The Supreme Court of the United States doesn't often agree to hear government contracts cases, but when it does then its opinion becomes the law of the land. Recently SCOTUS agreed to hear a bid protest case and **its opinion** established how the Veterans Administration (VA) will decide to award contracts to service-disabled and other veteran-owned small businesses. The opinion was good news for those small businesses.

Various statutes pertaining to the VA require that "a contracting officer 'shall award contracts' by restricting competition to veteran-owned small businesses if the officer reasonably expects that at least two such businesses will submit offers and that 'the award can be made at a fair and reasonable price that offers best value to the United States.'" That requirement is known as the "Rule of Two."

According to the SCOTUS case summary—

In 2012, the Department procured an Emergency Notification Service for four medical centers for a one-year period, with an option to extend the agreement for two more, from a non-veteran-owned business. The Department did so through the Federal Supply Schedule (FSS), a streamlined method that allows Government agencies to acquire particular goods and services under prenegotiated terms. After the initial year, the Department exercised its option for an additional year, and the agreement ended in 2013.

Petitioner Kingdomware Technologies, Inc., a service-disabled veteran-owned small business, filed a bid protest with the Government Accountability Office (GAO), alleging that the Department procured multiple contracts through the FSS without employing the Rule of Two. The GAO determined that the Department's actions were unlawful, but when the Department declined to follow the GAO's non-binding recommendation, Kingdomware filed suit …. The Court of Federal Claims granted summary judgment to the Government, and the Federal Circuit affirmed, holding that the Department was only required to apply the Rule of Two when necessary to satisfy its annual [socioeconomic] goals.

In a unanimous opinion, SCOTUS held that the statutory language was unambiguous. The language required the VA to use the Rule of Two before contracting under competitive procedures. The Rule of Two is not discretionary; it may not be waived even if the Department has already met its annual socioeconomic goals. Before opening a full and open competition, a

VA Contracting Officer must first conduct market research in order to determine whether or not there are at least two service-disabled veteran or veteran-owned small businesses that can perform the work and will submit offers than can be found to be fair and reasonable. If the CO determines there are at least two such small businesses, then the procurement must be "set aside," or restricted, such that only service-disabled veteran or veteran-owned small business may submit proposals for the contract.

The only exceptions to the foregoing are those in the statute itself, which provide that the VA may use noncompetitive procedures and sole-source contract awards for lower-value contract awards (which we believe means awards below the simplified acquisition threshold). In particular, SCOTUS held that orders under FSS contracts were not exceptions (as the VA had argued) and were thus subject to the Rule of Two.

If you are a service-disabled veteran-owned small business, or simply a veteran-owned small business, and you sell goods or services to the Veterans Administration—or want to sell goods or services to the Veterans Administration—then this SCOTUS opinion is excellent news. You need to make sure that you are on the appropriate VA list of SDVOSBs and VOSBs with all your NAICS codes, so that you can be positioned to submit responsive bids when you receive a call or email from a Contracting Officer. And make no mistake, you will be receiving communications—because the VA has to comply with this SCOTUS ruling.