

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 7<sup>th</sup>, 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 22<sup>nd</sup>, 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 16<sup>th</sup>, 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 11<sup>th</sup>, 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 17<sup>th</sup> with the recommendations is attached to my testimony.

I would also like to draw your attention to a copy of my testimony on March 7<sup>th</sup>, 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 14<sup>th</sup>, 2018, the four prime vendors received the modification directing them to begin negotiations with suppliers/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 19<sup>th</sup>, 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 oversight 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 awarded 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.

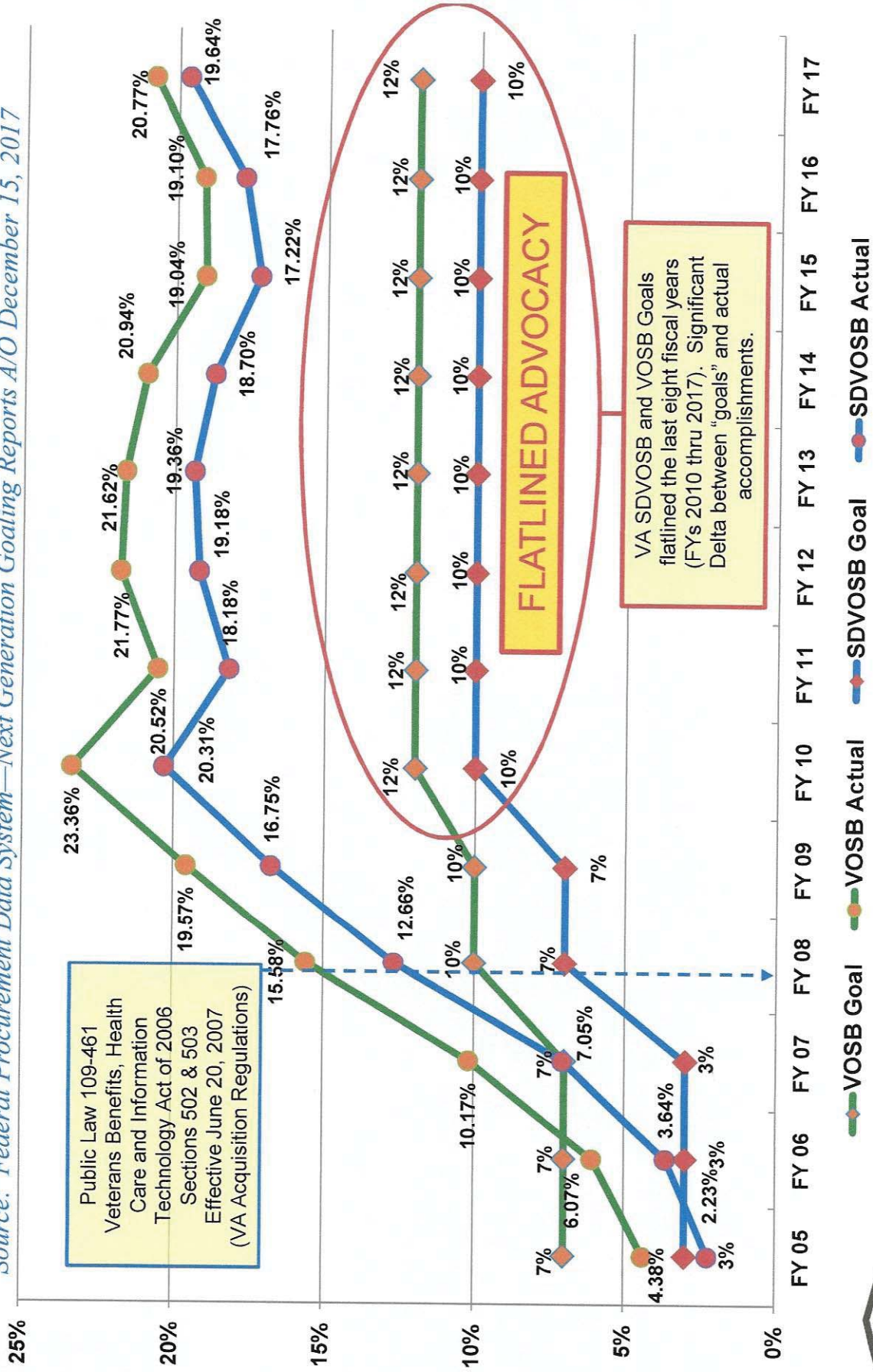
Mr Chairman, Ranking Member, and Members of the Committee this concludes my testimony. I thank you all for your time and interest and am happy to respond to any questions or comments you may have.

