

National Veteran Small Business Coalition



“One Cause, One Voice”

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Scott Denniston, Executive Director

Headquarters

Headquarters
14001-C St. Germain Drive, #652
Centreville, VA 20121

703-282-4140
www.nvsbc.org

January 17, 2020

Dear Senator Moran,

On December 18th, 2019 the National Veteran Small Business Coalition (NVSBC) wrote to you expressing our opposition to H.R. 4920, Department of Veterans Affairs Contracting Preference Consistency Act. This bill, as proposed, not only turns back efforts over the past 10 years to have the Department of Veterans Affairs comply with Public Law 109-461, commonly known as “VETS First”, but also will put veteran-owned small businesses out of business thru no fault of their own. Veteran-owned small businesses also hire many veterans. These veterans will become unemployed as a result of H.R. 4920. We also know that veteran-owned small businesses provide better value to the VA, including better prices while at the same time providing employees better wages.

As the Chair of the Senate Committee, charged with helping veterans successfully transition into private life, our members, all veteran small business owners, can’t understand why the Committee charged with advocating for veterans would even consider a bill which has the opposite effect. “VETS First” was established to provide contracting opportunities to service-disabled veterans and further expand job opportunities for veterans. Please, do not eliminate these opportunities now!!

As we explained in our letter of December 18th, we believe both Ability One and “VETS First” are valuable programs. We also believe compromise language can be added to H.R. 4920 so as not to hurt veteran-owned small businesses. Attached is a “White Paper” for your consideration which contains such language.

Also, attached is a “White Paper” on the impediments veteran small businesses face attempting to contract with VA under “VETS First”. We would ask your committee to hold discussions on these challenges facing veteran small businesses every day.

Respectfully,

Scott Denniston
Executive Director
National Veteran Small Business Coalition

Attachments: NVSBC Letter of December 18, 2019

“White Paper: H.R. 4910

“White Paper”: VETS First at VA

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December 18, 2019

Honorable Jerry Moran
United States Senate
521 Dirksen Senate Office Building
Washington, DC 20510

Dear Senator Jerry Moran,

The National Veteran Small Business Coalition (NVSBC) is the nation's largest non-profit trade association representing veteran and service-disabled veteran-owned small businesses in the federal marketplace as prime and subcontractors. On December 16th, 2019 the House of Representatives passed H.R. 4920, Department of Veterans Affairs Contracting Preference Consistency Act.

NVSBC is very opposed to H.R. 4920's current language. The bill not only turns back efforts over the past 10 years to have the Department of Veterans Affairs comply with Public Law 109-461, commonly known as "VETS First", but also has the potential to put veteran-owned small businesses out of business thru no fault of their own. VETS First was upheld by the U.S. Supreme Court in 2016 in *Kingdomware Technologies, Inc. v. United States*.

Now H.R. 4920 proposes to take opportunities away from service-disabled veteran-owned small businesses in favor of Ability One. While Ability One helps an underserved population the mission of VA is to "Care for Those Whom Bore the Battle". VETS First was established to provide contracting opportunities to service-disabled veterans and further expand employment opportunities for all veterans. Ability One as identified in FAR Part 8 continues to be afforded a higher contracting preference for the rest of the federal government. Service-disabled veterans who followed the rules as developed should not now have contracting opportunities taken away from them thru no fault of their own, especially at the VA. H.R. 4920 will jeopardize the future of many service-disabled veteran-owned small businesses.

We believe compromise language can be added to H.R. 4920 to ensure that service-disabled veteran-owned small businesses are not hurt and that opportunities will continue to exist for Ability One. We are happy to work with you and your staff to make that happen.

However, we urge you to oppose H.R. 4920 with its current language.

Respectfully;

Scott Denniston
Executive Director
National Veteran Small Business Coalition (NVSBC)

National Veteran Small Business Coalition

ISSUE PAPER

H.R. 4920: “Department of Veterans Affairs Contracting Preference Consistency Act”

BACKGROUND: The Javits, Wagner, O’Day Act (JWOD) of 1938 provides a contracting preference in federal contracting for organizations which employ disabled individuals. The organizations are commonly referred to as “Ability One”. Under Federal Acquisition Regulations (FAR) Part 8, “Required Sources of Supplies & Services”, “Ability One” is a “mandatory Government source” meaning “Ability One” has a government-wide preference above any commercial sources of supplies or services.

