

# MANIPULATION AND FRAUD IN THE REPORTING OF VA SMALL BUSINESS GOALS

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## JOINT HEARING

WITH

Small Business Committee  
Subcommittee on Investigations, Oversight and  
Regulations

BEFORE THE

Subcommittee on Oversight and Investigations

OF THE

COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES

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## **MANIPULATION AND FRAUD IN THE REPORTING OF VA SMALL BUSINESS GOALS**

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**Tuesday, June 23, 2015**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
*Washington, D.C.*

The subcommittees met, pursuant to notice, at 4:01 p.m., in Room 334, Cannon House Office Building, Hon. Mike Coffman [chairman of the Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs] presiding.

### **OPENING STATEMENT OF CHAIRMAN MIKE COFFMAN**

Present from Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs: Representatives Coffman, Roe, Walorski, Kuster, O'Rourke, Rice of New York, and Walz.

Present from the Subcommittee on Investigations, Oversight and Regulations, Committee on Small Business: Representatives Hardy, Rice of South Carolina, Knight, Bost, Adams, and Velázquez.

Mr. COFFMAN. Good afternoon. I'd like to welcome everyone to today's joint hearing titled "Manipulation and Fraud in the Reporting of VA Small Business Goals." I'm pleased to welcome Chairman Crescent Hardy and his fellow members of the Subcommittee on Investigations, Oversight and Regulations for the House Committee on Small Business for this joint hearing.

This hearing follows two recent hearings held by this subcommittee exposing massive circumvention by VA of the Federal Acquisition Regulations and related procurement laws. These laws are designed to ensure best value to the government and to reduce the risk of waste, fraud, and abuse. The previous hearings revealed how VA has incurred billions of dollars of unauthorized commitments through its misuse of purchase cards for the procurement of goods and services above the micropurchase threshold without contracts and through the procurement of non-VA care without contracts.

Due to the persistent failure of VA to enter into necessary contracts, VA has not only amassed huge liabilities, it has also seriously undermined its compliance with government-wide small business goals by grossly exaggerating the data it has provided to the Small Business Administration, General Services Administration, and the Office of Federal Procurement Policy.

According to a letter to Secretary McDonald from VA's Senior Procurement Executive, Mr. Jan Frye, who will testify today, VA officials at the highest levels knew that the data was false at the

time they submitted it. This incredible admission would be shocking but for the fact it concerns the VA. Tragically, this is the same Department where senior-level managers received bonuses for reporting false patient appointment wait times. Moreover, this is the same Department where it appears as of this date that only one employee has been fired for such shameful conduct.

Perhaps, given this backdrop, where malfeasance largely goes unpunished, it should not be surprising that VA is cooking the books regarding its small business performance. Based on incorrect data that VA entered into the Federal Procurement Database System, FPDS, or more importantly, required data that was never entered into FPDS, VA has received an A on the Small Business Procurement Scorecard every year reported since fiscal year 2011 and has exceeded its goals with regard to service-disabled veteran-owned small businesses.

According to Mr. Frye, FPDS data for VA has understated this by as much as \$6 billion to \$10 billion annually, and as a result, the percentages stated in VA's Small Business Scorecard are absolutely false given the immense inaccuracy of the denominator used to calculate them.

Underreporting of required contract data undermines transparency and obscures how billions of taxpayer dollars intended for veterans programs may be diverted and squandered without any accountability. Business opportunities that should normally be reserved for service-disabled veterans are jeopardized by false data. By gaming the numbers, VA puts in doubt not only its own scorecard, but also the scorecard for the entire Federal Government.

With that, I now recognize Chairman Hardy for his opening statement.

#### **OPENING STATEMENT OF SUBCOMMITTEE CHAIRMAN CRESENT HARDY**

Mr. HARDY. Good afternoon. Thank you, Chairman Coffman, for working with us on this important issue.

In 2007, then Senator Obama said: We should do everything we can to ensure the American public can easily access and track how the Federal Government does its business, because we can't reduce waste, fraud, and abuse without knowing how, where, and why the federal money is flowing out of the door.

I only wish the Department of Veterans Affairs and other agencies assembled here today had taken those words to heart. Instead, we have a story of fraud, waste, and abuse, and the victims are our Nation's veterans and small businesses. Allow me to give three examples.

First, the allegations here today include \$6 billion to \$10 billion in VA spending be hidden from public violation of the Federal Funding Accountability and Transparency Act of 2006, the law the President himself introduced and championed through Congress.

Second, as a candidate for President, Senator Obama promised to end the diversion of federal small business contracts. However, the allegations are the VA had ignored provisions from the Small Business Act to reserve all awards under \$150,000 for small businesses, instead spent that money without even allowing the businesses to compete.



Third, I read that the government credit cards were abused and the transactions were sloppily hand jammed, the transactions into the FPDS, attempting to obtain small business credit without regard of whether the purchases had been made from large or small businesses and without regard for the year of obligation.

The contracts we're discussing are for things like medical prosthetics, medical care. If the VA had followed the law, small business, including many veteran and service-disabled veteran-owned small businesses, would have had an opportunity to compete and provide goods and services our veterans so desperately need. That competition would have saved money, which means more services could have been provided for more veterans. Instead, the VA simply ignored the law.

Today, the committees look to investigate how deep the problem runs at the VA and whether it could be similar fraud by other agencies. I expect to hear Small Business Administration and General Services Administration and the Office of Management and Budget are doing to make sure that the agency cannot ignore the laws without consequences. And I see that, given that the OMB didn't even send a witness today for the hearing, I suspect that I'm not going to hear the answers that I like.

Finally, the committee needs to know that the VA employees received bonuses based on inflated small business numbers. Our veterans and our small businesses demand answers.

Mr. Chairman, I yield back.

Mr. COFFMAN. Thank you, Chairman Hardy.

I now recognize Ranking Member Kuster for her opening statement.

#### **OPENING STATEMENT OF RANKING MEMBER ANN KUSTER**

Ms. KUSTER. Thank you very much, Chairman Coffman and Chairman Hardy. And I want to welcome our colleagues, Mr. Rice and the Ranking Member, Ms. Velázquez, for joining us today.

This afternoon marks the third hearing we have held over the course of the last number of weeks regarding procurement problems at the Department of Veterans Affairs. We have focused on the accusations made in a 35-page letter that Mr. Jan Frye, VA's Deputy Assistant Secretary and Senior Procurement Executive in VA's Office of Acquisition and Logistics, sent to Secretary McDonald in March. This letter paints a picture of a VA acquisition process where acquisition and procurement regulations are routinely ignored.

Most troubling to me is that this letter highlights a problem we see time and time again at the VA: Broken and nonexistent processes and systems. These are necessary to ensure that policies and requirements are followed. These are necessary to provide accurate data with which to judge the effectiveness of the VA's efforts. And at the end of the day, the lack of objective and realistic data means that managers cannot manage and resources cannot be best utilized to provide benefits and services for our veterans.

We must get to the bottom of the allegations we're addressing today, VA's misreporting of its contracts with small businesses to the Small Business Administration and all of the procurement problems that we have been exploring over the past month. Our

hearings and the hearings we have held over a number of Congresses point to a VA that has lost its way, a VA that across all programs and departments is failing our veterans.

This is a systemic failure. The secret waiting lists in Phoenix and at VA medical facilities across the country, the ensuing patient access crisis, the VA claims and appeals backlog, the current budget shortfall, and the VA's inability to manage procurement, all of these problems are the result of VA's failure to collect, use, and report accurate data.

Today's issue is no different. The VA will never be able to appropriately plan, allocate resources, request necessary funding from Congress, and execute its mission without accurate data and without the necessary processes, systems, and leadership in place to make it happen.

This systemwide failure did not happen overnight. It has been decades in the making. But we're facing the results of decades of problems today, and we simply must begin to work on addressing these problems. We can no longer slap a band-aid on a problem and manage from crisis to crisis.

So where do we start? What steps must we take today and tomorrow and the weeks ahead to fix VA's failure to collect accurate data, provide sufficient oversight, hold managers accountable, and consistently execute the law? I'm focusing on accurate data systems and processes since I believe that these are the steps that can be taken to move us forward.

This is not the end of the reform effort, but merely the beginning. The end of a reform effort must result in a VA where the issues that we have been addressing this past month and for many months and years are the exception and not the rule. That reform effort will need the work of all of us, and I, for one, cannot wait to begin.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. COFFMAN. Thank you, Ranking Member Kuster.

I now recognize Ranking Member Adams for her opening statement.

#### **OPENING STATEMENT OF ALMA ADAMS, RANKING MEMBER OF INVESTIGATIONS, OVERSIGHT AND REGULATIONS**

Ms. ADAMS. Thank you, Mr. Chairman. Thank you for holding this important meeting, to our ranking members as well.

The Veterans Administration has an important role to play in fostering small business growth and especially helping veteran-owned small businesses succeed. When the VA meets its procurement needs by contracting with small businesses, veteran-owned firms, minority-owned companies, and other disadvantaged businesses, it creates a win-win situation. The taxpayer and the agency benefit from high-quality goods and services delivered at reasonable prices to the VA, and small businesses, especially those owned by veterans, secure a valuable customer, allowing them to grow their operations and in some cases even add employees to their payrolls.

Unfortunately, we've seen too often with many agencies that fraud, waste, and abuse can interfere with this laudable goal, depriving legitimate small businesses of their fair share of federal

contracts. The House Veterans' Affairs Committee has held previous meetings examining how the VA's Purchase Card Program has been abused. It's been suggested that the VA has committed as much as \$5 billion a year in improper and unauthorized procurement expenditures for at least the last 5 years.

The lack of control that contributed to this mismanagement and abuse raise a number of troubling concerns. Certainly, if the agency is purchasing biologics and medical supplies without contracts, there are serious patient safety issues. In addition, this lack of transparency means that the VA may routinely circumvent the terms of the Federal Acquisition Regulations. Many of these purchases may be illegally steered to vendors that do not provide the most competitive prices or services or may not actually be truly a small business or veteran-owned.

It should be highlighted from the previous work conducted by our committee how easily fraud can occur in programs like the Service-Disabled Veteran-Owned Small Business Program. Working with GAO, the committee found that when proper controls are not in place, multinational corporations often pose as veteran-owned firms for purposes of securing federal work.

Likewise, given the previously documented misuse and overuse of the Card Purchase Program, there's good reason to believe that the VA's small business, veteran-owned, and women-owned contracting numbers are significantly inflated. Procurements that are made without contracts are not included in calculations to determine small business goals that were set in statute by Congress. In other words, because of the practice of avoiding standard regulations, the very agency charged with assisting veterans may well be shortchanging not only small businesses, but veteran-owned small businesses.

Mr. Chairman, our two committees both have a responsibility to watch out for two groups, both of which have made our Nation great, small businesses and veterans. When there's waste, fraud, and abuse at any agency, as come to light here, groups like these are often the ones who suffer most. It's my hope that by working together we can exercise vigorous oversight and determine the extent of the problem and move forward with any necessary reforms.

I thank the witnesses for being here this afternoon, and I look forward to your testimony.

I yield back, Mr. Chairman.

Mr. COFFMAN. Thank you, Ranking Member Adams.

**OPENING STATEMENT OF RANKING MEMBER MS. NYDIA  
Velázquez OF THE SMALL BUSINESS COMMITTEE**

I now recognize Small Business Committee Ranking Member Velázquez, who has joined us today on the dais, for any opening remarks she may have.

Ms. VELÁZQUEZ. Thank you. Thank you, Mr. Chairman and Ranking Members of respective subcommittees.

It is clear that entrepreneurship is a critical path forward for our Nation's veterans. In fact, according to the SBA, there is about 1 veteran-owned firm for every 10 veterans, and veteran-owned firms employ 5.8 million individuals. Another study found that military service exhibits one of the largest effects on self-employment, and

veterans are 45 percent more likely to be self-employed than non-veterans. When taken together, it is not hard to see that veteran-owned small businesses are an important and growing part of our economy.

One way that these companies can become successful is through working with the U.S. Government, which buys nearly \$500 billion in goods and services annually. The Department of Veterans Affairs is a large part of this equation, awarding the second-highest amount to small businesses, much of which are veteran-owned, behind only the Department of Defense. In 2013, the agency awarded \$6.6 billion to small businesses, which amounted to nearly 40 percent of its contracting dollars.

Unfortunately, these numbers have been called into question due to allegations of fraud, waste, and abuse at the VA. Such accusations suggest that the agency failed to use legally required contracts, did not adhere to small business set-aside requirements, and misused GSA schedules. In the end, we do not know what the total value of small business contracts at the VA is, but estimates suggest that small businesses lost out on between \$2.8 billion and \$3.7 billion in contracts.

If this is true, this is a failure not just of the VA, but of the acquisition system more broadly. Time and time again we are presented with similar allegations in which opportunities were improperly diverted away from those that they were intended to reach. The truth is that we need more oversight, a better trained acquisition workforce, and legislative reforms that make these types of actions less likely.

