U.S SMALL BUSINESS ADMINISTRATION

WASHINGTON, D.C. 20416

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JOINT HEARING

HOUSE COMMITTEE ON VETERANS' AFFAIRS
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
AND
HOUSE COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON CONTRACTING AND THE WORKFORCE

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Chairmen Hoffman and Hanna, Ranking Members Kirkpatrick and Meng, and Members of the Subcommittees, thank you for inviting me to testify before you today. The Small Business Administration (SBA) plays a pivotal role in helping veteran owned small businesses (VOSBs) and service disabled veteran owned small businesses (SDVOSBs) obtain access to Federal contracts.

Background

As you know, veteran owned businesses are integral to our nation's economy and its ongoing recovery. Veterans own about 2.4 million—or nine percent—of all businesses, large and small, in the U.S. These businesses generate about $1.2 trillion in receipts and employ nearly six million Americans.[1] One key sector of the veteran small business economy is government contracting, where SBA and its SDVOSB program play a critical role.

The SBA's SDVOSB Program provides Federal procuring agencies with the authority to set acquisitions aside for exclusive competition by SDVOSBs.[2] The program also gives procuring agencies the authority to make sole source awards to SDVOSBs if certain conditions are met.

SBA's government-wide program, along with VA's Veterans First contracting program, helps the Federal government meet the statutorily-established annual, agency-wide goal

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[1] U.S. Census Bureau: http://www.census.gov/newsroom/releases/archives/business_ownership/cb11-88.html

[2] The Department of Veterans Affairs (VA) has its own SDVOSB program, known as Veterans First, which governs all VA procurements. Veterans First was established in response to the Veterans Benefits, Health Care, and Information Technology Act of 2006 (2006 Act).

of awarding at least three percent of the total value of all awards to SDVOSBs. In Fiscal Year 2011, over $11.8 billion in contracts went to SDVOSBs, up by 3.8 percent over the previous year.

Activities to Promote SDVOSBs in Federal Contracting

SBA, through our Office of Government Contracting and Business Development (GCBD), plays a critical role as a vocal advocate for VOSBs and SDVOSBs through myriad outreach efforts. SBA has a cadre of Procurement Center Representatives (PCRs) stationed at major Federal procuring centers throughout the country who are responsible for increasing small business opportunities in the Federal procurement process. These PCRs review proposed major procurements and recommend agency strategies that will maximize opportunity for all small businesses—including VOSBs and SDVOSBs. PCRs also review contract bundling requirements to determine if they are necessary and justified under SBA guidelines.

SBA also employs Commercial Marketing Representatives (CMRs) to ensure that small businesses receive a fair share of subcontracting opportunities from the large prime contractors utilized by Federal agencies. When awarded a contract valued at $650,000 or higher for most contracts, or $1.5 million for construction of a public facility, these large prime contractors are required to establish a subcontract plan for small business participation. Through its CMRs, the SBA—along with the procuring agency—evaluates the large prime contractor's effort against their subcontracting plan.

The White House is also playing a key role in helping veterans start, grow, and expand their small businesses. At the President's direction, the SBA is leading the Interagency Task Force on Veterans Small Business Development, which includes representation from seven Federal agencies and four leading veterans' organizations. The Task Force is focused on increasing the number of veteran-owned businesses and the number of Americans—including other veterans—that those businesses employ.

SBA Requirements and Process

To qualify as an SDVOSB under SBA's statutory guidelines, a firm must meet four conditions through a self-certification process: [3]

1. The firm must be least 51% owned by one or more service disabled veterans;
2. The firm's management must be controlled by one or more service disabled veterans or—in the case of a veteran with a permanent and severe disability—the spouse or permanent caregiver of the disabled veteran;
3. The firm must meet the small business size standard for their business and the size standard for any federal contract they bid on; and,
4. The firm must self-represent their disabled veteran status.

[3] The 2006 Act required VA to register and verify all VOSBs and SDVOSBs that wish to participate in the Veterans First program. By contrast, SBA's government-wide SDVOSB program requires a self-certification by SDVOSBs.

