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PROCUREMENT TECHNICAL ASSISTANCE CENTER - CONNECTING BUYERS & SUPPLIERS

Progress Through Regional Cooperation In The Alleghenies

Issue No.
08-15

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Upcoming Events with SAP&DC's PTAC...

As part of our continuing efforts to bring Government Contracting knowledge to our region, the PTAC at SAP&DC is proud to announce the following events in the second half of 2015:

PennDOT Small Business Enterprise (SBE) Program - September 29, 2015: This event will cover the ins and outs of doing business with PennDOT and marketing your company under this program. Hosted by the Southern Alleghenies PTAC, JARI PTAC, and the SEDA-COG PTAC, it will feature a presentation by Mark Corbin of Cheney University, and the PennDOT SBE Supportive Services Center. It will take place in State College, and the cost is free. Registration will be needed, because seating will be limited. Stay tuned for a link!

PA COSTARS - October 6, 2015: A reprise of a presentation done in 2014, a representative from the

Will The Supreme Court Put "Veterans First" In The Kingdomware SDVOSB Case?

Is the Department of Veterans Affairs required to prioritize service-disabled veteran-owned small businesses ("SDVOSBs") when it buys supplies and services? That, essentially, will be the question before the Supreme Court when it takes up the case of *Kingdomware Technologies, Inc. vs. United States*. On June 22, the Supreme Court [agreed to hear the case](#).

The Supreme Court's decision in *Kingdomware* will end a long-running battle between the VA and various SDVOSBs, which have accused the VA of creating loopholes to avoid a statutory contracting preference for veterans. Hopefully, the Court will get it right. As a matter of policy and law, the underlying decision of the U.S. Court of Appeals for the Federal Circuit is fundamentally flawed.

The VA Act and the GAO Cases

The Veterans Benefits, Health Care and Technology Act of 2006 (the "VA Act") directed the VA to prioritize SDVOSBs and VOSBs in agency contracting. The VA Act directed the VA to establish annual goals for contracting with SDVOSBs and VOSBs. The VA Act then establishes a contracting preference for SDVOSBs and VOSBs, codified at [38 U.S.C. § 8127\(d\)](#):

(d) Use of Restricted Competition. - Except as provided in subsections (b) and (c), for purpose of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department 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.

Elsewhere, the statute specifies that SDVOSBs are to be given top priority under this "rule of two" process; VOSBs have the second highest-priority.

The SDVOSB and VOSB priorities created under the VA Act were widely viewed as a "Veterans First" policy under which

Pennsylvania Dept. of General Services COSTARS Program will speak and give a half-day class on the program and how it can benefit your company. It will take place in State College, and the cost is free. [Registration can be found here.](#) and seating will be limited.

Fulton County Government Contracting 101, Part 2 - Date T/B/D Stay tuned for more information!

We will make social media announcements, email blasts, and web site changes for these events. If you have any questions on these, or have suggestions for other outreaches, please contact James Gerraughty, PTAC Program Manager, at jgerraughty@sapdc.org or (814) 949-6528.



Try GSA for Your Nuptial Needs

June being wedding season, you or a loved one may require a lacy white gown. Why not shop at the General Services Administration?

On Wednesday, the agency's Atlanta regional office launched a two-week "Down the Aisle Extravaganza" to [auction](#) off 3,000 items perfect for nuptials. The must-go inventory includes wedding gowns, fine jewelry, tuxedos, formal dresses and retail furnishings seized by the U.S. Marshals Service.

The items were reportedly from an Alaska bridal shop that was a criminal front and are now part of GSA's Personal Property Management program used by many agencies.

veteran-owned businesses would be preferred for all VA procurements. The only problem: the VA didn't see it that way.

Instead of applying the "rule of two" across the board, the VA took the position that it could buy goods and services using the Federal Supply Schedule without first considering SDVOSBs or VOSBs. The VA's position enabled the VA to circumvent SDVOSBs and VOSBs whenever goods or services were available on the FSS.

Inevitably, bid protests came. The first to result in a published decision as the protest of Aldevra, a SDVOSB based in Michigan. In 2011, Aldevra filed two bid protests with the U.S. Government Accountability Office ("GAO"), complaining that the VA had violated the law by seeking to procure certain kitchen equipment off the FSS, without first applying the "rule of two."

