

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.