comes to populating the MSPV-NG formulary.

Recommendation 2

The MSPV-NG program is a part of the MyVA transformation, which puts veterans and their families first. According to the Strategic Acquisitions Center, the cost savings from buying through the MSPV-NG contracting program will be applied to high-priority veterans' programs. The American Legion would like to know which programs specifically and how the savings from the MSPV-NG program will be accounted for.

Some of our SDVOSB distributors are on the GSA Schedule and the VA FSS. SDVOSBs contribute funds back to the government in Industrial Funding Fees (IFF) when they utilize the contracting services of the agency. IFF is trackable. If the aim of the MSPV-NG is to reinvest their savings, The American Legion believes VA can accomplish the same goal by buying from GSA's online government purchasing service or VA FSS contracts.

The Future

Small business distributors fear that they will lose business, when VA's proposal in the J&A is fully implemented. Since the proposal's implementation, prime vendors are already working directly with manufacturers and displacing small distributors from the procurement process.

Subcontracting then becomes the best way for SDVOSBs to tap into MSPV-NG. Unfortunately, subcontracting plans only apply to two of the four prime vendors, and within the last decade, VA has yet to meet their negotiated subcontracting goals with the SBA.[12] Without the bandwidth to track and enforce their subcontracting goals, VA provides little incentive for prime vendors to subcontract to small businesses. The door for SDVOSB inclusion into the MSPV-NG structure is closing.

Compounding all of this is the GSA's implementation of 2017 National Defense Authorization Act's Sec 846,[13] which directs GSA to establish a program for federal agencies to buy commercial products through commercial e-commerce portals. MSPV-NG prime vendors are not the only businesses abandoning their distributors and resellers. Businesses that sell products to the federal government are already choosing not to stock or not to renew contracts with distributors in

[12] "Department of Veterans Affairs Contracting Scorecard," U.S. Small Business Administration, June 4, 2018, https://www.sba.gov/document/support--department-veterans-affairs-contracting-scorecard
[13] Public law 115-91.

anticipation of the launch of the commercial e-commerce portal. These businesses know that in order to get their products to rank high on an online retail platform, they must pay to stock product with that company.

Additionally, micro-purchases on government charge cards are left out of SBA small business goals. Purchase card abuse is not relegated to the VA This problem exists in every federal agency. VA purchase card abuse was exposed in 2015 and is an admitted and identified issue within the agency.[14] GSA's proposal of raising the micro-purchasing ceiling to $10,000 overall and $25,000 for purchases made through the e-commerce portal does nothing to curb purchase card abuse; instead, it practically facilitates it.

Whether national, regional, state or local, SDVOSB wholesale distributors sell to more agencies than just the VA these distributors are feeling the pinch across all federal agencies. This is the climate SDVOSB distributors are operating in and they are very concerned about their future in the government procurement space. All indicators thus far, present a very bleak future. Despite the odds stacked against the SDVOSB distributors, The American Legion remains committed to advocating for their utilization and place within the federal procurement process.

Conclusion

Chairman Kelly, Ranking Member Adams and distinguished members of this critical committee, The American Legion thanks this you for the opportunity to explain the position of our two million members of this organization. Questions concerning this testimony can be directed to Jonathan Espinoza, Legislative Associate, in The American Legion's Legislative Division at (202) 861-2700, or jespinoza@legion.org

[14] "Veteran Heath Administration Audit of Purchase Card Use to Purchase Prosthetics," Department of Veterans Affairs Office of the Inspector General, June 4, 2018, https://www.va.gov/oig/pubs/VAOIG-15-04929-351.pdf

EXHIBIT A

Class Justification and Approval
for
Other than Full and Open Competition

1. Contracting Activity: Department of Veterans Affairs (VA)
Office of Acquisition Operations
Strategic Acquisition Center (SAC)
10300 Spotsylvania Avenue, Suite 400
Fredericksburg, VA 22408

2. Description of the Action: VA proposes to justify and obtain approval for the execution of contract modifications to modify the process of creating Master Item Lists for VA's Medical-Surgical Prime Vendor-Next Generation (MSPV-NG) Indefinite-Delivery Indefinite-Quantity (IDIQ) contracts. The contracts which require modification are:

VA Contract Number	Prime Vendor Contractor
VA119-16-D-0002	Kreisers, Inc.
VA119-16-D-0004	American Medical Depot (AMD)
VA119-16-D-0005	Cardinal Health 200, Inc.
VA119-16-D-0006	Medline Industries, Inc.

These contracts are for the distribution of healthcare supplies under VA's MSPV-NG program. The MSPV-NG Program was developed as the key element in VA's integrated healthcare supply chain improvement initiative and was designed to significantly improve efficiency, accuracy, and patient safety. The MSPV-NG Program was intended to support the establishment of a national strategic sourcing solution that combines a Government provided capability for ordering a wide range of medical and surgical supplies via a master listing with electronic cataloging (e-catalog) and ordering capability. The MSPV model offers VA critical benefits not available through other contract models, including traditional single source supply contracts. Comprehensive distribution support simplifies VA's supply chain objective: to achieve timely delivery in response to the heavy volume of orders in support of Veterans Health Administration's (VHA) urgent operational medical/surgical supply needs. The Prime Vendor (PV) model is required because VA lacks sufficient internal capability to warehouse, coordinate deliveries, and consolidate supply stores. Moreover, once a master list of medical/surgical supplies has grown to sufficient size and maturity, substantial savings in VA's cost to purchase those supplies is anticipated. However, the MSPV-NG has fallen considerably short of the intended outcomes.

In order to address patient safety concerns resulting from VA's current supply chain inefficiencies, the scope of the proposed modifications includes changing the regional MSPV-NG contracts from "distribution" contracts to "distribution and supply" contracts Enabling the MSPV-NG PVs with the capability to supply and distribute required healthcare supplies is critical in order to fully meet the diverse needs of VHA's facilities and the Veterans which they support. The primary objective is to increase the number

of healthcare supplies available to VHA facilities nationwide in order to enhance the quality of care provided to Veterans. Another anticipated benefit of the proposed modifications is that they will improve efficiency by reducing the use of non-preferred sources that do not leverage the distribution efficiencies of the PV (example: Government Purchase Card (GPC), local/regional contracts, etc.) By leveraging already existing PV distribution and supply channels, VA also anticipates being able to generate increased Veteran-owned business opportunities. In short, these modifications will help VHA achieve many of the intended outcomes not currently realized under MSPV-NG.

3. Acquisition History: VA manages the United States' largest integrated healthcare system. The system consists of 18 Veterans Integrated Services Networks with approximately 1,243 healthcare facilities including 170 medical centers. VA's healthcare system also includes 1,063 outpatient sites of care of varying complexity to include outpatient clinics, community living centers, Veteran centers and domiciles. Together these healthcare facilities, and the more than 53,000 independent licensed healthcare practitioners working within them, provide comprehensive care to approximately 9 million enrolled Veterans. Although VA's healthcare system is designed to receive a significant portion of its medical and surgical supply support via a national MSPV-NG program, the current MSPV-NG program is not capable of meeting VA's healthcare system demands.

In order to facilitate patient care within VA, a legacy program known as "Medical-Surgical Prime Vendor (MSPV)" was put into place to supply and deliver required, recurring expendable medical, surgical, and related supplies. The legacy program strived to achieve 40 percent of all VA medical and surgical spend through the MSPV program. The MSPV legacy program has since ended and a new program, MSPV-NG, has taken its place. Due to such a significant portion of VA's healthcare system's medical and surgical items being delivered via the national MSPV-NG program, the MSPV-NG contracts have experienced significant challenges in meeting demands thus jeopardizing patient health and safety.

It is estimated that approximately 80,000 items will be needed to support VA Medical Centers until logical product grouping can be negotiated with manufacturers or their authorized distributors utilizing a formalized clinically driven sourcing process. The current MSPV-NG program includes four regional PV contracts for distribution. The underlying Government provided master listing of products these PVs distribute from is created using a procurement-like process that has yielded a master list of approximately 7,800 items. Currently, VA's healthcare facilities are utilizing a variety of non-preferred contract methods to procure necessary items not available on the Government master list. The substantial number of necessary items that are unavailable in the catalog complicates local delivery and logistics and often leads to higher costs for these supplies. This includes significant over-reliance on GPCs transactions, which jeopardizes the MSPV-NG program's ability to adequately monitor and review supplies being purchased and used for direct patient care. Without the ability to adequately monitor and review the purchased supplies through the Government master list, there is

extreme risk to patient health and/or safety when it comes to ensuring the supplies are compliant with Food and Drug Administration (FDA) regulations for medical supply-items, monitoring and conducting appropriate safety and defective-item recalls, and compliance with all Buy-American Act (BAA) and/or Trade-Agreements Act (TAA) compliant items. Currently, the required Government master list has only a mere fraction of the required supplies needed for adequate patient care, health, and safety needs. The current acquisition-like process for determining items, prices, and suppliers on the master list involves soliciting industry and awarding Blanket Purchase Agreements (BPAs) to vendors meeting the stated requirements at the lowest offered price. However, actual orders are never issued against these BPAs. The BPA process serves only to identify the items and prices for the PV's distribution agreement with the BPA holder. No Government funds are disbursed directly to the BPA holder, only to the PV. Although this process awards no contracts per se, it exposes the Master List generation process to all of the delays inherent in the acquisition process including multiple protests, spotty vendor response, and several rounds of canceled competitive solicitations.

