

Statement of

on behalf of

The Associated General Contractors of America

to the

U.S. House of Representatives

**Committee on Committee on Veterans' Affairs**

**Subcommittee on Oversight and Investigations**

June 29, 2017



The Associated General Contractors of America (AGC) is the largest and oldest national construction trade association in the United States. AGC represents more than 26,000 firms, including America's leading general contractors and specialty-contracting firms. Many of the nation's service providers and suppliers are associated with AGC through a nationwide network of chapters. AGC contractors are engaged in the construction of the nation's commercial buildings, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, site preparation/utilities installation for housing development, and more.

2300 Wilson Boulevard, Suite 300 • Arlington, VA 22201 • Phone: (703) 548-3118

AGC is a national association of more than 26,000 businesses involved in every aspect of construction, with 92 chapters representing member companies in every state. The construction industry has historically supported and provided opportunities for our nation's veterans. For years, AGC has worked with the U.S. House Veterans' Affairs Committee to establish more protections and better governing policies for America's veteran owned businesses. AGC appreciates and thanks the committee for its continued efforts to help our nation's veterans, veteran owned businesses, and service-disabled veteran owned-small businesses.

The primary mission of the U.S. Department of Veterans Affairs (VA) is to dutifully care for the health of our nation's veterans. To support that mission, the VA has over 1,800 facilities ranging from large hospitals to small out-patient clinics and office buildings throughout the country. Within the VA, the Office of Construction and Facilities Management (CFM) and a system of 23 separate Veterans Integrated Service Networks (VISNs) under the Veterans Health Administration (VHA) support construction and maintenance needs of the agency's facilities. As mandated by law, CFM executes projects valued \$10 to \$100 million and the VISNs execute projects equal to or less than \$10 million. CFM does not have authority over the VISNs construction program and there appears to be little coordination between the two entities. It is clear that the mission of the VA is broad and therefore it is essential to delivering a construction project in a safe, efficient and timely manner. Thus, it is critical that the VA is adequately prepared to meet the real challenges of delivering high-quality facilities and infrastructure worthy of our nation's veterans. A significant impediment to meeting this complex challenge is the quality of training within the VA.

The VA does have several qualified experts when it comes to designing and constructing medical facility projects and is taking steps at CFM to train their resident engineers more effectively. However, not all VA construction representatives and, especially, contracting officers have such requisite expertise or the ongoing training requirements necessary to deliver high-quality health care facilities that the nation's veterans deserve. As such, to the extent previous reforms have not already done so, the VA should require its construction representatives and especially contracting officers that oversee construction contracts to receive sufficient training on topics including but not limited to contract administration and management, the Federal Acquisition Regulation, and project management. Such training should apply to both the major and minor construction programs. At least a portion of the construction management-side of this training must be administered through industry-recognized and well-qualified private construction management training organizations or institutions. The draft bill to "improve the hiring, training, and efficiency of VA acquisition personnel and organizations" initiates important steps to improve training for the VA personnel. AGC supports this draft bill and urges the committee's support it in its entirety.

The problem for many construction businesses contracting with the VA is not that they cannot adjust to meet the changes required to complete the project as the VA desires. Rather, the issue is that many at the VA lack proper training, and this lack of training creates a flow down of problems that affect the construction project. For example, the VA, along with other federal agencies, take months and sometimes a year or more to issue a formal change order notice that a contractor should perform work to address the change—making the agency liable for payment for the work performed. Even after the decision to issue a change order is made, a small business contractor may not actually receive payment for that change order work for a considerable period of time. This is a problem can involve not only the VA construction field representatives, but also contracting officers. Because of schedule requirements under the contract, some construction contractors perform this change order work without waiting for the formal change order notice from the federal agency. These problems were most recently publicized on the Department of Veterans Affairs' Aurora Hospital project outside Denver, Colorado.

On the VA Aurora Hospital project, the inability of the VA to process contract modifications left the general contractor and its subcontractors without payment for extended periods of time with severe consequences. For example, between September 2011 and September 2012, the VA stopped processing change orders tied to the southern clinic building then under construction.<sup>1</sup> Construction companies rely on prompt payments to meet payroll and expenses, often unable to cover those costs for very long.<sup>2</sup> Many rely on bank loans and lines of credit to bridge the gap, but on the Aurora project some banks balked at letting small business clients rely on its money to continue work.<sup>3</sup> According to the Colorado SBA, at least 33 small businesses were not paid for work in a timely fashion, and some were waiting more than a year after work was completed for payment.<sup>4</sup> Of those 33 companies, at least two filed for bankruptcy.<sup>5</sup> The prime contractor even paid subcontractors several million dollars out of its own pockets while waiting for payment from the VA, which was highly unusual.<sup>6</sup>

While the project in Aurora is a recent and, unfortunately, well-known example, problems with processing change orders happen in every federal construction agency on a regular basis. The problem is that those change order delays are happening on projects worth \$5 million, \$10 million and \$100 million, on which Congress does not ordinarily conduct oversight. The issue is that when the dollar amount is not high, and media attention is not existent, meaning that there's a lack of public outrage, the problems persist but go unnoticed by everyone except the small business that may have to close its doors.

AGC has found that recently, there have been some signs of an improving culture at the VA, particularly at CFM. AGC members note that there has been noticeable difference in VA's attitude on at least some large project construction sites. As opposed to the past, the right parties in the VA are beginning to coming to the table to better guide design and construction decisions. There is noted faith in the leadership of the VA and its construction leadership that they can and are having some success influencing positive change. These positive changes have been identified on major construction program projects—governing projects above \$10 million—overseen by the VA's CFM.

Small business AGC members, including service-disabled, veteran-owned small businesses, have not seen much, if any, relief. These contractors perform most of their work through the minor construction program—governing projects at or below \$10 million—at the VA. Generally speaking, a \$5 to \$10 million project is significant for small businesses and is a significant construction project on its own. The minor program is generally overseen on a regional basis through the Veterans Health Administration and its 23 individual offices, called VISNs. Small business AGC members find that the VISN offices have little or no construction training or expertise. Similarly, there appears to be little or no accountability for VISNs when it comes to delivering construction projects on time and on budget. The well-documented problems large construction businesses had at the various major VA hospital projects continue to happen in the minor construction program to small businesses, which have fewer resources available to handle long change order payment delays and protracted litigation with a federal agency.

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<sup>1</sup> David Migoya & Mark Matthews, *Aurora VA Hospital Project Spooked Subcontractors, Causing Cost Hikes*, DENV. POST, May 15, 2015 available at [http://www.denverpost.com/news/ci\\_28125325/aurora-va-hospital-project-spooked-subcontractors-causing-cost](http://www.denverpost.com/news/ci_28125325/aurora-va-hospital-project-spooked-subcontractors-causing-cost)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Cathy Proctor, *SBA: Progress being made on Helping Unpaid VA Hospital Subcontractors*, DENV. BUS. J., April 4, 2013 available at <http://www.bizjournals.com/denver/news/2013/04/04/sba-urges-va-to-speed-payments-for.html>

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

As such, AGC strongly encourages this committee to work with the construction industry to improve training at the VA, especially for the minor construction program. Through such better training, we hope reform can be implemented that will help the VA, the construction industry, and our nation's veterans.

Thank you again for inviting AGC to testify on these important topics to America's veterans. We look forward to following up with you on several items, including:

- Improving Training for VA Construction Employees;
- Improving VA Design and Construction Standards/Specifications;
- Conducting oversight on VA delays with issuing change orders on business construction contracts; and
- Addressing problems in the VA's Minor Construction Program.

Thank you for your time and consideration.