EXTENSIONS OF REMARKS

PERSONAL EXPLANATION

HON. DANNY K. DAVIS

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 17, 2019

Mr. DANNY K. DAVIS of Illinois. Madam Speaker, I was unable to cast votes on the following legislative measures due to flight delays. If I were present for roll call votes, I would have voted ''Aye'' for the following votes: Roll Call 656, December 9, 2019: On Motion to Suspend the Rules and Pass, H.R. 4739, Synthetic Opioid Exposure Prevention and Training Act, and Roll Call 655, December 9, 2019: On Motion to Suspend the Rules and Pass, H.R. 4761, DHS Opioid Detection Resilience Act.

CONGRATULATING CHAD BLACK ON RECEIVING THE NATHAN DEAL GOVERNOR'S AWARD FOR TRAUMA EXCELLENCE

HON. DOUG COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 17, 2019

Mr. COLLINS of Georgia. Madam Speaker, I rise today to recognize a fellow Northeast Georgian and my dear friend, Mr. Chad Black, for his incredible work in revolutionizing trauma care services in Northeast Georgia.

Chad Black spent over three decades working with the Hall County Fire Services, including 17 years in Air Medical Transport Services. After retiring from the Hall County Fire Services as Deputy Fire Chief in June 2016, Mr. Black was named Director of the Habersham County Emergency Services, where he oversees all fire, emergency medical services, and rescue for Habersham County. He also currently serves as Chairman of the Georgia Emergency Medical Services Association. Earlier this month, Mr. Black was appointed to the Georgia Firefighter Standards and Training Council. These honorable titles are the culmination of his 36 years of dedication to the fire and emergency services.

When Georgia Senate Bill 60 passed, it recognized the need for trauma centers in every community. Upon passage, Mr. Black began serving as Chair of the EMS Region II Regional Trauma Advisory Committee where he worked with the Northeast Georgia Medical Center to help them become a Level II trauma center. Today, the center remains the only trauma center in Region II, serving more than 2,000 patients each year.

To Mr. Black, trauma centers are a vital part of our community. Before these medical capabilities were established in Northeast Georgia, patients had to be airlifted to Atlanta to receive treatment. Thanks to Mr. Black's work, help is now closer than ever for the residents of Northeast Georgia.

Last month, the Regional Trauma Advisory Committee recognized Chad for his tireless work on developing the trauma center—and for his 36 years of service—by presenting him with the Nathan Deal Governor's Award for Trauma Excellence.

On behalf of the people of Northeast Georgia, I join Chad's colleagues in congratulating him on this award. I truly cannot think of anyone more deserving. I want to thank my dear friend for his commitment to improving trauma services across the state of Georgia, and most importantly, for devoting nearly four decades to saving lives in our communities.

DEPARTMENT OF VETERANS AFFAIRS CONTRACTING PREFERENCE, CONSISTENCY ACT

SPEECH OF

HON. DAVID P. ROE

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2019

Mr. DAVID P. ROE of Tennessee. Madam Speaker, I have determined it necessary to include in the RECORD the following views on H.R. 4920, the Department of Veterans Affairs Contracting Preference Consistency Act in the absence of a committee report.

VIEWS ON H.R. 4920, DEPARTMENT OF VETERANS AFFAIRS CONTRACTING PREFERENCE CONSISTENCY ACT

HON. DAVID P. ROE, RANKING MEMBER, COMMITTEE ON VETERANS' AFFAIRS

I.—PURPOSE AND SUMMARY: H.R. 4920, the Department of Veterans Affairs Contracting Preference Consistency Act, was introduced by Representative MARK TAKANO on October 30, 2019. H.R. 4920 is the ultimate result of a discussion draft that members of the Committee on Veterans' Affairs began circulating in October 2017. H.R. 4920 clarifies the relationship between the AbilityOne Program and the Department of Veterans Affairs' (VA) Veterans First Program.