This modification seeks to streamline the MSPV-NG process in order to rapidly expand the quantity and types of items contained on the Government master list, thus allowing the MSPV to continue maturing as a viable enterprise which is ultimately expected to yield substantial efficiencies. While the BPA or similar process will continue for high volume items with potential for significant strategic sourcing efficiencies, this modification will enable the PVs to assist the Government in sourcing thousands of new items quickly. This will be accomplished by allowing the PVs to leverage their existing commercial network in order to propose sources and prices for items identified by the MSPV Program Office. After an examination of the prices and sources identified by the PV by the MSPV-NG Program Office and SAC's contracting team, approved items will be added to the Government master list. The PV will then execute a distribution agreement with the supplier and the process will continue as before. In effect, the PV's supply chain network and expertise will be leveraged to assist the Government in conducting market research and price discovery for thousands of critical commercial medical items.

4. Description of Supplies/Services: Because of VA's ongoing requirement to quickly fill critical gaps in its healthcare supply chain and increase sourcing flexibility to obtain healthcare supplies critical to patient care, VA medical facilities have a critical need to access a wider variety of medical/surgical supplies than is currently available via the MSPV-NG catalog. By modifying the Government master list determination process of the existing MSPV-NG contracts, facilities will be able to expeditiously procure a broader array of supplies using normal MSPV-NG PV channels. This ability will improve patient care and safety as VA medical facilities will be able to keep and maintain Veteran appointments and will be able to safely and expeditiously procure the supplies needed for Veteran patient care.

Under the proposed modification, the MSPV-NG PVs will assist in sourcing, maintain and distribute all of the currently required medical, surgical, dental, laboratory, prosthetic supplies, other medical/surgical, cleaning, rescue and safety supplies and non-expendable equipment used by a medical facility. Required items continue to include the following Product Service Codes (PSC): 4240 (Safety and Rescue Equipment); 6505 (Drugs, biologicals). However, prescriptive drugs and prescriptive biologics requiring an FDA license will not be sourced through the MSPV-NG program; 6509 (Drugs and Biologicals, Veterinary Use); 6510 (Surgical Dressing Materials); 6515 (Medical & Surgical Instruments, Equipment and Supplies); 6520 (Dental Equipment, Instruments, Supplies); 6525 (Imaging equipment and supplies); 6530 (Hospital equipment); 6532 (Hospital and Surgical Clothing and Related Special Purpose Medical/Surgical Supplies);6540 (Ophthalmic instruments, equipment and supplies); 6545 (Replenish-able Field Medical Sets, Kits, and Equipment); 6550 (In Vitro Diagnostic Substances, Reagents, Test Kits and Sets); 6630 (Chemical Analysis Instruments and Equipment); 6640 (Laboratory Equipment and Supplies); 6650 (Optical Instruments, Test Equipment, Components and Accessories); 6670 (Scales and Balances); 7910 (Floor Polishers and Vacuum cleaning Equipment); 7920 (Brooms, Brushes, Mops and Sponges); 7930 (Cleaning and Polishing Compounds and Preparations); 8305 (Textile Fabrics); 8520 (Toilet Soap, Shaving Preparations, and Dentifrices).

The solution offered by this Class Justification and Approval (J&A) will allow VA healthcare facilities to continue placing orders under the MSPV-NG contracts and avoid an interruption in the healthcare supply chain. The PVs will continue to distribute items that are procured through current VA contracts, IDIQ contracts, Blanket Ordering Agreements, and BPAs that are on the existing Government-provided master listing and any other items identified for high potential strategic sourcing efficiencies in the future. The items to be added under this Justification and Approval have been identified as high-use medical items vital to the supply chain. VHA's Program Office analyzed the FY 2017 Medical Products Data Bank focusing on the top high-volume purchases and identified various types of critically needed, high use medical supplies, enabling VHA's ordering officers to place orders for required medical supplies. The supplies to be added for distribution via the MSPV-NG contracts are based on market research consisting of a review of medical surgical supply usage annualized based on 2017 calendar year usage data. With these modifications, PVs will be allowed to assist in sourcing and continue to distribute items on the attached pre-negotiated price list which is based on comparison to an index of current commercial prices as well as other applicable market price information. There is no increase in value to the prime vendors, because the prime vendors are using the master list to procure the items, and the items are within the number originally solicited. The products the sites order are not going to increase beyond the original scope of the contracts. To the extent there is any value (though I consider this to be a no-cost modification), any such value is reflected by the 24 months' period of performance. The period of performance is not to exceed 24 months.

5. Statutory Authority: If the proposed action is a change in scope to the current PV contracts, the statutory authority permitting other than full and open competition is 41 U.S.C. 3304(a)(1) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-1 entitled, "Only One Responsible Source and No Other Supplies Will Satisfy Agency Requirements." Full and open competition need not be provided for when supplies required by the agency are available from only one responsible source, or from only one or a limited number of responsible sources, and no other type of supplies will satisfy agency requirements. However, it is the position of the Contracting Officer that this action does not change contract scope as the PV continues to perform the core function of this contract.

6. Rationale Supporting the Use of the Authority Cited Above: As regional distributors for the MSPV-NG program, the current PVs have the existing infrastructure, ordering capability, and required resident knowledge which makes them uniquely qualified and the only sources currently capable of both enhanced sourcing and distributing required medical commodities throughout the entire VA healthcare network. Any attempt to award the required supplies through a different source would cause unacceptable delays in fulfilling the VA's requirements and would directly impact the health, safety, quality and timeliness of care to Veterans. The proposed action will not expand the scope of the current contracts because the original competition for the PV contracts was clear and unambiguous: it is/was the Government's intent to rapidly increase the MSPV-NG Master Lists to approximately the 80,000 item level.

Significant adverse consequences will occur if the proposed J&A is not approved as VA's healthcare supply chain will continue to be negatively impacted, directly affecting patient care and treatment. Continuance of the MSPV-NG Distribution Program is vital; any delay of supply and distribution will directly impair the delivery of healthcare and services to approximately 9.5 million Veterans currently receiving care through VA's healthcare system. A break in VA's healthcare supply chain will hinder the delivery of essential medical, surgical, dental, and laboratory supplies and other contracted healthcare such as cleaning, rescue and safety supplies and services used in the direct delivery of patient care.

To solicit, evaluate and fully implement new competitive contracts rather than fulfill this requirement via the proposed modification would result in unacceptable delays. Based on an analysis of acquisition timelines experienced in competitively awarding the current generation of MSPV contracts in 2016, a minimum of 16 months is projected to complete all necessary steps from the time FedBizOps publication to contract award(s). The 2016 MSPV-NG contract awards, which were solely for distribution services, required 13 months to publicize and competitively award (four months to synopsize the requirement, publish a draft solicitation and solicit industry comments; two months from solicitation release to solicit proposals; and seven months from solicitation closing to conduct evaluation and source selection following solicitation closing). In comparison to the 2016 effort, the proposed modification effort would likely take three additional months to evaluate due to a more complex requirement that incorporates not only the distribution services already being provided in the current MSPV-NG contracts, but also an additional supply component not contained in the current contract (nor its any MPSV

Source Selection Information – See FAR 2.101 and 3.104

predecessor contracts. Once a competitive award is made, protests are deemed likely due to the visibility and magnitude of these contracts; the minimum duration needed to resolve any protest is slightly over three months. Once any/all protests are resolved and performance can proceed, a substantial period for ramp-up/transition and implementation must be completed before PVs can attain performance levels and commence handling MSPV orders. Based on the terms of the current 2016 MSPV-NG contracts, the ramp-up/transition/implementation period requires a minimum of 4 months during which the MSPV PVs will gather product utilization data from facilities, load all supplies into an ordering database, coordinate and set up performance with facilities; provide training to facility staff on ordering procedures; and coordinate and provide training to necessary refresher training to using facilities. Market research with qualified commercial vendors shows that this timeframe could possibly be reduced but only minimally, by no more than one month based on the vendors' most optimistic projections. Permitting orders to proceed in advance of full implementation, and complete PV readiness would jeopardize patient safety based on the nature of the medical/surgical supplies to be ordered.