For the small businesses, veteran-owned or otherwise, that play by the rules, it is critical that we begin to clean up this mess, whether it is at the VA or elsewhere. Doing so will help all small businesses better compete for opportunities with the Federal Government, and that is something I hope we can all agree on.

I want to thank all the witnesses for appearing here today, and I look forward to your testimony.

Thank you, Mr. Chairman.

Mr. COFFMAN. Thank you, Ranking Member Velázquez.

I ask all members waive their opening remarks as per the committee's custom. Without objection, so ordered.

Seated at the witness table, we welcome Mr. Kevin Youel Page, Deputy Commissioner for the Federal Acquisition Service of the General Services Administration, and Mr. John Shoraka, Associate Administrator of the Office of Government Contracting and Business Development for the Small Business Administration.

For the Department of Veterans Affairs, we will hear from Mr. Thomas Leney, Executive Director of VA's Office of Small Business and Disadvantaged Business Utilization. He is accompanied by Mr. Norbert Doyle. Norbert Doyle, Chief Procurement and Logistics Officer for the Veterans Health Administration. We will also hear separately from Mr. Jan Frye, Deputy Assistant Secretary and Senior Procurement Executive for VA's Office of Acquisition and Logistics.

I note that we also invited the Honorable Mrs. Anne Rung, Administrator of the Office of Federal Procurement Policy of the Office of Management and Budget. It is disappointing that she is

not here. It is no wonder that federal procurement is in disarray when the head of the office in charge of policy runs from responsibility and fails to provide necessary oversight and transparency.

I now ask the witnesses to please stand and raise your right hand.

[Witnesses sworn.]

Mr. COFFMAN. Please be seated. All of your complete written statements will be made part of the hearing record.

Mr. Frye, you are now recognized for 5 minutes.

#### **STATEMENT OF JAN FRYE**

Mr. FRYE. Chairman Coffman, Ranking Member Kuster, and members of the subcommittee, thank you for inviting me to testify again today.

In a June 11, 2015, letter to VA Secretary McDonald, you invited me to testify as a witness on behalf of VA along with my colleagues, Messrs. Leney and Doyle. I was intentionally excluded by the VA leadership and do not appear before you today as a VA witness. I appear today of my own volition as a VA whistleblower representing American taxpayers and America's military veterans.

As you know, I alleged massive violations of acquisition and fiscal laws to Secretary McDonald in March of 2015. As you are also aware, I received no response from him regarding my disclosures. Thus, I was compelled to report them to this congressional body. In the first of now three joint hearings, beginning May 2015, I reported that some VA senior leaders have willfully violated the public trust, debasing federal procurement and financial laws.

A reasonable person might conclude my disclosure of illegal acts would be accepted with open arms by VA's leadership for further investigation. That has not been the case. My intentional removal as a VA witness for this hearing is irrefutable proof of continuing scorn for those who attempt to uphold the public trust. Further, these VA leadership acts can serve to cast a chill upon future potential whistleblowers.

We have a senior leader integrity malaise in VA. Like substance abusers before the journey to recovery, we will not be cured until we admit we have a disease.

During the June 1 hearing on these matters, you heard one of VA's chief law enforcers testify emphatically that violating U.S. federal statutes and regulations is not "illegal," quote, but just, quote, "improper." In my opinion, parsing words in this manner is a stark reflection of our denial and exemplifies just how low some VA senior leaders will stoop to avoid culpability and protect themselves. As government servants, we did not take an oath to serve ourselves.

Massive violations of public trust continue unabated. In the past several weeks it was disclosed that VHA officials committed approximately 2,000 illegal transactions for kidney dialysis from October 2014 to May 2015. This represents 34 percent of the transactions under these multiple award contracts. These are unauthorized commitments that require ratification before payment. However, payment has already been made, in violation of federal fiscal law.

This month, the VA Office of Inspector General reported the theft of approximately \$225,000 by a VHA West Roxbury, New York, employee using a government purchase card. This theft was avoidable. It occurred because required internal controls in VHA and the Department are lacking. These funds will never be returned to VA to take care of veterans.

Over a year ago, I personally authored a new policy that would vastly improve internal controls in the use of purchase cards for contract payment. VHA rejected the policy. It was apparently inconvenient for them to execute.

In this hearing, we will discuss VA's failure to accurately report our small business goal accomplishment. We are guilty. In doing so, we have deceived the veteran-owned small business community while violating federal laws. I have previously alleged that billions of dollars extended over multiple years have not been placed under contract as required, and thus, have not been reported in the Federal Procurement Data System as our VA total-spend denominator for contracting.

Today, I'm providing this subcommittee information concerning one of the most deceptive schemes I have uncovered in my 41 years of government service. Each year VHA purchases over \$1 billion in medical surgical products. All of these products must be procured in accordance with federal contracting laws. Departmental policy requires most be obtained through our medical/surgical prime vendors, who serve as distributors using federal supply schedules as underlying contracts.

I first learned we had hatched a scheme that avoids use of FSS in late 2014. We pretend to use them, we have never informed OMB or the public we are not using them, but in fact, we are not. Using a convoluted ruse, we buy products off a shopping list while throwing federal acquisition laws to the wind.

We are illicitly and deceptively pretending that federal supply schedules are being used while executing open market purchases. Federal supply schedules do not require small business set-asides. Open market purchases do require set-aside consideration.

Our illegal behavior allows us to avoid set-asides, intentionally fencing these purchases from small businesses. In these acts, exceeding \$1 billion annually, we are in violation of federal procurement law, as well as the Small Business and the Veterans First Acts.

After learning of these shocking practices in late 2014, I attempted to rally VHA senior leaders as well as my supervisor to systematically cease these unlawful deeds. I have been totally thwarted in my efforts to get VHA to properly place their products on contract.

We weave a tangled web. In previous hearings, I've outlined VA's failure to award billions of dollars for products and services via contracts, which is illegal and affords potential harm to veterans. These failures led to massive understatements of our annual total spend for multiple years in Federal Procurement Data System. In a domino effect, this resulted in an overstatement of departmental small business goal accomplishments.

And finally, as revealed today, we further duped the American public and the veteran-owned small business community with de-

ception using federal supply schedules. It is my opinion these acts combined and separately constitute corruption and gross mismanagement.

I conclude with this rhetorical question, which I posed to Secretary McDonald in my March report to him: Without demonstration of responsible stewardship, why would the American public support ever increasing and generous annual congressional appropriations to care for our Nation's veterans.

Mr. Chairman, this concludes my statement. I'm prepared to answer any questions this committee may have.

[THE PREPARED STATEMENT OF MR. JAN FRYE APPEARS IN THE APPENDIX]

Mr. COFFMAN. Thank you, Mr. Frye.

Let's see. Mr. Leney, you are now recognized for 5 minutes.

**MR. THOMAS J. LENEY, EXECUTIVE DIRECTOR, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, DEPARTMENT OF VETERANS AFFAIRS, ACCOMPANIED BY MR. NORBERT DOYLE, CHIEF PROCUREMENT & LOGISTICS OFFICER, VETERANS HEALTH ADMINISTRATION, DEPARTMENT OF VETERANS AFFAIRS**

#### **STATEMENT OF THOMAS J. LENEY**

Mr. LENEY. Good afternoon, Chairman Coffman, Chairman Hardy, Ranking Members Kuster and Adams, and members of the subcommittees. I appreciate the opportunity to address your concerns about the impact of the validity of the Department's procurement data on our socioeconomic goal achievements. I'm joined today by Mr. Norbert Doyle, Chief Procurement and Logistics Officer of the Veterans Health Administration.

VA has acknowledged in previous hearings that our approach to documenting procurement, such as non-VA care, prosthetics, and uses of purchase cards, has not been fully compliant with the Federal Acquisition Regulation. As a consequence, these transactions were not included in our reporting to the Federal Procurement Data System.

VA's socioeconomic goal achievements are reported based on procurement data in FPDS, the completeness and accuracy of which is certified annually by VA's Senior Procurement Executive to the Office of Federal Procurement Policy. Achievements are then calculated in accordance with methodology established by the Small Business Administration.

VA has a legal authority and a moral imperative to provide healthcare to eligible veterans. In fiscal year 2014, in order to provide an expedited means for ensuring that veterans had prompt access to non-VA care when needed, the VA processed approximately \$3.2 billion in transactions for non-VA care that were not reported into FPDS primarily through the use of individual authorizations. These authorizations, though enforceable, were not FAR-compliant contracts, and thus, were not included in the FPDS data upon which our socioeconomic goal achievements are determined.

While I cannot state how inclusion of these individual authorizations would have affected our socioeconomic goal achievement, as we do not know how many of these providers would have been con-

sidered small businesses, I can state that the procurements in question were made to support the care of veterans, the funds that were appropriated by Congress were used for their intended purpose, and VA's internal financial controls were used to track and monitor the expenditures.

As we are increasingly reliant on non-VA care to improve the timeliness of care for veterans, VA has sought congressional support for its legislative proposal to authorize VA to purchase care in certain circumstances through agreements that are not subject to certain provisions of the law concerning federal contracts.

In addition to proposed legislation, VA has taken action to procure the care through FAR-compliant contracts as part of the Patient-Centered Community Care Program, PC3 for short. The goal is to improve veteran access to care and to heighten the reporting and oversight of these transactions. After passage of the Veterans Choice Act legislation, VA modified the PC3 contract to bring the Choice program within the scope of these contracts.

In fiscal year 2014, we only spent \$15 million on non-VA care that was procured under these contracts. So far in 2015, over \$160 million has been spent under this program. We expect use of these contracts to increase over the coming months as VHA has established a hierarchy of purchase care to guide procurement of non-VA care and to minimize the use of individual authorizations moving forward.

We recognize that the increased use of care in the community will have a significant negative impact on our ability to achieve our socioeconomic goals. Because of the need to provide extensive referral networks, these contractors are necessarily large businesses.

Nevertheless, this is the right thing to do. Our imperative must be to get healthcare to veterans in a timely and effective way. To the extent we need to rely on the Choice program and other care and community programs to ensure timely care, we will do so, regardless of the impact on socioeconomic goal achievement.

VA has also taken action to properly include prosthetics purchases in FPDS. Based on concerns raised in 2011, VA has determined that all prosthetic spend above the micropurchase threshold must be awarded and reported by warranted contracting officers. The transition under this approach was completed in October 2013.

As of June 2015, our Electronic Contract Management System showed 57,047 prosthetics transactions, representing more than \$730 million. Of these transactions, 56,884 included an appropriate code indicating they had been reported to FPDS. This is a 99.7 percent compliance rate with 42 percent of our prosthetics purchases going to small businesses.

Where we have the opportunity to contribute to the government's efforts to ensure a fair proportion of contracting dollars are awarded to small businesses, we seek to do so, consistent with our mission to provide care and benefits for veterans. While the VA has been deficient in reporting all spending in FPDS, in fiscal year 2014 VA procured \$6.6 billion from small businesses, \$3.9 billion from veteran-owned small businesses, and awarded more dollars to service-disabled veteran-owned small businesses than all the other federal agencies in the government combined.



We believe we've made progress in improving the accuracy, completeness, and reliability of our procurement data, but we also know we have farther to go to be fully compliant. We seek your support to obtain the legislative authority that will allow us to continue to meet the expectations of both veterans and taxpayers.

Thank you, and I'm prepared to take your questions.

[THE PREPARED STATEMENT OF MR. THOMAS J. LENNEY APPEARS IN THE APPENDIX]

Mr. COFFMAN. Thank you, Mr. Leney.

Mr. Youel Page, you are now recognized for 5 minutes.

#### **STATEMENT OF KEVIN YOEEL PAGE**

Mr. Youel Page. Good afternoon, Chairmen Coffman and Hardy, Ranking Members Kuster and Adams, and honorable members of the subcommittees. My name is Kevin Youel Page. I'm the Deputy Commissioner for the Federal Acquisition Service at the General Services Administration.

In my current position, I lead operations, including the Federal Procurement Data System, known as FPDS, and the SmartPay purchase card program. These two programs support efficiency, transparency, and enable continuous monitoring and improved federal award management. I appreciate the opportunity to appear here today to discuss GSA's role in providing federal contract award reporting capabilities and the SmartPay purchase card program.

FPDS provides a comprehensive Web-based tool for agencies to report their contract actions in accordance with the Federal Acquisition Regulations. The accuracy of the information submitted is the responsibility of each agency to manage. As of May, there are more than 8 million civilian and defense actions reported to FPDS with reporting obligations of \$262 billion for fiscal year 2015 to date.

FPDS generates the Small Business Goaling Report. GSA collaborates annually with the Office of Federal Procurement Policy and the Small Business Administration to define the Goaling Report methodology. Procurements data entered into FPDS by agency contracting officials throughout the fiscal year are used to provide the Goaling Report, which is public information.

