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DEPARTMENT OF VETERANS AFFAIRS (VA)  
BEFORE THE HOUSE COMMITTEE ON VETERANS' AFFAIRS  
SUBCOMMITTEE ON TECHNOLOGY MODERNIZATION AND SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS**

**July 20, 2023**

Good morning, Chairman Rosendale, Chairwoman Kiggans, Ranking Member Cherfilus-McCormick, Ranking Member Mrvan, and Members of the Subcommittees. I am pleased to appear before you today to discuss competition trends in VA's procurement, VA's enforcement of organizational and personal conflict of interest regulations, and the Department's use of professional and management consulting service contracts. Joining me today are my colleagues, Mr. Phillip Christy, Deputy Executive Director, Office of Acquisition, Logistics, and Construction; Dr. Angela Billups, Executive Director, Office of Acquisition and Logistics and Senior Procurement Executive; Mrs. Luwanda Jones, Deputy Chief Information Officer for Strategic Sourcing from the Office of Information Technology (OIT); and Mr. Joseph Maletta, Executive Director for Acquisitions from the Veterans Health Administration (VHA).

As the committee is aware, VA's procurement of goods and services has grown from \$20.2 billion in fiscal year (FY) 2012 to \$56.2 billion in FY 2022, which is a 177.3% increase over a 10-year period. This increase represents a significant rise in procurement workload and the need to efficiently and smartly execute all the contracting requirements that support VA's mission needs. Even with this increase, VA has always placed great importance on adhering to all laws and regulations and maintaining the trust of Veterans and taxpayers in the proper execution of the procurement of all goods and services that support VA's mission. To deal with the major increase in procurement activities over the last 10 years, VA established a formal category management program to support the smart and efficient execution of how it buys goods and services. The Department has executed a robust and efficient category management program to drive how VA spends its financial resources on procurement. VA's program was devised in accordance with the Office of Management and Budget (OMB) Memoranda M-19-13, *Category Management: Making Smarter Use of Common Contract Solutions and Practices* and the results thus far have been exceptional.

In FY 2022, VA achieved an OMB standard of 90.1% for spend under management, exceeding the OMB goal of 87%. VA aggressively promotes the use of fair competition and opportunities among all prospective vendors for VA awards; uses a variety of contracting vehicles to smartly meet the Department's needs, ensures competition, and delivers results that save taxpayer dollars while providing world class health care and benefits to Veterans; VA's procurement processes include risk management controls to ensure compliance with applicable laws, regulations, and VA policy. VA also uses an acquisition lifecycle framework to enable the development of

effective requirements, appropriate acquisition approaches; identification and mitigation of potential organizational conflicts of interest, and targets the prevention of duplication, waste, and unethical or unfair behavior.

### ***The Competitive Procurement Process***

VA's Procurement program is consistent with OMB Memoranda M-19-13, *Category Management: Making Smarter Use of Common Contract Solutions and Practices* and has not resulted in the loss of competition nor hindered VA's enforcement of organizational and personal conflict of interest regulations. In fact, VA has demonstrated exceptional results the last 5 years with competition rates and, as of July 10, 2023, continues to maintain this tradition and is achieving a 97% competition rate for all procurements.

To complete our contracting needs while ensuring robust competition, we use a host of Federal contractual vehicles, including Government-Wide Acquisition Contracts (GWACs), General Services Administration (GSA) Federal Supply Schedules program, and VA strategic and individual contract vehicles. We regularly review requirements to improve the efficiency and effectiveness of acquisition activities to further VA mission outcomes, service delivery, and effective stewardship. Category management principles seek to identify unnecessary contract duplication using OMB recognized spend under management contract vehicles. However, the use of spend under management contracts are not prioritized at the expense of the agency's Veterans First contracting program nor small business goals.

As part of our VA category management program, we actively work to create strategic intelligence activities to include reviewing government and industry best practices, prices paid data, trend analysis, and other information to facilitate informed buying decisions. Our category management analyses often conclude that combining similar or duplicative procurement spend into larger enterprise actions will increase our ability to leverage our agency buying power. When consolidation of multiple requirements is determined to be in the Government's best interest, VA complies with the requirements in the Federal Acquisition Regulation (FAR) developing and approving a determination verifying the need and justification for consolidation. The written determination ensures that market research was conducted, alternative contracting approaches that involve a lesser degree of consolidation were considered, any negative impact of the acquisition strategy on contracting with small business concerns were addressed, and steps were taken to include small business concerns in the acquisition strategy. The determination must also be coordinated with VA's Office of Small and Disadvantaged Business Utilization (OSDBU) and with VA's Office of General Counsel (OGC).

Once an acquisition strategy is decided upon by contracting officers (CO), a source selection evaluation plan is created to evaluate proposals received in response to a solicitation to select a proposal that represents the best value to the Government in accordance with the FAR, VA Acquisition Regulation (VAAR) and VA Acquisition

manual (VAAM). Evaluation factors are tailored to each acquisition but generally consist of technical, price, past performance, small business participation, Veterans' involvement, and Veteran employment with a weighting of all the factors. The CO's contract award decision is based upon a comparative assessment of proposals against all source selection criteria in the solicitation. While the CO may use reports and analyses prepared by others, the source selection decision represents the CO's independent judgment. The source selection decision is documented, and the documentation includes the rationale for any business judgments and tradeoffs made or relied on by the CO, including benefits associated with additional costs.