Congress established the AbilityOne Program through the passage of the Javits-Wagner-O'Day Act, P.L. 92–98, codified at 41 U.S.C. §§8501–8506 (JWOD Act). The AbilityOne Program is designed to provide employment opportunities to individuals who are blind or who are severely disabled. Pursuant to the JWOD Act, the U.S. AbilityOne Commission (formerly known as the Committee for Purchase from People Who Are Blind or Severely Disabled) maintains the Procurement List, which lists the products and services made by qualified Non-Profit Agencies (NPAs) for the blind or severely disabled that the U.S. AbilityOne Commission deems suitable for the federal government to procure. If the federal government intends to purchase products or services on the Procurement List, it must purchase them from the qualified NPAs designated by the U.S. AbilityOne Commission. Therefore, the AbilityOne Program is often referred to as a ''mandatory source'' in federal contracting.

Congress created the Veterans First Contracting Program (Vets First Program) through the passage of the Veterans Benefits, Health Care, and Information Technology Act of 2006, P.L. 109–461, codified at 38 U.S.C. §§8127–8128 (VBA of 2006). The Vets First Program encourages increased levels of contracting by VA with Service Disabled Veteran Owned Small Businesses (SDVOSBs) and Veteran Owned Small Businesses (VOSBs), in descending order of priority, through a combination of noncompetitive, sole-source, and restricted competition authorities. The restricted competition authority, reflected in U.S.C. §8127(d) is known as the ''Rule of Two.'' The Rule of Two states that, ''a contracting officer ofthe Department shall award contracts on the basis of competition restricted to [SDVOSBs or VOSBs] if the contracting officer has a reasonable expectation that two or more [such SDVOSBs or VOSBs] will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.''

Whereas the VBA of 2006 is silent as to the relationship between the AbilityOne Program as a mandatory source and the Rule of Two, H.R. 4920 states that, notwithstanding the Rule of Two, VA contracting officers shall continue procuring from qualified NPAs those products or services that were included on the Procurement List on or before December 22, 2006, the date of enactment of the VBA of 2006.

II.—BACKGROUND AND NEED FOR LEGISLATION: VA, like other federal agencies establishes contracts with private businesses for needed products and services. Federal contracting has the additional objective of promoting small business, including socioeconomic subcategories, principally through a system of government-wide participation goals administrated by the Small Business Administration. Congress established such a goal for SDVOSBs in the Veterans Entrepreneurship and Small Business Development Act of 1999, P.L. 106–50, codified at 15 U.S.C. §644(g)(l)(A)(ii). The government-wide SDVOSB goal remains three percent, representing a minimum, though individual agencies have opted for higher goals. Due to agencies', including VA's, inability to achieve the three percent SDVOSB goal, Congress enacted the Veterans Benefits Act of 2003, P.L. 108–183, codified at 15 U.S. Code §657f, which among other purposes, granted agencies the authority to restrict competition to SDVOSBs and to award sole-source contracts to SDVOSBs under certain circumstances. The Veterans Benefits Act of 2003 (in section 308 of P.L. 108–183) was specific as to the relationship between the AbilityOne Program as a mandatory source and the newly created SDVOSB sole-source authority, ''Relationship To Other Contracting Preferences.—A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).'' However, due to VA's specific inability to achieve its SDVOSB goal, Congress enacted the VBA of 2006. In contrast to the Veterans Benefits Act of 2003, the VBA of 2006 contained no language clarifying the intended treatment of the AbilityOne Program or other contracting preference programs.

VA initially implemented the VBA of 2006 on June 20, 2007, and issued a final rule implementing the Act through changes to the

Veterans Affairs Acquisition Regulation on January 7, 2010. On April 28, 2010, VA issued a policy referred to as an ''information letter'' to address the relationship between the Vets First Program and the AbilityOne Program. This policy stated the following:

''The Veterans First Contracting Program final rule does not affect AbilityOne's order of priority in relation to the Veterans First Contracting Program. Therefore, all items currently on the AbilityOne Procurement List as of January 7, 2010, will continue to take priority over the contracting preferences mandated by P.L. 109–461. However, all new requirements will be subject to the contracting preferences mandated by P.L. 109–461 prior to being considered for placement with the AbilityOne Program. This policy provides an equitable solution by ensuring VA's continued commitment to AbilityOne, while also recognizing the changes to VA's small business hierarchy.''