GSA also manages the SmartPay government-wide commercial charge card program. The charge cards reduce procurement administrative processing costs, enhance transparency, and support streamlined acquisition of goods and services under the micropurchase threshold, freeing highly trained contracting staff to focus on larger, more complex acquisitions. Over the micropurchase threshold, purchase cards have been used to streamline payment under some procurement contracts.

In fiscal year 2014, agencies spent approximately \$17 billion through 20 million transactions and 263,000 cardholder accounts. Each agency is responsible for its system of management controls and overseeing cardholders' use of the program. Agencies decide which employees are issued the cards, and also determine spending limits within specified guidelines. GSA, through its contractor banks, provides card account management and oversight tools, training, and business rules to assist them in doing so.

The card management systems allow agencies to establish accounts and access information and reports on every purchase their cardholders transact. GSA supports agencies in effective charge card management through publications, training sessions, workshops, and regularly scheduled card manager meetings. Additionally, GSA has embarked on a government-wide charge card metrics and benchmarking program focused on CFO Act agencies. The metrics and benchmarks are designed to indicate potential card management emphasis areas for the agencies to examine.

Thank you for the opportunity to discuss the Federal Procurement Data System and the SmartPay programs. I stand ready to answer any questions the committees may have. Thank you.

[THE PREPARED STATEMENT OF MR. KEVIN YOEUL PAGE APPEARS IN THE APPENDIX]

Mr. COFFMAN. Mr. Page, thank you for your testimony.

Mr. Shoraka, you are now recognized for 5 minutes.

#### **STATEMENT OF JOHN SHORAKA**

Mr. SHORAKA. Thank you. Chairmen Coffman and Hardy, Ranking Members Kuster and Adams, and members of the subcommittees, I am honored to be here today to discuss SBA's methodology as it pertains to setting goals for and reporting on the small business procurement performance of federal agencies.

The Small Business Act tasks the Federal Government with awarding at least 23 percent of federal contracting dollars to small businesses. Goals have also been established for awards to small disadvantaged businesses of 5 percent, women-owned small businesses of 5 percent, service-disabled veteran-owned small businesses of 3 percent, and firms located in historically underutilized business zones of 3 percent. The U.S. Small Business Administration is responsible for annually reporting on the Federal Government's performance towards these goals and does so via the Small Business Procurement Scorecard.

The Small Business Procurement Scorecard for fiscal year 2013 revealed that for the first time since 2005, the Federal Government met the 23 percent goal for prime contracting dollars awarded to small businesses with 23.39 percent of all federal small business eligible dollars being awarded to small businesses. Additionally, the Federal Government exceeded the 5 percent for SDBs and also met the 3 percent goal for SDVOSBs. These achievements represent a dedication across government in improving small business access to the many opportunities available within the federal supply chain.

The grading associated with the scorecard follows a publicly available methodology, which can be found in the contracting section of SBA.gov. Each federal agency has a different small business prime contracting goal, which is negotiated with the SBA annually. When negotiating agency small business prime contracting goals, SBA considers each agency's past small business performance and the small business opportunity available by specific industries. SBA ensures that sum of all agencies' goals exceeds the 23 percent target established by law.

Although the small business prime contracting goals negotiated with SBA differ for each agency, as described above, each agency has the same goals for prime contract spending within the socio-

economic categories. As an example, each agency has a 5 percent goal for prime contracting dollars awarded to women-owned small businesses.

The scorecard is based on information pulled from the Federal Procurement Data System, or FPDS-NG. It is a Web-based tool for all agencies to report contract action. This system is maintained, as you've heard, by the GSA, and governed an interagency council, on which SBA is a nonvoting member. The Federal Acquisition Regulation provides agencies with guidelines on the data that is to be entered into FPDS-NG, and each agency is responsible for inputting its own data and ensuring its accuracy. The FAR also requires that each agency certified to GSA and the Office of Management and Budget that the data that has been entered into FPDS is complete and accurate.

After agencies certify this data, GSA provides this data to SBA for scorecard calculations. Grading is based in part on information provided to SBA by each federal agency to document its performance. This information is reviewed by an independent peer panel comprised of directors of agencies of Office of Small and Disadvantaged Business Utilization, or OSDBUs. These panelists review each agency's submissions and the average score is reported on the agency's scorecard.

This administration has emphasized its commitment to ensuring small businesses get their fair share of federal contracts. SBA has made significant progress in increasing the transparency and reliability of its scorecard methodology and the reliability of the data provided by agencies.

As mentioned previously, the scorecard methodology is publicly available, as is the FPDS-NG data, in real time. Although SBA cannot change the data in FPDS-NG nor enter it on behalf of agencies, SBA does conduct data anomaly reviews and shares these findings with agencies prior to the data certification date to allow agencies to correct any potential errors.

SBA initiated these practices in fiscal year 2011, and in fiscal year 2013 SBA worked with GSA to develop a standard anomaly reporting process that can be run by agencies at any time. SBA encourages agencies to run the standard anomaly reports quarterly and correct errors as they are discovered. SBA has continued to identify anomalies through other forms of analysis and shares those findings with agencies to correct as well. Additionally, SBA has allocated new staffing resources to improve data quality and provide training to agencies.

Finally, data quality best practices are incorporated into the scorecard so SBA can score agencies on their internal practices. SBA continues to work with OMB's Office of Federal Procurement Policy and each federal agency to ensure that effective policies and practices are in place to provide maximum practicable opportunity to small businesses.

Thank you again, and I look forward to your questions.

[THE PREPARED STATEMENT OF MR. JOHN SHORAKA APPEARS IN THE APPENDIX]

Mr. COFFMAN. Mr. Shoraka, thank you so much for your testimony.

Mr. Frye, in reference to the testimony given by Mr. Leney, who in a sense justifies breaking the law in terms of the regulations regarding contracts by saying that it was for the veterans, it's okay that we violated the law because we did it for the veterans, but in violating the law, don't you believe it makes it more costly? In other words, it's not done on a competitive bid basis. Go ahead.

Mr. FRYE. Certainly. By violating the law, by not putting our requirements on contract as required by law, we do several things. First, we put veterans at risk. If we buy products, for instance, that aren't on a contract, terms and conditions aren't included in that purchase. So, for instance, Buy American, Trade Agreement Act, safety, and efficacy are thrown out the window.

On top of that, only a contracting officer can determine a fair and reasonable price. So if no contract exists, no fair and reasonable price determination has been made, and that's by definition. There's no way around it.

Mr. COFFMAN. So I think it's pretty easy to say that in Mr. Leney's testimony and based on his leadership, that we're not helping veterans, we're hurting veterans, wasting American taxpayer dollars by going around the procurement system.

Mr. FRYE. We're doing all of that. We're hurting veterans, perhaps, you know, with efficacy and safety issues. But we're also hurting veterans because every dollar we waste is a dollar we can't spend on the veterans of America, who so richly deserve it. So, you know, to say that buying something and paying 20 percent more for it doesn't hurt veterans is just not an accurate statement. It does hurt veterans.

Mr. COFFMAN. Mr. Frye, I think Mr. Leney mentioned something about a PC3 agreement. I don't understand how that fits in what we're talking about today. Could you—

Mr. FRYE. I do not know how that fits into what we're talking about today either.

Mr. COFFMAN. Mr. Leney, could you speak to that?

Mr. LENey. Yes, sir. What we have attempted to do, what we are doing, is moving more of our procurements into FAR-compliant contracts. So that the PC3 program has two contracts whereby when people seek non-VA care, they're able to do it via these health networks, VA FAR-compliant contract. And what you're seeing is an order of magnitude increase in the use of this, and we expect to see the use of it to continue to climb as procurements that were done outside of FAR-compliant contracts now come into FAR-compliant contracts. So I think it has everything to do with what we're talking about today.

Mr. COFFMAN. Mr. Frye.

Mr. FRYE. Again, I would focus on what we haven't done in this case instead of trying to—if I were on the VA panel, I would not personally agree with a strategy that tries to convince you what we have done right.

In this case, I think we need to do the mea culpa. We've done wrong. We screwed up. What's wrong with just coming in front of this body and saying that and finally admitting that we've got a problem and saying we're going to fix the problem?

Again, it goes back to the first hearing, the hearing that took place over a month ago, where I said obfuscation is our game. We

come here and hope we can give you an answer that will lead you to a question that we can quickly extinguish that won't lead you to a question that we can't answer. And I think that's what we're doing here. That's my personal opinion.

Mr. COFFMAN. Mr. Leney, I think that the allegations are pretty profound. They're really about fraud. It's about the fact that there are SBA requirements dealing with veteran-owned small businesses, among others, and the way the VA has done its contracting. The numbers aren't real. And yet, people got bonuses based on those numbers. I mean, tell me, don't you think that's a problem?

Mr. LENEY. I'm not prepared to say this is an issue of fraud. This is an issue of improper accounting. We did not account, as I acknowledged in my statement, as the VA has acknowledged in two previous hearings, we have not properly accounted for all of our non-VA care purchases.

Mr. COFFMAN. But you went around the law. I mean, these are interesting semantics you have. I don't understand how the VA is ever going to reform itself when they never acknowledge that they have problems and the extent of those problems.

And the fact is, I mean, that you've grossly violated the law when it comes to contracting, compromised the safety in terms of public health of our veterans in doing so, paid more than we should for those products by not doing it in a competitive manner. And then the subject today is, in doing so, the numbers were also fudged for meeting the SBA requirements in terms of contracting.

So I don't have any confidence in your leadership, certainly, and in the senior leadership of the VA to clean up this mess because you all never come forward here and are able to define the problem.

I will now turn the gavel over to Chairman Hardy for his questions and to preside over the remainder of this hearing.

Mr. HARDY [presiding]. Thank you, Mr. Chairman.

I'd first like to start off by asking all of you, all four of you except Mr. Frye, if you believe that you dropped the ball, and if so, how did you drop the ball on making sure that you ensure that contracting requirements are met? Start with you, Mr. Shoraka.

Mr. SHORAKA. I'm happy to go first. Thank you, sir.

I think on our part, we are entirely reliant when we report on the scorecard and small business spend on what is entered into FPDS-NG as the system of record. So when we pull from that data, we rely on the certifications from the agencies to the accuracy of that data.

What I would add in addition to that is that it's not clear that the entire impact of this, it would have been negative to small businesses. Right? We're not sure if that money—not saying that it should not have been in FPDS, because clearly the discussion has been that that should have been in FPDS—but we're not clear if those funds went toward small businesses, went toward large businesses, and what the potential impact could have been on the overall score of the agency. That has to be analyzed and determined if it would have been negative, significantly negative, or even potentially positive.

Mr. HARDY. I guess I'd like to ask, doesn't the SBA have the responsibility to make sure that these actions are moving in the right direction?

Mr. SHORAKA. So we have responsibility above the \$3,000 card limit. We certainly have responsibility in ensuring that what we report out of FPDS is reported accurately. But we do rely on the agencies to certify their numbers to OMB and OFPP, which is what GSA pulls and gives us for analysis and reporting purposes.

Mr. HARDY. I'd like to continue that line of questioning. Who dropped the ball? Or did you think you dropped the ball?

Mr. LENEY. VA dropped the ball. VA dropped the ball because we didn't properly account for all of our procurement actions. We've acknowledged that. We're not trying to obfuscate it. We're not trying to deny it.

But I disagree with Mr. Frye, and I think what you need to hear from us is what are we doing about that ball. And I think Mr. Frye underestimates the impact of his efforts on the VA. He alleges that no one has paid any attention, no one has done anything. And I assert that we have done a great deal since many of these allegations were made.

We've pulled back all purchase cards with the capacity to go over \$3,000 for everybody who is not warranted. We're using contracts. We are using the PC3 n dialysis contracts to deal and with obtaining care that previously was not under contract. Prosthetics, we've gotten prosthetics under control. We've done a lot of stuff here.

Mr. HARDY. Let me stop you there.

Mr. LENEY. Okay.

Mr. HARDY. There's a law. You knew there was a law, right, that you're supposed to act and follow and track certain things, certain items within procurement? Do you believe you're above the law to just go on by yourself to do these things?

Mr. LENEY. No.

Mr. HARDY. Is that the nature of what this body wants to hear? Or would it be better to come to this hearing and say: You know, legislature, you need to fix this problem we have. Why have we waited to do that? That would be my question.

I guess before I run out of time here, were any of you aware of bonuses that were given or awarded based on meeting and exceeding the acquirement of these goals? And if so, do you believe these bonuses were deserved? And should they be paid back possibility? There's four of you sitting there.

Mr. LENEY. I can't speak to the way performance awards were provided in the VA beyond my own. I did not receive a bonus this year. We didn't meet our small business goals.

Mr. HARDY. In 2013 did you get a goal?

