Kilpatrick

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LOOK OUT VA, is the Kingdomware loop hole about to end?

If you have followed our blog and client alerts, recall that last year the Supreme Court rendered a unanimous decision relating to *Kingdomware Technologies*, in which the VA was found to have violated laws intended to require the VA to use veteran-owned contractors by its using a loophole. That loophole involved utilizing GSA Federal supply schedule contracts to get around a statutory requirement to award contracts to service disabled veteran-owned small businesses and veteran owned small businesses. Yesterday, a bill was submitted in congress entitled the "Ensuring Veteran Enterprise Participation in Strategic Sourcing Act", H. R. 2781. If passed, this bill would require the VA to increase the number of veteran-owned (VOSB) or service disabled veteran-owned small businesses (SDVOSB) that participate in GSA directed government wide contracts or alternatively, to stop using those GSA federal supply service contracts in their entirety. In effect, the VA would be required to work with GSA to try to alleviate this issue and the underlying loophole.

Recall that the Supreme Court unanimously ruled in the June 2016 *Kingdomware* case that the VA was required to give the VOSBs and SDVOSBs a preference for all contracts rendered by the VA and that the department cannot selectively make awards by relying on the "rule of two" - namely that at least two such positioned businesses would likely bid on the contract and offer a reasonable price. By utilizing the GSA contract vehicles, the VA effectively skirted this requirement, by arguing that competition had already occurred through the GSA, and therefore that, by using those vehicles, competition through the use of veteran-owned businesses was not necessary.

The bill is sponsored by representatives Neil Dunn, a Republican and California Democrat Jimmy Panetta.

Personally, rationale dictates that the VA should always consider making awards to its charges, namely veterans and service-disabled veterans. This is a situation that has always confounded me, and now it appears that, hopefully, this bill will place this issue in its grave once and for all.