There are no other vendors other than current PVs that the Government could negotiate with in order to quickly add the volume of required items. There is also a need to add and delete products as necessary in order to meet the needs of VA Medical Centers and medical practitioners. The current PVs are positioned and equipped to assume the sourcing and distribution of requirements to be added as a result of this J&A because they already have established commercial contracts with suppliers and have existing relationships with many of the suppliers where products need to be added. Under the proposed modification, VA's healthcare facilities will be able to expeditiously procure their required supplies using the mandated MSPV-NG channels, which account for FDA safety requirements, as well as requirements to inform healthcare providers and process required product recalls and replacements, as well as conform to the BAA and TAA.

In terms of overall quality of care, the proposed J&A will significantly increase the safety and efficiency of patient care because VHA's Ordering Officers will be able to procure necessary supplies while simultaneously monitoring the full supply chain for any critical issues (i.e. medical item recalls, filtering out non-FDA compliant or grey-market items or non BAA/TAA compliant items). The four current regional PVs are the only sources within their given geographical regions that are capable of meeting their contractual duties through use of authorized Government sources of supply, as proposed in this modification. No other contractor currently has the required infrastructure, ordering capability, or Electronic Data Interchange (EDI) in place to deliver the necessary medical supplies required to support patient care and safety without interruption or degradation to quality of care. Furthermore, the current MSPV-NG PVs are the only sources that have the cognizance to manage previously shipped and current inventory and supply issues critical to patient safety: management and processing of product safety recalls and filtering of "grey market" non-approved FDA medical supply items. Only the current MSPV-NG PVs have the infrastructure in place to support any

mandated or optional product recall, as well the capability to provide sourced replacement items without incurring a reduction or interruptions in patient care.

The current PVs have pre-existing business relationships throughout the medical supply industry and the medical commodities required by VA are commercial off-the-shelf items. Given these two facts, VA's ability to consolidate and maximize its buying power by moving those medical requirements currently being purchased via GPCs over to the MSPV-NG will without doubt, result in substantial savings to the Government. Under the proposed Class J&A, the estimated cost reduction for purchase of individual items via the MSPV-NG Formulary is approximately $32M over the course of 24 months. Note: The $32M estimate does not account for efficiencies in the ordering and inventory management processes.

Disapproval of the J&A will result in the continued disruption of VA's healthcare supply chain and negatively affect the Department's ability to provide world-class patient care to our nation's Veterans. Other negative ramifications include negated potential savings as facilities source supplies through other means. Workload, man-hours, and cost of operations will increase as already depleting resources are focused on obtaining supplies, and VA will revert to the inefficient means of sourcing medical supplies as occurred before the introduction of the national MSPV program in 2005. Those inefficient methods include use of GPCs and local VHA contracting initiatives.

Without the issuance of the proposed sole source action, the continued use of non-preferred acquisition methods will increase the workload for VA contracting professionals exponentially. Use of GPCs as an ordering method has shown to be more than five times the workload burden of using the MSPV-NG ordering method. In addition, VHA has approximately 2,000 contracting staff processing 576,134 formal contracting actions annually. In the event MSPV-NG's Ordering Officers were unable to place orders via the MSPV-NG catalogs and those orders are added to the workload of an already overburdened contracting staff, the result would be catastrophic. Lead times to procure these items through contracting for other than emergency orders are 45 days; however, emergency orders require action within three days. Virtually all orders would become emergencies in order to ensure timely delivery of safe, reliable healthcare to Veterans.

The MSPV-NG PVs are currently the only sources serving in the critical role of comprehensive emergency supply response in support of local, regional, or national emergencies or disasters. Additionally, VA supports the Federal Emergency Management Agency (FEMA) and US Department of Health & Human Services with the delivery of medical supplies and coordination of support missions for response to and recovery from nationally-declared emergencies and disasters. VA accomplishes this requirement through the current regional MSPV-NG PVs, who are contractually required to perform a full range of support to healthcare facilities to ensure resiliency, continuity and rapid recovery of healthcare services during disasters and other potential disruptions to healthcare service delivery. VA Medical Centers and other

select federal facilities are designated FEMA facilities with significant contingency and emergency response roles. Accordingly, the PVs are the primary providers of emergency medical supplies during major catastrophic events. Any interruption in VA's health care supply chain or in the nation's emergency supply chain significantly jeopardizes VA's ability to ensure minimum disruption in the delivery of critical services in a contingency situation. In the event of a national, regional, or locally designated emergency, a supply chain interruption would not only negatively impact healthcare delivery to our nation's Veterans and their dependents, but also potentially have a direct, negative impact on the greater public. The proposed J&A is vital to support VA's nationwide healthcare system and prevent disruptions to Veteran care. The identified medical items represent supplies determined essential to patient care and safety by VA medical centers to meet VA patient care and safety needs. Continued use of these products and sources of supply will ensure timely delivery and minimize VA supply chain interruptions.

A well-coordinated supply chain is necessary to ensure VA's healthcare facilities are fully supported and Veterans are cared for timely. There are no reasonable, short-term alternatives that would adequately address these critical circumstances. Any financial costs incurred by the Government under the authority of the proposed J&A, and any potential costs or cost avoidance not realized through competition would not outweigh the benefits received through continuance of the healthcare supply chain. Approval of the Class J&A is in the best interests of the Government and is justified by the circumstances.

Non-approval of this Class J&A would result in significant negative impact to the Government in terms of monetary cost, however, the far greater negative impact would be the undeniable risk to the overall health, welfare and safety of millions of Veterans Although every effort was made to compare costs, benefits and all other options, no reasonable, timely alternative has been identified.

VHA's MSPV Program Office has considered the impact to competition that will result from the proposed action, and acknowledges the importance of maximizing competition in the procurement system. However, VHA asserts this is an extraordinary situation, and maintains that due to the critical nature of the items that will be accessible on the delivery of medical and surgical supplies and services to millions of Veterans, and the need to quickly expand the number of supplies available from the PVs, the facts of this case justify the unusual measure proposed under this Class J&A. The Program Office considered the need to balance competitive procurement principles with the best interest of the Government and determined that the expedited infusion of the proposed critically needed medical supplies under the authority of this Class J&A is mitigated and justified. A break in the healthcare supply chain will be costly and detrimentally disruptive to VA operations and delivery of critical healthcare services to more than 9 million Veterans. Additionally, it is in the Government's best interest to continue to support the MSPV enterprise to maturity, at which point substantial efficiencies and cost savings to VA are expected to be realized. Items procured under the authority of this

Class J&A will be included in the MSPV-NG program for a maximum period of twenty-four (24) months until the medical supplies can be competitively awarded. At such time, the items will be replaced with the competitively awarded functional equivalent.

The MSPV-NG program is the mandated means to obtain medical supplies; these items are regarded as critical to patient care. In executing this change the following improvements will be realized:

a. The MSPV-NG distributors shall continue to not charge any VA formulary-approved or other Government source of supply to handle their product in conjunction with the contract.
b. The Government mandates all distributors to remain EDI compliant.
c. The MSPV-NG distributors shall not require product suppliers to carry liability insurance in excess of $1,000,000 charge any tracking fees, and/or require additional discounts from product suppliers.

This action is vital to support VA's nationwide healthcare system and prevent disruptions to Veteran care. The identified medical items represent supplies collectively determined essential by VHA medical centers to meet patient care needs. The inclusion of these medical supplies and distribution will ensure timely delivery and minimize healthcare supply chain interruptions.

7. Efforts to Obtain Competition: Substantial previous and ongoing efforts have been made to maximize and obtain competition for the required supplies. The following timeline and description of past efforts to obtain competition are provided:
VHA, in cooperation with VA's National Acquisition Center (NAC), initiated contract support for the MSPV program in 2005. The result was the first generation of seven PV distributor contracts that not only support VHA, but also support the Department of Health and Human Services, Department of State, Indian Health Service, and the Federal Bureau of Prisons. Since that time, VHA and NAC have successfully executed two long-term, multiple-award 5-year contracts in support of the MSPV program. The MSPV contract expired in October 2015 and was replaced by the MSPV-NG contract. However, because of delays with MSPV-NG, a set of bridge contracts were executed by the NAC extending the period of performance to April 19, 2016. Those bridge contracts were as follows: VA797N-15-C-0003, VA797N-15-C-0004, VA797N-15-C-0005, VA797N-15-C-0006, VA797N-15-C-0007, VA797N-15-C-0008, and VA797N-15-C-0009.