Mr. LENEY. I received a performance award in 2013. My focus is on the numerator, my focus is on proving access to economic opportunity for small businesses, and we did that. Again, we can argue about the percentages, and the percentages are incorrect, but the——

Mr. HARDY. Is it your responsibility to ensure that small businesses are being awarded contracts and purchasing between \$3,000 and \$150,000? And did you not notice that these number of contracts awards were severely decreased?

Mr. LENEY. The requirement is that procurements under \$150,000 and over \$3,000 are provided to small businesses or contracting officers have to justify their actions as part of the procurement process.

Mr. HARDY. Thank you. My time has expired.

I'd like to recognize the gentlelady, Ranking Member Kuster.

Ms. KUSTER. Thank you very much, Mr. Chair.

I wanted to focus on where we are and where we're headed. So these questions are to either Mr. Frye or to Mr. Leney.

What actions did the Office of Acquisitions, Logistics, and Construction take to ensure VA compliance, and in particular, in the last month since the hearing when Mr. Frye came forward as a whistleblower? Can you be very specific, Mr. Frye, if you've had a rule in responding to that? And in particular, have you been certifying data that's been going to the SBA at this point? What steps have you taken to ensure at this point that we have accurate data?

Mr. FRYE. I certify the data on a yearly basis. The Chief Acquisition Officer has delegated that to me. This year, as I stated in a previous hearing, I certified right at \$19 billion.

I can only certify what is on contract. For instance, let's take fee basis. If we have \$5 billion worth of fee basis care that wasn't put on a contract, I can't certify that on FPDS. In other words, I can't certify a mirage. So it's incumbent upon the respective organizations, administrations, if you will, in VA to ensure that they put all the requirements, all their requirements on contract as required by the Federal Acquisition Regulation.

Ms. KUSTER. Do you have confidence now, since you've come forward, in that data going forward? Do you have confidence for the next year's certification that you will be in a position to provide accurate assessments?

Mr. FRYE. It's too early for me to tell you that I have confidence in 30 days' time. As I just reported to you, I was just informed that there are approximately 2,000 unauthorized commitments for dialysis, and that's just been reported to me in the last 21 days. So again, I don't know where we're at with accuracy.

Ms. KUSTER. What steps, Mr. Leney, you started to tick off a few of these, what steps are being taken so that we will have confidence in the data going forward?

Mr. LENEY. Specifically, the simplified the acquisition threshold, at the last meeting of the Senior Procurement Council we discussed reinforcing our focus on simplified acquisition threshold purchases. My office now reviews purchases under \$150,000 that don't go to small businesses, so we've put a process and strengthen that process. We're establishing goals for our component organizations for their simplified acquisition threshold purchases. We're continuing to press non-VA care authorizations into our PC3 contracts. While I can't speak to Mr. Frye's statement about dialysis ratifications, we have increased the number of dollars going through our national dialysis contracts by over 25 percent.

Ms. KUSTER. Prosthetics has been in the news quite a bit VARO. We have an allegation of over \$1.2 billion in prosthetics purchased without contracts. First of all, is that allegation true, and what steps are being taken to address the situation with prosthetics?

Mr. LENEY. In 2011 there was a large number of prosthetics purchases that were done not under contract. But as I said before, if you look at 2015, where we are today, our prosthetics purchases are made under contract. We have \$730 million of prosthetics purchases under contract, 42 percent went to small businesses, and we feel confident that we have captured the vast majority of all those purchases.

Can you find somebody in some medical center somewhere doing something wrong? Yes. Guaranteed. But is there a pervasive situation of prosthetics in the VA currently? Absolutely not. We have fixed the problem.

Ms. KUSTER. What's the oversight in place to make sure that, if the statement is correct that you're making, that we don't run into this problem again? What's the oversight currently on the prosthetics purchasing?

Mr. LENEY. Well, I think the best person to give you that answer is Mr. Doyle, who oversees that process and has been a big part of fixing it.

Ms. KUSTER. Thank you.

Mr. Doyle, could you give some reassurance, both to the Members of Congress, but more importantly, to the veterans at home and to small businesses that you have a system of assessment in place such that we won't run into this problem again?

Mr. DOYLE. Yes, ma'am, I will do that. We started a path in 2011 on prosthetics transfers. The interpretations at the time were that prosthetics was not required to be bought by a warranted contracting officer. We started that process in 2011. My office has received an additional 211 FTEs from the Department to help put that process in place. We completed that transfer on October 1 of 2013. Since that time, all prosthetic purchases above \$3,000 are done by a warranted contract officer using a contract.

Internally, in my office, we have audits that we do. Again, they are done by warranted contracting officers. And then Mr. Frye's office runs an A-123 review of the procurement aspects of things, and they provide another level of oversight in how we're doing it.

I am confident, though, that everything we are doing through my contracting officers does properly flow through eCMS, our Electronic Contract Management System, into the FPDS system and accurately reflects.

Ms. KUSTER. Thank you. My time is up.

Mr. HARDY. Thank you.

The chair will now recognize Ranking Member Adams.

Ms. ADAMS. Thank you, Mr. Chair. And thank you, gentlemen, for your testimony.

Mr. Frye, you've been forthcoming with your superiors and peers regarding the legality of their actions. However, you claim that they're still engaged in illegal contracting actions. Why do you believe they continue to do so?

Mr. FRYE. I'm sorry. I wear hearing aids, and I'm having trouble understanding.

Ms. ADAMS. Okay. You've been forthcoming with your superiors and peers regarding the legality of their actions. However, you claim that they're still engaged in illegal contracting actions. Why do you believe that that's the case, that they're still doing it?



Mr. FRYE. Well, again, in the last 21 days, it was reported that—to me that since October of 2014 to May 2015 generally 2,000 unauthorized commitments, which are illegal transactions, have taken place with the dialysis alone.

Ms. ADAMS. Why do you think that's happening?

Mr. FRYE. I believe that it's a lack of leadership.

Ms. ADAMS. Okay. You contend that rather than use the schedules as required, that staff at the VHA were ordering products from a shopping list of almost 400,000 items. Do you know how items or vendors from this list were selected?

Mr. FRYE. Yeah. That's a great question. Let me see if I can answer you sufficiently. What is supposed to take place is we're supposed to use the Federal supplies schedules which were put in place by our national acquisition center in Hines, Illinois, and we're supposed to utilize those Federal supply schedules by competing schedule holders against each other at a strategic level and putting competitive blanket purchase agreements in place. In this way, we can use ordering officers versus contracting officers simply to place orders against these contracts that are put in place. That makes for ease of use in our supply chain.

Instead of those requirements being put in place, VHA is simply using a 400,000-item list as a shopping list and placing orders against those using our prime vendor and the prime vendor delivers. We're clearly in violation of FAR 8.4 which requires us to compete.

In addition, we have hoodwinked the American public, we've hoodwinked anybody that knows anything about this business, by stating that they're Federal supply schedule purchases when they're not. They're open market purchases.

Ms. ADAMS. Okay. Could you speak to the impact that these allegations of misconduct have on minority-owned small businesses looking for Federal procurement opportunities? And, to your knowledge, have any minority-owned firms been shut out of the Federal procurement programs at the VA as a result of these allegations?

Mr. FRYE. I can't speak specifically to minority-owned firms, but I can speak specifically to veteran-owned businesses. If we are not using Federal supply schedules which don't require set-asides, if we are buying in open market purchases, we must consider set-asides. So we've spent over a billion dollars a year for a number of years for these medical/surgical items, and given that we aren't correctly using—we're illegally stating that these are Federal supply schedule buys when in fact they're open market buys, we shouldn't consider set-asides for small businesses.

Ms. ADAMS. Mr. Leney, your office is charged with ensuring that provisions meant to ensure small business participation at the agency like the small business reserve are followed by contracting officers. However, Mr. Frye's allegations seem to indicate that this rule was routinely not observed.

What have you observed at the VA regarding contracting actions that are valued below this threshold?

Mr. LENEY. I'm sorry. I'm not sure I understand the question. Are you talking about contracting action below the simplified acquisition threshold?

Ms. ADAMS. Yes.

Mr. LENEY. Contract actions below the simplified acquisition threshold by law are supposed to be 100 percent to small businesses unless a contracting officer is able to justify why that's an inappropriate action. We do not provide 100 percent of our acquisitions below \$150,000 to small businesses.

I don't have visibility with regards to how the contracting officers make those justifications. In fact, Mr. Frye's office does a audit of contracts, and his office has the capacity to look into particular acquisitions and determine whether or not a contracting officer's done the job correctly. I have not heard from Mr. Frye's office that this is a particular problem in the VA, but I can't speak to it because it's his office that makes those investigations, not mine.

Ms. ADAMS. Thank you, sir. I believe I'm just about out of time. I yield back.

Mr. HARDY [presiding]. Thank the gentlelady.

The chair will now recognize Mr. Bost.

Mr. BOST. Thank you, Mr. Chairman. And, Mr. Leney, I need to know, and I'm going to go in a different direction here, if you know how involved like top level management for individual VA facilities and to ensure compliance with this particular law, the Federal Acquisition Regulations, that I'm talking about individual managers at our VAs, are they the ones that choose to have the oversight, or is that accurate?

Mr. LENEY. Our medical center directors, our network directors, are, at the end of the day, responsible for what their organizations do or fail to do.

Mr. BOST. Okay.

Mr. LENEY. It is the approach at the VA that rather than just passing this off to staff members, we keep it within the chain of authority.

Mr. BOST. Okay. And that leads to my second question because of some information I found out recently. Does the lack of permanent directors at some and many of our facilities create an opportunity for those below them to falsify the number of contracts awarded to small business?

Mr. LENEY. I'm not sure that it creates an opportunity for people to falsify. When you have half of your medical center directors in an acting capacity and you're missing a large number of senior managers, it puts additional stress on the people who are in those positions. So their ability to fully manage, fully lead is compromised. So does that mean that somebody that works with them can do something wrong? Absolutely.

Mr. BOST. Okay. That's the concern I have. And that's why I went down this path. We found out and we have a situation in a VA near my district and then another one in my district that the facility manager, in a two-year period there've been seven. Every 120 days, because that's what the rule is, they don't serve longer than 120 days, and I don't know how anyone in a capacity of 120 days can be an overseer to a level that they can manage to, one, even if they want to, and I don't want to say some of them don't want to. I mean, if they want to, they can't possibly in 120 days figure out who that's been there for a long time that is actually doing this and find it and correct it.

So it still stems down to a problem with the VA and the overall management of each facility and the larger picture of trying to make sure that the law is followed. And then to find the person who's responsible for following that law. Do you see the problem with that?

Mr. LENEY. I think you've pointed out a very serious problem that the agency confronts. No one is here trying to say that we don't have a problem when we're missing such a large number of senior executives.

The challenge is a medical center director has to follow many, many, many laws. And at the end of the day, I will tell you in every single medical center director's performance plan is the ability to achieve small business goals. But I would be remiss if I were to try to tell you that that is the number one priority for a medical center director, nor as the small business advocate within the VA would I say that it should be. Because what is their priority? To make sure that patients are safer and well cared for.

You all are very familiar with the challenges we've gone through. And so, yes, we are trying to follow human resources laws and small business laws, and at the end of the day, it's not about getting performance awards or bonuses, it's about doing your job which is to take care of veterans that walk through the door of your medical center. And we don't do that in every case, but that has been the focus of the senior leadership of the VA. You've asked me to focus on small business.

Mr. BOST. And that should be the focus. But that focus should never—let me tell you that I want every time for the veteran to be taken care of—and everybody on this committee, everybody in this Congress, wants that to happen. But that still doesn't make law suggestion. It's still law.

Mr. LENEY. We agree.

Mr. BOST. I yield back.

Mr. HARDY. Gentleman yields back.

We now recognize the ranking member Ms. Velázquez.

Ms. VELÁZQUEZ. Thank you, Mr. Chairman.

Mr. Frye, all government purchase card holders must receive training prior to the issuance of their cards. Was this training occurring at VA?

Mr. FRYE. I don't run the government purchase card program. That's run by the chief financial officer. I will go out on a limb and say that training was provided. I think it was. I would state that the micro purchase piece and the use of the government purchase card, the micro purchase program, that is \$3,000 and below, is run very well from everything I know in the VA. It's the use of the purchase card for payment of contracts above \$3,000 where we have had our problems.

Ms. VELÁZQUEZ. Thank you.

Mr. Doyle, the VA's office of inspector general has substantiated some of Mr. Frye's claims regarding illegal use of government purchase cards, including some cards held by VHA employees. Have you identified the responsible individuals and have their purchase cards been rescinded?

Mr. DOYLE. I don't know exactly the names that are involved, but generally when something like that happens, their cards are re-

scinded or their dollar values are reduced to one dollar so they can no longer use the card.

Ms. VELÁZQUEZ. But are you aware that it has taken place?