In [Aldevra, B-405271, B-405524 \(Oct. 11, 2011\)](#), the GAO held that "[w]e see nothing in the VA Act or the [VA Acquisition Regulations] that provides the agency with discretion to conduct a procurement under FSS procedures without first determining whether the acquisition should be set aside for SDVOSBs." The GAO wrote that the law was "unequivocal; the VA 'shall' award contracts on the basis of competition restricted to SDVOSBs where there is a reasonable expectation that two or more SDVOSBs will submit offers and award can be made at a fair and reasonable price." The GAO sustained Aldevra's protests and recommended that the VA cancel its solicitations and re-solicit its requirements using a SDVOSB set-aside if appropriate.

The VA refused.

Although the GAO's decisions are technically "recommendations," procuring agencies almost always follow them. Not this time. The VA stuck to its guns and continued to insist that it had the right to procure goods and services from the Schedule without first applying the "rule of two" preference for SDVOSBs and VOSBs.

Two months after the Aldevra decision was issued, Kingdomware Technologies got into the action for the first time. Kingdomware, a Maryland-based SDVOSB, filed a protest complaining that the VA had failed to apply the "rule of two" in a solicitation seeking subscription and support services at the VA San Francisco Medical Center. In [Kingdomware Technologies, B-405727 \(Dec. 19, 2011\)](#), the GAO sustained Kingdomware's protest. The GAO again recommended that the VA re-solicit its requirement; again, the VA ignored the GAO's recommendation.

Over the ensuing months, the GAO sustained several more protests and the VA kept refusing to implement the GAO's recommendations. Finally, Kingdomware took the VA to federal court. Unlike the GAO, the Court of Federal Claims has the authority to issue injunctions; the VA could not simply ignore the Court if it ruled in Kingdomware's favor. But unfortunately for Kingdomware - and SDVOSBs everywhere - that didn't happen.

The COFC and Federal Circuit Decisions

In [Kingdomware Technologies, Inc. v. United States, No. 12-173C \(Fed. Cl. 2012\)](#), Judge Nancy Firestone held that the VA had reasonably interpreted the VA Act. Judge Firestone held that the VA Act must be construed in light of its "goal-setting provisions" and thus the statute is "at best ambiguous" as to whether it mandates a preference for SDVOSBs and VOSBs for

Available individually or in lots are:

- Wedding gowns with starting bids as low as \$46;
- A 3-carat diamond & platinum engagement ring;
- Formal wear for men, women & children;
- A Louis Vuitton travel bag;
- Veils & tiaras
- Wedding bouquets, stationary & decorations;
- Camera equipment
- Mannequins & wall racks

Karen Warrior, regional personal property management director for GSA's Southeast Sunbelt Region, said the "wedding collection is a great example of the unique treasures we sell for federal agencies everyday on GSAAuctions.gov."

[Article posted courtesy of Charles S. Clark, Government Executive](#)

GSA exceeded subcategory prime small business contracting goal, received top grade from SBA

The Government Services Administration awarded \$1.5 billion in contracts to small businesses in fiscal 2014, with the Small Business Administration giving the agency an "A" grade for its efforts, says a June 29 GSA statement.

Government-wide, agencies are given goals by the SBA to direct a certain percentage of prime contracting and subcontracting dollars to small businesses, then SBA grades the agencies on their performance.

Those grades are based 80 percent on the number of prime contractor dollars agencies have

all VA procurements." Judge Firestone acknowledged that the 2006 VA Act uses the phrase "shall award" in one place, but held that this phrase "must be read in connection with the other terms in the 2006 Act, which demonstrate that the Act is goal-setting in nature."

In sum, Judge Firestone held: "the court respectfully disagrees with the GAO's interpretation of the 2006 Act in the case at hand, and finds that the VA's decision not to set aside the ENS contract at issue was not arbitrary, capricious, or contrary to law." Judge Firestone awarded summary judgment in favor of the VA.

Kingdomware appealed to the Federal Circuit. There, a three-judge panel [upheld Judge Firestone's decision](#) on a 2-1 vote.

