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Mr. Jan R. Frye
Deputy Assistant Secretary
Office of Acquisition and Logistics (049)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Mr. Craig Robinson
Executive Director and Chief Operating Officer
National Acquisition Center (049A1)
Department of Veterans Affairs
P.O. Box 76, Building 37
Hines, Illinois 60141

Re: VA OIG Report No. 05-01670-04 – "Special Review of Federal Supply Schedule Medical Equipment and Supply Contracts Awarded to Resellers"

Dear Messrs. Robinson and Frye:

This firm and the undersigned represent Buffalo Supply, Inc. ("BSI"), an award-winning, women-owned small business which resells medical equipment to a variety of public sector and private customers. We have been asked by BSI to review and comment on the above-referenced report, issued by the Department of Veterans Affairs Office of Inspector General ("VA OIG"), and to provide our observations to you. BSI particularly asked that we communicate with you concerning the legality of certain of the recommendations made by the VA OIG in the report.

As detailed below, while two of the VA OIG recommendations are welcome improvements to the VA contracting process, others plainly contravene law, regulation and the VA's delegation of procurement authority ("DPA") from the General Services Administration ("GSA") to operate certain federal supply schedules ("FSS"). Moreover, the VA OIG's recommendations reflect a decade-old campaign to eliminate many small business resellers from the FSS marketplace – a campaign that has been rejected by Congress, is wholly inconsistent

with GSA FSS policy and practice and, sadly, has been fostered by distortions and half-truths such as those that appear in the above-referenced report.[1]

We provide our observations below. Initially, we provide information to correct and supplement the factual record created by the VA OIG to support its recommendations. Thereafter, we explain why certain of the VA OIG's recommendations violate the law, regulation and the DPA. We urge that the National Acquisition Center ("NAC") and the Department as a whole carefully consider the legality of the actions recommended by the VA OIG before attempting to implement them via modifications to existing FSS contracts or amendments to open FSS solicitations.

I. *Comments on the VA OIG Report*

Before proceeding to address the legal propriety of certain of the VA OIG recommendations, we need to set the record straight on certain of the factual assertions contained in the VA OIG report. The tone and tenor of the VA OIG report – especially with respect to its treatment of BSI and the NAC itself – is completely lamentable and denigrates the good-faith efforts of BSI and the NAC.

As the FAR itself recognizes, delivering products and services to government customers is a team effort. *See* FAR 1.102(c) (defining the "Acquisition Team" as including "all participants in Government acquisition including not only representatives of the technical, supply and procurement communities but also the customers they serve, and the contractors who provide the products and services"). This team – including both the NAC and its FSS contractors – is to "exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs." FAR 1.102(d).

BSI believes that this is precisely what the NAC and BSI collectively have strived to do over the past twelve years, when BSI first became an FSS contractor. BSI is proud of the fact that it has brought competition to a number of product segments where none previously existed, resulting in lower prices to VA customers. BSI deplores the VA OIG's ad hominem attacks on

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[1] We are sure that you will recall the VA OIG's original, unsuccessful attempts to eliminate small business resellers from the VA FSS market, as embodied in a 2001 report on the topic and its advocacy of an "anti-reseller" provision in H.R. 3645, a VA procurement reform measure that, as passed, wisely omitted that provision. We will not dwell on it at length here, but do discuss it in passing in Part II of this letter.

the collective efforts of the Acquisition Team, and it will continue to devote all of its efforts to cooperating with the NAC to serve the veterans' community.

The distortions and fallacies contained in the VA OIG report are simply too numerous to mention. We identify and rebut just a few of the more critical ones in this section of our comments.

The VA OIG report repeatedly suggests (in terms laden with innuendo) that the use of channel partners (e.g. resellers, dealers, distributors) somehow is not a standard commercial practice. *E.g.,* VA OIG Report at i ("manufacturers are large businesses who are using resellers to shield themselves"); *id* at 2 (reseller-manufacturer contracts are "unusual contractual agreement[s]"); *id* at 23 (criticizing channel arrangements as "broker" agreements used to "insulate[]" manufacturers).[2] Perhaps this is not surprising, as the VA OIG apparently has never attempted to understand the commercial marketplace – which is of course the fundamental underpinning for the FSS program and commercial item contracting generally.

