

Victory! **Supreme Court's decision in** ***Kingdomware Technologies, Inc., v. the United States***

SDVOSBs and VOSBs were big winners recently, as the Supreme Court unanimously ruled that the VA's "rule of two" is mandatory, and applies to all VA procurements—including GSA Schedule orders. This decision was several years in the making and came as a shock to the veteran business community as previous indicators led one to believe that the case would be decided in the Government's favor.

What does it mean for SDVOSBs and VOSBs ?

As we reported recently, the 8-0 unanimous decision by the court means that the VA will be required to finally put "Veterans First" in all of its procurement actions including the federal supply schedules, which is exactly what veterans have been fighting for over the last several years. Despite the absence of a statutory exception for GSA Schedule orders, the VA has long taken the position that it may order off the GSA Schedule without first applying the VA Act's Rule of Two. This practice by the Department of Veterans Affairs has now been ruled incorrect and illegal by the highest court in the land. Immediately after the court's decision a Senate hearing was scheduled to learn what action the VA would take regarding the court's decision. At the hearing, Thomas J. Leney, Executive Director Office of Small and Disadvantaged Business Utilization for the Department of Veterans Affairs, stated that the VA would immediately begin to comply immediately with the Court's decision.

The Office of Small and Disadvantaged Business Utilization, and our counterparts in VA's Offices of Acquisition, Logistics and Construction and General Counsel, are identifying and addressing the policy and operational changes required. While VA's previous policy was found to be consistent with the law by two subordinate Federal courts, *Kingdomware* represents a correction of our understanding of the Veterans First mandate. We have already engaged VA's acquisition workforce with new guidance, focusing most urgently on procurements currently in process, but not yet awarded. VA operates a health care system that must remain staffed and supplied 24 hours a day, seven days a week. Acquisitions to support these activities must proceed without undue delay, while also remaining within legal requirements.

Accordingly, VA acquisition professionals will continue to work diligently on new acquisitions while policymakers fully determine *Kingdomware*'s implications and issue new guidance. In the interim, we have already taken action to address the Court's recent decision. For example, we have modified VA's Procurement Review Policy, issued by my office, to require the review of all procurements not set aside for VOSBs. We have also directed VA's contracting officers to review all active procurements to determine whether VOSBs were appropriately considered in the market research."

Again this is a huge victory for SDVOSBs and VOSBs. The VA had steadfastly asserted that it may order off the GSA Schedule without prioritizing veteran-owned businesses, and now that must change!

The opportunities for veteran owned businesses will grow exponentially with potentially billions of extra dollars flowing to veteran-owned companies. The long battle is over—and SDVOSBs and VOSBs have won their rightful place in the purchasing hierarchy at the VA!

Please join us for a webinar on August 11th at 10 am PDT
Supreme Court Decision: Next Steps for Veteran Owned Businesses

**presented by long time Veterans Advocate and VA contracting
Expert
Maggie Bullard-Marshall**

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