The majority focused on the statutory phrase "for purpose of meeting the goals under subsection (a)." The majority agreed with the VA that the rule of two is "the required procedure for meeting these goals." The majority continued, "[a]ccordingly, the agency need not perform a VOSB Rule of Two analysis for every contract, as long as the goals under section (a) are met."

Judge Jimmie Reyna issued a strong dissent. Judge Reyna wrote that "[t]he plain language of the 2006 Veterans Act unambiguously requires VA contracting officers to conduct a Rule of Two analysis in every acquisition and does not exempt task or delivery orders under the [FSS] from this imperative." Judge Reyna wrote that the majority's opinion "guts the Rule of Two imperative of its full force and effect...."

With respect to 38 U.S.C. § 8127(d), Judge Reyna stated that "[t]he statutory provision at issue could not be clearer. It provides that contracting officers 'shall award contracts' on the basis of restricted competition whenever the contracting officer has a reasonable expectation that the Rule of Two will be satisfied." Judge Reyna pointed out that "the word 'shall' is ordinarily the word of command" and that when it is used in a statute, it is usually "mandatory." Judge Reyna concluded that the majority's opinion "undermines" the purpose of 38 U.S.C. § 8127(d) and renders it "superfluous" by interpreting the statute no differently than the VA's existing Rule of Two obligation under the FAR.

Will the Supreme Court Put "Veterans First"?

The June 22 announcement that the Supreme Court will hear Kingdomware's case gives renewed hope that the judicial system may yet get this one right. As Judge Reyna persuasively argued, the Federal Circuit majority (and Judge Firestone) were wrong on the policy, and wrong on the law.

The VA has a special relationship with all veterans, and especially those who are disabled because of their service. By imposing the "rule of two," I believe the Congress intended to require the VA to sue SDVOSB and VOSB sources whenever two or more responsible, reasonable SDVOSB and VOSB sources were available. The Federal Circuit majority allows the VA to depart from this preference any time that its "goals...are met." But a goal is nothing more than a minimum acceptable standard. The preference established in the standard requires the VA to do much more than be minimally acceptable; it requires the VA to contract with veteran-owned companies whenever possible.

steered toward small businesses, 10 percent for subcontractors and 10 percent on subjective categories such as leadership and data quality.

The GSA [says](#) it exceeded all of its subcategory prime contracting goals as well as its main goal of sending 25 percent of its total contracting dollars to small businesses.

Small businesses accounted for nearly half of GSA-funded contract dollars, 80 percent of all vendors on GSA Schedules and 34 percent of all dollars awarded, the statement says.

And to improve subcontracting performance, GSA developed and implemented a dashboard to track ongoing subcontracting performance and target goals that everyone in the agency could see.

Article posted courtesy of Ryan McDermott, FierceGovernment

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The majority's opinion is convoluted and impractical. For one, who decides whether the VA's "goals are met," and when? Official SBA report cards for each fiscal year ordinarily are not issued until many months after that fiscal year closes. Are Contracting Officers supposed to use outdated goaling data from previous fiscal years to make set-aside choices? Or are they supposed to attempt to obtain real-time data about the VA's current progress toward its goals? The majority doesn't say.

What if the VA meets its goals in one fiscal year, but not the next? In such a case, a "rule of two" preference might apply, for instance, in 2017 but not in 2018. Or what if the VA is required to use real-time data, and progress toward its goal rises and falls throughout the year? In this scenario, the "rule of two" might apply to a procurement issued on Monday, but not one issued on Wednesday. Did Congress really intend the SDVOSB and VOSB preference to be switched on and off like this?

Another problem with the majority's decision: the "rule of two" set forth in the VA Act is not exactly The Small Business Act includes a goal setting component for small businesses and various socioeconomic subcategories of small businesses. For example, the [current government-wide goal](#) for small business prime contracting is 23%. The FAR, in turn, uses a "rule of two" formula to prioritize small business acquisitions. Under [FAR 19.502-2](#), a contracting officer shall set-aside any acquisition over \$150,000 for small businesses where there is a reasonable expectation that offers will be obtained from at least two responsible small businesses at fair market prices. An even stricter standard is set forth for acquisitions between \$3,000 and \$15,000. And yet, although the Government [met its 23% small business goal](#) in the last reported fiscal year, no one is contending that the Government is now somehow exempt from the small business "rule of two" under the FAR. Instead, it is universally understood that 23% is the minimum acceptable threshold and that the "rule of two" continues to apply even in years following those in which the Government met its goals.

