

LEGISLATIVE HEARING ON H.R. 2006; H.R. 2749;  
H.R. 2781; AND, A DRAFT BILL, "TO IMPROVE  
THE HIRING, TRAINING, AND EFFICIENCY OF  
ACQUISITION PERSONNEL AND ORGANIZATIONS  
OF THE DEPARTMENT OF VETERANS AFFAIRS,  
AND FOR OTHER PURPOSES"

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND  
INVESTIGATIONS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
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**LEGISLATIVE HEARING ON H.R. 2006; H.R. 2749; H.R. 2781; AND, A DRAFT BILL, "TO IMPROVE THE HIRING, TRAINING, AND EFFICIENCY OF ACQUISITION PERSONNEL AND ORGANIZATIONS OF THE DEPARTMENT OF VETERANS AFFAIRS, AND FOR OTHER PURPOSES"**

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**Thursday, June 29, 2017**

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON VETERANS' AFFAIRS,  
SUBCOMMITTEE ON DISABILITY ASSISTANCE  
AND MEMORIAL AFFAIRS,  
*Washington, D.C.*

The Subcommittee met, pursuant to notice, at 10:00 a.m., in Room 334, Cannon House Office Building, Hon. Jack Bergman [Chairman of the Subcommittee] presiding.

Present: Representatives Bergman, Bost, Poliquin, Dunn, Arrington, Kuster, Peters.

Also present: Representatives Coffman, Panetta.

**OPENING STATEMENT OF JACK BERGMAN, CHAIRMAN**

Mr. BERGMAN. Good morning, everybody. This hearing will come to order. I want to welcome everyone to today's legislative hearing on H.R. 2006; H.R. 2749; H.R. 2781; and a draft bill to improve the hiring, training, and efficiency of VA acquisition personnel and organizations.

Before I begin, I would like to ask unanimous consent for the previous Chairman of the Subcommittee, Representative Coffman, and our colleague, Representative Panetta from California, to sit in on the dais and speak at these proceedings. Without objection, so ordered.

This morning we will discuss four bills that aim to reform different aspects of acquisition in the Department of Veterans Affairs. This Committee has held 27 oversight hearings on VA acquisition over the last ten years. From constructing new buildings, to purchasing medical supplies, to procuring IT systems, to operating the Choice program, acquisition underpins everything VA does. The outrageous scandals of recent years are well known. And I do not think anyone in this room today doubts the need for improvement. In this conversation we necessarily focus on medical purchasing and VHA as roughly 80 percent of the department's acquisition

workforce either works in VHA or purchases on its behalf despite being employed by other organizations.

It is wise to take our cues from the Choice Act independent assessment, the Commission on Care, and GAO. The common thread in their findings is while a few areas of acquisition work well, notably pharmaceutical purchasing, VA contracts take too long to award, fail to produce results because they are not administered closely, and do not capture all possible savings. They attribute the problems to confusing organizational structures, overly bureaucratic procedures, inefficient IT systems, and personnel challenges. I must point out that acquisition difficulties in the Federal government are hardly unusual. The Federal Acquisition Regulation is lengthy and complicated. However, all agencies operated under the FAR and many of them do so effectively. VA's difficulties may come from the fact that unlike some other agencies, it is responsible for all aspects of acquisition, including procurement logistics, and construction. Each is a somewhat different situation with its own needs. As the agency tasked with serving veterans, VA also has requirements over and above those of other agencies to contract with veteran owned small businesses and service disabled veteran owned small businesses.

The current requirement, called the rule of two, has existed for over ten years. And I am sure everyone here today is well aware last year the Supreme Court unanimously ruled in the *Kingdomware* decision that this requirement applies at all times and to all VA purchasing. The issue is central to our discussion today.

These legislative proposals demonstrate our bipartisan commitment to making this important aspect of VA's operations work properly. I thank the bills' sponsors as well as our witnesses for being with us today to present their views. To that end, I would like to briefly discuss the bill that I am proud to sponsor with Ranking Member Kuster, H.R. 2749, the Protecting Business Opportunities for Veterans Act of 2017.

This bill will help ensure contracts that are set aside for veteran owned small business and service disabled veteran owned small businesses actually go to companies that abide by the rules instead of opportunists who are abusing the system. Specifically, the bill strengthens existing prohibitions on improper pass-throughs, which are when a company obtains a contract but instead of performing the required percentage of work subcontracts the work to another company while nonetheless collecting profit. Improper pass-throughs waste tax dollars by building in unnecessary layers of contractor profit. In VA contracts, improper pass-throughs also take away from small business owned by veterans and service disabled veterans and hand it to other companies. This problem has existed before the *Kingdomware* decision but since the ruling allegations of abuse have increased.

H.R. 2749 requires that before any company is awarded a VA contract it must certify that it will perform at least the percentage of work required by the Small Business Act and acknowledge that misrepresentations are subject to criminal fraud penalties. The bill also directs VA to refer violations or suspected violations to OIG for investigation. Finally, if the Secretary determines after consulting

with OIG that a company did not follow the performance requirements, and did not act in good faith, the company may be subjected to appropriate punishment.

This bill strengthens enforcement of existing laws that are being ignored. It does not create any new bureaucracy and its mechanism, a certification when submitting a proposal, would only take a few minutes to read and fill out. It seeks to give VA a tool to make its procurement system work as intended.

I now yield to Ranking Member Kuster for any opening statement and remarks on today's legislation that she may have.

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

Ms. KUSTER. Thank you, Chairman Bergman. I am delighted to be here with you today. And thank you to the witnesses who are here to provide us feedback and recommendations on how we can improve these four bipartisan bills. Most of the work we do on this Committee is bipartisan and I am proud to say that the bills before us today are examples of the bipartisan way in which we conduct business on the VA Committee.