However, as we are sure the NAC understands – and as GSA clearly understands, given its oversight over the entire FSS program and its administration of its own FSS contracts – the use of resellers is a standard commercial practice. Manufacturers employ resellers for a variety of reasons – market penetration, sales and marketing, leveraging brand awareness, servicing, and outsourcing of certain ordering, billing and accounts payable functions – even in cases in which the resellers do not stock or deliver products. In the IT industry, for example, well-known companies such as Hewlett-Packard, Cisco Systems, Microsoft and IBM employ this business model in both commercial and government markets. We understand that Cisco and Microsoft, in particular, do not hold direct FSS contracts with the GSA, but rather rely on hundreds of channel partners (resellers) to market their products to FSS customers. It is also a standard commercial practice to assign some or all resellers territories, and these can be segmented geographically or by market (e.g., public sector versus commercial) depending on the expertise of the resellers involved. This, too, is a prevalent commercial practice.

Thus, there are similar good and sufficient reasons for "Manufacturer A" (as described in the VA OIG Report) and other medical device manufacturers to employ similar channel

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[2] The VA OIG report also implies that medical device manufacturers are under some obligation to contract directly with the United States. There is, of course, no statutory basis for this assertion.

programs in commercial and public sector markets. For the VA OIG to characterize this as insidious or noncommercial behavior merely underscores that office's lack of business judgment.

The VA OIG Report also refers repeatedly to the VA prime vendor program as an apparent reason to discriminate against or eliminate small business resellers (*e.g.*, VA OIG Report at iii, 3, 13). In so doing, the VA OIG characterizes the "intent of the prime vendor program" as including "an electronic ordering system to accept and process orders, deliver products, and accurately bill for and accept payment for items delivered." VA OIG Report at 3. These are precisely the functions that BSI performs – and more. For example, BSI provides a number of solutions which far surpass the functions and abilities of prime vendors. For example, BSI is the *only* company which can provide a turn-key solution for the renovation and upgrade of hospital operating rooms (booms and lights products, integration products, scopes and video products, and installation). These "ORs of the Future" are highly technical and completely customized to customer specifications. Prime vendors cannot provide such service; absent BSI's contract, the hospitals would be forced to go to multiple vendors to procure, install, service and maintain the products. Given that any OR downtime is a significant problem, the ability to have one point of contact for all issues is of major importance to facilities in such procurements. Furthermore, the director of the VA Prime Vendor program has indicated that the program is not designed for the procurement of capital equipment, whereas the FSS program *is* capable of meeting the unique needs of capital procurements.

Other examples of the value BSI brings to the federal market are equally noteworthy. To take just two, BSI worked with the Department of Defense and a team from Lackland AFB in a year-long development effort to create turning frames (a product that allows medical personnel to rotate a person in traction) that would be "air-ready" to work in their airplanes for safer patient travel. Additionally, BSI worked with the DoD overseas in the Rebuilding Iraq project to supply over 3,000 hospital beds, which required a great deal of logistical work and oversight in order to deliver the 75+ truckloads of beds onto Iraqi soil, while maintaining the proper supply availability to our VA and DoD hospitals. BSI's combination of technical expertise, relationship with multiple vendors, experience in the government marketplace and its FSS contract greatly reduces the burden on federal customers when it comes to developing products to fit their needs or handling complicated logistical situations. This is something the Prime Vendor program does not and is not intended to do. The OIG overlooks the value-added features that BSI brings to the VA, and its report does not explain how the prime vendor program somehow is more valuable than the FSS program.

Even contractual agreements and provisions that represent the "sound business judgment of the Acquisition Team" – a guiding philosophy in the FAR, as stated above – do not escape the hypercritical eye of the VA OIG. For example, the report (at page iv) describes a post-award audit that the VA OIG performed on BSI's prior VA FSS contract that the VA OIG suggests resulted in a refund. That is certainly correct. What the VA OIG neglects to mention is that the rebate provision that was the subject of the audit was a prior bilateral contractual agreement between the NAC and BSI in which BSI agreed to accommodate the NAC by offering further price reductions under the prior contract that preceded one then under negotiation. This is precisely the sort of teamwork that BSI and the NAC have demonstrated in the service of VA customers over the years, consistent with the FAR guiding principles, and one that resulted in cost savings to the VA. The VA OIG dismisses this merely by stating that the "rebate had no relationship to FSS price protection clauses." VA OIG Report at iv. Is the VA OIG somehow opposed to VA FSS savings merely because a rebate provision does not fit into that office's notion of how such savings should be achieved?