In preparation for the continuation of the MSPV Program, in 2014 SAC assumed responsibility of awarding the MSPV-NG contracts. Due to a protest and continued technical evaluations, SAC's Contracting Officer determined that a second set of bridge contracts was required to ensure continuity of services and the continuance of healthcare support throughout the VA community beyond the bridge contracts' expiration on April 19, 2016. In February 2016, SAC awarded the second set of bridge contracts. The bridge contracts are as follows: VA119-16-D-0007, VA119-16-D-0008,

VA119-16-D-0009, VA119-16-D-0010, VA119-16-D-0011, VA119-16-D-0012, and VA119-16-D-0013. The period of performance for the second SAC bridge contracts began April 20, 2016, with an expiration of April 19, 2017.

Leveraging the NAC's lessons learned, VHA Program Office and SAC developed a procurement strategy that included a complete VA-wide MSPV-NG Government provided master listing of approved supplies that would be available for use by April 2016. To execute this plan, VHA and SAC formed a team in February 2015 to initiate development of the MSPV-NG Government provided master listing of medical/surgical supplies. The team's goal was to solicit and award approximately 7,000 individual line-items, identified as an optimal initial level, for the pending MSPV-NG Government master listing. The team developed a streamlined approach to solicit and award these items, which involved VHA providing salient characteristics for all 7,000 line-items, and SAC awarding competitive BPAs based on those salient characteristics.

Between April 2015 and January 2016, the MSPV-NG Program Office forwarded to SAC approximately 4,400 individual procurement packages consisting of both single and multiple line-items, of which approximately 3,500 were solicited and 900 returned to VHA for inclusion in future grouping efforts. Although SAC issued multiple Requests for Quotations, vendor response rates averaged less than 30 percent. Due to lack of response, SAC and VHA sought input from industry via a series of MSPV-NG Industry Days. When queried, the vendors identified two main problems: (1) VHA's salient characteristics were often flawed and/or insufficient. The salient characteristics did not appear to be based on clinical input, and often cited unnecessary manufacturer-specific features which prohibited timely, quality responses, or in many cases, no responses at all. ; (2) Vendors indicated that VA's practice of requesting single item quotes was an administrative burden and not cost effective enough for them to provide quotes.

To obtain a better success rate and to work on completing the new MSPV-NG Government approved master listing supplier contracts, two possible strategies were identified: (1) VHA created supply-line commodity teams, and began seeking clinical input for the development of salient characteristics. Additionally, logical commodity groupings were developed; and (2) moving forward, VHA's Program Management Office was to group line-items by supply-line categories, or by United Nations Standard Products and Services Codes. Supply-line categories were found to be the most favored by industry. To validate this strategy, a Request for Information (RFI) was issued to industry in February 2016. The RFI responses confirmed the supply-line category approach as the most appropriate method to solicit BPAs for item inclusion in the approved Government provided master listing.

On February 24, 2016, competitive awards were made to four MSPV-NG PV distributors, with an estimated performance starting 120 days after notice to proceed. The period of performance under these contracts was scheduled to begin October 2016. It was anticipated the PVs would have a full-line of approximately 12,000 to 15,000 competitively awarded BPA line-items to populate their electronic catalogs at

Source Selection Information – See FAR 2.101 and 3.104

contract award with another 15,000 to 35,000 items to be added during performance. Due to lack of vendor response, the Government provided master listing of medical/surgical supplies fell short of the necessary items required to complete the PVs' e-catalogs. In an attempt to resolve the shortfall identified above, numerous changes in VA's strategy for populating the Government provided master list were considered. This directly resulted in the need to establish additional MSPV-NG bridge distribution contracts to ensure continuation of service. The MSPV-NG bridge contracts were awarded with a start date in April 2016. This included a 3-month base period of performance, and three 3-month option periods. The final period of performance expiration date was not-to-exceed 12 months.

October 2016 saw the transfer of the MSPV-NG contracts to the new PVs; however, the Government provided master list fell drastically short of the anticipated range of approximately 80,000 items; only about 1,600 items that were previously competed by SAC and NAC were transferred to the Formulary/Catalog. Limited Source Justifications (LSJs) were established, on a not to exceed 12 month basis, to add the most widely used medical supplies to the Government provided master list. These items were identified using spend data from Medical Products Data Bank; only items available under the FSS were eligible for the LSJs. The reprieve offered by these LSJs allowed VHA's Ordering Officers to continue placing orders under the MSPV-NG contracts on a temporary basis and avoid an interruption in the healthcare supply chain while SAC continued to pursue competitive procurements for the MSPV-NG Government provided master listing of medical/surgical suppliers. Three rounds of solicitation packages were planned for staggered release during the summer of 2017; these solicitations would have yielded over 2,600 unique line items. However, the first round of solicitations was protested, which stalled release of the subsequent solicitations. It was decided that these packages needed to be reworked. The LSJs began to expire during the fall of 2017. As a short-term solution to keep these items on the Government provided master listing, SAC transferred these LSJs to distribution and pricing agreements. The SAC solicited approximately 1,400 line items via FSS in October 2017, all solicitations were protested. Those solicitations for set-aside items are currently working towards award and those solicitations not set aside were cancelled. Of the 1,400 items solicited, less than 150 items will be eligible for award.

New packages are currently being developed for a projected release of quarter one of 2018. Due to protests and low response rates, multiple acquisition efforts for medical supplies resulted in little to no return on investment; hence the current need to amend the competitively awarded MSPV-NG distribution contracts to enable them to function as supply and distribution contracts while a truly clinician driven and value analysis based Government provided master listing is pursued.

In addition to the corporate subcontracting plans provided by PVs that are large businesses, VA will negotiate individual contract subcontracting plans with all Medical Surgical PVs, regardless of business size, in order to address subcontracting with Veteran Owned Small Business (VOSB) and Service Disabled Veteran Owned Small

Business (SDVOSB). Performance results against the individual subcontracting plans will be considered in determining past performance ratings submitted to the Contractor Performance Assessment Reporting System. VA's Office of Small and Disadvantaged Business Utilization will assist the PVs in identifying qualified SDVOSBs and VOSBs for subcontracting consideration throughout the contract performance period.

8. Determination of Fair and Reasonable Cost: As the Contracting Officer, I hereby determine that the anticipated cost to the Government will be fair and reasonable. These are widely available commercial items for which fair and reasonable pricing can be easily established. In negotiating pricing for the modifications, the Government will approve "not to exceed" prices for added supplies based on commercial indices.

9. Market Research: The market research conducted for the MSPV-NG requirement has been conducted on a continuing basis, concluding immediately prior to this justification being finalized. It showed there are multiple individual suppliers capable of providing the needed healthcare supplies; however, there are currently no suppliers outside of the existing PVs that can immediately integrate the necessary supplies into the VA's supply chain on a nation-wide basis, as required. The MSPV program observed a $202M decrease in MSPV purchases between FY 2016 and FY 2017 due to decreased availability of products in the MSPV catalog. In FY 2017, GPCs accounted for more than $4B of VA's medical supplies, equipment and services spend. The principal reason for the decline in MSPV usage and high GPC volume was the lack of items available via MSPV-NG catalog. The current process produced a catalog of approximately 7,000 line items, far short of the estimated enterprise requirements.

VA has a need to have consistent, uninterrupted sources of supply that meets system-wide requirements without compromising direct patient care to VA's medical centers and/or related facilities. Current PVs understand VHA systems, have insight into what VHA buys, and have the infrastructure in place to support quick implementation. The capability is there and only the current PVs can fulfill the imminent requirement to supply and distribute healthcare supplies throughout VA. VHA's MSPV Program Office is developing a long-term strategy that is both supported by market research and clinically driven.

10. Any Other Facts Supporting this Class Justification: VA has been unsuccessful in implementing a clinically driven sourcing capability which is a fundamental foundation for modern best-in-class healthcare supply chains, including VHA's healthcare supply chain. VHA is diligently working to develop improved, clinically driven sourcing capabilities but benchmarking with world-class commercial healthcare systems reveals that success in this area typically takes between ten and fifteen years. To avoid potential catastrophic disruption to VA's healthcare supply chain, the only feasible alternative to quickly supply current and urgent healthcare supply chain needs across the VA network is to use a more agile process to satisfy requirements. To quickly fill critical gaps in VA's healthcare supply chain (impacting both access to care and quality of care) it is essential that PVs have appropriate authority to leverage commercial

contracting capabilities while VA continues to pursue its goal of maximizing cost, quality and healthcare outcomes in the context of clinically driven sourcing. This additional sourcing flexibility to obtain critical healthcare supplies will more closely approximate VHA's existing best in class pharmaceutical PV program that relies heavily on commercial buying practices. In an effort to mitigate current capacity gaps negatively impacting implementation of clinically driven sourcing, VHA's MSPV Program Office intends to conduct market research seeking commercial research, analytical and documentation capabilities that will simplify and accelerate evidence-based decision making by VHA clinical communities.