The meaning and impact of the VBA of 2006 were challenged in a series of bid protests. In one key protest to the Government Accountability Office (GAO), In re Kingdomware Techs., No. B–406507 (May 30, 2012), GAO determined that VA, ''improperly used nonmandatory Federal Supply Schedule procedures to procure services, rather than using a set-aside for [SDVOSB] concerns, and improperly awarding a contract to a non-SDVOSB concern.'' After VA declined to implement GAO's decision, the protestor Kingdomware Technologies, Inc. proceeded to file a similar protest at the Court of Federal Claims, which granted summary judgment to VA upholding its interpretation on November 27, 2012. Kingdomware Technologies then appealed the Court of Federal Claims' ruling to the Court of Appeals for the Federal Circuit, which affirmed the earlier ruling in a split decision on June 3, 2014. The Supreme Court agreed to hear the case on June 22, 2015. There were two matters of controversy, which periodically rose and fell in prominence, throughout these protests and appeals: whether the Rule of Two should be in force at all times, or only up to the point in time in each fiscal year when VA has awarded sufficient contracts to SDVOSBs to satisfy its SDVOSB goal, and whether the Rule of Two applies to orders placed against Federal Supply Schedules. In the government's brief, the solicitor general framed the question presented as, ''whether the Department of Veterans Affairs permissibly concluded that 38 U.S.C. 8127 did not require it to utilize a small-business contracting preference before placing an order under a pre-existing Federal Supply Schedule contract.'' On August 25, 2015, forty-one members of Congress, including Rep. David P. Roe and three other current members of the House Committee on Veterans' Affairs, submitted an amici curiae brief, reiterating congressional intent that the Rule of Two shall apply continuously, not switch on and off throughout each fiscal year depending on when the SDVOSB participation goal is met. The Supreme Court, in a unanimous opinion, Kingdomware Techs. v. United States, No. 14–916, 136 S. Ct. 1969 (June 16, 2016) held the following:

''Alternative readings of §8127(d) are unpersuasive. First, §8127(d)'s prefatory clause, which declares that the Rule of Two is designed ''for the purposes of' meeting §8127(a)'s annual contracting goals, has no bearing on whether §8127(d)'s requirement is mandatory or discretionary. The prefatory clause's announcement of an objective does not change the operative clause's plain meaning. See Yazoo & Mississippi Valley R. Co. v. Thomas, 132 U.S. 174, 188. Second, an FSS order is a ''contract'' within the ordinary meaning of that term; thus, FSS orders do not fall outside §8127(d), which applies when the Department ''award[s] contracts.'' Third, to say that the Rule of Two will hamper mundane Government purchases misapprehends current FSS practices, which have expanded well beyond simple procurement to, as in this case, contracts concerning complex information technology services over a multiyear period. Finally, because the mandate §8127(d) imposes is unambiguous, this Court declines the invitation to defer to the Department's declaration that §8127 procedures are inapplicable to FSS orders.''

The construction of and relationship between the VBA of 2006 and the JWOD Act were also challenged in a series of bid protests. One key protest to the Court of Federal Claims, Angelica Textile Servs., Inc. v. United States, 95 Fed. Cl. 208 (Oct. 26, 2010), concerned the necessity of VA performing a Rule of Two analysis before adding a new product or service to the Procurement List, in addition to other alleged procedural irregularities. Angelica Textile Services, Inc. was an SDVOSB and an incumbent VA contractor performing a service which VA attempted to add to the Procurement List. The Court of Federal Claims noted in its opinion that, ''Were there a conflict between the two statutes, the more specific Veterans Benefits Act would control. See NISH v. Rumsfeld, 348 F.3d at 1272; NISH v. Cohen, 247 F.3d at 205. Where, as here, the statutes exist in tension, albeit not in direct conflict, the Department was entirely reasonable in concluding in its New Guidelines that the Veterans Benefits Act should have priority.'' Angelica Textile Servs., Inc. v. United States, 95 Fed. Cl. 208, 222 (Oct. 26, 2010). The Court ordered that VA be enjoined from adding the services to the Procurement List and proceeding to contract with an AbilityOne NPA, and that VA must comply with its April 28, 2010 policy and apply the Rule of Two before making any such decisions in the future.