When it comes to ensuring that taxpayer dollars are spent to get the right supplies and services so that veterans receive the health care and benefits they have earned, we are proud that we do work together to support this goal. We all support changes and reforms to make government contracting more efficient, transparent, and fair. We are also proud to support our service disabled veteran owned small businesses and to ensure our government is giving them business opportunities. For these reasons I support the legislation on the agenda today and I am happy to be a cosponsor of two of these measures.

Chairman Bergman and I introduced H.R. 2749, the Protecting Business Opportunities for Veterans Act, to close a loophole that some service disabled veteran owned small business contractors were using to bypass government contracts through to non-veteran owned businesses. This practice is unfair to the thousands of service disabled owned small businesses who follow the regulations and are able to do the work only to lose out on a contract. This bill would prevent these SDVOSBs from subcontracting more than 50 percent of the contract to non-veteran owned businesses. We want our disabled veteran entrepreneurs to thrive and it is unfortunate that a small number of individuals were attempting to game the system for their own personal gain at the expense of disabled veteran business owners who should receive government contracting preferences.

I also plan to introduce draft legislation to improve VA hiring, training, and efficiency of acquisition personnel and its organization with my colleague from New England, Mr. Poliquin, and with Chairman Bergman. This legislation will require VA's procurement workforce to receive training and certification for each general schedule pay grade. It will also prioritize the use of VA acquisition internships to employ entry level acquisition professionals at the VA. This will give our veterans who want good paying job opportunities to work at the VA as highly skilled and trained acquisition professionals. It will also require VA to examine the procurement organization and make some changes allowing it to operate in a

way that will best serve front line employees who are providing health care and benefits to veterans.

I also support H.R. 2781, Ensuring Veterans Enterprise Participation in Strategic Sourcing Act, which would make sure more of our veteran owned small businesses are able to compete for contracts under the Federal Strategic Sourcing Initiative; and H.R. 2006, the VA Procurement Efficiency and Transparency Act, that would require the reporting of cost savings from government contract competition and the use of standardized procurement templates VA-wide.

I look forward to hearing from our witnesses. Thank you, Chairman Bergman, and I yield back the balance of my time.

Mr. BERGMAN. Thank you, Ranking Member Kuster.

To our witnesses, we will have several members providing statements this morning. So if at some point during the hearing any of you need to briefly be excused, please feel free to do so.

We will now hear from Representative Coffman speaking in support of his bill, H.R. 2006, the Procurement Efficiency and Transparency Act. Mr. Coffman, you are recognized for five minutes.

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

Mr. COFFMAN. Thank you, Mr. Chairman, for including my legislation, H.R. 2006, the Procurement Efficiency and Transparency Act, in today's hearing. One of the VA's top procurement goals is to achieve savings through competition. But there is no uniformity in how the savings are calculated or if they are reported at all. In fact, individual offices seem to determine these numbers according to each office's own policies. For example, when a VA procurement official says, we saved so many dollars through competition, there is no surefire way to judge his legitimacy. Often these numbers are based on inaccurate estimates or hypothetical cost avoidances. My legislation would mandate the use of uniform parameters for how to calculate these savings and allows the VA to write policy that fills in the specific details. Additionally, contracting officers rely on templates for key documents like statements of work and terms and conditions for their everyday duties. Currently the VA has templates but they are disorganized and not well maintained. To address this issue, my legislation directs the VA to organize these templates and put them in a central place that is accessible to all VA's procurement offices.

Mr. Chairman, the VA has acknowledged the importance of doing this. But they continue to struggle to get this done. My bill gives the VA a much needed push in the right direction. And I encourage my colleagues to support this common sense measure.

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

Mr. BERGMAN. Thank you, Mr. Coffman. We will now hear from Representative Dunn, who will be speaking in support of his bill H.R. 2781, the Ensuring Veteran Enterprise Participation in Strategic Sourcing Act.

#### **OPENING STATEMENT OF NEAL DUNN**

Mr. DUNN. Thank you very much, Mr. Chairman.

Mr. BERGMAN. Dr. Dunn, you are recognized for five minutes.



Mr. DUNN. Thank you very much, Mr. Chairman. H.R. 2781, the Ensuring Veteran Enterprise Participation in Strategic Sourcing Act is common sense legislation, which I am honored to sponsor with my friend and fellow Member, Mr. Panetta from California. This bill closes a loophole which inadvertently denies veteran owned small business and service disabled veteran owned small businesses contracting opportunities.

2781 concerns a group of contracts run by the General Services Administration known as the Federal Strategic Sourcing Initiative, FFSI, which enables Federal agencies to pool their money for buying power to common items like office supplies, janitorial products, building maintenance services. Each group of contracts under FFSI is awarded roughly ten to 20 companies. When an agency needs to order such products, the agency asks for price quotes from FFSI companies, which have already been selected and vetted, and picks one of those. The FFSI is a good and simple method of purchasing. The only problem is with some of the contracts in the subcategories.

These subcategories are divided in such a manner which many only have a few, and in some cases none, no veteran or service disabled veteran owned businesses. The VA is required to look for veteran and service disabled veteran owned small businesses. But in too many cases in the FFSI contracts none of them are there to be found or too few to establish meaningful competition.

H.R. 2781 directs the VA to implement the most logical fix, to examine whether there are enough veteran owned small businesses and service disabled owned small businesses for the FFSI contracts. If there are not enough veteran contractors, the bill directs the VA to work with GSA to add more. In no way does the bill force other agencies to operate differently. Instead it helps the Federal government meet the veteran owned small business and service disabled veteran owned small business contracting goals by giving agencies access to a larger pool of contractors.