Currently, there are approximately 12,000 self-certified SDVOSBs in the System for Award Management, the government-wide contracting database.

In terms of a participant's status as a veteran with a service-connected disability, the owner-operator of an SDVOSB must be able to produce official documentation that he or she has a service-connected disability in the event of a "protest."[4] A protest occurs when a competing bidder or other interested party challenges the winning firm's eligibility as an SDVOSB. The initial decision on a protest is made by my office, GCBD. The determination of a protest may be appealed to SBA's Office of Hearings and Appeals (OHA).

OHA provides independent, administrative appellate review of SBA program determinations, including the initial SDVOSB determinations made by GCBD. OHA decisions, in turn, may be appealed to the Federal courts. Currently, OHA is staffed by eight full-time employees, including two administrative judges who decide appeals of the Office of Government Contracting's initial SDVOSB determinations. In FY 2012, OHA decided eight SDVOSB appeals, roughly 20 percent of GCBD's 41 initial determinations that year.

One of our top priorities at SBA is to ensure that the benefits of our programs flow to their intended recipients. We have no tolerance for fraud, waste, and abuse and have therefore implemented a comprehensive three-pronged strategy to identify, prevent, and pursue non-compliance or fraud across all of our government contracting programs. The three prongs of our fraud, waste, and abuse strategy are as follows:

1. Effective certification processes: Clear and comprehensive eligibility screening ensures that only qualified, eligible firms participate in SBA programs;
2. Continued surveillance and monitoring: Targeted and thorough examinations, reviews, and site visits identify firms which commit fraud and no longer qualify; and,
3. Robust and timely enforcement: Prompt, proactive enforcement removes bad actors, deters wrongdoing, and reassures those eligible to participate in SBA's programs.

GCBD uses the protest process to help root out fraud, waste, and abuse in our small business contracting programs by referring questionable firms to our General Counsel Debarment Official or SBA's Inspector General for further investigation. In FY 2012, SBA suspended, proposed for debarment, or debarred approximately 28 firms or individuals involved in procurement-related misconduct.

Differences between VA and SBA

The SBA and VA mutually recognize the importance of the VOSB and SDVOSB communities to the American economy. SBA and VA have collaborated to compare our

[4] SBA regulations require that documentation of a service-connected disability must come from the VA, Department of Defense, or the U.S. National Archives and Records Administration.

programs in an effort to bring them into closer alignment and provide better services to the veterans' community. The comparison contrasted the statutes, regulations, interpretations, business processes, and information technology support of the programs. Our comparison found many similarities between the "ownership and control" eligibility requirements for the VA and SBA programs, due in large part to the VA program drawing extensively from SBA regulations for the 8(a) and SDVOSB programs.

While there are similarities, there are also key differences, as I noted in my letter dated December 6, 2012, submitted in response to GAO Report 13-95. For instance, VA's Veterans First program is a certification program similar to SBA's 8(a) Business Development Program, while the government-wide SDVOSB program uses self-certification. In order to meet the requirements of a certification program, a firm must provide more initial information and work through the certification process to meet eligibility requirements. This process is inherently more labor-intensive than a protest-based self-certification program.

Another difference between the SBA and VA programs is in the timing of requests for documentation and review of documentation to demonstrate program eligibility. In a protest-based self-certification, the requests for additional documentation are submitted in response to a protest that is filed after a contract award. Once the documentation is reviewed, a determination of eligibility is made. The VA certification process requires that documentation be submitted and a determination made before a contract can be awarded.

Finally, although the regulations are similar, SBA's determinations are made on a case-by-case, fact-specific basis. Each application is reviewed on the totality of information presented by the applicant firm. Consequently, there are very few instances where there is only one factor contributing to the denial of a firm's program eligibility. As a result, it is inappropriate to presume there is only one clear bright line interpretation of a regulation as it applies to every potential applicant firm, and every potential set of factors.

Our collaboration with VA has been productive in identifying other areas of potential coordination and best practice sharing. I would be happy to discuss these efforts or any of the topics the Subcommittees wish to explore during the question-and-answer portion of the hearing today.

Thank you once again for your support of our work in this area, and for the opportunity to appear before you today.