In another important protest, PDS Consultants, Inc. v. United States, 132 Fed. Cl. 117 (May 30, 2017), the Court of Federal Claims considered the question of ''which procurement priority must the VA first employ: the requirement that the VA conduct a Rule of Two analysis to determine whether it must restrict the procurement to veteran-owned small businesses under the VBA [of 2006] or the requirement that the VA use the AbilityOne List under the JWOD, regardless of whether the VA has conducted a VBA Rule of Two analysis.'' The protestor was PDS Consultants, Inc., a SDVOSB. The holder of the protested contracts was Winston-Salem Industries for the Blind (now known as IFB Solutions) an NPA. This question arose in the context of products and services which had been included for many years on the Procurement List for two of VA's regions, called Veterans Integrated Service Networks, as well as products and services for two other regions which were being performed within the Vets First Program but which the AbilityOne Commission had recently added to the Procurement List without VA conducting Rule of Two analysis. Therefore, this protest concerned SDVOSB contracts which were subject to move into the AbilityOne Program and NPA contracts which were subject to move into the Vets First Program. The Court of Federal Claims noted in its opinion that:

''The VA, faced with these potentially contradictory contracting preferences, originally took the position in this litigation that if a product or service appears on the AbilityOne List for a particular region of the country the JWOD requires the VA to purchase that product off of the List without first performing a Rule of Two analysis. However, during the pendency of the litigation, the VA changed its position through regulation. The VA now agrees that if a product or service was added to the AbilityOne List after 2010, the VA will perform the Rule of Two analysis before purchasing off of the List. The new regulation provides, however, that the VA will continue to purchase items off of the AbilityOne List without first performing a Rule of Two analysis for items added to the List before 2010.''

The Court of Federal Claims held that, ''VA is required to perform a Rule of Two analysis for all procurements after the VBA was passed. Accordingly, the VA may not enter into future contracts with IFB until it performs a Rule of Two analysis and determines whether two or more veteran-owned small-businesses can perform the subject work.'' Winston-Salem Industries for the Blind appealed this decision to the Court of Appeals for the Federal Circuit. In PDS Consultants Inc. v. United States, 907 F.3d 1345 (Oct. 17, 2018), the appeals court upheld the lower court ruling and ''conclude[d] that the requirements of the more specific, later-enacted VBA take precedence over those of the JWOD when the two statutes are in apparent conflict.'' The appeals court observed in its opinion that, ''While the precise question we consider today was not presented in Kingdomware, we may not ignore the Court's finding that the VBA 'is mandatory, not discretionary,''' and, ''We assume that Congress was aware that it wrote an exception into the agency-wide Veterans Benefits Act in 2003 when it left that very same exception out of the VBA only three years later.'' Since the appeals court ruling, Winston-Salem Industries for the Blind filed a petition for a writ of certiorari on September 9, 2019. Recently, on December 9, 2019, the solicitor general filed a brief in response in opposition, reasoning that although the Supreme Court's decision in Kingdomware ''did not address the question presented here,'' and ''although the government agrees with petitioner that the relevant statutes taken together are better read to give priority to JWOD's specified-source requirements where those requirements apply, the court of appeals' contrary holding also represents a reasonable reconciliation of the competing interests that are implicated here. And Congress of course remains free to mandate a different approach in response to the court's decision.''

On May 20, 2019, in response to the Court of Appeals for the Federal Circuit issuing a mandate effectuating its decision in PDS Consultants Inc. v. United States, VA issued a new policy in the form of a Veterans Affairs Acquisition Regulation deviation replacing its April 28, 2010 policy. The deviation's purpose was to ''require contracting officers to apply the VA Rule of Two to determine whether a requirement should be awarded to [SDVOSBs] and VOSBs under the authority of 38 U.S.C. 8127–28, by using preferences and priorities in subpart 819.70 prior to considering an award to an AbilityOne non-profit organization or the Federal Prison Industry, Inc.'' Impacts ensued from this policy.