Some may ask why this legislation is necessary. The loophole is obvious, at least to the veterans in these industries who have been frustrated at being excluded from the business opportunities under FFSI. This Subcommittee brought this issue to the department's attention last year and it has not been resolved. This is why Mr. Panetta and I bring this legislation forward today. I encourage all the Members of the Committee to support the bill. And with that, Mr. Chairman, I yield back.

Mr. BERGMAN. Thank you, Dr. Dunn. Next we will hear from Representative Panetta for his comments on H.R. 2781. Mr. Panetta, you are recognized for five minutes.

#### **OPENING STATEMENT OF JIMMY PANETTA**

Mr. PANETTA. Thank you, Mr. Chairman. I appreciate this opportunity. It's wonderful to see you in that position, especially as a freshman class member. It is great. Thank you. And thank you to all the other Members of this Committee, ladies and gentlemen.

I am proud to join my good friend and colleague, Representative Dunn, in sponsoring H.R. 2781. The Ensuring Veteran Enterprise Participation in Strategic Sourcing Act would protect the veterans' preference when it comes to awarding government contracts to vet-

eran and service disabled veteran owned businesses. That protection would come from a common sense fix to an obvious loophole in the Department of Veterans Affairs rule of two.

Currently the rule of two mandates that when the VA wants to buy something, it must first make a determination whether there is at least two other veteran or service disabled veteran owned small businesses that can do the work at a fair and reasonable price. If that determination is made, the VA then enters into that contract for those products with those businesses. Sometimes, however, when the VA purchases office, janitorial, and other products through the General Services Administration, it does not always apply the rule of two. Thus, that is the loophole this bill addresses and fixes.

Under H.R. 2781 the Secretary of the VA, who Neal and I actually met with this morning, must work with the GSA to increase the number of service disabled veteran and veteran owned small businesses represented in the contracting process. By making it easier to contract with the VA, veteran and service disabled veteran owned small businesses will greatly benefit from this bill.

As veteran, Congressman Dunn and I understand the challenges that our servicemembers face when transitioning from military to civilian life and running their own businesses. As Americans, we understand that we should be working to serve those who served us. That is why, as Members of Congress, Republican and Democrat, we are introducing this bipartisan bill that gives our veterans more opportunity to thrive and to serve not only the government of our country but our communities. And that is why both Neal and I encourage our colleagues to support this bill.

Thank you, Mr. Chairman. And I yield back.

Mr. BERGMAN. Thank you, Mr. Panetta. Thanks for joining us.

Mr. PANETTA. Thank you.

Mr. BERGMAN. Now we will hear from Representative Poliquin speaking in support of the fourth piece of legislation, a draft bill to approve the hiring, training, and efficiency of VA acquisition personnel and organizations. Mr. Poliquin, you are recognized for five minutes.

#### **OPENING STATEMENT OF BRUCE POLIQUIN**

Mr. POLIQUIN. Thank you, Mr. Chairman, very much. I appreciate it. I am very proud to sponsor this bill with you, Mr. Chairman, and also with Ranking Member Kuster. You know, I am new to this Committee, but I am already very familiar, and I think we all are, with some of the VA contracting disasters that we have seen throughout the country and that continue to happen. And nobody knows more about constructing management problems than Mr. Coffman from Colorado. The new medical center in this district is more than \$1 billion over budget and it is still, Mr. Chairman, it is still not complete. The Inspector General's report explains how this happened, and I encourage everybody to read it. Because everything possible that could go wrong did go wrong.

Now another example was right here in Washington, D.C. at the VA Medical Center. The supply chain there, Mr. Chairman, completely broke down. There were employees at the Washington, D.C. Medical Center who were scrambling to borrow basic medical sup-

plies from other hospitals and postponing procedures. One of the VA's reports about its own investigation quotes a logistics employee describing the state of the organization. And I do paraphrase here but it was something like this. The employee said, we do not have an actual operable inventory system. It is all manual or by hand. You have to remember we have people down here who just are put on the spot and given a credit card and asked to go out and buy supplies. Now that is completely unacceptable.

Some of the VA's most important programs, like our Choice program, Mr. Chairman, are run through contracts. The VA has attributes these problems to early and bad contracts and are now trying to improve the program through better contracts. But my point is there always seems to be a problem with contracts. And so we have got to, you know, reach out and come up with a solution to fix this problem.

Now my bill, Mr. Chairman, tackles two of the big problems that the VA has when it comes to acquisition. And a workforce that does not get the training it needs in the outrageous complicated bureaucracy that Mr. Bergman described. My bill directs the VA to set up, very simply, a career certification program for a logistics employee or for someone who is involved in construction or facilities management. The department gets to design the programs but they have to include better training. The employee must complete courses to achieve these certifications and they must achieve these certifications in order to advance professionally within the VA.

Now this is not a new idea. The Department of Defense already does this. And the VA already has a career certification program for contracting employees. So it's time to recognize that logistical workers and construction managers also are important and need this training and certification.

Now my bill also directs the VA to expand its acquisition intern programs. These are great programs to bring new college graduates and recent veterans into the VA and to train them to do these jobs, Mr. Chairman. We need these young people to replace the older employees that are retiring in greater numbers every year. Now it takes a long time, Mr. Chairman, for all, everybody in these jobs to learn how these contracting regulations work and how construction management and how supply chains operate. We need to plan for the future and grow our talent from within. So it is time to use these interim programs as best we can to the maximum extent possible.

Finally, Mr. Chairman, my bill pays for these workforce improvements, these training improvements, by consolidating redundant acquisition bureaucratic problems. Now the bill sets out ten possible areas and the Secretary of the VA gets to decide how to do it, but it has got to happen. I encourage everybody at the VA not to look at the consolidation as threatening. The situation we have today is a mess and we have got to fix it.