Mr. DOYLE. I know that has happened in some cases, yes. I don't know to what extent it has happened, though.

Ms. VELÁZQUEZ. Mr. Leney, if Mr. Frye's allegation prove true, the VA will have deprived small businesses of billions of dollars in contracting dollars. So the issue here is not that you didn't account properly, the issue is that you didn't follow the law. And don't come back to me and say that you are committed and your mission is to provide the best quality care to veterans, because I agree with that. But there should not be a contradiction between providing the best quality care that they need and deserve and following the law. So isn't the failure to properly account fraud? I'm asking you.

Mr. LENEY. I'm not clear on what the question is. Does the failure to properly account constitute fraud?

Ms. VELÁZQUEZ. Yes.

Mr. LENEY. I'm not a lawyer, but I'm not aware that that's the case.

Ms. VELÁZQUEZ. Well, I guess that at some point once the investigation is concluded, those will determine whether or not it's fraud. Because you resist to call it what it is. When you fail to properly account, that is fraud. And you're providing misinformation.

Mr. LENEY. I don't know.

Ms. VELÁZQUEZ. Mr. Leney, the management system of the SmartPay program allows agencies to establish accounts and access information on every purchase their card holders transact. There are even standard reports to identify instances of attempts to circumvent spending limits. Mr. Leney, do you have access to these reports?

Mr. LENEY. No, I don't. I'd have to defer to my colleague Mr. Doyle.

Ms. VELÁZQUEZ. Mr. Doyle?

Mr. DOYLE. I have people who run the government purchase card program within my organization for VHA, and they have access, I believe, to that account.

Ms. VELÁZQUEZ. And if they have access, they haven't seen—well, I guess that if I ask you this question you're going to say that you don't know. Have you seen those reports?

Mr. DOYLE. I do not see the reports, no.

Ms. VELÁZQUEZ. And, Mr. Shoraka, do procurement center representatives have access to this information?

Mr. SHORAKA. The SBA doesn't have authority to manage or have oversight over the Smart Card program. So in our surveillance reviews, our focus—

Ms. VELÁZQUEZ. Okay. You don't have the authority. That's it.

Mr. Shoraka, if the agency was in fact underreporting contracting dollars by \$6 to \$10 billion, does your agency plan on going back to review these numbers so that we have a more accurate accounting of the government's small business contracting dollars?

Mr. SHORAKA. As I indicated before, if it's not an FPDS, or the Federal Procurement Data System, we have no record of that. So it would be—we would be unable to determine what the impact would

have been on the small business performance. Some of those funds could have indeed gone to—other than small, some of them could have gone to small. But as long as it's not within FPDS, we will not have the opportunity to analyze that data.

Ms. VELÁZQUEZ. Okay. Mr. Shoraka, in your testimony you noted that each agency's submission for the scorecard is peer reviewed by a panel of three OSDBUs. Do you know if any questions were raised by this panel when reviewing the VA's fiscal year 2013 submission?

Mr. SHORAKA. I'm sorry. The question was do I know if they've reviewed—

Ms. VELÁZQUEZ. If they raised any questions by the panel?

Mr. SHORAKA. I'm not aware that they've raised particular questions around this particular issue in the peer panel review—

Ms. VELÁZQUEZ. That's it, Mr. Chairman. I yield back.

Mr. HARDY. Thank you.

The chair will now recognize Dr. Roe.

Dr. ROE. I thank the chairman.

I guess I'm going to start out by just saying to Mr. Frye, are you just the—you've been here several times. Are you just the oddball uncle that every family's got that tries to hide out when the family gets together, or are you really a patriotic whistle blower that's trying to correct serious problems in this great organization? Because you've become a gigantic pain in the VA's gluteus maximus. And I think without you doing that we would never have known a lot of these things, and I think it'd still been going on. So which are you?

Mr. FRYE. Well, again, I didn't expect when I wrote this 35-page document, which took me a few hours to write, by the way.

Dr. ROE. I suspect it did.

Mr. FRYE. I did not expect it would reach this level. I sent it to Secretary McDonald hoping it would entice him to instigate an investigation. You know, what I made were allegations. I didn't do the investigation for them. I've got names. I've got documents. But I'd hoped to entice the Department to do an investigation. Unfortunately, that didn't work. So it ended up at this level because I thought it needed to be known.

So, you know, I can't tell you that I'm a patriotic American, but I am a retired Army officer, and, you know, duty, honor, country does enter into my equation.

Dr. ROE. That makes you patriotic for me.

A couple things, just a couple of questions briefly. Why did it take the IG to find this \$225,000 or so theft in Roxbury? Why wouldn't internal controls? That's a big number. Why?

Mr. FRYE. That is a very good question. Internal controls will—we're supposed to have separation of duties. First of all, you issue someone a purchase card, they're not supposed to be able to order and receive and pay for that product. There has to be a separation of duties to keep this from happening. This individual could have ordered big screen TV's for his house and apparently no one would have known any different.

These are internal controls, basic—basic—to any financial system, and they were not stood up, or if they were, they weren't complied with.

Dr. ROE. I guess the other question I'd have for Mr. Leney, I think why—the VA clearly didn't obey the Federal procurement policy and why didn't they? And the other question I have is: If you don't, if you just ignore a statute, and I think it just became slowly the way the VA did business, if you ignore that statute, is there a penalty for ignoring it?

In other words, if I just decide I'm going to ignore this statute, that was clearly done, is there any penalty that that person that's ignoring it all the way up to the top where you sit endures?

Mr. LENEY. The VA failed to comply with statutes. That's clear. I guess the—my only comment would be we're talking about things that we discovered, and we took action to deal with them.

So in terms of did we decide that we didn't have to follow the law? I don't think so. I'm not the person who's familiar with each of these details, but I have the opportunity to watch my colleagues work these issues very hard, and over the course of the last 3 years, like I say, a lot of these issues that Mr. Frye has noted the VA has discovered, the VA is dealing with them, and the VA has made progress.

Dr. ROE. Well, I mean, my question is, is there a penalty? You didn't answer that question. Is there a penalty? Because if I go too fast at home, there is a penalty. So is there a penalty in the statutes? In other words, can you just—can members of the VA just ignore these and there's no teeth to it so there's no penalty. People got bonuses apparently. Is there?

Mr. LENEY. I can't speak to that.

Dr. ROE. So you made an emphatic statement a minute ago that said that this problem has been solved. And I guess if it's been solved—if you say it's been solved, are you willing say: If it hadn't been solved, I resign?

Mr. LENEY. No. I'm not willing to say that because that's not my solution. I'm reporting to you what the VA—

Dr. ROE. It is your responsibility. Not solution, but is that your responsibility to oversee that?

Mr. LENEY. No. It's not my responsibility—

Dr. ROE. Well, whose is it? Whose responsibility? That's what we've been having a problem finding out whose responsible. Let me tell you, for 30 years I knew who was responsible when I went in the operating room. Me. Nobody else.

So who's responsible for this so we can say: You are responsible, and then there's a penalty if you don't correct this problem. Because you made a very emphatic statement just a second ago.

Mr. LENEY. Well, I would say Dr. Lucille Beck heads the VA prosthetics program, and she's responsible for a lot of the improvements that have been made in the program.

Dr. ROE. So we don't know who's responsible. Okay.

Mr. LENEY. No. I just told you, Congressman.

Dr. ROE. I'm not going to ask any more there.

Mr. Page, I've got a question for you, sir. If—how much—what percent of, and you may not know this, and it was hard—we have 263,000 of these purchase cards? Did I hear you say that correctly?

What percent of the purchases are made with these cards of the VA—what VA purchases? Does that make sense?

Mr. PAGE. It does. I'm not sure I do have that specific number. I believe there are some numbers in the written testimony that VA certified to a large number in FPDS, and we do know that transactions through—

Dr. ROE. Do you know the total number? I think I heard you say that in your testimony.

Mr. PAGE. Well, I know the total number in Federal-wide is what I spoke to. I mean, I—

Dr. ROE. Well, you don't have to get it. My time is expired, and I don't want to be—I'll get that from you afterwards. Thank you.

Mr. PAGE. The Veteran's Administration is a very large user of the purchase card program, sir.

Dr. ROE. Thank you, Mr. Page.

Mr. HARDY. Thank you.

The Chair will now recognize Mr. Rice.

Mr. RICE of South Carolina. Mr. Leney, you said earlier that the problem with acquisition in the prosthetics had been corrected. Is that right?

Mr. LENEY. Yes.

Mr. RICE of South Carolina. Mr. Frye, has it been corrected?

Mr. FRYE. Well, I was interested to hear that Mr. Leney went back to 2011. Let me go back to 2012. In 2012, actually, in December of 2011, the Secretary sent a letter to Mr. Donnelly, now Senator Donnelly, and stated that we had quit violating the law with regards to purchases of pharmaceuticals. From December of 2011 until August of 2012, self-reported by VHA, they violated the law 9,700 times. And that was self-reported. It may be much higher than that.

So when we dip all the way back to 2011 and then say that we fixed it from then forward, we clearly didn't. Because we violated the law with regard to pharmaceuticals in the period that I just indicated.

Mr. RICE of South Carolina. Okay. We agree there was a problem before 2011, and there's a little dispute about whether there's one after. With respect to the problem before 2011, Mr. Leney, did anybody get fired?

Mr. LENEY. I don't know the answer to that, Congressman.

Mr. RICE of South Carolina. And this—

Mr. LENEY. By the way, no one here is saying that the problem was solved in 2012. What I'm saying is in 2015 we have addressed the problem.

Mr. RICE of South Carolina. All right. And then with respect to this prepared card, somebody mischarged \$200,000, did that person get fired?

Mr. LENEY. I don't know the answer to that. The IG is investigating that.

Mr. RICE of South Carolina. I read that Mr. McDonald said earlier that he needs to fire 1,000 people in the VA. Did anybody get fired?

Mr. LENEY. I don't know the answer to that. I presume he's following the various laws he has to with human resources.

Mr. RICE of South Carolina. The people that got—the veterans that were killed in Phoenix, 80 of them, and then the ones that were killed in Columbia, did anybody get fired for that?

Mr. LENEY. I'm not in a position to answer that, Congressman.

Mr. RICE of South Carolina. Does anyone else know? Did anybody get fired for that? I mean, the problems with the ignoring the law with respect to small business acquisition, and you said you got a bonus and other people got bonuses, apparently incorrectly, is there any movement to go back and retake those bonuses?

Mr. LENEY. I don't know the answer to that question.

Mr. RICE of South Carolina. So it appears to me that there is an absolute lack of accountability. That, you know, we screw up, we admit we screw up. Well, so what. We're going to go to work the next day and we may continue to do it the way we were doing it or we may not, and nobody gets fired and nobody loses their bonus, and there's no consequence.

So by what rationale would you change your behavior? My question is this. Mr. Frye, I'm curious. Is the VA fixable? I mean, really. It's grown to be such a monolithic, bureaucratic web. I hear all you guys talking about your processes and your accountability and this and that and the other, but it's clearly not working. None of it is. It's a tangled web that's not working. Is this mess fixable?

Mr. FRYE. We currently have a moniker in the VA called I Care. The I stands for integrity. In my opinion, these five elements are the bedrock that we build a foundation upon. Right now that bedrock is—or these footings are not reaching all the way to bedrock.

Mr. RICE of South Carolina. Well, I think, you know, I think with respect to entities and the way they function, this is the core, this is the fundamental reason why a governmental entity will never perform as efficiently as a private entity. Because with a private entity, you're dealing with your own money. In a governmental entity somebody can charge \$200,000 on a prepaid card and nobody will even notice. It's not their money. Their bonus won't get affected, and their job's not on the line. There's so many protections built in for Federal employees, that they could do anything and not get fired for it. Hell, these 80 people died and Mr. Shinseki held on for months before he finally resigned.

Now, I think we need to do some real fundamental soul searching about the way this entity is organized, or I don't know that it can be fixed. I think maybe we should be looking at the cost of this overall entity versus the cost of just buying—you know, you were saying that the Choice program would violate the socioeconomic goals. Well, if the socioeconomic goals of the VA and VHA include keeping veterans alive, I think the Choice program's probably pretty important and maybe we ought to look at expanding the Choice program to the ultimate detriment of a large part of the VHA.

Thank you very much.

Mr. HARDY. Thank you.

The chair will now recognize Mr. Knight.

Mr. KNIGHT. Thank you, Mr. Chair.

I think a lot of the questions have been asked today, but I got just a couple that will still follow the same lead, I think, as Congressman Rice was talking about.



I'd like to talk about the performance awards and how that happens. I mean, I'm a government guy right now, and, you know, I get a performance award or I get a performance demotion every 2 years. That's about it.

Can you explain how performance awards happen? Is there a yearly or is there a biannual kind of look at your performance? Can you explain this to us? I mean, Mr. Leney?