Given the urgent need for facilities to access a much broader listing of medical and surgical supplies via the MSPV-NG PVs and given that fair and reasonable prices can be confirmed using commercial cost indices, it is in the best interest of VA to ensure a broad suite of medical surgical supplies are available to the facilities through normal distribution channels (Medical-Surgical PVs) while the VHA Program Office implements future programs, incorporates clinician-driven sourcing, value analysis led by clinicians, and a national catalog of medical surgical supplies.

The current MSPV-NG contracts have fostered creation of an undocumented GPC enabled medical/surgical supply chain. Non-supply GPC holders can easily order supplies independently without supply personnel involvement. Under these circumstances, the items ordered would not be recorded in the master data base, and would be invisible to supply personnel reviewing patient safety recalls. In other words, a clinic or ward could unknowingly be using a hazardous product and endangering Veteran patients because there was no record of the item in the healthcare facility's master file.

These recalls are common. Per the Stericycle Expert Solutions Q3 2017 Recall Index Report, 167 medical device and 89 pharmaceutical recalls occurred nationwide in the subject quarter; and 15.7 percent of pharmaceutical recalls were due to sterility problems and 17.4percent of quality issues were attributed to medical device recalls.

GPC vendors may not consistently track items to ensure product guarantees and the chain of custody that the MSPV program automatically provides. GPC provided items may appear to be U.S. approved, but may be repackaged items acquired from non-US sources. They may also have been expired prior to repackaging.

The Joint Commission International white paper titled, "The Effect of Illicit Supply Chains on Patient Safety" (© 2017) highlighted, "a major threat to patient safety is the debilitating/compromising effect caused by healthcare commodities that are purchased inadvertently or purposely from the "grey market." These items may appear to be the same as the manufacturer's items but may be counterfeit, contaminated, adulterated, diverted, expired, and or illegally obtained and therefore pose a significant risk to patient safety and the integrity of the healthcare organization. "

Contrary to GPC transactions, MSPV-NG PVs must acquire healthcare commodities directly from manufacturers, or from authorized distributors that have an established relationship with the federal Government through FSS contracts or VA written contracts/BPAs/BOAs. These items are researched and sourced by diverse teams that include expert clinicians and National Center for Patient Safety representatives. The items also undergo technical review by the same teams prior to contract award to ensure they meet clinical requirements.

In addition, only FDA approved medical/surgical supplies that are compliant with Global Standard 1, Health Industry Business Communications Council, and/or International Society for Blood Transfusion 28 standards are available through the MSPV-NG program. Unlike some GPC vendors, PVs are subject to inspection by both VA facility and VHA supply chain management experts to ensure the handling and distribution and U.S. approved sources clauses of the MSPV-NG contract are met.

For the reasons described above, the proposed J&A is urgently needed to ensure the robustness of the MSPV-NG catalog and the availability of safe clinician required commodities for the treatment of our Veterans.

11. A Listing of the Sources, if any that Expressed, in Writing, an Interest in the Acquisition: None

12. Actions to Increase Competition: The MSPV-NG Program Office is moving forward with a plan to streamline the procurement and delivery of high-use medical, surgical, dental, select prosthetic, laboratory and facility management supplies throughout VA. This plan is outlined in the MSPV-NG Program Implementation Directive soon to be published. MSPV-NG is a national mandatory program, providing a customized distribution system to meet or exceed facility requirements by providing an efficient, cost-effective, just-in-time distribution and catalog ordering processes.

To fulfill the objective of providing a streamlined ordering capability across VA, the Program Executive Office (PEO) envisions a future, clinician-driven formulary/catalog that is robust, agile, and proactively responsive to the requirements of users in the field. Clinician-driven sourcing is a central component of MSPV-NG formulary/catalog development and collaboration across VA will facilitate ongoing improvement of VA's sourcing of key, high-use medical and surgical supply items. Clinician-driven sourcing requires accountability, participation, and collaboration amongst clinical specialists who have the knowledge and education of items needed for the highest quality of care for Veterans. In the future state, the national Clinical Program Offices (CPOs) will work in partnership with the PEO to ensure that clinicians in the field have access to the right medical products at the right time. In order to ensure the MSPV-NG program is fully based on a foundation that is rooted in clinician-driven sourcing principles, a clear strategy and plan of action must be developed in concert with collaboration of Executive Leadership from the MSPV-NG PEO, the Healthcare Commodities PEO, VHA, VHA Procurement and Logistics Office, VA Office of Acquisition and Logistics, National

CPOs, Chief Medical Offices, National Center for Patient Safety, and other key offices as required.

Due to the immense amount of executive-level, clinical, functional, and national coordination required to institute a fully-functional, clinician-driven healthcare product supply chain, the plan to implement and improve the program includes the following high-level milestones and interim objectives:

- **Quarter 1- Quarter 2 CY2018: VA / VHA Executive Leadership and National Clinical Program Office Engagement**
  - MSPV-NG PEO will conduct roadshow to engage with VHA Executive Leaders and National Clinical Program Offices to:
    - Solicit clinical stakeholder/leadership buy-in
    - Identify key points of contact for continued CPO engagement with MSPV-NG PEO
    - Initiate development of a long-term plan to ensure VHA's Program Office has a sustainable and comprehensive clinician drive sourcing strategy. Draft and obtain approval for clinical-driven governance structure
- **Quarter 3 CY2018: Align Clinician Driven Sourcing Strategy to Meet Future Clinical Operations and Veteran Needs**
  - If required, issue an RFP for a Formulary/Catalog management source to continuously provide access and pricing for commercial medical surgical items at prices commensurate with VHA volume.
  - Establish clinical-driven governance structure
  - Continue development of a long-term plan to ensure VHA has a sustainable and comprehensive clinician drive sourcing strategy
  - Engage with VA leadership to ensure all key stakeholders buy-in to the clinician driven sourcing approach and strategy
  - Develop and approve processes for MSPV-NG Formulary/Catalog refinement to include, item additions, retirements, etc.
- **Quarter 4 CY2018 and Beyond: Implement Clinician Driven Sourcing Strategy to Meet Future Clinical Operations and Veteran Needs**
  - Stand-up and implement governance and processes for clinician-driven sourcing strategy for new product identification, value analysis, and product retirement.
  - Full implementation of sustainable processes to support MSPV-NG program

This J&A will be required until a new MSPV contract can be awarded and implemented. It is estimated that this can be accomplished within 24 months of final signature.

Technical and Requirements Certification: I certify that the supporting data under my cognizance, which are included in this justification, are accurate and complete to the best of my knowledge and belief.

[redacted]

Date

[redacted]

Date

Determination of Best Value/ Procuring Contracting Officer Certification: I hereby determine that the proposed contract action will represent the best value to the Government and certify that this justification is accurate and complete to the best of my knowledge and belief.

[redacted]

Date

Legal Sufficiency Certification: I have reviewed the justification and find it legally sufficient as to formalities and compliance with the requirement set forth in FAR 6.302-1 only.

[redacted]

Date

Concurrence

Based on the foregoing justification, I concur with the execution of a modification and class justification for medical commodities on an other than full and open basis, pursuant to the authority cited in 41 U.S.C. 3304(a)(1) as implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-1 entitled, "Only One Responsible Source and No Other Supplies Will Satisfy Agency Requirements," subject to availability of funds, and provided that the services and commodities herein described have otherwise been authorized for this acquisition.