The Choice Act independent assessment found widespread concern among VA employees themselves about so many different contracting organizations doing the same things and failing to perform up to expectations. And the GAO found too many types of confusing policies from different places. Even the people who write the policies couldn't keep track of it all. So it is time to straighten this

thing out. And if we do, everybody will benefit. The department needs good acquisition talent, the best it can get. This is not about downsizing. It is about getting everybody in the right places and the training they need and removing this blanket of bureaucracy that is stifling everybody.

This bill, Mr. Chairman, is a strong first step towards going down the pathway of acquisition reform. And I encourage everybody on this Committee, Republicans and Democrats, to support it.

And finally, Mr. Chairman, for the record, I would like this statement from Associated General Contractors of America in support of this bill. I yield back my time, thank you.

Mr. BERGMAN. Thank you, Mr. Poliquin. I now welcome the Members of our panel who are seated at the witness table. First, VA informed us yesterday afternoon of its intention to substitute its lead witness so I wanted to note that in order to dispel any confusion about the name on VA's written testimony not matching that of the individual testifying for them today.

With us today from VA we have Mr. Tom Burgess, Associate Deputy Assistant Secretary of the Office of Logistics and Supply Chain Management. He is accompanied by Mr. Tom Leney, the Executive Director for Small and Veteran Business Programs at VA. We have Mr. Patrick Murray, Associate Director of the National Legislative Service at the Veterans of Foreign Wars. We also have Ms. Kaitlin Gray, Assistant Director of the National Veterans Employment and Education Division at the American Legion. And welcome to your first testimony. Finally, we have Mr. Wayne Simpson, a member of the National Veterans Small Business Coalition, representing the organization. Mr. Burgess, you are now recognized for five minutes.

#### **STATEMENT OF THOMAS BURGESS**

Mr. BURGESS. Good afternoon, Chairman Bergman, Ranking Member Kuster, and Members of the Subcommittee. On behalf of Mr. Frye, who definitely intended to be at today's hearing, I express his regrets at his absence due to a family tragedy overseas yesterday.

On Mr. Frye's behalf I appreciate the opportunity to address the Subcommittee regarding the four bills that affect department acquisitions and veteran owned small businesses. I am joined today by Mr. Tom Leney, Executive Director of Small and Veteran Owned Business Programs in the Office of Small and Disadvantaged Business Utilization.

VA is a significant contributor to the government's efforts to ensure proportion of contracting dollars are awarded to small businesses. According to Federal procurement records, VA was the fourth largest Federal agency in terms of fiscal year 2016 contract spend. Out of \$23.1 billion in reported contract spend, VA awarded over 29 percent to small businesses. VA also reported more dollars awarded to service disabled veteran owned small businesses than all other Federal civilian agencies combined.

Ensuring the highest quality service to veterans, improving our acquisition processes, and complying with laws and regulations impacting veteran owned small businesses are top priorities for the

department. We would like to comment on each of the four bills separately.

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

The bill also requires development of standardized procurement templates. The department's contract writing system does store required clauses and applies standardized logic in the creation of contract documents. Electronic copies of these contracts are stored in the system and can be reused or modified easily to meet a future need.

Regarding H.R. 2749, this bill would clarify the performance expectations for service disabled veteran owned small businesses and veteran owned small businesses receiving contracts under the Veterans First contracting program authorities. We recognize that awards to SDVOSBs and VOSBs can provide these entrepreneurs with the resources and opportunities they can use to develop their business according to their own business plans and objectives. This goal will be accomplished only if these firms perform a certain share of the work themselves and not simply pass the work through to others. This bill would give our regulatory action a statutory basis by referencing Section 46 of the Small Business Act where the limitations on subcontracting rules are currently contained.

Finally, it would strengthen enforcement through a certification by the awardee that it will comply with these requirements and provide a role for VA to monitor and enforce compliance.

With respect to H.R. 2781, VA does not support this legislation. This bill would require the Secretary of Veterans Affairs to certify whether there are sufficient numbers of service disabled veteran owned small businesses and veteran owned small businesses in each category of Federal Strategic Sourcing Initiative contracts managed by the Office of Federal Procurement Policy in the General Services Administration. VA does not believe that any additional legislation is required as proper application of the current law is sufficient to ensure that VA does not place orders against FSSI contracts if the rule of two is not satisfied.

Finally regarding the draft bill to improve hiring, training, and efficiency of acquisition personnel and organizations of the department, VA does not support the draft bill. Section 1A requires VA to develop and implement a training and certification program. It is not entirely clear based on the language if this program is for more than just acquisition personnel.

Section 2 would require the Secretary to develop a plan that achieves cost savings from the reduction in duplication and increased efficiency to be used to support increased participation in the interim program, as well as the training and certification programs. In an effort to achieve potential savings, VA would be required to centralize procurement and logistics employees. VA has

previously provided technical comments on this proposed legislation and does not feel it is necessary.

VA is the only civilian agency with a dedicated training academy. VA established a contracting intern school and a Warriors to Workforce program to internally supplement traditional procurement workforce recruitment. VA would like to retain existing flexibility to modify throughput of these programs based on evolving work load requirements. VA currently follows OMB and OFPP acquisition program certification requirements and does not see the need for legislation in this area.

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

Mr. BERGMAN. Thank you, Mr. Burgess. Mr. Murray, you are now recognized for five minutes.

#### **STATEMENT OF PATRICK MURRAY**

Mr. MURRAY. Chairman Bergman, Ranking Member Kuster, and distinguished Members of the Subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States and its Auxiliary, thank you for the opportunity to present VFW's thoughts on these proposed bills.

For years the Department of Veterans Affairs has not uniformly tracked cost savings in the competitive bidding process. Simple databases would allow VA to have consistent tracking systems that would keep track of savings and allow for enhancements across the entire contracting system. The savings provided for VA would ultimately mean a savings for the taxpayers and allow for money spent by VA to be better used to support veterans.

