

**STATEMENT OF
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DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES**

JUNE 29, 2017

Good afternoon, Chairman Bergman, Ranking Member Kuster, and Members of the Subcommittee. I appreciate the opportunity to address the Subcommittee regarding the four bills that affect the Department of Veterans Affairs' (VA) acquisitions and Veteran-Owned Small Businesses (VOSBs). I am joined today by Mr. Tom Leney, Executive Director, Small and Veteran Business Programs, Office of Small and Disadvantaged Business Utilization.

VA is a significant contributor to the Government's efforts to ensure a fair proportion of contracting dollars are awarded to small businesses. According to the Federal Procurement Data System (FPDS), in Fiscal Year (FY) 2016, VA was the fourth-largest Federal agency in terms of contract spend. Out of \$23.1 billion in FY 2016 reported contract spend for the Department, FPDS indicates VA awarded over 29 percent to small businesses. VA also reported more dollars awarded to Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) than all other Federal civilian agencies combined.

These are results that translate into real dollars and real opportunities in the hands of small businesses and Veteran entrepreneurs. Ensuring the highest quality service to Veterans, improving our acquisition processes, and protecting Veteran-owned small businesses are our highest priorities. We'd like to comment on each of the four bills separately.

H.R. 2006 - VA Procurement Efficiency and Transparency Act

VA does not support the bill. H.R. 2006 would require VA to calculate and record cost avoidance achieved through the procurement process. This process is not required by the Federal Acquisition Regulation nor does it appear to be a requirement for any other Federal agency. VA's procurement process is not unique, and should not be treated as such by imposing this requirement on the agency.

VA's current system does not support this function, so this will only add to the extensive documentation of the procurement process. VA is also in the process of replacing its current contract writing system. Based on current knowledge of the new system, and the limited utility of adding this capability, it does not support recording this data.

VA does not see how the historical information will be of use. The pricing data is part of the evaluation/decision process. Once the contractor is selected, the value of the difference between the bids is not considered valuable to managerial decision making. Additionally, a difference in the awarded price and the average of offers received may not accurately reflect an actual savings, but may be an indication that the contractor provided an offer that significantly decreased the company's profit in order to secure the award.

Furthermore, the reported "savings" derived from the calculation methods outlined in the proposed legislation are simply a reference point. Such a reference point might be useful in the development of future independent government cost estimates, but are not genuine savings because they are not being computed against any established baseline such as most recent prior price paid, independent government price estimate, best commercial catalog price, etc. We note that both the Office of Management and Budget (OMB) and the Government Accountability Office (GAO) always seek to validate claimed savings against these types of baselines.

The bill also requires development of standardized procurement templates. VA does not see the need for this provision. VA attempts to standardize the procurement process as much as possible. Contracts are written in accordance with government-wide Federal Acquisition Regulations as supplemented by Department-wide VA Acquisition Regulations (VAAR). These regulations standardize the overall approach to soliciting and awarding contracts.

The Department's contract writing system stores required clauses and applies standardized logic in the creation of contract documents. Electronic copies of the contracts are stored in the system and can be reused or modified to meet a future need. It is for these reasons that we feel VA is adequately addressing the issue of standardization.

VA also seeks to leverage our buying power with National or regional contracts. This is also a form of standardization, allowing multiple locations to use the same contract for like needs. VA has also been a proponent of the Federal Strategic Sourcing Initiatives. Again, this is a form of standardization by requiring multiple locations to use the single government solution.

H.R. 2749 - Protecting Business Opportunities for Veterans Act of 2017

This bill would clarify the performance expectations for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) receiving contracts under the Veterans First Contracting Program authorities. While VA's program is not a "business development" program in the same sense as, say, the Small Business Administration's (SBA) 8(a) program, we recognize that awards to SDVOSBs and VOSBs can provide these entrepreneurs with the resources and opportunities they can use to develop their business according to their own business plans and objectives. This goal will be accomplished only if these firms perform a certain share of the work themselves and not simply pass the work through to others.

Accordingly, VA incorporated the Limitations on Subcontracting into its Veterans First Contracting Program (Veterans First) from the very beginning. The initial implementation of Veterans First, through a June 2007 information letter issued by the Office of Acquisition & Logistics, contained contract clause language modeled on language applicable to SBA's small business programs. VA later incorporated the contract clause language into the VAAR. When VA issued a package of class deviations to the VAAR to implement changes necessary to comply with the decision issued last summer in *Kingdomware Technologies, Inc. v. United States* (Kingdomware), we included new language to incorporate SBA's current regulation by reference, since SBA had revised its rule based on new legislation.

This bill would give our regulatory action a statutory basis by referencing section 46 of the Small Business Act, where the Limitations on Subcontracting are currently contained. Finally, it would strengthen enforcement through a certification by the awardee that it will comply with these requirements, and provide a role for VA to monitor and enforce compliance. Instances of suspected noncompliance would be referred to the Office of the Inspector General (OIG) for further action. We defer to the OIG for comment on matters within their jurisdiction.

Section 46 of the Small Business Act, as written and as implemented by SBA regulation, requires a contract to be classified either as services or as supplies, based on which constitutes the greatest percentage of the dollar value. For supply contracts, a small business either provides products without paying more than 50 percent of the contract value to its own suppliers or, if an eligible nonmanufacturer, agrees to provide the product of another small business. This latter requirement, referred to as the nonmanufacturer rule, can be waived by SBA if there are no small business manufacturers available.