[redacted]

[redacted] Date

[redacted]

[redacted] Date

June 6, 2018

VIA EMAIL ONLY

The Honorable Trent Kelly
Chairman
U.S. House of Representatives
Committee on Small Business
Subcommittee on Investigations, Oversight, and Regulations
2361 Rayburn House Office Building
Washington, D.C. 20515

Re: Veteran-Owned Small Businesses Need More Support from VA

Dear Chairman Kelly:

Our coalition represents small businesses owned by service-disabled veterans and veterans (referred to as "SDVOSBs" and "VOSBs"); we have worked with many SDVOSBs and VOSBs that participate in the U.S. Department of Veterans Affairs' ("VA") Veterans First Contracting Program. Congress created this program through the Veterans Benefits, Health Care, and Information Technology Act of 2006. The Veterans First Contracting Program is designed to maximize the participation of SDVOSBs and VOSBs in VA acquisitions through contracting priorities that require VA to go "Vets First" in awarding its contracts. In a nutshell, the Veterans First Contracting Program **"is a logical extension of VA's mission to care for and assist veterans in returning to private life.** It provides VA with the new contracting flexibilities to assist veterans in doing business with the VA. SDVOSBs and VOSBs will obtain valuable experience through this VA program that can be useful in obtaining contracts and subcontracts with other government agencies as well."[ii]

The same policy judgments Congress made when it created the Veterans First Contracting Program – to care for and assist veterans in returning to private life and playing a greater role in our economy – hold true today. In fact, the veterans we represent believe the Vets First mandate is needed now more than ever. Despite Congress' creation of this important program over 10 years ago, VA's prime contract spending on SDVOSBs and VOSBs has declined in recent years. So, too, has the number of small business prime contractors working with the federal government in general. And, subcontracting opportunities for SDVOSBs and VOSBs on VA contracts are nearly non-existent. In short, it is far from "mission accomplished" for the Veterans First Contracting Program.

Like all small businesses, SDVOSBs and VOSBs are critical to our economy and our industrial base. However, the current federal contracting climate is presenting a significant challenge for small business contractors. Federal spending data shows that consolidation of contracting opportunities across the federal government in recent years has led to a 25% reduction in the number of small business contractors performing on federal prime contracts since 2010.

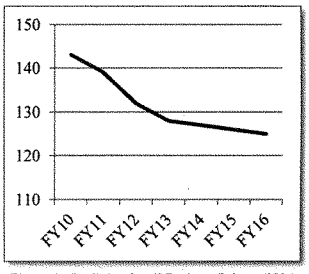


Figure 1 - Declining Small Business Primes (000s)
Source: Deltek

Similarly, despite the statutory mandate and contracting program designed to give priority to SDVOSBs and then to VOSBs

for VA prime contracts, VA's prime contract awards to SDVOSBs and VOSBs are in decline. Additionally, subcontracting to SDVOSBs and VOSBs on VA projects is almost nonexistent – and well below VA's modest goals. These trends persist despite the fact that VA has certified 12,519 firms as SDVOSBs and VOSBs eligible for VA contracting priority.

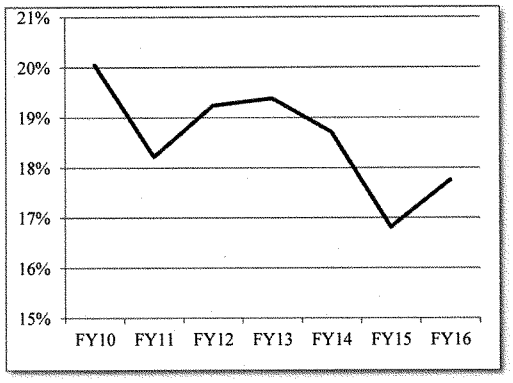


Figure 2 - Declining VA Prime Contract Spending on SDVOSBs

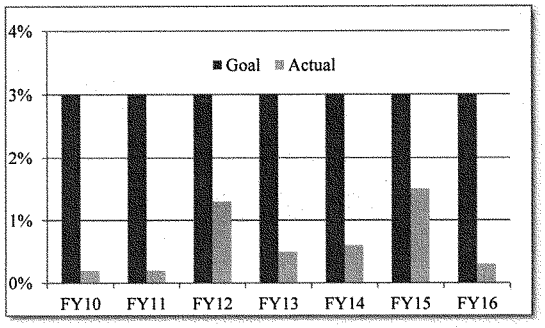


Figure 3 - VA SDVOSB Subcontracting Goals vs. Actual Subcontracting to SDVOSBs

VA has not fully supported or adhered to the VA Act's "Vets First" mandate. Since the law's enactment, VA has fought numerous protests in which the agency advocated for a limited interpretation of the Vets First mandate.[ii] VA even took the extraordinary step (through an October 17, 2011 policy memo issued by VA's Deputy Assistant Secretary for Acquisition and Logistics) of ignoring recommendations of the U.S. Government Accountability Office ("GAO") in response to these protests.[iii]

The veteran small business community has reason to believe that some are advocating repealing or amending the VA Act to limit the Vets First mandate because using SDVOSBs and VOSBs unnecessarily increases the cost for VA (and taxpayers). Such a rationale is dubious at best. Previous studies, including by the Congressional Budget Office, have found that contracting with small businesses does not significantly increase costs to the government.[iv] Further, the VA Act rightly requires SDVOSBs and VOSBs to submit reasonable prices. Congress appropriately determined that helping veterans as business owners, at a reasonable price, is a worthy objective and investment for our country and, specifically, for VA.

Below we detail many of the issues currently plaguing the Veterans First Contracting Program:

1. **VA spending on SDVOSBs is in decline and VA is not aggressively establishing new spending goals**

VA is not aggressively establishing higher spending goals for SDVOSBs and VOSBs. For example, despite achieving nearly 18% spending on SDVOSBs in 2016, VA's goal for SDVOSB spending in 2017 was only 10%.

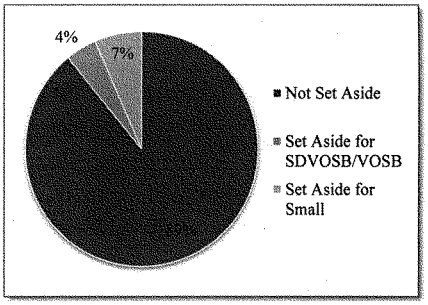
Moreover, VA's performance at the subcontract level has been abysmal. Given that VA spends the vast majority of its procurement dollars on large businesses each year, and those large businesses are required under the Federal Acquisition Regulation ("FAR") and the terms of their contracts to maximize utilization of SDVOSBs and VOSBs at the subcontract level, the subcontracting goals and enforcement process at VA is clearly broken.

Recommendation No. 1.1: VA needs to establish more aggressive prime contract and subcontract spending goals for SDVOSBs and VOSBs, **at least 25% for each category**, prepare an action plan to overcome any barriers to meeting the goals, identify where they may need outside support, and regularly report to Congress on implementation of this action plan, their progress toward meeting the goals, and how they will hold senior VA procurement officials accountable if the new goals are not met.

Recommendation No. 1.2: Congress should require VA to report annually on its efforts to meet the subcontracting goals and its enforcement efforts, including the amount of liquidated damages VA collects from prime contractors that do not meet their SDVOSB and VOSB subcontracting goals.

2. **96% of VA contracts below the simplified acquisition threshold in FY16 were not set aside for SDVOSBs or VOSBs**

Some projects are so large and complex that they are not suitable for small businesses. However, smaller contracts are generally best suited for small businesses, especially those below the simplified acquisition threshold ("SAT"), which was recently increased to $250,000. In fact, the U.S. Small Business Administration ("SBA") regulations and the FAR require agencies to consider the "Rule of Two" and conduct a set-aside for small businesses on all contracts below the SAT.



Despite the preference for small businesses to perform smaller acquisitions, as well as the greater

suitability of this work for small firms, VA is failing to conduct any type of small business set aside for the vast majority of its contracts below the SAT. As shown in Figure 4, FY16 contracting data obtained from VA through a Freedom of Information Act ("FOIA") request paints a stark picture on the lack of VA set-asides below the SAT. In FY16, VA conducted a total of 122,628 procurements valued at below the SAT. Of that total, 109,113 of the procurements – or a staggering 89% – were not set aside. And, only 5,314 of the procurements – or 4% – were set aside for SDVOSBs or VOSBs. Thus, at a time when VA's overall spending on SDVOSBs and VOSBs is declining, its performance in adhering to the Vets First mandate is far worse on smaller procurements many SDVOSBs and VOSBs would be best suited to perform.

Recommendation No. 2: VA should issue new procurement guidance to confirm that its procurement personnel must comply with the VA and Small Business Acts on contracts below the SAT. Also, Congress should require VA to report on its progress in maximizing participation of small businesses, especially SDVOSBs and VOSBs, on procurements below the SAT.

3. VA has adopted a policy that makes it more difficult than Congress intended for VA procurement officials to issue SDVOSB or VOSB sole source contracts

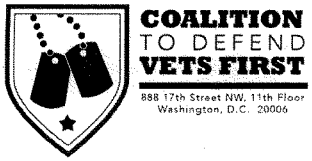
The VA Act permits VA to make sole source awards to SDVOSBs and VOSBs when three conditions are met: (1) the concern is a responsible source; (2) the contract award price will exceed $150,000 but will not exceed $5 million; and (3) award can be made at a fair and reasonable price that offers best value to the United States. Notably, this sole source authority granted in the VA Act does not require that the SDVOSB or VOSB awarded the contract is the only SDVOSB or VOSB that can provide the services or supplies at issue. Rather, the law merely requires that the SDVOSB or VOSB is a responsible source and award can be made at a fair and reasonable price – without a "Rule of Two" analysis. The law therefore shortens the VA procurement cycle, while increasing SDVOSB/VOSB opportunities.