The VFW supports the VA Procurement Efficiency and Transparency Act and does not agree with the VA's reason to oppose this. Everyone else not having to do it is not an acceptable excuse.

This proposal would implement a database that would keep track of the average bids, the winning bids, and produce a cost savings analysis for future use. Additionally, the VFW thinks using standardized procurement templates across the entire department would only streamline the procurement process and help VA become more efficient across the board.

Pass through contracts have been a problem in the veteran owned small business community for far too long. Hardworking veterans who are trying to advance their businesses are plagued by others who are taking advantage of loopholes and under scrutinizes regulations. It has been far too easy for business owners operating in bad faith to pass off work as their own in order to make a quick buck off the system. The VFW supports the Protecting Business Opportunities for Veterans Act, which would help strengthen the regulation regarding VOSBs and keep those who abuse the system from continuing to do so.

VOSBs provide an integral part of our country's business community. They provide veterans with the outlet to start up their businesses and take part in our Nation's free market system. There are, however, some bad actors who take advantage of the veterans programs offered and try to abuse the system. This regulation would provide the veteran small businesses operating in good faith

the opportunity to flourish by removing these so-called VOSBs that do not adhere to the rules and regulations. Removing these businesses that act as a pass through for larger entities will clean out the field and give those veterans that are doing the right thing the ability to grow.

Certain contracts in the VA are only obtainable by certain large corporations and smaller veteran owned businesses cannot compete at that level. For example, contracts such as office supplies and janitorial equipment are written in ways that allow large suppliers to obtain the contracts but not smaller companies. Making the contracts more open would allow the competition and possibly more cost savings to the VA. The VFW feels that having certain contracts unobtainable for VOSBs is unfair for competitive contracting and is something that needs to change. That is why the VFW supports Ensuring Veteran Enterprise Participation and Strategic Sourcing that would help improve the abilities of veteran small businesses to obtain Federal contracts. This would help raise the number of veterans working under Federal contracts and help strengthen the entire small business community. Additionally, if the number of contracts awarded in certain categories is too low, giving the Secretary permission to order stoppage of those contracts awarded that are too restrictive for veterans to participate in is a great thing.

Regarding the draft legislation, government agencies have been using the internship programs to move veterans into their ranks for years and they are highly successful programs. Thousands of veterans have joined the Federal government's workforce through programs such as the Warriors to Workforce program and the acquisition internship program. However, VA has been adding veterans to their workforce at a slower rate than some of these other programs. In recent years there have been roughly 20 to 30 participants in VA's AIP while other agencies are placing almost 100 candidates annually. Expanding the program to bring dozens more veterans to VA is an excellent way to make it a better government agency.

The VFW strongly supports expanding the AIP and this bill would increase the number of participants, more than doubling the current amount. The Warriors to Workforce program and the AIP provide great pathways for veterans to join VA in procurement or logistics supply chain management fields. More veterans within the ranks of VA will only make it a stronger agency as these programs provide an in depth on the job training that results in well-rounded VA employees.

The VFW supports developing a plan to reduce duplication and to increase efficiencies within the logistics and supply chain management programs. This effort would reduce unnecessary expenses for matching programs running concurrently. This cost savings could be better spent on improving the existing programs instead of being wastefully spent in similar efforts. Consolidating or abolishing duplicate functions of the Procurement and Logistics Office of the VA will help eliminate wasteful spending and make the entire office more efficient.

Mr. Chairman, this concludes my testimony. I would be happy to answer any questions you or Members of the Subcommittee may have.

[THE PREPARED STATEMENT OF PATRICK MURRAY APPEARS IN THE APPENDIX]

Mr. BERGMAN. Thank you, Mr. Murray. Ms. Gray, you are now recognized for five minutes.

#### STATEMENT OF KAITLIN GRAY

Ms. GRAY. Thank you, Chairman Bergman, Ranking Member Kuster, and Members of the Subcommittee. On behalf of Charles E. Schmidt, National Commander of the American Legion, and over two million members, we thank you for the opportunity to testify regarding the American Legion's position on the pending legislation.

The American Legion sees the legislation under review today as having the potential to improve the VA's acquisition systems and processes. Due to the allotted time available, I will only speak on three of the four bills listed.

H.R. 2006, the VA Procurement Efficiency and Transparency Act, would require the VA to uniformly track cost savings in its contracting competitions and ensure the use of standardized contracting procedures. Currently the VA measures savings using inconsistent local policies and disorganized templates, leading to inaccurate contracting data and inefficient and costly procurement results. Under this practice, the VA has misspent billions due to its negligence and disregard for procurement rules.

During the 114th Congress, the Subcommittee held hearings examining the VA's flawed procurement processes, identifying the waste of billions. The June 2016 hearing received testimony on the significance of consistently using a uniform template when procuring medical services for veterans from affiliated hospitals. Testimony further revealed that negotiating these contracts from scratch instead of using standardized contracts resulted in inexcusable wait times, some as long as three years to finalize. Consequently, these long wait times for contract finalization have caused significant delays for veterans in receiving their much needed health care.

However, this bill falls short of giving stakeholders sufficient ability to clearly understand the alternative spending solutions and how they might produce greater utility for taxpayers' dollars. Specifically, this bill would only ensure visibility into the pricing and configurations of vendors who responded to a solicitation. Given that this would only represent a subset of the supplier community, the end result would be an incomplete data set, employing a strategy that only looks at those opportunities that were evaluated. Notwithstanding the concerns noted above, we see a modified version of this bill producing value and utility for both the taxpayer and the Nation's veterans. The American Legion support H.R. 2006, with amendments.