## 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 7<sup>th</sup>, 2018
5. Briefing Paper for Veterans Affairs Deputy Secretary, Thomas Bowman, by the National Veteran Small Business Coalition, April 19<sup>th</sup>, 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



## **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.**

### **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.

### *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 oversight of field contracting activities

## *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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## *National Veteran Small Business Coalition*

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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"*

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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 11<sup>th</sup>, 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.

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## *National Veteran Small Business Coalition*

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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.

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## *National Veteran Small Business Coalition*

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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

STATEMENT OF  
SCOTT DENNISTON, EXECUTIVE DIRECTOR  
NATIONAL VETERAN SMALL BUSINESS COALITION  
BEFORE THE  
COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS  
U.S. HOUSE OF REPRESENTATIVES

March 7, 2018

Good afternoon, Chairman Bergman, Ranking Member Kuster, and distinguished members of the Subcommittee. On behalf of the members of the National Veteran Small Business Coalition and all veteran (VOSB) and service-disabled veteran-owned small businesses (SDVOSB) trying to do business with the Department of Veterans Affairs (VA), I sincerely appreciate the opportunity to discuss the proposed pieces of legislation as invited. The National Veteran Small Business Coalition (NVSBC) is the nation's largest non-profit trade association representing veteran and service-disabled veteran-owned small business in the federal marketplace as prime and subcontractors.

I would like to first address HR3497 and HR 4245 dealing with Veterans Electronic Health Records. We believe HR 3497 to allow veterans to use a portable medical records storage system is good news for veterans as it allows easier access to their own personal health records. HR 4245 appears to address Congress' concerns regarding the contract the VA Secretary announced last fall which he intends to award to Cerner to modernization of VA's electronic patient health care record systems. Our concern with this contract is VA has taken a very minimalistic approach to providing subcontracting opportunities for small business, including veteran and service-disabled veteran-owned small business. VA only required the awardee to meet the "minimum goals" of 17% to small business, 5% to SDVOSBs and 7% to VOSBs. Information technology contracts such as this, generally provide many opportunities for prime contractors to subcontract to small business including VOSBs and SDVOSBs. For example, the FY 2018 subcontracting goals established by the U.S. Small Business Administration (SBA) for other agencies include the following:

Department of Defense	33%
Department of Energy	42%
Department of Homeland Security	40%

Also, over the past 10 years VA has NEVER once achieved its subcontracting goal negotiated with SBA. Given VA's poor track record and the lower goals accepted for this contract we implore this committee to include in HR 4245 a provision requiring the Secretary of Veterans Affairs to report to Congress on a quarterly basis the accomplishments against the small business subcontracting goals to include subcontract awards to VOSBs and SDVOSBs.

Next, I would like to address the draft bill regarding VA employees found to have knowingly misused VA purchase cards. The NVSBC is fully supportive of this draft. Abuses of purchase cards has been widespread. This trend will only continue with the recent raising of the limitations on purchases using the cards from \$3,500.00 to \$10,000.00. We have found that many times these issues arise due to poorly written policies and training on the part of VA acquisition leadership, not because VA employees are dishonest people.