Mr. LENEY. Yes. The process is annually the employee establishes a performance plan with objectives, and we seek to have, you know, the term smart objectives, and then he or she is evaluated on the basis of their performance against that plan. And that's in accordance with OPM guidance. We try to do that in accordance with how the Federal Government tells us to do it.

Performance awards are provided at the end of that period if a person has performed in an exceptional manner and exceeded their goals.

I am not fully—read any of this, but I don't believe any senior executive in VHA received a performance award this year, but I may be wrong.

Mr. KNIGHT. Okay. But we've been having serious problems with the VA for several years now. This isn't a 2015 issue or 2014 issue. We've had severe issues. And there has been performance awards previously in the last 5 years with several staff, several leadership.

Again, can you tell me is this something that we have written—this isn't something in statute. This is something that is by performance goals written in a MOU, in some sort of an understanding by the department? Can you kind of—

Mr. LENEY. It's written into a thing called a performance plan, which is between the employee and their supervisor. So it's not—I don't believe it's in statute, but, again, I hesitate to hold forth on this because I'm not a human resources expert. I just know how my performance plan was done.

Mr. KNIGHT. I'm not going to beat this too much, but the performance awards, how do we budget that? How does the VA budget performance awards? Do they have a certain amount that is put into performance awards in a yearly basis and we can use them for people who have achieved their goals or exceeded their goals?

Mr. LENEY. I could only speak to my own organization. I was given nine-tenths of one percent of the salary base in my organization for performance awards. So if everybody in my organization was great, they would get nine-tenths of one percent of their salary in a performance award.

Mr. KNIGHT. Okay. Or someone could get a much bigger bonus if only one or two exceeded their goals.

Mr. LENEY. If only one or two exceeded their goals, they could get a bigger bonus, yes, sir.

Mr. KNIGHT. Okay. I think that the main question that a lot of us want answered is over the last 2 or 3 years, what has been the leadership change in the VA? What can we kind of look to and say: Well, I know we've had these serious problems and we've all talked about what's happened in Phoenix, we've all talked about what's happened on these death lists and things of this nature, and then can we point a serious leadership change? Because I can tell you in any department that I've worked at, if we've had serious prob-

lems like this, the organization would look differently the next year, and it would look differently from top down. Can we look at that and say that these are the people that have been changed? These are the reasons why we don't expect this to happen over the next couple of years?

Mr. LENEY. When I was a senior executive in a commercial company, I had the opportunity and the authority to change out people at will. I don't have that authority. The Secretary doesn't have that authority. I think Secretary McDonald has made enormous changes both—attempted to make changes in the culture of the organization and in the people while doing so within the parameters and constraints that he operates under.

I think there are probably days he wishes he was king for a day and could do everything he wanted to do. But he doesn't get to operate that way. I am not responsible for many of these actions. However, I have had the opportunity to participate in many of the discussions and see people who are responsible operate. And I got to tell you, there's a lot of people in the VA that work very hard on behalf of veterans. Are they all perfect? No. Do we make mistakes? Yes. Did we fail to comply with the law in reporting all of our procurements? That is correct. Are we fixing it? Yes. Have we fixed it? No.

Mr. KNIGHT. And I agree with you. I think that there are a lot of great people in the VA, and I think that most of them are looking out for the betterment of our veterans. But the problem is, is when you have problems like this and these problems get rampant or out of control in a certain regard and no one is there to say that these are the problems and we have corrected them because we have fired some people, we have changed what we're going to do, the procedures are different, then it makes us all kind of look and say: Has anything really changed?

And, Mr. Chair, I yield back.

Mr. HARDY. Thank you.

I'm going to go with a second round of questions, and I'd like to recognize Chairman Coffman if I could.

Mr. COFFMAN. All right. Thank you, Mr. Chairman.

Mr. Leney, I think you said that we failed to report, but when we're referring to procurement law, but it's failure to adhere to by virtue of going around the system and using multiple credit card purchases in violation of the limit that would have required contracting. I mean, that's adhere. That's not a reporting issue. Why did you say report?

Mr. LENEY. We have both issues. There are people who have failed to adhere to the law. There are people who have divided contracts. All of those things have happened in our agency. We have failed to adhere to the law in terms of accounting for all of our procurements. Mr. Frye said an interesting thing. The VHA self-reported 9,600 incidents of that. So—

Mr. COFFMAN. Okay. Mr. Leney, under the Small Business Act you are required to ensure contracts are being properly set aside for small businesses. However, there's at least \$6 to \$10 billion awarded in amounts subject to the small business reserve but not set aside for small business. So did you fail to review these because

of your verification distractions, or did you simply concur with the decision to illegally bypass small businesses?

Mr. LENEY. I did not fail to review these because of distractions from verification. We do review procurements, as I said. And Mr. Frye's office also audits procurements to make sure that contracting officers are doing it in accordance with the law.

I must say I don't find anywhere in the Small Business Act where it's my responsibility to ensure the execution of contracts. That's not my role.

Mr. COFFMAN. Mr. Frye.

Mr. FRYE. This afternoon I met with my—or earlier today, I should say, I met with my staff regarding these A123 reviews that we conduct of contracting across VA. The number one issue out there is lack of compliance, and it's ubiquitous.

We open contracts, of course they're electronic, we find a almost total lack of compliance in many areas. I don't blame the contracting officers that are out in the field. What I'm looking for is leadership starting with the senior leaders of each of the administrations and down to their heads of contracting activity is their responsibility to run their procurement organizations in accordance with the law. And it's not being done in all cases. Obviously, in many cases it's not being conducted properly. So it's a leadership issue.

Mr. COFFMAN. Mr. Leney, I think you said that you're correcting these issues—you're taking the initiative to correct these issues. But isn't that—didn't that corrective action only occur after Mr. Frye, a whistle blower, brought the issue forward?

Mr. LENEY. At the time Mr. Frye brought a number of these issues forward, he wasn't a whistle blower, to my knowledge. He was a senior procurement executive.

Mr. COFFMAN. But, you know, and the reason why I bring this up is because it just seems like from—VA senior leadership never identifies these problems. They're always identified by whistle blowers within the organization. I mean, every problem that's brought before this committee has never been identified by—self-reported by the leadership of the VA. It's always by others within the organization that fundamentally care about what this organization is doing and whether or not it's meeting its obligations to our Nation's veterans.

So I just want to, again, express my disappointment in the senior leadership of the VA. And it just—and I don't feel—I mean, what I feel from you is the same with others that testify on behalf of the VA, VA's leadership, is a sense of indignation that, you know, we're disappointed we got caught. We don't feel like we did anything wrong, and we'll just say the right things here, but we'll continue doing what we've always done.

Mr. Chairman, I yield back.

Mr. HARDY. Thank you. The chair will now recognize ranking member Ms. Adams.

Ms. ADAMS. Thank you, Mr. Chair. I just have one question.

Mr. Leney, would it be fair to say that there is a necessity for an overhaul to the way the VA approaches small business contracting starting with an increase in transparency to acquisitions as a whole?

Mr. LENEY. I believe we are transparent with respect to our FAR complaint acquisitions. We have less transparency with respect to those things that are operating under other controls.

Ms. ADAMS. So you don't think transparency is an issue?

Mr. LENEY. I don't think transparency's a very large issue with respect to the \$19 billion that we put into FPDS. We have acknowledged, we have admitted, we've come to this committee and stated where we've had problems on things like purchase cards, where we've had problems on non-VA care, and I'm stating that again today. I'm not trying to hide that we have a problem \$3.2 billion was spent on non-VA care outside of the FAR. We accept that. And it's our responsibility to get it fixed.

And much of what Mr. Frye has done was done when he was a senior procurement executive which he still was prior to him declaring himself a whistle blower. And a great deal of action has been taken on much of what he has spoken to.

Ms. ADAMS. Thank you, Mr. Chair.

Mr. HARDY. Thank you. I'll now recognize myself for 5 minutes.

Mr. LENEY, since 1978 the small business director was required to make sure that the VA awarded contracts under the simplified acquisition threshold to small businesses. This is a statutory procurement, 15 U.S.C. 64-K-4. Are you trying to say that you just now started this in 2015 and this has been around since 1978?

Mr. LENEY. No. We didn't just start it in 2015, Mr. Chairman.

Mr. HARDY. Try that again.

Mr. LENEY. No. We did not just start it in 2015.

Mr. HARDY. Okay. A discussion was just held just a minute ago about whose responsibility it was, and it says: When the small business act says that the director of the small business is disadvantage utilized, it shall be the responsibility for implementation and the execution of the functions and duties under Section 8 and 15 of the act related to such agencies. That's talking of you. Aren't you responsible for that?

Mr. LENEY. I think under 15 U.S.C. 644 on the paragraph you're talking about I'm responsible for the implementation and execution of the functions and duties under that section.

Mr. HARDY. Okay. June 26 of 2012, a memo was sent to you by Mr. Frye, and it talks about actions required, and this is for approvals are required as below. COs have to sign off. The acquisition officer director, the customer, consumer SES level, and the contracting officer has to sign off. Basically did you send that letter off to your folks?

Mr. LENEY. Mr. Chairman, I was the origin of that letter.

Mr. HARDY. And you did not send that review out to your folks?

Mr. LENEY. That review was sent by the deputy secretary to under secretaries and assistant secretaries and key officials. It was sent to Mr. Frye to all the contracting officials. My folks received it.

Mr. HARDY. Okay. And the other question I have for you, it says here on your evaluation for 2012 and 2013, it says: Tom has led the VA efforts to achieve socioeconomic procurement goals to increase small business access to the VA procurement opportunities. Do you remember what your bonus was for that year? For 2013—

Mr. LENEY. No, I don't.

Mr. HARDY. Almost \$9,000. And with now understanding what we do, it would probably put you at an F rating rather than an A based on the way things have been evaluated. Do you believe that the staff was entitled to those kind of bonuses? And yourself?

Mr. LENEY. My focus and my mission has been to work on the numerator of that number and to make sure that we provided access to economic opportunity to small businesses, and I believe we did that.

Mr. HARDY. Okay. I'll yield back. And we got anybody left?

Okay. We're going to close here. I have a closing statement, and I'd like to thank the panel for being here. I know it wasn't all fun and games for you, and I don't think any of us here meant it to be fun and games.

I wish I could say that I'll be leaving here today confident that the practices detailed by Mr. Frye on March 2015 letter to the Secretary McDonald are being addressed and that the American veterans and small businesses are being well served. Unfortunately, everyone seems happy to say how much they value these communities, but neither the VA, the SBA, or the GSA, nor the OMB seem to be willing to be responsible or take responsibility for fixing the problem. Even though what I have heard today appears to be a serious and massive violation of Antideficiency Act, the Small Business Act, the Veteran's First Law and the Federal Funding Accountability Transparency Act. No one being held accountable.

Based on what we've heard here today, it is evident to me that the VA and the Obama administration have failed our veterans, small business owners, and American taxpayer. For this I give these agencies and this administration an F. When the executive branch fails to act responsibly, we in Congress need to revisit the authorities provided to those agencies, and I look forward to working with my colleague Chairman Coffman and all the other members, respective committees, to ensure that our Nation's laws are upheld, our veterans are honored, and our small businesses thrive—until our small businesses thrive.

I would like to recognize Chairman Coffman if—he's not here.

With that being said, I'd like for unanimous consent that all members have 5 legislative days to revise and extend their remarks and include extraneous materials. Without objection, so ordered.

I'd like to once again thank you all for being here, and all the witnesses and members who have joined us today on this conversation. With that, the hearing is adjourned.

[Whereupon, at 5:44 p.m., the subcommittees were adjourned.]

## APPENDIX

### PREPARED STATEMENT OF JAN R. FRYE

Chairman Coffman, Ranking Member Kuster, and Members of the Subcommittee, thank you for inviting me to testify today.

In a June 11, 2015 letter to VA Secretary McDonald, you invited me to testify as a witness on behalf of VA, along with my colleagues Messrs. Leney and Doyle. I was intentionally excluded by the VA leadership, and do not appear before you today as a VA witness. I appear today of my own volition, as a VA whistleblower, representing American taxpayers and America's military veterans.

As you know, I alleged massive violations of acquisition and fiscal laws to Secretary McDonald in March 2015. As you are also aware, I received no response from

him regarding my disclosures. Thus, I was compelled to report them to this Congressional body. In the first of now three joint hearings, beginning May 2015, I reported that some VA senior leaders have willfully violated the public trust, debasing Federal procurement and financial laws.

A reasonable person might conclude my disclosure of illegal acts would be accepted with open arms by VA's leadership for further investigation. That has not been the case. My intentional removal as a VA witness for this hearing is irrefutable proof of continuing scorn for those who attempt to uphold the public trust. Further, these VA leadership actions serve to cast a chill upon future potential whistle blowers.