The AbilityOne Commission states on its website that, ''providing employment opportunities to more than 45,000 people who are blind or have significant disabilities, including approximately 3,000 veterans, the AbilityOne Program is among the nation's largest providers of jobs for people who are blind or have significant disabilities.'' The AbilityOne Commission also cites on its website a 70 percent unemployment rate among these populations and characterizes this as ''unacceptably high.'' According to the AbilityOne central nonprofit agencies

SourceAmerica (formerly National Industries for the Severely Handicapped) and National Industries for the Blind, approximately 2,000 jobs of individuals who are disabled and approximately 800 jobs of individuals who are blind, respectively, are associated with VA contracts. In mid–2019, there were roughly 90 such contracts held by NPAs located in 30 states and the District of Columbia. Some of these contracts have passed from AbilityOne NPAs to SDVOSBs or VOSBs since May 20, 2019. Available information indicates that more contracts for products have been affected than contracts for services, due to the fact that the particular services that are prevalent in the AbilityOne Program, such as custodial, food, and call center services, are relatively less likely than products to pass the Rule of Two. Available information indicates that many affected NPAs have furloughed employees while attempting to secure work for them on other contracts. However, the extent of layoffs that have already occurred is unknown, while the Committee has been provided no example of a SDVOSB or VOSB gaining a contract which was formerly performed by an NPA and taking on the NPA's employees who would otherwise be displaced.

The destruction of employment and employment opportunities for individuals who are blind or disabled is extremely unsatisfactory; it is also unnecessary and avoidable. The courts in the cases discussed above relied on the general maxim of statutory interpretation that a specific statute (the VBA of 2006) takes precedence over a general statute (the JWOD Act), particularly when the specific statute was later enacted. They also gave weight to the Veterans Benefits Act of 2003's clarity as to the treatment of the JWOD Act in contrast to the VBA of 2006's silence and imputed there congressional intent to subsume the AbilityOne Program in VA. The purpose of H.R. 4920 is to clarify Congress's intent. The Vets First Program and the AbilityOne Program should coexist in VA as they did after the enactment of the VBA of 2006, through the April 28, 2010 policy, through the time of Kingdowmare, until PDS Consultants fundamentally changed the programs' alignment. However, recognizing the time that has passed and the inherent fairness issue that informs the relevant bid protests and cases, it is more appropriate to use the date of enactment of the VBA of 2006, December 22, 2006, as a point of demarcation than the date of VA's former policy, April 28, 2010. This legislation would exempt the award of contracts in VA for products and services that were placed on the Procurement List on or before December 22, 2006 from the Rule of Two and thereby preserve a substantial amount of, though not all, employment in the NPAs that rely on these contracts. All contracting for products and services added to the Procurement List later must comply with the Rule of Two. In effect, all future contracting opportunities will flow through the Vets First Program.

Finally, it should be emphasized that in contrast with PDS Consultants, this intent is wholly consistent with the Supreme Court's opinion in Kingdomware as well as the congressional intent expressed in the amici curiae brief submitted in conjunction with that case and the functioning of the Vets First Program since Kingdomware. I share the solicitor general's assessment, in his December 9, 2019 response to Winston-Salem Industries for the Blind's petition, that the treatment of ordering against Federal Supply Schedules, which was the matter at issue in Kingdomware, is not generalizable to the AbilityOne Program's mandatory source. It should also be noted that although the AbilityOne Program's status as a mandatory source is directly comparable to that of the Federal Prison Industries Program, also known as UNICOR, and these two programs present a similar question as to their relationship to the Vets First Program, the volume of usage of Federal Prison Industries in VA has declined to a minimal level and no longer represents a significant controversy. For this reason, H.R. 4920 does not address Federal Prison Industries.

PERSONAL EXPLANATION

HON. ANTHONY G. BROWN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, December 17, 2019

Mr. BROWN of Maryland. Madam Speaker, on December 12, 2019 I was absent from the House of Representatives. Had I been present, I would have voted "YEA" on Roll Call No. 659, on Motion to Suspend the Rules and Pass, as Amended, FUTURE Act.