The last draft bill you asked me to discuss directs the Secretary of VA to carry out the Medical Surgical Prime Vendor (MSPV) program using multiple prime vendors. Before addressing the specifics of the draft bill I want to share with you our observations having lived the current prime vendor program for the past two years and numerous meetings with both Veterans Health Administration (VHA) and Strategic Acquisition Center (SAC) leadership. The current program is being driven for contracting expediency, not based on clinical input to improve veteran patient care. There is little to no clinical input in our opinion. VHA and the SAC appear to work on conflicting time frames. There is no strategic plan. Determining who is in charge is impossible. The rules of engagement change on a weekly basis as to acquisition strategies to be used. Frankly we wonder how often VHA and SAC actually communicate needs/requirements and solutions. Also, there appears to be much more communication with the large business community than communication with the VOSB/SDVOSB community. Communication with the VOSB/SDVOSB community is after the fact when we are told what will happen as opposed to having an opportunity to make recommendations to improve the process. VA seems to forget, as veterans and users of the VA health care system we have a personal and vested interest in its success. Also, there is little data available as to products, quantities or delivery requirements VA intends to purchase.

The NVSBC, in representing all VOSBs/SDVOSBs trying to do work with VA would be remiss if we didn't again point out the anti-veteran small business positions expressed by VA's senior acquisition official during this Committee's Veterans First Contracting Program Roundtable held on October 11<sup>th</sup>, 2017. That official has publically stated numerous times that VOSBs and SDVOSBs add no value, cost more and are administratively burdensome to work with. He further stated his position that VA should not pay a penny more to buy from a VOSB or SDVOSB. This culture as well as the policies implemented by VA limit the opportunities for VOSBs and SDVOSBs to work at VA and fly in the face of the VETS First Contracting Program as well as the U.S. Supreme Court decision in *Kingdomware*. Bottom line; there is a toxic culture in VA, particularly in VA Central Office to working with the veteran small business community.

In the fall of 2017 when we learned the SAC intended, under MSPV 2.0, to award one contract for the MSPV 2.0 program we were appalled. Particularly when we learned the contract would require the MSPV 2.0 contractor to also determine the formulary of products and to also purchase all products to be included on the formulary. We asked what part VOSBs and SDVOSBs would play in MSPV 2.0 and were told they would be subcontractors to the MSPV 2.0 prime. When asked how VETS First would apply to MSPV 2.0 we were told it doesn't as VOSBs and 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 and SDVOSBs to subcontractors allows VA to avoid the issue of a waiver of the SBA "Non-Manufacturer Rule ". VA has established a policy of requiring HCA approval prior to any contracting officer requesting a waiver from SBA. WE believe this policy to be in direct violation of the Small Business Act. We also know of and appreciate this

Committee's concern over this overly burdensome requirement which we believe is another attempt by VA to circumvent VETS First.

We support the Committee's position that VA cannot have just one prime vendor. Our experience in the private sector is commercial hospital systems are members of a number of "Group Purchasing Organizations (GPOs). This allows for flexibility of products as well as guarantees product availability while at the same time taking advantage of volume discounts. Commercial hospital systems have learned they need flexibility which doesn't come from a one supplier solution. We believe VA needs to develop a similar concept. As I stated previously, VA's plan seems to be driven for the benefit of the contracting process, not the needs of veteran's healthcare needs. We also do not understand why VA does not use the VA Federal Supply Schedule (FSS) contracts as a starting point for formulary products. FSS contracts by definition are considered "fair and reasonable" prices. VA, as well as the large and small business community has put tremendous effort into the success of the FSS program. We do not understand why VA appears to be abandoning FSS?

We fully support the draft bill provisions that the prime vendor should not be the decider of the formulary nor of the suppliers of the products. We strongly suggest this Committee direct VHA and SAC leadership to define requirements, develop a process for clinical input and develop a strategic plan for moving forward with MSPV 2.0. The plan must include how VA intends to provide opportunities for VOSBs and SDVOSBs as required by VETS First. This plan should then be shared with industry, large business and small business for comments and suggestions. We believe this will provide better outcomes for all parties.