H.R. 2749, Protecting Business Opportunities for Veterans Act of 2017, improves the oversight of contracts awarded by the VA to veteran owned and service disabled veteran owned small busi-



nesses. When a VOSB or SDVOSB is awarded a contract under the Vets First program, they are required to perform a certain percentage of work. However, there is a longstanding problem of improper pass throughs in that program where business profit from the contracts while performing little to no work while passing them off to other companies. This bill would require participants in the Vets First program to certify that they are performing the required percentage of work and directs the VA to refer suspected violators to the Office of the Inspector General. This is crucial, especially after the Kingdomware decision. Because essentially every VA small business contract is now set aside for the SDVOSBs and VOSBs.

The American Legion supports legislation that will provide assistance and equal opportunity for veterans to start or grow a small business, including establishing numerical goals for all veterans to compete in government procurement. Therefore the American Legion supports H.R. 2749.

H.R. 2781, Ensuring Veterans Enterprise Participation in Strategic Sourcing Act, directs the VA to certify a sufficient participation of veteran owned and service disabled veteran owned small businesses and contracts under the Federal Strategic Sourcing Initiative. This draft bill closes a loophole in 38 U.S.C. 8127, Procurement Requirements, and requires VA to set aside the proper amount of contracts for veteran businesses. Currently the VA obtains much of its supply through government wide strategic sourcing contracts run by the GSA. In some product categories, veteran owned businesses hold few or no contracts. VA is required to work with GSA to increase veteran business representation on the contracts and veterans must be given all available opportunities to pursue that three percent allotted to SDVOSBs.

We view this draft bill as having the potential of producing substantial benefits for the veteran business community. However, the American Legion encourages Congress to implement a measurement that is stronger than just sufficient. We request that the term "sufficient" be changed to maximum extent practicable. The American Legion supports this bill, with amendments.

This concludes my testimony. The American Legion appreciates the opportunity to comment on the bills being considered and I would be happy to answer any questions you may have. Thank you.

[THE PREPARED STATEMENT OF KAITLIN GRAY APPEARS IN THE APPENDIX]

Mr. BERGMAN. Thank you, Ms. Gray. And as I mentioned earlier, this is your first testimony. Little did we know, you were going to get a concert in the background there. The Nashville Songwriters Association is meeting with Chairman Roe in his office. So these rooms are not exactly soundproof. So I appreciate your persevering through the background, unintentional background accompaniment.

Mr. Simpson, you are now recognized for five minutes.

#### STATEMENT OF WAYNE SIMPSON

Mr. SIMPSON. Thank you. Good morning, Mr. Chairman, Ranking Kuster, Members of the Subcommittee. Thank you for all you do for America's veterans and their families, and providing the National

Veterans Small Business Coalition with this opportunity to share its views on legislation to strengthen the Department of Veterans Affairs acquisitions.

The National Veterans Small Business Coalition is the largest not-for-profit organization of its kind representing America's veteran-owned small businesses to the Federal Government, giving them a collective voice on legislative, regulatory, and policy issues affecting Federal procurement. We do so to enhance procurement opportunities for veteran small business entrepreneurs engaged in or seeking to enter the Federal marketplace.

Today, I would like to start my testimony concerning the draft bill concerning improving hiring and training of VA acquisition personnel and improving the efficiency of acquisition organizations at VA. From our perspective, this is perhaps the most important bill before us here today.

The National Veterans Small Business Coalition fully supports any legislation which strengthens VA acquisition operations, and improves the knowledge and skills of the Department's acquisition professionals.

Procurement reform through legislation at VA is long overdue. Although VA has a robust training program worthy of emulation offered through the VA Acquisition Academy in Frederick, Maryland, we believe VA's training program could always be strengthened with curricula specifically designed to train VA acquisition and small business personnel in the area of socioeconomic procurement preference program goal development, attainment, advocacy, and the use of the Veterans First contracting program.

VA's acquisition organization structure, on the other hand, leaves much to be desired. VA's continued decentralization approach to its acquisition operations creates duplication of efforts, redundant procurements, waste, and inefficiency. Multiple VA contracting activities, all seeking to prove themselves as value-added organizations, seek to conduct procurements as if to compete with other contracting activities as to which organization can do the best job. This is troubling to VA's industry partners and has an adverse effect on SDVOSBs and VOSBs.

It is truly dumbfounding as to why VA allows this organizational structure to persist. Veterans and American taxpayers certainly deserve better, and this can be accomplished through centralizing and strengthening acquisition leadership and programs at the Department level. As examples, we offer the following:

VA's Strategic Acquisitions Center in Fredericksburg, Virginia is now conducting most of VA's medical/surgical-related procurements, these procurements having been migrated there from the National Acquisition Center's National Contracting Service in Hiles, Illinois. The SAC often uses open-market procurement methods to conduct its acquisitions. The SAC charges the Veterans Health Administration a three-percent service level agreement fee for this privilege, as opposed to when VHA buys using VA Federal supply schedule contracts, which includes only a one half of one percent industrial funding fee. In other words, VHA's cost of many acquisitions increased from one and one half percent to three percent of every procurement dollar spent, a 600-percent increase.

While a two-and-one-half-cent fee increase per dollar does not sound like it is significant, multiply this against the millions of dollars VA spends each year on medical/surgical and related items. Although buying through the Strategic Acquisition Center now helps to replenish VA's supply fund, it dramatically increases VHA's cost to use these contract vehicles. These fees are paid by VHA from the same funding used for the procurement, most often the medical care appropriation. Increasing the cost to buy has to come at an opportunity cost to VA. What is that opportunity cost?

There are those in VA which suggest these cost savings resulting from procurements conducted by the SAC offset the increased fees to use these contract vehicles, but no empirical data is available to prove this assertion.