Another fundamental distortion in the report that evidences the VA OIG's lack of understanding of the FSS market is the constant focus on FSS contract pricing without reference to the actual prices paid by VA FSS customers. We certainly agree with the VA OIG that FSS contract prices must, by law and regulation, be adjudged fair and reasonable. But the VA OIG's constant criticism of BSI's (and other resellers') FSS pricing and participation in the FSS program never seems to take into account that the FSS price is merely a ceiling price, and that BSI and other resellers consistently offer pricing below FSS pricing in competitive situations and otherwise when such pricing makes good business sense. In fact, during its current VA contract, BSI has provided VA FSS customers, in the aggregate, additional price reductions of $16.8 million below standard VA FSS contract prices. These data clearly were available to the VA OIG when drafting its report, but were conveniently ignored because the data do not comport with the VA OIG's scheme.

There is more in the way of misconception. In its "overview" of the FSS program, the VA OIG declares that "[a]ny offeror vying for an FSS contract is not competing for award against another offeror, but rather is competing against its own commercial business practices." VA OIG Report at 5. This concept of competition is incorrect and irrelevant. As the Competition in Contracting Act ("CICA") suggests, competition occurs at the order level only after the program has been opened to all responsible sources. 41 U.S.C. § 259(b)(3)(A). This sort of competition generally involves price reductions granted by one or more FSS contractors competing at the order level, *see, e.g.,* FAR 8.405-4.

Unfortunately, in attempting to eliminate BSI and other resellers from the VA FSS marketplace, the VA OIG is seeking to restrict rather than encourage healthy competition and the cost savings that such competition brings. We discuss the legality of the VA OIG's actions – and the fact that they have met with bipartisan condemnation from Congress – in Part II of this letter. Here, however, we want to identify just one of several places in which BSI has provided healthy competition through VA FSS participation where there previously was no competition at all.

BSI is the only vendor on FSS contract which provides spine implants. BSI has conducted and has on file price comparisons showing FSS pricing versus open-market pricing that VA hospitals have received. This analysis concludes that the FSS contract can provide an average savings of more than 30% over open market pricing for these products. Even in instances in which hospitals do not purchase through BSI, they are in a position to achieve better pricing from their current providers due to the competition created by BSI's FSS contract for these items. Furthermore as an additional accommodation to VA, BSI negotiated four price tiers for these products which have increased the percentage discount off of list from 5% to 7% to 9% to the current level of 11% off of list price. BSI agreed that if a tier was passed during any given quarter, the lower pricing would be made available the first day of the subsequent quarter. BSI has honored this agreement and has passed along these discounts to customers, even when the VA has been dilatory in processing formal modifications. BSI believes that the current FSS prices for spine products are better than the pricing received by the manufacturer's comparable commercial customers.

We understand that the VA Hospital in Cleveland had this to say about BSI's participation in the spine implant market: "The average savings Buffalo Supply could provide (on spine implants) came in at 36%. This number did not take into account the loaner and transportation fees that the VA was being charged at the time...Since the change (to Buffalo Supply) has been made, the Cleveland VAMC has seen a reduction in cost while at the same time experiencing a higher level of service..."

Is the VA OIG suggesting that the VA would be better off to use sole-source open market procurements rather than having competition?

These are just a few of the factual inaccuracies that riddle the VA OIG report and completely undercut its credibility. As discussed below, the legal underpinnings for certain of the VA OIG recommendations are equally suspect.

II. *VA OIG Recommendations*

As we noted at the outset, two of the VA recommendations provide needed clarity for the FSS program and are appropriate for adoption by the NAC. In particular, we endorse the OIG's recommendation that the VA establish firm criteria to determine when an FSS offeror has "significant" commercial sales and thus need not submit commercial sales practices ("CSP") information from a manufacturer as part of an initial proposal or major modification. Indeed, BSI and other resellers have requested clear quantitative guidelines from the NAC on numerous occasions in the past concerning this requirement. These firm criteria should be made publicly available to all FSS offerors and contractors so that there is no confusion about the requirements, and no concern that offerors and contractors are being treated in disparate fashion.