During this Committee's roundtable on the VETS First program on October 11th, 2017, Chairman Bergman invited participants to provide recommendations to the Committee for improving VETS First at VA. NVSBC provided 8 specific recommendations in a letter to this Committee dated October 17, 2017. These recommendations are still relevant today and I would encourage the Committee to consider the recommendations moving forward. I have provided a copy of our letter with my testimony. We are also available to meet and discuss any of the recommendations with any member of the Committee.

I also want to bring to the Committee's attention a solution to the micro-purchase program NVSBC has been developing for the past year. VA, buy their own statistics spends approximately \$4 billion per year under micro-purchases using purchase cards. In the future this amount will sky rocket as the micro-purchase threshold in VA is being raised from \$3,500 to \$10,000. VA policy exempts micro-purchases from the VETS First program. This is in spite of the U.S. Supreme Court decision in Kingdomware where the court determined all "contract actions" are subject to VETS First. Micro-purchases meet the Federal Acquisition Regulations (FAR) definition of a "contract action".

Over the past year, NVSBC has met with VA leaders from VHA, SAC, and the Office of Small Business Programs (OSDBU) to discuss how to provide more micro-purchase opportunities to the VOSB and SDVOSB community. 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 "Go VETS". Our vision is all VA verified VOSBs and SDVOSBs who can provide products to VA under the micro-purchase threshold will upload their products on the platform. VA purchasing personnel with then have a "one stop, easy button" to purchase products, using their purchase cards, from verified VOSBs and SDVOSBs. We are starting in the medical products area as it represents the greatest spend and VA is currently buying many of these products from the 4 current Medical Surgical Prime Vendors, and many

times at inflated costs. As we fine tune the platform other product lines will be added from verified VOSBs and SDVOSBs. As you can imagine we have overcome many obstacles to get to this point, but we are optimistic we can have "Go VETS" operational in 90 days. We are also encouraged by the fact that many VA officials with whom we have discussed this platform over the past year are warming to the idea and see its value. We are happy to demo "Go VETS" to the Committee as well as provide updates on our progress. We are very excited by the potential to provide many more opportunities to VOSBs and SDVOSBs.

Mr. Chairman, Ranking Member, and Members of the Committee, this concludes my statement. Thank you for the opportunity to testify before the Committee today. I am happy to respond to any questions or comments you may have.



## BRIEFING PAPER

Title: Medical/Surgical Prime Vendor (MSPV) Contract Modification

Prepared for: Thomas Bowman, Deputy Secretary, Department of Veterans Affairs

Prepared By: Scott Denniston, Executive Director, National Veteran Small Business Coalition

**ISSUE:** On April 12<sup>th</sup>, 2018, VA's Strategic Acquisition Center (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. Indeed, one of those large entities has been recently portrayed in numerous press accounts as having contributed significantly to the national opioid crisis on the basis of distribution practices that favored their bottom-line over the public interest. Yet, VA now intends to rely on this firm and other similarly situated distributors to determine which vendors get to supply product to VA, and at what price.

**BACKGROUND:** In 2016, the SAC and 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, a division of Cardinal Health, 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.

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 as identified below:

1. Determining suppliers and prices paid are inherently governmental functions which it is not in VA's best interest to contract out. FAR 7.503(c)(12) forbids VA from contracting this function out.