P.L. 109-461: “Veterans Benefits, Healthcare & Information Act of 2006”, establishes a contracting preference only at VA for service-disabled veteran owned small businesses (SDVOSBs), commonly referred to as “VETS First”. “VETS First” requires VA to conduct “market research” to determine if verified SDVOSBs existed to provide VA products and services at “fair and reasonable” prices. If so, competition is limited to verified SDVOSBs.

The U.S. Supreme Court ruled unanimously in *Kingdomware Technologies, Inc. vs. United States*; 14-916 (June 6, 2016) that VETS First applied to all VA contract actions. Since passage of P.L. 109-461, elements of VA have actively worked to hinder the implementation of VETS First. On October 17th, 2018 the U.S. Court of Appeals for the Federal Circuit ruled in *PDS Consultants vs. United States*; 17-2379, that VETS First has priority over “Ability One” at VA.

Since the establishment of VETS First at VA, many veterans have formed small businesses to support the VA mission. The vast majority of SDVOSBs have a policy of hiring other veterans. If H.R. 4920 is passed with its current language SDVOSBs will be precluded from competing for the supplies and services they are currently providing to VA. This will result in SDVOSBs going out of business and veterans losing employment opportunities through no fault of their own.

It is interesting to note that on January 3rd, 2020, “Ability One” published in the Federal Register a proposal to add “Fourth Party Logistics (4PL) Services & Logistics Support Services” for Department of Defense to its procurement list. This service will more than make up for any potential job loss or revenue to “Ability One” that may be lost at VA.

SOLUTION: Both “Ability One” and “VETS First” are worthy programs! There are more than enough opportunities for each program to participate in VA acquisitions. The objective should be to NOT negatively impact any “Ability One” organization or a service-disabled veteran owned small business.

Language must be added to H.R. 4920 which protects currently established SDVOSBs. Suggest the following:

Any product or service on the “Ability One” procurement list, currently being provided by a verified service disabled veteran owned small business shall continue to be subject to Section 8127 of title 38, United States Code, until such time as VA determines through market research that service-disabled veteran owned small businesses do not exist to meet VA’s needs.

If an Ability One entity uses a distributor to distribute products to VA, the distributor shall be a verified service-disabled veteran owned small business.

ISSUE PAPER

“VETS First” at Department of Veterans Affairs

BACKGROUND: Public Law 109-461, “Veterans Benefits, Healthcare & Information Technology Act of 2006”, enacted December 22, 2006, establishes a contracting preference only at VA for service-disabled veteran and veteran-owned small businesses (SDVOSBs), commonly referred to as “VETS First”. “VETS First” requires VA to conduct “market research” to determine if verified SDVOSBs exist to provide VA products and services at “fair and reasonable” prices. If so, competition is limited to SDVOSBs.

Since passage of P.L. 109-461, certain elements of the VA have actively worked to hinder the implementation of “VETS First”. Strategies have included establishing more restrictive specifications, not conducting adequate market research, using other agency contract vehicles, requiring SDVOSBs to provide the “lowest price” as opposed to a “fair & reasonable” price, and establishing policies to preclude “VETS First” from applying to certain types of procurements (micro-purchases). This has resulted in numerous protests to the General Accountability Office. Most of these protests have been found in favor of the SDVOSBs. VA has consistently ignored GAO decisions.

The U.S. Supreme Court ruled unanimously in *Kingdomware Technologies, Inc. vs. United States*; 14-916 (June 6, 2016) that “VETS First” applied to all VA contract actions. On October 17, 2018, the U.S. Court of Appeals for the Federal Circuit in *PDS Consultants vs. United States*; 17-2379, also ruled that “VETS First” applies to ALL VA contract actions. Unfortunately, VA continues to find ways to circumvent “VETS First”.

SOLUTION: Congress must pass a “Fairness to SDVOSBs Act” which prohibits VA from circumventing “VETS First”. The act must include as a minimum the following provisions:

1. Establish that micro-purchases and simplified acquisitions are subject to “VETS First”.
2. Establish a 10% Price Differential for SDVOSBs in all unrestricted procurements by VA and agencies contracting for VA.
3. Prohibit VA from using a “Tiered Evaluation” acquisition strategy, unless VA considers only offers from SDVOSBs first and determines them to not be “fair and reasonable” prior to considering offers from non-SDVOSBs.
4. Prohibit VA from using other government agencies or contract vehicles if “VETS First” is not applied. Require VA to ensure compliance with “VETS First” on all contract vehicles regardless of the which agency, or office makes the award.
5. Prioritize SDVOSB manufacturers over all other offerors regardless of size.
6. Establish a “Go VETS” pilot to determine cost effectiveness of using the electronic ordering platform to purchase micro-purchases from verified service disabled veteran owned small businesses.