We also agree that GSA-prescribed Economic Price Adjustment ("EPA") clauses should be the only EPA clauses employed by VA in its FSS solicitations and contracts. The reason for this is quite simple: VA needs to follow the GSA's rules. The NAC operates certain FSS schedules under a limited DPA from GSA. GSA, of course, has general authority for the FSS program pursuant to the Federal Property and Administrative Services Act (as amended) ("FPASA") and the Competition in Contracting Act ("CICA"). *See* 40 U.S.C. § 501; 41 U.S.C. § 259(b)(3); s*ee also* FAR 8.402(a), VA OIG Report at 38. That DPA permits VA to exercise contracting authority over FSS contracts for certain products, but does not authorize VA to create its own policies or regulations for FSS contracts. By law, the policies and regulations governing FSS contracts remain the exclusive domain of GSA and may not be altered by VA in any way. *See* 40 U.S.C. § 501(a), (b)(1)(A), (b)(2)(A); FAR 8.402(a). In operating FSS contracts under the DPA, VA is responsible for complying with all applicable statutory and regulatory requirements. *Id.; see* FAR 38.101(d), (e). Under the DPA, VA may not make any changes that deviate from GSA policy and regulations without the express written consent of GSA prior to implementation. E.*g.*, October 22, 1993 letter from GSA Director, FSS Acquisition Management Center, to Associate Deputy Assistant Secretary, VA NAC (Attachment 1).

The VA OIG's recommendations, however, suggest that VA is free to pick and choose the FSS policies and regulations that the VA will follow (for example, those relating to an EPA) and those which it will ignore. In particular, the VA OIG suggests that VA may incorporate in its FSS solicitations and contracts a price reductions clause ("PRC") that requires resellers to employ a "third-party tracking customer" -- that is, the commercial customer (or customers) of a manufacturer -- for PRC monitoring purposes. The VA OIG asserts that this can be done by artifice -- namely, that VA has the authority to approve a class deviation from the PRC and

implementing regulation that appear in the GSAR without GSA approval[3]. As we pointed out in our February 2003 protest to the Government Accountability Office on behalf of BSI, the VA OIG's assertions about the legality of a PRC that employs a "third-party tracking customer" are utterly and completely without merit.

First of all, the concept of a "third-party tracking customer" is unsupported by market research and, consequently, violates governing law and regulations concerning commercial item procurement. FSS solicitations and contracts are commercial item procurements subject to the Federal Acquisition Streamlining Act ("FASA") and its implementing regulations at FAR Part 12. Both FASA and FAR Part 12 place certain limitations on the use of commercial item contracts. Importantly, FAR Part 12 contains "special requirements for the acquisition of commercial items...to more closely resemble those customarily used in the commercial marketplace." FAR 12.201. Agencies are obligated to conduct market research before soliciting proposals for contracts with a value in excess of a simplified acquisition threshold, 41 U.S.C. § 264b(c)(1)(B), and only may include provisions in such contracts that are either required by law or consistent with standard commercial practice for the item being acquired. FAR 12.301(a); Pub. L. No. 103-355, § 8002(b)(1).

Put differently, a contracting officer, after conducting market research, may include additional provisions in a commercial item contract beyond those identified in the FAR if those

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[3] The VA OIG's legal argument concerning deviations is fundamentally flawed. The GSAR clearly provides that deviations may not be used to avoid FAR and GSAR approval requirements. GSAR 501.402(c). Further, GSAR 501.404(a)(3) provides that when the contracting activity "knows a proposed class deviation will be required on a permanent basis, the HCA should propose or recommend an appropriate FAR and/or GSAR revision." The VA OIG is suggesting precisely such an action here - - a permanent class deviation from the PRC and related language. We are sure, however, that the VA OIG would not urge compliance with this regulatory mandate because it knows that GSA would object to any such revision as being violative of law and regulations, as well as being inconsistent with GSA's support for small business resellers.

Third, and most importantly, general regulations, including those relating to deviations, are clearly trumped by the specifics of the GSA DPA, which specifically states that "any changes contemplated by [VA] which might impact the program from a policy standpoint, require the expressed approval of GSA prior to implementation." *See* Attachment 1. This strained construction of governing law, regulations and policy is unworthy of even the VA OIG.

provisions will result in a "business arrangement satisfactory to both parties," "but **shall not include additional terms or conditions in a . . . contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired....**" FAR 12.213, 12.302(c) (emphasis added).