2. All current product suppliers will be required to negotiate 4 separate contracts with each of the 4 prime vendors. VA may end up with different prices for the same products. This does not allow VA to aggregate volume purchasing to get better prices. Some current suppliers may not want to be relegated to subcontractors without the protections the FAR allows for prime contractors, and decide to ignore the VA market which could impact patient care.
3. VA and the contractor community have invested heavily in the Federal Supply Programs. VA receives a very valuable industrial funding fee when facilities use the FSS contracts. These funds will be eliminated under MSPV.
4. Conflicts of interest will arise as several of the current prime vendor contractors have their own branded products which provide them more profit. There is no requirement for prime vendors to compete the opportunities under this proposal so prime vendors will give VA what is best for them, not what is best for VA.
5. Conflicts of interest will also arise because two of the prime vendors are large commercial product distributors that maintain extensive commercial "rebate" agreements with med-surg product manufacturers and suppliers. These rebate agreements will continue and there is nothing to prevent these prime vendors from selecting VA suppliers on the basis of which suppliers provide them the greatest level of rebates.
6. SAC has stated one of the reasons for this process is to eliminate protests. Most of the protests filed against the SAC's contract actions to date have been upheld by GAO. Also, GAO will accept protests on modifications to existing contracts which is this case.
7. The FAR requirements for competition are being ignored as there is no requirement to compete the items provided to VA.
8. The FAR has specific requirements which must be met for brand name products, all of which are being ignored under this modification. As examples, the product list requires a sole source brand name requirement for an 8 ounce plastic cup from SOLO, AA alkaline batteries from Gillette, Duracell and Energizer, and medical dressings from Jiangsu Province in China.
9. VETS First and the US Supreme Court decision in Kingdomware are being circumvented as the SAC relegates all suppliers to subcontractor status knowing there are adequate service disabled and veteran owned small businesses to compete for most of the products affected by this modification.
10. FAR requires "maximum practicable opportunity" for all small businesses to compete as prime and subcontractors. FAR also requires a subcontracting plan to meet this objective. Subcontract plans are normally negotiated prior to contract award when the government had leverage to protect subcontractors. As this is a modification the SAC has no leverage to obtain an adequate subcontract plan.
11. Over the past 10 years VA has NEVER achieved a subcontracting goal negotiated with the U. S. Small Business Administration. The SAC has no plan to develop, monitor or levy penalties against the prime vendors for not subcontracting with small businesses, particularly veteran and service disabled veteran owned small businesses.
12. SAC has ignored FAR requirements to provide justification to SBA when an acquisition strategy will result in "bundling" which will consolidate contract opportunities which are unsuitable for award to small business. SBA has not been consulted prior to issuing this modification.

13. The J&A states this modification will save \$32 million over 24 months. A "Cost Benefit Analysis" to support this analysis has never been made public. The savings are less than 2% of the expected total cost of the contract. Also, the distribution fees paid to the prime vendor for the additional distribution of products will more than offset the projected savings.
14. The SAC expects this modification to be effective in July. If the SAC in over 3 years has only made 6500 items available under the formulary, do the current prime vendors have the necessary staff and systems to add an additional 30,000 items in 3 months?
15. The J&A states that only the current 4 prime vendors can do this work and that no other source has expressed a written interest in the acquisition. As there was no public notice how could anyone express interest or concerns?
16. Prior to the SAC's participation in the MSPV program, it was operated successfully for many years by the VA's National Acquisition Center (NAC), which also manages VA's vast suite of Federal Supply Schedule (FSS) contracts. Unfortunately, the SAC was stood up with no true role to perform and an operational decision was made to transfer the MSPV program from the NAC to the SAC. The SAC elected to separate its MSPV program from the FSS contracting program, even though the FSS program ensures VA was receiving demonstratively reasonable pricing based on in-depth disclosures by FSS suppliers. Having failed in its own strategy, the SAC should return to the origins of the MSPV program and realign with the FSS program to serve the interests of veterans and taxpayers. Virtually all sectors of industry and their advocates would prefer a return of the MSPV program to its origins and to utilize FSS pricing to populate a MSPV formulary.

**CONCLUSION:** This J&A is fatally flawed and proposes a flawed acquisition strategy.

**RECOMMENDATION:** Cancel the J&A and modifications immediately. Establish dialogue with industry, including the veteran and service disabled veteran owned small business community to develop a strategy that truly ensures effective pricing to VA, through either the engagement of GPO experts or reliance on the proven FSS contracting models, to support VA, the veteran community and the public.