Additionally, many within and outside of the VA's procurement community are left wondering what the mission of the VA National Acquisition Center's National Contract Service is now that most of its work has migrated to the SAC without a commensurate adjusting and staffing.

Furthermore, open-market purchases undermine VA's Federal Supply Schedule program and the revenue stream generated by the industrial funding fee to its supply fund, which funds a large part of VA's acquisition operations and all of VA's Office of Small and Disadvantaged Business Utilization to include VA's Center for Verification and Evaluation.

This is only the one of a couple of examples of the nature of VA's decentralized and competing acquisition program where one contracting element does not appear to communicate with another. VA must be held to account for its acquisition operations and demanded to improve.

With regards to VA's organizational procurement structure's inefficiencies, VHA has established three Service Area Offices, also known as SAOs, all of which appear to be competing within the VA procurement community to show the value they too add.

It is our sincere hope the draft bill will begin to address the long overdue overhaul necessary to VA's procurement structure and operations to improve efficiency accountability to the American taxpayers, while improving opportunities for service-disabled veteran-owned small businesses and veteran-owned small businesses. It seems only legislation will resolve this decades-old problem.

Lastly, for as confusing as VA's decentralized and dysfunctional procurement system is to even VA personnel in many cases, imagine the significant confusion this causes for SDVOSBs and VOSBs in the greater veteran business community at large. While the SAC appears to be moving away from the FSS program, VA National Acquisition Center continues to award FSS contracts. Throw the three SAOs into the mix, and SDVOSBs and VOSBs realize the duplicate and competing organizational efforts make contracting with VA confusing and administratively cumbersome.

Additionally, how does SDVOSBs or VOSBs determine which contracting opportunities to pursue which will result in the best return on their investment?

Fortunately, for-profit SDVOSBs and VOSBs would never operate their respective procurement operations the way the VA does.

Congress must resolve this dysfunction, waste and inefficiency; VA continues to demonstrate it is incapable of doing so.

H.R. 2781 addresses participation by SDVOSBs and VOSBs in contracts under the Federal Strategic Sourcing Initiative, our concern is how VA will implement this legislation. VA demonstrated in implementing its Veterans First contracting program under Public Law 109-461, the Veterans Benefits Health Care and Information Technology Act of 2006, its conservative and contradictory stand on legislation benefitting veteran small businesses. It took a Supreme Court decision to resolve this issue.

In the case of H.R. 2781, we believe that Congress should explicitly state in its intent that this and any other legislation addressing VA's procurements in the context of veteran small businesses, whereby nothing in the legislation should be construed as relieving VA's obligation of applying the Rule of Two. Not to do so, we believe, will likely result in another misguided VA implementation which provides VA with a loophole of reporting—of using the Rule of Two.

The coalition fully supports H.R. 2006, the VA Procurement Efficiency and Transparency Act, which we believe will add great utility in VA capturing and understanding its cost savings. Additionally, the use of standardized templates in the conduct of procurements VA-wide should improve the quality of VA solicitations and the contracts awarded resulting from those solicitations. It is clear from the quality of some of the solicitations currently being issued, supervisory personnel are not monitoring or reviewing the quality of those solicitations.

The National Veterans Small Business Coalition supports H.R. 2749, the Protecting Business Opportunities for Veterans Act of 2017. This legislation is consistent with the U.S. Small Business Administration's amended regulations allowing for subcontracting of opportunities with similarly situated small business concerns without said subcontracting counting against the prime contractor's limitations on subcontracting.

Similarly situated small business concerns are those with the same socioeconomic procurement preference program status.

We believe H.R. 2749 would be strengthened by indicating the context of VA procurements conducted pursuant to the Veterans First Contracting Program that a similarly situated SDVOSB or VOSB must have been verified by VA's Center for Verification and Evaluation, and listed in VA's Vendor Information Pages database. These important distinctions will ensure verified SDVOSBs and VOSBs do not subcontract to non-verified SDVOSBs and VOSBs, although these businesses are similarly situated.

In closing, Mr. Chairman and Ranking Member Kuster, we would like to call your attention to VA has flat-lined its Service-Disabled Veteran-Owned Small Business and Veteran-Owned Small Business goals since fiscal year 2010, despite substantially exceeding these goals each year. We have provided a chart to the Subcommittee which tracks VA's goals and accomplishments for the last 11 fiscal years. You can appreciate how disturbing this chart is to veterans and the coalition.

Clearly, for all intent and purposes, such low goals are truly meaningless and call into question the strength and the effective-

ness, if not the legitimacy of VA's advocacy on behalf of veteran small businesses. VA's fiscal year 2014 goals were not communicated to VA personnel until there was only 38 days remaining in the fiscal year.

A recent Freedom of Information Act request revealed VA's Secretary did not issue any goal memoranda for fiscal years 2015 and 2016, and the fiscal year 2017 goals were only issued on May 25th of this year, with 128 days remaining in fiscal year 2017.

We ask and hope you will use your considerable influence to encourage the Subcommittee on Economic Opportunity to hold a hearing for VA to explain and account for its goals and advocacy to the Subcommittee and America's veterans.

This completes my statement and I will be happy to answer your questions.

[THE PREPARED STATEMENT OF WAYNE SIMPSON APPEARS IN THE APPENDIX]

Mr. BERGMAN. Thank you, Mr. Simpson.

The written statements of those who have just provided oral testimony will be entered into the hearing record.

We will now proceed with questioning and I will reserve my time until the end.

Ranking Member Kuster is recognized for five minutes.

Ms. KUSTER. Thank you.

And I will just address my questions to the panel, but I think Mr. Burgess perhaps would be the best to answer.

Have you become aware of any small business exploiting the non-manufacture rule and class waiver system to become pass-throughs and sidelining veteran-owned small businesses that are acting in good faith?

