



## **SMALL BUSINESS ADMINISTRATION**

### **Procurement Scorecard Program; Exclusion for Certain Department of Veterans**

#### **Affairs Contracts**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** The U.S. Small Business Administration (SBA) publishes an annual procurement scorecard (Scorecard) that scores agencies on their performance in contracting with small businesses. This notice modifies the method that SBA uses to calculate contracting dollars for the Department of Veterans Affairs (VA). Specifically, starting with fiscal year 2023 (FY23), SBA will exclude VA expenditures for Community Care Network (CCN) contracts and any successor contracts.

**FOR FURTHER INFORMATION CONTACT:** Kevin Doss, Deputy Director, Office of Government Contracting and Business Development, [Kevin.Doss@sba.gov](mailto:Kevin.Doss@sba.gov), (202) 272-7700. This notice modifies the method that SBA uses to calculate contracting dollars for the Department of Veterans Affairs (VA). Specifically, starting with fiscal year 2023 (FY23), SBA will exclude VA expenditures for Community Care Network (CCN) contracts and any successor contracts.. The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

SBA issues an annual Scorecard to score Federal agencies on creating the maximum practicable opportunities for the award of prime contracts and subcontracts to small business concerns, small disadvantaged businesses (SDBs), women-owned small

businesses (WOSBs), HUBZone small business concerns, and service-disabled veteran-owned small business concerns (SDVO SBCs). Sec. 868, Pub. L. 114–92, 129 Stat. 933 (November 25, 2015). SBA bases an agency’s score on several weighted factors, the most significant of which is the percentage of prime contracting dollars awarded to small businesses.

SBA strives to account for all Federal contracting dollars on the annual Scorecard, but, in rare circumstances, SBA will exclude isolated categories of contracts from the Scorecard. As one example, SBA does not consider contracts that are not reported into the governmentwide contract reporting systems, namely the Federal Procurement Data System (FPDS) and the Electronic Subcontracting Reporting System (eSRS), because SBA cannot verify their existence. Some other categories are excluded from the Scorecard by operation of law. *See* 15 U.S.C. 644(g)(2)(B).

Additionally, SBA has excluded from the Scorecard certain contracts in which the agency has very little—if any—involvement in incurring the obligation. SBA believes that the Scorecard measures the agency’s efforts to reach small-business and socioeconomic contractor goals, and, in the rare cases where the agency is not the primary decisionmaker in incurring the contract obligation, it is not unreasonable to consider whether those cases are skewing the agency’s Scorecard achievement through no fault of the agency itself.

On that basis, SBA excludes from the Scorecard certain contracts awarded under the Department of Defense’s TRICARE program, which provides health care to Servicemembers, retirees and their families. Under the TRICARE exclusion, SBA disregards all contract obligations reported by the Defense Health Agency’s TRICARE contracting offices codes H94002 and HT9402. in determining the Department of Defense’s score for the Scorecard. As noted in SBA’s Goaling Guidelines, the TRICARE exclusion recognizes patients’ role as the primary decisionmaker when and where to seek

health care under the program. DHA's contracting arrangements primarily give effect to that patient decision. Other exclusions operate in the same manner.

All of the exclusions from the Scorecard, as well as other details on the Scorecard methodology, are listed in SBA's Goaling Guidelines, available at <https://www.sba.gov/document/report-sba-goaling-guidelines>.

On May 22, 2023, the VA, through its director of the Office of Small Disadvantaged Business Utilization, requested that SBA grant an exclusion from the Scorecard for the VA's Community Care Network (CCN) contracts used to provide veterans with access to health care from non-VA providers. SBA has considered the VA's request and the applicable statutory requirements for an exclusion, and SBA grants the exclusion beginning with the Scorecard for FY23.

## II. The VA's CCN Contracts

Under the CCN contracts, veterans have access to a nationwide system of healthcare providers that operate outside of the VA system. The VA states in its exclusion request that the veteran is the primary decisionmaker on whether to incur an obligation under a CCN contract. According to the VA, the veteran's choice as to whether to use a non-VA facilities largely determines whether healthcare will be provided under a CCN contract or through a VA provider.

The VA's request explains that the CCN contracts are for the benefit of the veteran, not a procurement for Government use. The VA analogized the CCN contracts to the Department of Defense's TRICARE contracts, which SBA already excludes from the Scorecard.

The VA's expenditures through CCN are substantial. In FY22, CCN obligations accounted for 38.9% of the VA's total procurement base. The growth in CCN obligations in FY22 caused a steep decline in the percentage of contracting dollars that the VA spent

with small businesses, even as VA's actual dollars awarded to small business attained a record high.

### III. Statutory Requirements

Section 1631(c)(2) of the National Defense Authorization Act (NDAA) for Fiscal Year 2013, Pub. L. 112-239, constrains SBA's authority to consider and grant exclusions from the Scorecard. Under section 1631, SBA is not permitted to exclude categories of contracts on the basis of three criteria listed in the NDAA: (1) the type of goods or services for which the agency contracts; (2) whether or not funding for the contracts is made directly available to the agency by an Appropriations Act or is made available by reimbursement from another agency or account; and (3) whether or not the contract is subject to the Federal Acquisition Regulation.

In its request, the VA explained that an exclusion for the CCN contracts would not be on the basis of any of those statutorily identified criteria. First, the CCN exclusion is based on specific contracts that provide access to non-VA care for veterans, not based on the type of good or service. The VA states that the exclusion would not affect other healthcare contracts, such as establishing Community Based Outpatient clinics, procuring medical supplies, or obtaining temporary services from health care providers.

Second, the VA found that the CCN exclusion would not be based on whether the funding is appropriated. Congress appropriates funding for CCN contracts through a Medical Community Care appropriations account, but that is not the basis for the VA's request. Instead, the VA bases its request on the veteran being the primary decisionmaker on whether to incur an obligation under the CCN contracts.

Third, the VA states that it does not base its request on the applicability of the Federal Acquisition Regulation. The VA reiterated that the contracts are for the benefit of the veteran, not the agency.

Based on the foregoing, SBA believes that it is not constrained by section 1631 in considering and granting the VA's request for an exclusion.

#### IV. Exclusion for CCN Contracts

Starting in the Scorecard for F23, SBA will exclude the CCN contracts and any successor contracts from the VA's prime contracting Scorecard and the governmentwide prime contracting scorecard by disregarding actions using Funding Office code 36135Y.

This code refers to the Office of Integrated Veteran Care within the Veterans Health Administration, which reports the claims for payments under the CCN contracts for submission to FPDS.

**Larry Stubblefield,**

*Acting Associate Administrator, Office of Government Contracting and Business Development.*

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