### ***Competition, Competency and Organizational Conflicts of Interest***

Because of VA's large annual spend on contracts, it is not uncommon for a vendor to be selected for several different requirements, but the Department follows the competitive acquisition process outlined above. It should be noted that contractors are selected based on their competency and ability to successfully respond to the solicitation requirements. Many companies have multiple areas of expertise and compete on requirements for different services throughout the enterprise. Prior to an award, a determination is made to ensure the awarded contractor is competent in the areas that they are providing services. Where there is the potential for related services to be provided by the same company, the solicitation includes Organizational Conflict of Interest (OCI) clauses requiring vendors to disclose if they believe there is a conflict as well as put them on notice that if they were to win the contract, they could be conflicted out of potential future work.

If any potential OCIs are identified, these are brought to the attention of the CO who investigates the potential OCI in conjunction with the requiring program activity. The results of the investigation are shared with Office of General Counsel (OGC) for their review and advisement. If the CO determines an actual or potential OCI exists, the Government must act to avoid, neutralize, or mitigate the actual or potential OCI. In the last 12-months VA has received three major OCI complaints by industry and VA conducted thorough analysis and determined OCIs did not exist. These three instances were challenged by industry and were independently investigated by the Government Accountability Office (GAO) and the GAO also determined OCIs did not exist, and VA followed proper procedures in the determination process. VA does have one current high visibility OCI allegation which is still under investigation. VA will follow its established procedures and make a final determination once the investigation is completed.

VA takes the concern of OCI seriously and ensures its contract awards comply with the FAR, VAAR and VAAM. Furthermore, VA requires the inclusion of OCI as a topic as part of all Senior Executives and Acquisition Workforce annual mandatory ethics. Safeguarding sensitive information and compliance with ethical behavior is a high priority for VA. As such, we embrace the principles of least privilege in all our daily activities; this extends into our management of contracts and our oversight of contractor personnel.

Industry-wide vendor consolidations have been ongoing for years in the marketplace. Due to size and scale, many of VA's contracts consist of a prime contractor working with one or more subcontractors, either directly managed or through a joint venture. As subcontractors may only provide specific targeted outcomes for the prime on a part-time basis, the subcontractors employees may participate in multiple VA contract actions at the same time. This necessitates our use of confidentiality and Non-Disclosure Agreements (NDAs). These artifacts specifically discuss requirements for contractor personnel to safeguard information and not disclose information to unauthorized individuals. In addition, VA's contract language requires contractors to limit access to the minimum number of personnel necessary for contract performance for all information considered sensitive or proprietary. To be clear, an NDA alone is not sufficient to avoid or mitigate an OCI for the prime and subcontractor. When a prime or subcontractor is identified as potentially participating in related contracts, the government OCI investigation would take into consideration whether the prime and subcontractor performance under one contract would impact or create impaired objectivity, unequal access to information, or biased ground rules on the additional or new contract.

### ***Information Security***

Safeguarding Veteran data is VA's top priority. All contractor and subcontractor employees requiring access to VA information or VA information systems must pass a security background check and complete the VA Privacy and Information Security Awareness training and acknowledge their understanding of any responsibilities for compliance by signing VA Information Security Rules of Behavior.

When it comes to VA's development of future acquisition needs, we closely safeguard the sensitive information from our industry partners by ensuring this information is not included in written or oral communication that would give any incumbent vendor a competitive advantage. When our market research and contract development activities necessitate industry interaction, we make use of broad industry announcements to ensure all potential bidders receive equal access to information provided and equal access to provide feedback on VA's approach to acquiring future products and services.

In reference to vendors performing work across VA's enterprise, situational awareness is ascertained and made available by using data captured in various systems including, but not limited to, Contractor Performance Assessment Reporting System (CPARS) and the Federal Procurement Data System—Next Generation. Reports are routinely run by COs and program offices leveraging these systems to obtain oversight of a contractor's portfolio within VA's enterprise. Additionally, the program office and contracting officer representatives and COs continuously monitor performance and enter performance information into these systems to allow for the documentation of this information.

Regarding the use of professional management and consulting services, VA is carefully monitoring this category of spend for work conducted by contractors while also looking for duplication of efforts as part of our category management program. It is noted that the Mission Act, the COVID-19 pandemic, and the PACT Act drove an increase in spending on professional management and consulting services contracts over the past few years. Currently, VA is projected to spend less and execute fewer contracts in FY 2023 for the purchase of professional management and consulting contracts. VA is committed to ensuring the use of professional management and consulting services is necessary and prudent.

### ***Conclusion***

Chairman Rosendale, Chairwoman Kiggans, Ranking Member Cherfilus-McCormick, Ranking Member Mrvan, and members of the subcommittees, thank you for the opportunity to speak on competition trends in VA's procurement, VA's enforcement of organizational and personal conflict of interest regulations, and the Department's use of professional and management consulting service contracts. My colleagues and I are pleased to answer any questions that you may have.