VA FSS solicitations and contract pricing – like those at GSA – contain a PRC. The PRC requires the parties to agree on a "tracking customer" or customer category to be used as a basis for adjusting government pricing during any FSS contract. Whether the PRC itself is consistent with standard commercial practice is a debate for another time. We are certain, however, that neither the VA OIG (nor any other entity within VA) has conducted any market research whatsoever on the commercial validity of a "third-party tracking customer."

It is worth noting that GAO previously has rejected similar attempts by agencies to employ pricing provisions that are inconsistent with standard commercial practice. *See Smelkinson Sysco Food Services*, B-281631, 99-1 CPD ¶ 57. There, the agency attempted to impose certain disclosure and pricing requirements for the offered commercial services. In support of its use of these provisions, the agency asserted that because no single pricing method was employed in the industry, the pricing provisions were "not inconsistent with customary commercial practice."

GAO sustained the protest concerning the provision. GAO concluded that "the agency...failed to meet its obligation to conduct appropriate market research to show that the challenged terms [were] consistent with customary commercial practice." GAO noted that there was no showing in the record that the provision was ever the subject of market research, or discussed with or commented on by industry representatives. GAO recommended that the offending provision be stricken from the solicitation.

This reasoning applies with equal force here. The "third-party tracking customer" amendment to the PRC that the VA OIG is advocating here is not based on market research and is inconsistent with standard commercial practice. It is one thing to peg government pricing to the pricing that the contractor offers one of its own customers or categories of customers, and quite another to peg that pricing to the pricing that a third-party supplier offers its own customers in wholly unrelated, independent transactions over which the VA contractor has no control. It is noteworthy that GSA FSS contracts contain no such provisions despite the prevalence of small business resellers in the GSA FSS marketplace. This is of particular import here – again, VA operates its FSS contracts only under a limited DPA from GSA, which will not permit this sort of

deviation. In short, given the utter lack of market research, VA cannot insist on including the "third-party contracting customer" provision in any FSS solicitation or contract.

Second, the VA OIG's "third-party tracking customer" proposal also completely violates the terms of the regulations that implement the PRC. Quite simply, GSAR 538.272(a) "requires the contractor to maintain during the contract period the negotiated price/discount relationship (and/or term and condition relationship) between the eligible ordering activities and the **offeror's customer or category of customers"** on which the contractor award was predicated." (Emphasis added.) Clearly, the plain language of the governing regulation – promulgated by GSA, which has the obligation under the FPASA and CICA to issue regulations for the FSS program – precludes the VA from using a third-party's customers as "tracking customers." This is reinforced by GSAR 515.408, which defines customer as "any entity, other than the Federal Government which acquires supplies or services from **the Offeror**." (Emphasis added.)

Clearly, the VA OIG's proposal violates FSS regulations that the agency is obligated to follow. GSA has not delegated to VA the authority to operate its FSS programs in a manner that is contrary to GSA regulations on the subject. *See* 40 U.S.C. § 501(a), (b)(1)(A), (b)(2)(A), 41 U.S.C. § 259(b)(3), FAR 8.402(a)(GSA procurement authority); FAR 38.101 (d), (e) (VA obligation to comply with GSA regulations in operating FSS contracts). For example, in an October 22, 1993 letter concerning VA FSS activities, GSA reminded VA that GSA alone was "responsible for the overall management of the Federal Supply Schedules program" and that any **"changes contemplated by [VA that] might impact the program from a policy standpoint, require the expressed approval of GSA prior to implementation."** *See* Attachment 1 (emphasis added). Certainly an application of the PRC that is contrary to the plain terms of the governing regulations fall within this requirement. In short, VA cannot propose terms in FSS solicitations or contracts in defiance of law, regulations or the DPA.[4]

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[4] The VA OIG report declares without any support or analysis that "the plain language of the Price Reductions Clause fully supports" the notion of a "third-party tracking customer". VA OIG Report at 15. This declaration is false, as evidenced by the detailed legal discussion in the accompanying text above. It also is noteworthy that the VA OIG has not been able to explain why VA somehow requires more protection in an FSS contract than GSA requires from resellers in its own FSS contracts The VA OIG report also overlooks the fact that agencies may, in many circumstances, seek additional price reductions for the contractor before placing an order; indeed, in many circumstances, BSI and other FSS contractors traditionally have offered better-than-contract pricing in order to secure individual FSS contract orders, and agencies are encouraged to seek such pricing. FAR 8.405-4. In fact, BSI's own sales figures demonstrates