Historically Black Colleges and Universities make substantial contributions to the nation's economic strength. A recent report by the United Negro College Fund found that HBCUs generate $15 billion in annual economic impact, and created over 134,000 jobs. HBCUs enroll on average, 24 percent of all black undergraduates pursuing a bachelor's degree, graduate 26 percent of all black bachelor's degrees and 32 percent of STEM degrees earned by black students. Having a degree from an HBCU lifts the lifetime earnings of a graduate by nearly a million dollars. This legislation provides permanent funding for HBCUs and other minority-serving institutions attended by over 2 million students, recognizing the value of their missions and academic offerings. Furthermore, the bill takes an important step in simplifying the Free Application for Federal Student Aid for 20 million working families.

SECURE AND TRUSTED COMMUNICATIONS NETWORKS ACT OF 2019

SPEECH OF

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, December 16, 2019

Ms. ESHOO. Mr. Speaker, I rise in support of H.R. 4998, the Secure and Trusted Communications Networks Act of 2019, as amended.

For nearly a decade I've raised how the vulnerabilities in our telecommunications infrastructure directly impact our national security. On November 2, 2010, I wrote to the Chairman of the Federal Communications Commission (FCC) expressing grave concerns about Huawei and ZTE, which have opaque relationships with the Chinese government, and I request that my letter be entered into the CONGRESSIONAL RECORD.

Sadly, in the intervening nine years many small and rural providers have invested hundreds of millions of dollars in equipment made by Huawei and ZTE because the equipment is the cheapest available, and this investment was often funded by the FCC's own programs.

I'm pleased that H.R. 4998 addresses this problem by strengthening the supply chain of the U.S. telecommunications infrastructure by prohibiting purchases of compromised equipment when FCC funds are used. The bill also creates a program to assist providers with the costs of removing and replacing prohibited equipment. This is necessary since smaller providers can't afford these upgrades on their own.

However, H.R. 4998 is limited to strengthening our supply chain issue and is not a comprehensive network security effort. The threats we face are constantly evolving, and Congress must remain diligent in ensuring our communications are secure, private, and reliable.

I support H.R. 4998 and urge my colleagues to do the same.

HOUSE OF REPRESENTATIVES,
WASHINGTON, DC, NOVEMBER 2, 2010.

Hon. JULIUS GENACHOWSKI,
Chairman, Federal Communications Commission, Washington, DC

DEAR CHAIRMAN GENACHOWSKI, As a senior member of the House Permanent Select Committee on Intelligence, I have had grave concerns about the implications of foreign-controlled telecommunications infrastructure companies providing equipment to the U.S. market for quite some time. In particular, I'm very concerned that Huawei and ZTE, Chinese telecommunications infrastructure manufacturers are looking to increase their presence in the U.S.

These companies have long-standing relationships with the Chinese People's Liberation Army, and are not subject to the same kinds of independence and corporate transparency that other countries require of their telecommunications companies.

Last May, I wrote to the Director of National Intelligence and asked him to assess the national security implications of Chinese-origin telecommunications equipment on our law enforcement arid intelligence efforts, as well as on our switched-telecommunications infrastructure. While I cannot discuss the results of that assessment in an unclassified letter, suffice to say the answers were troubling, and the National Counter Intelligence Executive has made communications infrastructure security a top priority.

Huawei and ZTE have recently taken aggressive steps to increase penetration into the U.S. telecommunications market. This summer, Huawei was in discussions with Sprint to provide mobile telecommunications equipment. And in August of 2009, Huawei signed a deal with Clearwire to provide equipment to their wireless network. Unlike mergers and acquisitions by foreign firms, agreements to directly supply equipment to the U.S. telecommunications infrastructure are not subject to CFIUS requirements.

However, the net result is the same, where sensitive U.S. communications will travel over the networks and switches provided by a foreign-controlled entity.

Clearly, the current CFIUS regime does not provide scrutiny of procurements from foreign companies to assess the risk to the U.S. telecommunications infrastructure. I would like to understand what your role is to protect the U.S. networks in order to assess what additional legislation may be needed.

Do you have authority to protect the U.S. telecommunications infrastructure from inappropriate foreign control or influence?

What authorities do you have to review procurements of foreign equipment by U.S. companies operating our telecommunications networks? What additional authorities would you need to ensure that the U.S.