In VA's case, some of our supply contracts involve items manufactured solely by large firms but the main benefit to be provided by the small business awardee would be the ancillary services. These would nevertheless be classified as supply contracts because of the large dollar value of the items. However, since they are manufactured by large firms, and SBA has waived the nonmanufacturer performance requirement, these supply contracts have effectively no performance requirement at all for the SDVOSB or VOSB awardee. Their main competitive advantage is the services they have to offer along with providing the items, but they have no obligation to provide any.

As an example, consider our High-Tech Medical Equipment contracts for radiological imaging and similar devices. The dollar value of these products is by far the dominant share of the contract value, so these would be classified as supply contracts. SBA has already provided a class waiver of the nonmanufacturer rule for these items, since no small business manufacturers exist. If these were set-aside for SDVOSB or VOSB distributors, these firms would pass-through the dominant share of the contract value to the large business manufacturer. There would be no requirement for them even to perform any ancillary services, since the performance requirement for services would not apply to a supply contract. Potentially they would collect an administrative overhead cost and pass the entire contract value to others for performance.

VA and SBA appreciate the bill's aim of preventing pass-throughs, but have concerns that we would like to address with the Committee.

H.R. 2781 - Ensuring Veteran Enterprise Participation in Strategic Sourcing Act

VA cannot support this legislation, and would like to discuss these concerns with the Committee. This bill would require the Secretary of Veterans Affairs certify whether there are sufficient numbers of Service-Disabled Veteran Owned Small Businesses (SDVOSB) and Veteran-Owned Small Businesses (VOSB) in each category of Federal Strategic Sourcing Initiative (FSSI) contracts managed by the Office of Federal Procurement Policy. Insufficient representation within a category would require the Secretary to consult with the Administrator of the General Services Administration on increasing the number of such concerns or require VA to abstain from orders under the specific category with insufficient representation. As such, VA does not believe that any additional legislation is required as proper application of the current law is sufficient to achieve the desired outcome. In other words, the existing law does not allow VA to place orders against FSSI contracts if the Rule of Two is not satisfied.

Furthermore, the draft legislative requirement for the Secretary of the Department of Veterans Affairs to make certain certifications related to the efficacy of OFPP, the General Services Administration (GSA), and various Category Manager efforts to streamline Federal buying practices and improve Federal business outcomes is misdirected. If Congress desires some type of certification that VA is or is not in a position to leverage such solutions, we believe it would be more prudent and appropriate to have the OFPP designated Category Managers make such a certification. This approach would properly fix accountability on the appropriate acquisition officials for ensuring that the solutions they develop are accessible by all potential Federal customers. Customers, including VA, should not be critiquing the work of category managers or contracting officers from organizations supporting category managers after the fact. Rather, quality should be built into the solutions up front, and solutions should be developed that optimize Federal business outcomes.

VA, like any other Federal agency, provides our requirements, including our unique requirements traceable to § 8127, to Category Managers, program managers

and contracting officers as solutions are developed. VA requirements are considered, but should not necessarily drive Federal solutions. FSSI and other similar program officials build solutions that optimize business outcomes at the Federal level. When such solutions permit VA to participate, we actively do so. In fact, OMB has historically and consistently rated VA as one of the top supporters of FSSI. As an example, VA is the single largest user of the Federal Domestic Delivery Service (DDS) strategic sourcing solution. When, for whatever business reasons, a particular Federal solution will not permit VA compliance with § 8127, we cannot use that particular solution.

H.R. ____ - To improve the hiring, training, and efficiency of acquisition personnel and organizations of the Department of Veterans Affairs, and for other purposes

VA does not support this bill. Section 1(a) requires VA to develop and implement a training and certification program. It is not entirely clear based on the language if this program is for more than just acquisition personnel. Other parts of the bill reference acquisition, supply chain and construction personnel. The training and certification programs are to be established as quickly as practicable.

Section 1(b) of the proposed draft legislation would require VA to prioritize use of internship programs to hire employees for entry level positions. It does this by prescribing the number of participants VA must matriculate through the intern schools. The goal is for VA to meet its hiring/attrition needs with the graduating interns. Once VA achieves this goal, the SECVA would need to certify to Congress that the number of interns coming through the program is adequate to meet its needs. At that time VA would be able to set the number of interns to maintain sufficient capacity to meet hiring/attrition demand.

Section 2 would require the Secretary to develop a plan that achieves cost savings from the reduction in duplication and increased efficiency to be used to support the increased participation in the intern program as well as the training and certification programs. In an effort to achieve potential savings, VA is required to centralize procurement and logistics employees. Under this section, VA must not allow an acquisition or logistics employee to be in the customer's supervisory chain of command. This would require VA to remove logistics personnel, mostly from hospitals (approximately 5K), from their current supervisory chains. Much of VA's acquisition personnel already report through an acquisition supervisory chain of command, but some small number in the Veterans Benefits Administration (VBA) and the National Cemetery Administration (NCA) may still be reporting through their customers chain of command.

Section 2(a)(3) requires that VA must achieve these changes through attrition or redistribution. Under Section 2(a)(4), demotions, furloughs, or liquidations are not allowed in order to achieve cost savings.

VA has previously provided technical comments on this proposed legislation and

does not feel it is necessary. VA takes training, hiring and certification of its workforce very seriously. VA is the only civilian agency with a dedicated training academy. It established a contracting intern school and a warriors-to-workforce program to internally supplement traditional procurement workforce recruitment. With regard to the number of training cohorts, VA would like to retain existing flexibility to modify throughput of these programs based on evolving workload requirements. VA currently follows OMB and OFPP acquisition program certification requirements and does not see the need for legislation in this area.

Thank you for the opportunity to appear before you today. My colleague and I will be pleased to answer any questions you or other Members may have.