Congress' will in creating the SDVOSB/VOSB sole source provisions in the VA Act is comparable to the sole source authority it granted to SBA's 8(a) program, yet VA has in practice negated Congress' intent. VA has done so by implementing regulations and internal policies that limit the ability of VA contracting personnel to make sole source awards to SDVOSBs and VOSBs.

Recommendation No. 3: Congress should direct VA to adhere to the sole source provisions of the VA Act and rescind all policies and regulations that make sole source awards to SDVOSBs and VOSBs more difficult to implement than Congress intended in the law. Congress should also require VA to report on its timeline for revising its sole source policies and rules and on its annual use of the sole source authority under the VA Act.

4. VA has issued many changes to its procurement regulations to limit the reach of the Vets First mandate through "class deviations" that are not subject to public notice and comment rulemaking

In February 2017, VA issued a class deviation that is contrary to SBA's NMR and has a significant adverse effect on SDVOSB and VOSB suppliers. SBA's NMR states that a small business may not provide products that it did not manufacture unless it meets certain conditions, including providing a product manufactured by a small business, or a waiver of the NMR is granted. If applicable requirements are met, SBA will waive the NMR for either a class of products or for a specific procurement.



VA's February 17, 2017 class deviation was issued to add a VAAR provision that (i) requires the Head of Contracting Activity ("HCA") to approve any request by a VA contracting officer for a waiver of the NMR for individual procurements and, (ii) where SBA had issued a class waiver to the NMR, requires the contracting officer to receive approval from the HCA prior to utilizing other than competitive procedures or restricted competition as defined in 38 U.S.C. § 8217.

Added without notice and comment rulemaking, this improper class deviation negatively impacts SDVOSB and VOSB suppliers for two reasons. With respect to waivers of the NMR for individual procurements, the authority to submit a request to SBA is vested with the contracting officer. By requiring a VA contracting officer to obtain the approval of the HCA before even making a request for an individual waiver of the NMR, VA has usurped a contracting officer's authority to request a waiver of the NMR and put that power in the hands of the HCA.

With respect to class waivers of the NMR, this VAAR provision also requires HCA approval prior to using other than competitive procedures or restricted competition for a product for which SBA has already issued a class waiver of the NMR; again usurping a contracting officer's authority.

Recommendation No. 4: VA should rescind its class deviation on the NMR and follow SBA guidelines concerning the use of SDVOSB and VOSB set-asides with an NMR waiver.

5. Medical/Surgical Prime Vendor (MSPV) Contract Modification is Flawed

In 2016, the VA's Strategic Acquisition Center (SAC) and the Veterans Health Administration (VHA) leadership determined in order to have an effective medical/surgical supply chain; VA needed a contracted formulary to serve as the backbone of its supply chain for medical-surgical products. The SAC has worked for approximately the past 3 years to develop an MSPV program, which to date has resulted in a contracted formulary with approximately 6500 items. The current 4 prime vendor contracts, consisting of Cardinal Health 2000, LLC, Medline Industries, Inc., Kreisers, LLC, and American Medical Depot, LLC, require the prime vendors to stock and ship the 6500 items to VA facilities around the country once the SAC contracts for the specific items and places the items on a formulary.

The current MSPV program has experienced limited success due to lack of clinical input by VHA and lack of input with industry, particularly the service disabled veteran owned small businesses. This limited success has resulted in greater use of purchase cards, less discipline in the VA acquisition process, higher costs to VA as well as VA having little accurate data as to what is being purchased and at what cost.

On April 12th, 2018, the SAC issued a "Class Justification and Approval for Other than Full and Open Competition" (J&A) to change the current MSPV contracts from "distribution" to "distribution and supply" contracts, thereby turning over the primary sourcing decisions for the VA's Med-Surg supply chain to four large "for profit" entities that have no Group Purchasing Organizations (GPO) credentials and are in the business of leveraging their own operations to increase their own bottom-lines.

The recently released J&A modifies the current MSPV contracts so that a) the size of the MSPV formulary is being dramatically increased to 37,500 SKUs: and b) not only are the MSPV contractors distributing products, but they are now also empowered to determine not only the source of supply but also the price to be charged to VA. This strategy only benefits the current prime vendor contractors and VA will lose control over approximately $4 billion in medical products purchased each year. This strategy is bad business practice and violates FAR requirements and places current SDVOSB and VOSB prime contractors in a position where they can only be engaged as subcontractors to the four prime vendors.

Recommendation 5.1: VA must consult with SBA to ensure that the J&A modification is not improperly bundled to the detriment of small businesses.

Recommendation 5.2: VA must apply the Vets First mandate to orders placed under the MSPV, consistent with Kingdomware, and VA should ensure that MSPV prime vendors establish aggressive SDVOSB and VOSB subcontracting goals with penalties, including liquidated damages, for not meeting the goals and public reporting on their goal performance.

Recommendation 5.3: VA must remove inherently governmental functions from the J&A modification and have OMB review the strategy to ensure it does not require the prime vendors to perform inherently governmental functions.

The above issues paint a compelling picture that congressional action is necessary to ensure that VA meets its statutory obligations and fully embraces the Vets First mandate. And time is of the essence – each day that goes by, the policies and practices at VA that are contrary to Vets First become more entrenched, infect more procurement strategies, and harm more SDVOSBs and VOSBs.

We would like your help to press VA for answers and meaningful changes. Ultimately, we believe it is important to hold senior VA procurement personnel accountable and to get needed answers on what VA is doing to correct these issues.

Sincerely,

John Shoraka
Managing Director

Enclosure

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[i] Pub. L. No. 109-461, § 502, 120 Stat. 3403, 3431–32 (2006); see also VA Acquisition Regulation: Supporting Veteran-Owned and Service-Disabled Veteran-Owned Small Businesses, 74 FR 64619-01.

[ii] See, e.g., Powerhouse Design Architects & Eng'rs, B-403174, et seq. (Oct. 7, 2010) (GAO rejected VA's argument that procurements under the Brooks Act were not subject to the VA Act and its Vets First mandate); Angelica Textile Servs. v. United States, 95 Fed. Cl. 208 (2010) (the court rejected VA's attempt to contradict its own policy by ignoring the Vets First Contracting Program in favor of the AbilityOne program); Aldevra, B-405271; B-405524 (Oct. 11, 2011) (GAO rejected VA's interpretation that task orders under the FSS are not subject to the Veterans First Contracting Program).

[iii] The October 17, 2011 memo was issued to all VA acquisition personnel and stated that VA would not follow GAO's ruling in the Aldevra case because "VA is of the opinion GAO's interpretation [in Aldevra] is flawed and legally incorrect."

[iv] See CBO Cost Estimate for H.R. 4093 (May 2, 2014); see also American Society for Public Administration in the Public Administration Review, Vol. 54, No. 5 (finding no significant differences between bids submitted on set-aside competitions and bids submitted on unrestricted competitions).

June 1, 2018

Scott Denniston
NVSBC

Re: VA SAC J&A Impact on Marathon Medical, SDVOSB

Dear Mr. Denniston,

The VA Strategic Acquisition Center has implemented a new policy that in effect places the responsibility of the management and oversight of the VA MSPV-NG (Medical Surgical Prime Vendor Next Generation Program) formulary additions/deletions on large businesses (Concordance Healthcare Solutions, AMD, Medline Industries and Cardinal Healthcare) which violates current FAR regulations.

Transferring the primary Federal Government responsibility of the SAC to private industry is fraught with problems and causes direct harm to Marathon Medical a SDVOSB Medical Products Distribution Company. In executing this plan, the SAC has circumvented the Vets First Law 109-461 and removes the ability for Marathon and all other SDVOSB distributors a fair and reasonable way to compete for formulary additions and to support our existing VAMC customers. For example, each of the Prime Vendors has reached out to our mfg. partner's directly requesting best pricing for items that we currently supply on their behalf to VAMCs nationwide at prices established on the FSS, BPAs and other approved contract vehicles. Plus, we supply non contracted items (Open Market) at the low unit of measure quantity and at lower prices than if the VAMC were to purchase them directly from the mfg. As a stocking distributor with two warehouse locations across the USA we are equipped to deliver true value to the VAMC hospitals directly or in partnership with the Prime Vendor organizations. Allowing the large business interests to manage what products and who supplies them on four unique formularies with no clear cut way to include and enforce a plan for SDVOSB involvement eliminates our value as a stocking distributor for consumable and disposable products that will make up the SAC formulary.