Third, the VA OIG is demanding the "third-party tracking customer" provisions as part of its campaign to do indirectly what it has not been able to do through legislation – namely, eliminate small business resellers such as BSI from participating in the VA FSS program. In 2001, VA OIG issued a report containing a strong recommendation that resellers should not be able to participate in the program unless they negotiated prices with and made sales to commercial customers of the manufacturer. This recommendation was reflected in H.R. 3645, which, as proposed, provided that resellers could not participate in the VA FSS program unless they actually stocked products. H.R. 3645 § 2(a), 107th Cong., 2d Sess. The House of Representatives wisely noted when it deleted this provision that elimination of such resellers merely would reduce competition because it would eliminate additional sources for the commercial items appearing on VA FSS contracts.[5] Specifically, Representatives Velazquez and Manzullo noted in a July 29, 2002 letter to the Secretary of VA that this provision

> would have severely limited or eliminated the participation of distributors, a significant portion of whom are small businesses, from bidding on the procurement of health-care items covered by the legislation. Such an anti-distributor provision doesn't make sense from any view point since it is in the interest of any buyer, whether the government or private sector purchaser, to maximize rather than restrict competition.

July 29, 2002 letter from Representatives Velazquez and Manzullo to VA Secretary Principi, Attachment 2, at 1.

The inclusion of resellers in the FSS program is good business. The exclusion of resellers is illegal. CICA provides that the FSS contract program constitutes a competitive procedure only when the program is open to all responsible sources. 41 U.S.C. § 259 (b)(3)(A). VA's attempts at de facto elimination of BSI and other resellers violate this provision of CICA as well as its mandate that the use of competitive procedures is required in all but the most exceptional of circumstances. *Id.* § 253 (a)(1)(A).

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that the company has granted customers almost $17 million in price reductions below VA FSS prices during the current VA contract. The VA OIG conveniently overlooks this result, as it has done consistently since it initiated its "anti-small business reseller" campaign many years ago.

[5] It is worth recalling that a representative of the VA Secretary testified against this "anti-reseller" provision while the legislation was pending before Congress, and that a representative of the VA OIG, despite this, testified in favor of the provision.

Fourth, VA's attempts to eliminate BSI and other resellers from FSS program participation violates the Small Business Act, which decrees that small businesses such as BSI shall have the maximum practical opportunity to participate in federal procurements. 15 U.S.C. § 644(e)(1). It is noteworthy that the VA OIG's crusade to eliminate small businesses such as BSI from FSS participation is completely contrary to GSA's policy of soliciting and encouraging the participation of small business resellers and distributors in the FSS program.

A final word is in order here about the VA OIG's recommendation to modify existing contracts to include its deviant PRC. Any such modifications would violate the terms of the contracts themselves. FSS contracts are commercial item contracts that contain a simple bilateral "Changes" clause. That provision states explicitly that "[c]hanges in the terms and conditions of this contract may be made only by written agreement of the parties." FAR 52.212-4(c). The VA OIG conveniently overlooks this provision – just as it conveniently has overlooked other pertinent laws and regulation in its obsessive and quixotic quest to preclude small business resellers from participation in the VA FSS program.

CONCLUSION

We urge VA -- and especially, the NAC -- to consider carefully the wholesale adoption of the VA OIG recommendations. We urge particular care in attempting to amend FSS solicitations and contracts in ways that clearly violate law, regulation and the DPA. The sad irony of the VA OIG's position -- as Congress has noted -- is that it is essentially anti-competitive. Resellers such as BSI bring additional value to the government in terms of product choices, service and pricing. Elimination of resellers like BSI will force more sole-source awards and higher-price "open market" transactions, rather than healthy price competitions among two or more vendors. This sort of competition occurs every day among small business resellers and large business manufacturers on the GSA FSS contracts. VA customers -- and the warfighters and families they serve -- deserve no less.

We would be happy to provide any further information that you might require regarding this letter and the subjects raised in it. Please do not hesitate to contact the undersigned should you require additional information.

Sincerely,

Robert J. Sherry

RJS/nd
Enclosures

Cc: Ms. Molly Wilkinson

Attachment 1

General Services Administration
Federal Supply Service
Washington, DC 20406

OCT 22 1993

Ms. Nancy L. Darr
Associate Deputy Assistant Secretary
Department of Veterans Affairs
National Acquisition Center
P. O. Box 76
Hines, IL 60141

Dear Ms. Darr:

Reference is made to your letter dated October 5, 1993, in which you requested a delegation of authority for the National Acquisition Center to independently make future FSS improvements on VA managed schedules, i.e. coordinate, control and approve GSA Form 1649 actions as delineated in FSS P 2901.2A (HB), paragraph 10.