We have a senior-leader integrity malaise in VA. Like substance abusers before the journey to recovery, we will not be cured until we admit we have a disease. During the June 1 hearing on these matters, you heard one of VA's chief law enforcers testify emphatically, that violating U.S. Federal statutes and regulations is not "illegal" but just "improper." In my opinion, parsing words in this manner is a stark reflection of our denial, and exemplifies just how low some VA senior leaders will stoop to avoid culpability and protect themselves. As Government servants, we did not take an oath to serve ourselves.

Massive violations of public trust continue unabated. In the past several weeks, it was disclosed that VHA officials committed approximately 2000 illegal transactions for kidney dialysis from October 2014 to May 2015. This represents 34 percent of the transactions under these multiple-award contracts. These are unauthorized commitments that require ratification before payment. However, payments have already been made, in violation of Federal fiscal law.

This month, the VA Office of Inspector General reported theft of approximately \$225,000 by a VHA, West Roxbury, NY employee, using a government purchase card. This theft was avoidable, and occurred because required internal controls in VHA and the Department are lacking. These funds will never be returned to VA to take care of veterans. Over a year ago, I personally authored a new policy that would vastly improve internal controls in use of purchase cards for contract payment. VHA rejected the policy. It was apparently "inconvenient" for them to execute.

In this hearing we will discuss VA's failure to accurately report our small-business goal accomplishment. We are guilty. In doing so, we have deceived the veteran owned small-business community, while violating federal laws. I have previously alleged that billions of dollars, extended over multiple years, have not been placed under contract as required, and thus have not been reported in the Federal Procurement Data System as our VA total-spend denominator for contracting.

Today, I am providing this subcommittee information concerning one of the most deceptive schemes I have uncovered in my 41 years of government service. Each year VHA purchases over \$1B in medical/surgical products. All of these products must be procured in accordance with Federal contracting laws. Departmental policy requires most be obtained through our medical/surgical prime vendors, who serve as distributors, using Federal Supply Schedules (FSS) as underlying contracts. I first learned we had hatched a scheme that avoids use of FSS in late 2014. We pretend to use them; we have never informed OMB or the public we are not using them; but in fact, we are not. Using a convoluted ruse, we buy products off a "shopping list" while throwing Federal acquisition laws to the wind.

We are illicitly and deceptively pretending that Federal Supply Schedules are being used while executing open-market purchases. Federal Supply Schedules do not require small business set-asides. Open-market purchases do require set-aside consideration. Our illegal behavior allows us to avoid set asides, intentionally fencing these purchases from small businesses. In these acts, exceeding \$1B annually, we are in violation of Federal procurement law, as well as the Small Business and the Veterans First Acts.

After learning of these shocking practices in late 2014, I attempted to rally VHA senior leaders, as well as my supervisor, to systematically cease these unlawful deeds. I have been totally thwarted in my efforts to get VHA to properly place their products on contract.

We weave a tangled web. In previous hearings I have outlined VA's failure to award billions of dollars for products and services via contracts, which is illegal and affords potential harm to veterans. These failures led to massive understatements of our annual total spend for multiple years in Federal Procurement Data System. In a domino effect, this resulted in overstatement of Departmental small-business goal accomplishments. And finally, as revealed today, we further duped the American public and the veteran-owned small-business community with deception using Federal Supply Schedules. It is my opinion these acts combined and separately constitute corruption and gross mismanagement.

I conclude with this rhetorical question, which I posed to Secretary McDonald in my March report to him: Without demonstration of responsible stewardship, why would the American public support ever-increasing and generous annual Congressional appropriations, to care for our nations veterans?

Mr. Chairman, this concludes my statement, and I am prepared to answer any questions this Committee may have.

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PREPARED STATEMENT OF MR. THOMAS J. LENEY

Good afternoon, Chairmen Coffman and Hardy, Ranking Members Kuster and Adams, and Members of the Subcommittees. I appreciate the opportunity to address your concerns about the validity of the Department's data on our small business goals. I am joined today by Mr. Norbert Doyle, Chief Procurement and Logistics Officer of the Veterans Health Administration (VHA).

The Department of Veterans Affairs (VA) is a significant contributor to the Government's efforts to ensure a fair proportion of contracting dollars are awarded to small business. According to the Federal Procurement Data System (FPDS), in Fiscal Year (FY) 2013, VA was the fourth-largest Federal agency in terms of contract spend. Out of \$18.3 billion in FY 2013 reported contract spend, FPDS indicates VA awarded over 36 percent to small businesses. VA also reported more dollars awarded to service-disabled Veteran-owned small businesses 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 these metrics accurately and completely report the Department's commitments to small business is important.

The Small Business Administration (SBA) issues the official agency scorecard. SBA receives a data extract of small business prime contracting performance from FPDS-NG, which is an extract of all of the contracting data entered by the various agencies.

The Federal Acquisition Regulation (FAR) places the responsibility for reporting contract actions to FPDS on the contracting officer. The contracting officer reports contract actions on FPDS by completing contract action reports. A contract action report is required for contract actions which are "any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold [generally, \$3,000], or modifications to these actions regardless of dollar value" (FAR 4.601). The Senior Procurement Executive and the Head of the Contracting Activity are collectively responsible for "developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS" (FAR 4.604 (a)). Annually, the VA certifies its data in FPDS to the General Services Administration (GSA) and Office of Management and Budget (OMB) that the data it has entered into FPDS is complete and accurate. After which, SBA uses the FPDS data to formulate VA's, and other agencies, Scorecard.

VA's Office of Acquisition and Logistics (OAL), headed by the Senior Procurement Executive, has a data system that facilitates the timely and accurate reporting of contract actions. The Electronic Contract Management System (eCMS), VA's contract-writing system, provides a range of functionality to support contract actions above the micropurchase threshold, including award of definitive contracts, modifications and options, and orders against the Federal Supply Schedules. eCMS currently enables a program office to plan and transmit requirements to an acquisition office, and for the contracting staff to execute the transaction all the way to award and retain source documents electronically. Before eCMS will allow the contracting officer to make the award, he or she must submit a contract action report to FPDS. This system has significantly strengthened VA's compliance with the FAR reporting requirement.

VA still encounters risk in FPDS reporting associated with actions performed outside of eCMS. The FAR allows for "express" reporting of batches of transactions from the same vendor, when separate reporting of each individual transaction would be burdensome (FAR 4.606(a)(3)). If this method is utilized, the express reporting should be performed on at least a monthly basis. For example, VA's Consolidated Mail Outpatient Pharmacies provide a monthly report on the amount of pharmaceuticals purchased against the Pharmaceutical Prime Vendor contract to provide outpatient medicines to Veterans. VA has improved its timeliness of aggregating and submitting these express reports to FPDS.

VA formerly reported its prosthetic spend similarly, using this express report function to “batch” reports of prosthetics buys conducted through the Graphical User Interface in the Veterans Health Information Systems and Technology Architecture. However, VA re-examined its interpretation of the FAR requirements and determined that all prosthetics spend above the micropurchase threshold must be awarded and reported by warranted contracting officers. As of October 1, 2013, all VHA prosthetic procurements are in compliance. We believe this issue now has been addressed adequately. As of June 15, 2015, eCMS showed 57,047 prosthetics transactions,<sup>1</sup> representing \$730.6 million in spend. Of these transactions, 56,884 records included an appropriate code indicating they had been reported to FPDS. This is a 99.7% compliance rate. These prosthetics transactions are and will continue to be included in analysis of VA’s small business achievements based on FPDS data.

VA will continue to redress identified concerns with our procurement process and address new issues as they arise. For example, VHA has been implementing the Veterans Access, Choice, and Accountability Act of 2014. This will have policy and data reporting consequences which we are beginning to address. Although we will continue to work through these issues, we do not know how these transactions will ultimately affect our small business achievements.

Additionally, OAL is seeking to improve infrastructure to better support efficient transactions to eCMS that will improve interfaces with VA’s legacy systems and improve our ability to provide an enterprise-wide view of VA procurement. I appreciate that OAL has included my office as an active participant in this effort. Small business goal forecasting and reporting is a cross-cutting requirement that affects numerous other business processes across the Department.

Continued improvements in our data systems, consistent use of eCMS, and timely reporting of express reports will heighten the Department’s ability to report accurate and complete procurement data for SBA to use in determining small business goal outcomes. In an environment of quick and continuous change, we have worked to resolve identified concerns, anticipate future needs and address new issues as they arise. We welcome the input of our Congressional partners as we work to better serve Veterans in achieving the Department’s small business goals.

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.

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<sup>1</sup>Prosthetic transactions reported in eCMS are for purchases above the \$3000.00 micropurchase threshold, e.g., artificial limbs, surgical implants, specialized custom wheelchairs and home adaptations.



COMMITTEE OF SMALL BUSINESS AND COMMITTEE OF VETERANS AFFAIRS

WRITTEN STATEMENT OF

Kevin Youel Page, Deputy Commissioner

Federal Acquisition Service

General Services Administration

BEFORE

THE SUBCOMMITTEE ON INVESTIGATIONS, OVERSIGHT AND REGULATIONS AND THE

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, RESPECTIVELY

ON

MANIPULATION AND FRAUD IN THE REPORTING OF VA SMALL BUSINESS GOALS

June 23, 2015

**Introduction**

Good afternoon, Chairmen Coffman and Hardy, Ranking Members Kuster and Adams, and honorable members of the Subcommittees. My name is Kevin Youel Page, and I am the Deputy Commissioner for the General Services Administration's (GSA) Federal Acquisition Service. I previously served as the Assistant Commissioner of the Integrated Award Environment (IAE). I started working for GSA in September 2011 as the Deputy Assistant Commissioner for the Integrated Technology Service, and led the IAE program from July 2013 until November 2014, including responsibilities for the Federal Procurement Data System (FPDS). I appreciate the opportunity to appear here today to discuss GSA's role in providing Federal contract award reporting capabilities and GSA SmartPay purchase cards to government agencies, including the Department of Veterans Affairs.

**Integrated Award Environment**

The Integrated Award Environment (IAE), which was created as a Presidential eGov initiative under the E-Government Act of 2002, is designed to streamline and unify the Federal award process for Government and non-government participants in the grants, loans and contracting communities.

The largest and most complex of the E-Government initiatives, the IAE's main goal, in concert with our governance and oversight bodies, is to evolve the existing shared portfolio of ten systems (of which FPDS is one) into a user-centric, open source, secure, common services platform that will improve operations for those who award and administer contracts or grants. This work will enable the Government to be more efficient, reduce burden, and will provide more transparent Federal award information to enable continuous monitoring and improved Federal award management.

Importantly, IAE plays a government-wide role, and is therefore managed through a variety of interagency working groups of which the Small Business Administration and Department of Veterans Affairs are members. These working groups, represented by Chief Financial Officer Act agencies, provide guidance, add extensive experience and expertise, and help provide direction on the priorities for IAE development.

**Federal Procurement Data System**

GSA serves as the executive agent for the management of all Government-wide award systems, including, through interagency cooperation, FPDS. 41 U.S.C. § 1122 establishes the requirement

for agencies to report data into a federal procurement data system. FPDS provides a comprehensive web-based tool for agencies to report their contract actions, in accordance with the statute and as prescribed by Federal Acquisition Regulation (FAR), Subpart 4.6. Agencies report contract actions to FPDS either directly through a web portal or through real-time integration via their Contract Writing Systems. As of May 2015, there are more than 8 million Fiscal Year 2015 civilian and defense actions reported to FPDS, reporting obligations of \$262 billion.

The requirement for reporting data in FPDS is based upon the Federal Acquisition Regulation, Subpart 4.6. Agencies operating under the FAR are required to report contract actions over the micro-purchase threshold, which is currently \$3,000. FAR Subpart 4.606 provides specific guidance to agencies for reporting contract actions. If an agency wants to enter non-FAR based actions, they can send a request to the IAE, which is then evaluated by an interagency board. . The purpose of this governance is to ensure that IAE remains a good steward of agency data in FPDS data and that the appropriate changes are made to the system.

FPDS captures summary information on each contract action. Summary data includes information such as what was purchased, the obligated amount, the contracting activity that purchased it, the funding agency that is paying for it, the contractor that will provide it, the place of performance, and the socio-economic status of the contractor. Procurement data in FPDS are made publicly available via USASpending.gov without a password and via registration in FPDS if access to additional reports is desired.

As prescribed in FAR Subpart 4.604, each agency's Senior Procurement Executive, in coordination with the head of the contracting activity, is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS. Further, the Chief Acquisition Officer of each agency required to report its contract actions must submit to GSA, within 120 days after the end of each fiscal year, an annual certification regarding whether, and to what degree, agency contract action data for the preceding fiscal year are complete and accurate in FPDS.