In addition, one of our additional value added services will be impacted. We manage multiple companies FSS, DAPA, E-CAT and GSA contracts. If the current process is kept in place and the large business distributors are empowered by the SAC to directly negotiate with our existing mfg. partners it will negatively impact the value we bring as contract administrators and place a heavier burden on those manufacturers that have chosen not to commit the time and funds to this process.

Sincerely,

John St. Leger
President

3251 Lewiston Street, Suite 16 • Aurora, CO 80011
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www.marathonmed.com

Honorable Trent Kelly, Chairman
Subcommittee on Investigations, Oversight, and Regulations
Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Kelly: 08 JUN 18

As an Army General, and fellow combat veteran, surely you can appreciate that we are the decorated combat veteran owners of one off the oldest and larger Veteran Owned National/Global Medical Distribution Companies in the Federal Contracting sector (multiple purple hearts, medals for valor between us from Vietnam to modern wars with WWII and Korean War investors/board members both deceased and living). And with 140 employees in the state of Mississippi (Biloxi office), we are taking this time to provide you (per your request last week on the Hill) to explain why, how, where and/or when SDVOSB businesses (using ours as a specific example) bring value to the Federal Government. Needless to say, our dedication, patriotism and battlefield sacrifices should speak for something though apparently not at the VA, especially with regard to procurement, where it's Deputy Secretary of Procurement and dozens of other decision makers at 810/811 Vermont (VACO), insist and constantly as well as publicly that we veterans are a *"thorn," "unprofessional," "costly"* and a *"nuisance"* or should and **"will be relegated to mopping floors, selling toilet paper and other things becoming of veterans while industry professionals empower the VA accordingly!"** to name a few of the insults slung at just our company over the years (at VA held events, seminars, industry days etc.—all this despite representing a dozen Fortune brands including 5 each Fortune 50 corporations, multiple global standardizations (out competing Wall street firms on pricing, service etc.) with Dept. of Defense and other agencies and more than a hundred thousand completed transactions at VA, which have absolutely improved patient safety as well as quality of life for veteran patients. Such dedication (**veterans serving veterans vs executives serving shareholders**) equally increases QA/QC, accountability and other value add. This doesn't mean public companies or large businesses are to be disparaged, just that they have a different protocol both spiritually and legally than small veteran owned businesses.

That said, there are a majority of patriots and professionals alike who work at the VA, who also do NOT want only 4 public companies to become an all-powerful monopoly (which breeds fraud, waste and abuse as we all know) and realize that diversity, competition and further that the veteran owned, small business ethos is what drives local jobs, and the economy on a whole (as well as voters). Small Business is also the overwhelming force providing a customized *"customer service"* to the VA. For example, when the VA calls any of us...collectively, we're: ***"Johnny on the spot"*** vs **"so big the left doesn't know what the right is doing!"**

Not only does the aforementioned underscore the contrast of notion perpetrated by substantial VA executives—that we care not about our fellow veterans and equally are just waste time and money and further if we would just go away the VA would somehow operate efficiently and within budget: is beyond laughable!! Yet this sentiment is totally alive and well in Mr. Frye's office!! He actually came to the annual VA small business show and harassed GE, Siemens and other global corporations (debased them and mocked us for working together while further making what many perceived idol threats or worse); these are Fortune Companies we have collaborated with for years and years of which the results are undeniable (just see TrillaMed as thee only, ONLY corporation in history to standardize quality control, pricing and otherwise with regard to FSS pricing and protocol for life saving Radio Pharmaceuticals (and we have 3 dozen other examples!!).

Please Sir, as true to our Special Operations training, we still work today as we did back in the jungles of South East Asia, Latin America and the middle east, under the motto: DEEDS NOT WORDS!

Therefore, we present the following:

TRILLAMED VALUE-ADD

I. 100% FEDERALLY-FOCUSED DISTRIBUTOR (One can serve only a single master...for us it's the VA)

- Dedicated & focused "Federal-only" clinical sales team
- Federal National Accounts Team
- Government Contracts Team
- Customer Service team: order taking, post award follow-up, OEM warranty support, etc.
- FSS, DAPA, ECAT, BPA, MMESO and other contract vehicle support

*In other words, All of the large businesses are 90% focused NOT on the federal gov't since the private sector is 90% larger than the roughly 35M Federal Employees, DoD and Veterans.

**Therefore, they rely on competent procurement partners to help them enforce compliance, service and other programmatic and project management needs and requirements. Naturally, the Fed Gov't is the default beneficiary of such service. (It also gets to do its part locally, by working with community and small business, which also hires people, and this raises payroll taxes and helps funds congress's coffers accordingly...which is WHY President Eisenhower created the SBA and why legislatively 21% goes to small business (since large biz is far better at not hiring, paying taxes/off shore money and generally protecting shareholders by law vs small biz, which is spiritually dedicated to the 600k remaining WWII veterans who now depend on us like we once did them!!)

II. PRICING:

- TrillaMed works to match the OEM-based price point, ensuring the VHA receives the very best pricing and no added costs through the dedicated SDVOSB vendor.
  - In other words, we pay for ourselves. The OEM pays us to outsource their madness which costs the Fed Gov't nothing yet fully improves quality of service, which ultimately improves quality of life and patient safety.
- Providing dedicated focus to large business OEMs:
  - OEMs often do not possess dedicated Federal sales teams; reps are often focused on both commercial and federal accounts, which limits the focus and support
  - OEMs often do not possesses dedicated resources to Federal Government Contracting
  - TrillaMed / other value-added SDVOSBs provide dedicated support on behalf of the OEM in all areas related to Federal initiatives
  - Allows OEM to focus on manufacturing world-class solutions and provides supplemental focused support to Federal accounts
  - The Fed Contracting process is not simplified or easy to navigate (i.e., competitive contracting process does not allow for a "guarantee" of a transaction desired by the Med Center
- Said strategic support goes a long way in navigating through the procurement processes and not only are the Fed Gov't and OEM much happier but the tax payer, war fighter and veteran are much more respected as time, money and effort directed on the up and up reduce fraud, waste and abuse!

III. KEY INDUSTRY INFORMATION

- OEMs sell through distributors in the commercial market – why should it be any different in the Federal Space?
  - Apparently it's not VA's intention to state that in order to fix its broken procurement system, it

not only needs to eliminate veterans (oxymoron for the VA to eliminate veterans) but replace them with only a few public companies because of their perceived efficiencies. Which is rather ludicrous since their actual efficiencies—in procurement & distribution—are actually outsourced already, within the private sector via distributors!! Therefore, the SDVOSB's are acting as the very sales & distribution channel for the Federal Government as our fellow small businesses perform for the commercial markets!!!

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- Not only does Congressional or Legislative Law via Veteran's First, but also Case Law via SCOTUS prevent such insanity, a simple look at the "way it works in the commercial sector," which the VA appears to be such a fan of, is precisely why such ridiculous actions at the VA are beyond contemplation.
- We are a free market, capitalistic Republic. Thus, the "Kingdomware" decision, **does not mandate** an award be made to an SDVOSB; it does however state that SDVOSB / VOSB vendors be given the opportunity to meet the requirement at a fair and reasonable price. If the SDVOSB / VOSB cannot do so, contracting is free to award through other means.
- Veterans do NOT want a hand out, but by all means we DO want the opportunity to control our own health benefits and have influence over our own agency if you will. Should VA become the stellar example of care, quality and lack of pathetic neglect, perhaps we wouldn't have to fight so hard to be involved, but as we all know, the VA needs more help than perhaps any federal agency...thus removing veterans from the process is NOT a solution in any way, shape or form.

With high respect I conclude with the notion that veterans in business hire other veterans, which in itself, helps reduce suicide, substance abuse, job and homelessness and other vet-centric issues, because we veteran employers recreate the military structure (in a civilian setting) by empowering veterans to once again have a mission to belong and serve other veterans from a team environment! You sir, of all people understand this! You understand just like President Eisenhower did, that veterans are industrious, which is why he created the SBA in the first place, to provide a place for veterans to contribute to society...and we do! The numbers are in:

We veterans in business,only 3 million of us, employ over 8M payrolled employees and contribute well over a Trillion to our nation's GDP! Naturally, one would expect nothing less from veterans yet it's downright atrocious the VA of all places is in direct contradiction to vetrepreneurial success on a whole!

Thank you for your service,

Gratefully,

Frank

Frank Campanaro,
CEO, TrillaMed, LLC
fcampanaro@trillamed.com