Authority is hereby granted. However, as the General Services Administration is responsible for the overall management of the Federal Supply Schedules program, and in order that we might remain abreast of all changes affecting schedules, it is imperative that you provide this office with information copies of all actions taken to change or alter the VA managed schedules. Please provide this information as soon as possible from the time you become aware of it; so that we can assess any potential effect the change may have on the program. You are also reminded that any changes contemplated by your organization which might impact the program from a policy standpoint, require the expressed approval of GSA prior to implementation. If you're uncertain as to the impact of a change on the program, please do not hesitate to contact us.

If you have further questions, or require additional information, please contact Miiiisa Gary of my staff, at (703) 305-7962.

Sincerely,

Nicholas M. Economou, CPPO
Director
FSS Acquisition Management Center

Attachment 2

DONALD A. MANZULLO, ILLINOIS
CHAIRMAN

NYDIA M. VELÁZQUEZ, NEW YORK

Congress of the United States

House of Representatives

107th Congress

Committee on Small Business

2361 Rayburn House Office Building

Washington, DC 20515-6315

July 29, 2002

The Honorable Anthony J. Principi
Secretary of Veterans Affairs
Department of Veterans Affairs
810 Vermont Avenue, N.W.
Washington, D.C. 20420

Dear Secretary Principi:

The Committee on Small Business has actively supported the entrepreneurial efforts of veterans, especially disabled veterans, to start and grow small businesses. This Committee in the 107th Congress has held two oversight hearings concerning the Small Business Administration's treatment of veterans and the success or failure of that agency's programs for veterans. In addition, the Committee has carefully followed the formation and growth of the National Veterans Business Development Corporation, whose success could greatly benefit veterans throughout this Nation. The legislation that created this Corporation was a cooperative effort between the House Committees on Veterans' Affairs and Small Business. We look forward in the future to working with the Committee on Veterans' Affairs and your Department in a continuing and cooperative effort to meet the needs of veterans.

We are writing to you today concerning a matter of importance to small businesses and the maintenance of fairness in the procurement process as administered by your Department. As we are sure you are aware, the House of Representatives last Monday passed H.R. 3645, a bill to provide for improved procurement practices by the Department of Veterans Affairs in procuring health-care items. The bill, as originally introduced, contained a provision, subsection (d)(2) of Section 2, which would have severely limited or eliminated the participation of distributors, a significant portion of whom are small businesses, from bidding on the procurement of health-care items covered by the legislation. Such an anti-distributor provision doesn't make sense from any viewpoint since it is in the interest of any buyer, whether the government or a private sector purchaser, to maximize rather than restrict competition.

It is our understanding that this particular provision had its origin in a report done by the Inspector General of your Department. However, it would appear that the conclusions reached in this report did not meet with general acceptance in your agency since the Principal Deputy Assistant Secretary for Management, who testified on behalf of your

Department regarding H.R. 3645, opposed the strict mandates imposed by the legislation, including the anti-distributor provisions. Wisely, the House did remove the anti-distributor provisions and they are not in the bill passed last Monday. However, there remains concern within the small business community that there will be an effort in your Department to end run the recent efforts here in the House to maintain fairness in the procurement process. The President in his remarks to the Women Entrepreneurship Summit, in March of this year, sets forth the Administration's small business plan, a major tenant of which is that "government contracting must be more open and fair to small businesses." The language stricken here in the House would have had the opposite result.

Government has a genuine concern that goods and supplies purchased are delivered on time, at a competitive price, and of requisite quality. The procurement process is not designed to dictate to small and large businesses how they should be organized in doing business with the Federal government or in the private sector. This country has achieved its success through a vigorous free enterprise system. Those nations that have relied upon government planners to manipulate their economies have failed. Now is the time to support our free enterprise system and to maintain equity in the government procurement process.

You may be assured that the Committee on Small Business will continue its effort on behalf of the veterans of this Nation. We are sure that under your leadership, the President's standard of more fairness to small businesses in government contracting will be followed.

Sincerely,

Donald A. Manzullo
Chairman

Nydia M. Velázquez
Ranking Democrat