Similar "rules of two" are set forth in the FAR to establish when competitive set-asides are appropriate in the 8(a) Program ([FAR 19.805-1\(a\)](#)); HUBZone Program ([FAR 19.1305\(b\)](#)); Women-Owned Small Business Program ([FAR 19.1505\(b\)](#) and [\(c\)](#)); and the SBA's separate SDVOSB program ([FAR 19.1405\(b\)](#)). In none of these other "rules of two" is there any hint of a link between the effectiveness of the rule and the agency's satisfaction (or lack thereof) of its relevant goals. It is likely that Congress had FAR 19.502-2 and these other "rules of two" in mind when it drafted the VA Act.

Hopefully these policy and legal considerations will be on the Supreme Court's mind when it takes up the case. Perhaps now-nearly four years after the first *Aldevra* decision and seven years after the passage of the VA Act-"Veterans First" will finally become a reality.

Article posted courtesy of Steven Koprince, Koprince Law, LLC

Fed contractors: Prepare for September Spending Spree

Federal contractors are getting ready for the fourth-quarter spending spree, a new tradition in government acquisition which has been significant spikes in contracting in the last quarter of the year.

Ten years ago, agencies tended to spend most of their budgets in the first two quarters, Today, sequestration, continuing resolutions and other budgetary issues have resulted in large spending spikes, most notably in September.

"The [term] 'Q4 spending spree' is a misnomer," according to Deltek analyst Carey Webster. The spike is concentrated in the last month of the fiscal year, she said.

While spending in July and August is generally on par with other months throughout the year - between 7 percent and 9 percent of total budgets - September saw spending total an average of 17.6 percent over a five-year average.

Landscaping, interior design and IT professional services are usually the focus of that spending, rather than large programs or O&M, Webster pointed out.

Going by the five-year trend, Deltek analysts expect agencies to spend about \$471 billion this September.

"We continue to see this trend," Webster said during a July 21 webinar. "It's definitely important for contractors to understand which agencies are buying in Q4" and be prepared to respond to RFPs on short notice.

Webster added this is especially important for small businesses, which might not have the resources on hand to respond quickly. Those contractors are advised to be prepared for the September spending spree by having quotes ready for the quick turnaround.

The State Department is historically the biggest Q4 spender, dropping 55 percent of its budget on average at the end of the fiscal year. The Social Security Administration and Interior Department round out the top three, both averaging 48 percent over the last five years.

Contractors are less likely to see a lot of late activity from agencies that focus on larger projects, such as the Energy Department, which averages 16 percent, NASA at 25 percent and HUD, DoD and the Air Force, each at 28 percent.

**Article posted courtesy of
[Aaron Boyd, Federal Times](#)**

About Us

The PTAC at SAP&DC is an economic development entity that bridges the gap between supplier and buyer in the government marketplace. The PTAC stands ready to support businesses in the Alleghenies region in their pursuit to secure contracts with local, state and/or federal government agencies nationwide by:

- Identifying niche government markets and specific contract opportunities
- Assisting with bid and proposal preparation
- Preparing the required vendor registrations
- Navigating your company through the requirements and procedures of government contracting
- Enhancing competition by obtaining applicable socio-economic certifications
- Providing guidance to ensure successful post-award contract performance

Due to the generous support of our Commonwealth and Federal funding partners, services provided by the PTAC are free of charge.

Whether you are an experienced contractor or new to the government marketplace, the PTAC will provide one-on-one counseling utilizing the following program resources to increase your share of contact awards.

PTAC Resources

- Electronic Bid Matching for products and services
- Military/Commercial specifications and standards
- Past procurement information and pricing histories
- State and Federal regulations guidance
- Professional training and outreach events
- Quality assurance and packaging guidance

Contact us today at [The PTAC at SAP&DC](#) to get started!



[Forward this email](#)



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