#### **Small Business Goaling Report**

The Small Business Goaling Report (SBGR) is used by agencies to measure their respective accomplishments in relation to their annual small business program goals. The SBGR provides summary information about small business purchasing for all the departments in the Federal government. The IAE collaborates annually with the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA) to define the specific functional system requirements based on applicable statutes, policies and regulations to calculate the SBGR. Procurement data is captured in FPDS as required by the FAR and is used by IAE to produce the SBGR on behalf of the SBA. The SBGR, once complete, is made publicly available on the FPDS website. The accuracy of the information submitted is the responsibility of each agency. Neither IAE nor SBA alter or update agency data collected in FPDS.

#### **Increasing Usability & Transparency**

Working with the acquisition and financial assistance communities, along with other governmental and non-governmental stakeholders, IAE is on an approved path to modernize all

systems in the Integrated Award Environment, including FPDS. IAE has conducted numerous focus groups with federal, contractor, reporting and oversight stakeholders and users in order to design, develop and launch new interfaces into a consolidated site. The program plan for modernization is using agile and iterative development and has launch cycles through FY 2018.

Several key areas for user enhancement include single, authenticated sign-on capabilities, improved identification of authorized persons and roles, as well updated and customized visualization of data. The earliest changes to FPDS will be in regard to accessing reports. IAE has made significant progress in developing the underlying new cloud infrastructure, architecture, and technical governance for the new environment.

#### **GSA SmartPay® Government-wide Purchase Card Program**

The GSA SmartPay® government-wide commercial charge card program started in 1998. The main objectives of the program are to streamline government purchasing and save money. Under this program, GSA competitively awards contracts to commercial banks, known as “issuers,” to provide charge cards and related card management services and data systems to customer agency-designated cardholders. These cards are not “credit” cards in that balances are paid in full each billing cycle. No revolving credit is extended. The program consists of purchase, travel, fleet and integrated (a single card which combines two or more card types) charge cards, as well as other commercial payment solutions. The current iteration of the program, known as “GSA SmartPay® 2,” includes contracts with 3 issuers: Citi, JPMorganChase, and U.S. Bank. Through yet another level of competition, these banks compete for task order awards to service specific agencies.

Since its inception, the GSA SmartPay® program has enabled a total of \$416 billion in purchases through 1.4 billion transactions, generating \$2.9 billion in agency refunds to reinvest in mission delivery. The cards also reduce procurement administrative processing costs across the government, supporting the ability to quickly acquire goods and services under the micro-purchase threshold (currently \$3,000) and freeing up highly trained contracting staffs to focus on larger, more complex acquisitions where their training and expertise is of the most benefit. The cards have all but eliminated the issuance of cash advances for travel, enabled and supported strategic sourcing for items like domestic shipping and office supplies, and provide an audit trail for activity that previously had little visibility. Under the GSA SmartPay® program contracts, customer agencies have zero liability for external fraud, meaning the government has no financial liability for fraudulent transactions perpetrated by criminals who use cards to make purchases.

In terms of purchase cards alone, agencies in FY14 spent \$17.1 billion through 20 million transactions using approximately 263,000 accounts. According to FY14 data, VA spent \$8.4 billion through 6.7 million transactions and 46,222 accounts, 49% of total government-wide purchase card spending.

#### **GSA SmartPay® Agency Management & Oversight**

The charge cards are provided to customer agencies at no up-front cost. These agencies decide which employees are issued the cards, and also determine the spending limits on those cards within specified guidelines. Each agency is responsible for its system of management controls

and overseeing cardholders' use of the program. GSA, through its contractor banks, provides card account management and oversight tools, training and business rules to assist them in doing so. Known as "Electronic Access Systems (EAS)," the card management systems allow agencies to establish accounts and access information on every purchase their cardholders transact. These systems are provided at no cost to customer agencies. There are standard reports to identify potential "split purchases," instances of attempts to circumvent spending limits by acquiring an item costing greater than \$3,000 by breaking it into repeated purchases under the micro-purchase limit. The GSA SmartPay® master contracts require the issuers to provide over 50 standard reports to assist in card program management. Examples of these reports include the following:

- Account Activity Report: Provides transaction details for active accounts and spending during a billing cycle
- Declined Authorization Report: Identifies cardholders that attempted transactions which exceed limits or which were attempted with blocked merchant categories
- Disputes Report: Provides information on the number of cardholder transaction disputes
- Unusual Spending Activity Report: Identifies transactions which may require additional review and follow-up
- Lost/Stolen Card Report: Identifies cards that are reported as lost or stolen

In addition, agencies can run ad hoc reports focusing on specific issues like a particular transaction amount, merchant or cardholder. For example, it is possible to identify all purchase card spend, by cardholder, in excess of the micro-purchase threshold.

In addition to the EAS and standard/ad hoc reporting capabilities, GSA requires the issuing

contractor banks to offer data mining systems, such as VISA® Intellilink and MasterCard® Expert Management System (EMS). Customer agencies can load business rules into these systems and identify transactions which fall outside of these parameters. Other oversight tools available for customer agency use include Citibank's Program Audit Tool (PAT) and U.S. Bank's Payment Analytics. To manage their purchase cards, VA uses U.S. Bank's EAS, known as "Access On-line," and U.S. Banks "Payment Analytics" data mining tool, in combination with VA-unique in-house systems.

As part of the internal control framework for the purchase cards, every cardholder has an approving official, who is responsible for reviewing their transactions for appropriateness. Also, groups of cardholders are managed by a card manager within their agency, known as an "Agency/Organization Program Coordinator" (A/OPC), who works with management to ensure cardholders are trained, establish accounts, set spending limits, monitor transaction activity, and cancel/close accounts.

41 U.S.C. § 1909, OMB Memo M-13-21, and OMB Circular A-123, Appendix B, "Improving the Management of Government Charge Card Programs" provide the main statutory and policy requirements for charge card management. Customer agencies often supplement these requirements with their own agency-unique policies. These policies typically define employee disciplinary actions or reference "tables of penalties" for card misuse/abuse. All purchase cardholders must be trained prior to card issuance.

As mentioned previously, purchase cards serve as both a procurement and payment method for



purchases of \$3,000 or less, known as “micro-purchases.” For purchases above that amount, the card can be used only as a payment method under a contractual instrument (purchase/delivery/task order, contract, etc.). FAR 4.603 requires all contracting actions over \$3,000 to be reported in FPDS, unless they are classified.

Commercial charge card transaction data includes information such as: merchant name, location, transaction date and transaction amount. In some cases, when the merchant point of sale system provides it, line item description data is also captured. But the commercial transaction data does not provide specific information as to whether or not a purchase was made under a particular contract. As every purchase must be reconciled by the cardholder, most bank and agency reconciliation systems provide a comment field where information, such as a contract number, could be entered.

To further aid agencies in effective charge card management, in addition to publications, training sessions, workshops and regularly scheduled card manager meetings, GSA’s Office of Charge Card Management (OCCM) has embarked on a government-wide charge card metrics and benchmarking program focused upon CFO Act agencies. The initial metrics, released earlier this month, include: (1) Use of a data mining tool, (2) merchant spend concentration, (3) number of transaction disputes, and (4) number of confirmed violations (by an agency Inspector General) as reported pursuant to 41 U.S.C.1909. The metrics and benchmarks are designed to indicate potential card management emphasis areas for the agencies to examine, and will therefore evolve over time.

Chairmen Coffman and Hardy, Ranking Members Kuster and Adams, and honorable members of the Subcommittees, thank you for the opportunity to discuss IAE's Federal Procurement Data System and the GSA SmartPay® government-wide purchase card program. I am happy to answer any questions you and the members of the Subcommittees may have.



**U.S. Small Business Administration**  
**Washington, D.C. 20416**

**TESTIMONY of**

**A. JOHN SHORAKA**

Associate Administrator, Government Contracting Business Development  
U.S. Small Business Administration

**Committee on Small Business**  
**Subcommittee on Investigations, Oversight, and Regulations**  
**&**

**House Veterans Affairs**  
**Subcommittee on Oversight and Investigations**

*Manipulation and Fraud in the Reporting of VA Small Business Goals*

**Tuesday, June 23, 2015**

Chairmen Coffman and Hardy, Ranking Members Kuster and Adams, and members of the Subcommittees, I am honored to be here today to discuss SBA's methodology as it pertains to setting goals for and reporting on the small business procurement performance of federal agencies.

As you know, the Small Business Act (P. L. 85-536, as amended) tasks the Federal Government with awarding at least 23 percent of federal contracting dollars to small businesses. Goals have also been established for awards to Small Disadvantaged Businesses (SDBs) of 5 percent; Woman-Owned Small Businesses (WOSBs) of 5 percent; Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) of 3 percent; and firms located in Historically Underutilized Business Zones (HUBZone firms) of 3 percent. The U. S. Small Business Administration (SBA) is responsible for annually reporting on the federal government's performance toward these goals and does so via its Small Business Procurement Scorecard.

The Small Business Procurement Scorecard (Scorecard) for Fiscal Year 2013 revealed that for the first time since 2005, the Federal Government met the 23 percent goal for prime contracting dollars awarded to small businesses, with 23.39 percent of all federal small business eligible dollars being awarded to small businesses. Additionally, the Federal Government exceeded the 5 percent goal for SDBs and also met the 3 percent goal for SDVOSBs. These achievements represent a dedication across government to improving small business access to the many opportunities available within the federal supply chain.

The grading associated with the Scorecard follows a publically available methodology, which can be found in the "Contracting" section of [www.sba.gov](http://www.sba.gov).<sup>1</sup> Each federal agency has a different small business prime contracting goal which is negotiated with the SBA. When negotiating agency small business prime contracting goals, SBA considers each agency's past small business performance and the small business opportunity available by specific industry. SBA ensures that the sum of all agencies' goals exceeds the 23 percent target established by law. Although the small business prime contracting goals negotiated with SBA differ for each agency for the reasons described above, every agency has the same goals for prime contract spending with the socioeconomic subcategories. For example, each agency has a 5 percent goal for prime contracting dollars awarded to WOSBs.

The overall Scorecard grade is based on three categories: prime contracting, which is 80% of the overall grade; subcontracting, which is 10% of the overall grade; and seven success factors, which are 10% of the overall grade. These categories are combined to yield a letter grade for each agency as well as for the Federal Government on the government-wide Scorecard.

The government-wide Scorecard and each individual agency's prime contracting score are based on information pulled from the Federal Procurement Data System-Next Generation (FPDS-NG). FPDS-NG is a web-based tool for all agencies to report contract actions. This system is maintained by the General Services Administration (GSA), and governed by an interagency council on which SBA is a nonvoting member. The Federal Acquisition Regulation

<sup>1</sup> [https://www.sba.gov/sites/default/files/files/Scorecard-Grade-Calculation-Methodology-FY13\\_FINAL\\_2014-06-04.pdf](https://www.sba.gov/sites/default/files/files/Scorecard-Grade-Calculation-Methodology-FY13_FINAL_2014-06-04.pdf)

(FAR) provides agencies with guidance on the data that is entered into FPDS-NG, and each Agency is responsible for inputting its own data and ensuring its accuracy. The FAR (4.604) also requires each agency to certify to GSA and the Office of Management and Budget (OMB) that the data it has entered into FPDS is complete and accurate. After agencies certify their data, GSA provides SBA with an extract of data from FPDS-NG to use in formulating the Scorecard. The information for subcontracting performance is pulled by GSA for SBA from the Electronic Subcontracting Reporting System (eSRS).

Success factor grading is based on information provided to SBA by each federal agency to document its performance for each factor. This information is reviewed by a peer panel comprised of Directors of agency Offices of Small and Disadvantaged Business Utilization (OSDBUs). Three panelists review each agency's submission, and the average score is reported on the agency scorecard. The government-wide success factor grades are the averages of all agencies' performance on that specific factor.

This Administration has emphasized its commitment to ensuring small businesses get their fair share of federal contracts. SBA has made significant progress in increasing the transparency and reliability of its Scorecard methodology and the reliability of data provided by agencies. As mentioned above, the Scorecard methodology is publically available, as is the data in FPDS-NG, in real time. Although SBA cannot change the data in FPDS-NG nor enter it on behalf of agencies, SBA has conducted data anomaly reviews and shared findings with agencies prior to the data certification date to provide agencies time to correct errors. SBA initiated these practices in Fiscal Year 2011, and in Fiscal Year 2013, SBA worked with GSA to develop a standard anomaly report that can be run by agencies at any time. SBA encourages agencies to run the standard anomaly report quarterly and correct errors as they are discovered. SBA continues to identify anomalies through other forms of analysis and shares those findings with agencies to correct. Additionally, SBA has allocated new staffing resources to improve data quality and provide training to agencies. Finally, data quality best practices are incorporated into one of the success factors, so SBA can score agencies on their internal practices. SBA continues to work with OMB's Office of Federal Procurement Policy and each federal agency to ensure that effective policies and practices are in place to provide maximum practicable opportunity to small businesses.

Thank you for your continued leadership and support. I look forward to your questions.