Mr. BURGESS. No, ma'am, I am not personally aware.

Ms. KUSTER. Would you take that back to VA—

Mr. BURGESS. Oh, absolutely, ma'am, absolutely.

Ms. KUSTER [continued]. —for a response on that? Thank you.

And do you have any concerns regarding the Secretary's role in recommending penalties such as levying of fines or criminal prosecution when the Secretary has found that a veteran-owned small business has violated the legislation?

Mr. BURGESS. No, ma'am, we support that.

Ms. KUSTER. Okay. And if a veteran-owned small business subcontracts out 50 percent or more of the product, goods, or services, does that have any effect on the timing and efficiency of the procurement?

Mr. BURGESS. I don't believe it does, ma'am.

Ms. KUSTER. Okay.

Mr. BURGESS. I don't believe it does.

Ms. KUSTER. And are you aware if any veteran-owned small businesses that manufacture high-tech medical equipment and what is the average percentage of work that these veteran-owned small businesses subcontract out, do you have any information on that, on high-tech medical equipment?

Mr. BURGESS. No, ma'am. I am not aware of any small business high-tech medical equipment manufacturers, I am not personally aware of any.

Ms. KUSTER. Okay.

Mr. BURGESS. Market research hasn't indicated any.

Ms. KUSTER. Okay, thank you.

To the VSOs, what impact do bad-faith actors such as pass-through contractors have on the ability of veteran-owned small businesses to successfully bid for Federal contracts?

Mr. MURRAY. Ma'am, it clogs up the system. It takes the opportunities away from those that are operating in good faith, trying to expand their businesses that are being kind of pushed out, that can offer lower prices to attain those contracts only to pass them off to a larger contractor. It keeps the people trying to do the right thing from being able to do so.

Ms. KUSTER. Thank you. And do you have any concerns regarding the Secretary's role in recommending penalties such as levying fines or criminal prosecution when they find a violation?

Mr. MURRAY. No, ma'am.

Ms. KUSTER. Okay. Thank you.

I am going to turn to the other bill, H.R. 2781, the Veteran Enterprise Participation. Again to Mr. Burgess, would requiring the Secretary of VA to monitor, certify, and consult with GSA regarding the participation of veteran-owned small businesses in the Federal Strategic Sourcing Act further promote these veteran-owned small businesses?

Mr. BURGESS. Yes, ma'am. We just don't believe that a certification process after the fact, after GSA has awarded those contracts is going to actually fix accountability to make the process work the way it should work.

Ms. KUSTER. What would you recommend? We have concerns.

Mr. BURGESS. What we do routinely, ma'am, is we are in constant coordination/collaboration with GSA as they are developing these solutions. We put our requirements, as all of the departments do, into the mix. Obviously, one of our special requirements is a need to have SDVOSBs and VOSBs available on those contract solutions if we are going to use them.

For whatever reason, sometimes the solutions don't allow a GSA to put those types of firms in different contract arrangements, and when they do not, for reasons that GSA determines, we simply do not use that portion of an FSSI; we defer to 8127. If we are purchasing improperly, then you should hold us accountable for that.

Ms. KUSTER. And do you have some way of reporting that back to us? We have an oversight role, we are an Oversight and Investigation Subcommittee of VA. How are we going to know? You said sometimes there are some reasons why it might not happen—

Mr. BURGESS. Well, what VA—

Ms. KUSTER [continued]. —how do we know?

Mr. BURGESS [continued]. What VA would suggest is that we affix accountability on the category managers who actually develop and execute the solutions, okay? They receive our requirements, okay? And they should be the certifying party that says, we have put in place a solution that permits all agencies, including VA, to use our solution, which is the Federal intent to maximize the spend and leverage the spend.

For us to certify after the fact—

Ms. KUSTER. My time is up, but I am just curious about how we would find out why it didn't happen.

Mr. BURGESS. I think that is a question we would have to get with GSA on.

Ms. KUSTER. Okay. Thank you.

I yield back.

Mr. BERGMAN. Thank you.

Mr. Poliquin, you are recognized for five minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman. I very much appreciate it.

Mr. Burgess, I appreciate your comments on my draft bill, which is entitled "The Hiring, Training, and Efficiency of VA Acquisition Personnel and Organizations." And I know in your written testimony that it reflects on an earlier version of the bill. We have worked with your staff and made sure that there is an updated version of the bill that you have seen.

And so my question to you is, in the earlier version logistics personnel were being prohibited to be supervised by the people for whom they are purchasing things, but that language has been removed, does that satisfy your concern?

Mr. BURGESS. The draft bill includes many, many subject areas. So in general, we need flexibility to assign people—

Mr. POLIQUIN. Sure.

Mr. BURGESS [continued]. —in the best way possible to achieve the mission outcomes that we desire.

Mr. POLIQUIN. Specifically on this issue, sir, when it comes to making sure that logistics employees are not being supervised by the people for whom they are purchasing things, is that okay with you?

Mr. BURGESS. Logistics people—it is absolutely fine that logistics personnel—

Mr. POLIQUIN. Great. Thanks.

Mr. BURGESS [continued]. —can work for—

Mr. POLIQUIN. All right, great. Thanks. Let's move on. Thank you.

Do you think, Mr. Burgess, that the Acquisition Intern Program is a good program?

Mr. BURGESS. It is an excellent program.

Mr. POLIQUIN. Great. Do you agree that the quality of contracting officers and logistics staff and facility managers are in high demand in government?

Mr. BURGESS. Contracting personnel are very much in demand, logistics personnel less in demand.

Mr. POLIQUIN. Right. Do you believe that a lot of these folks are expected to retire in the next five years?

Mr. BURGESS. There is a sizeable portion of the logistics population that can retire.

Mr. POLIQUIN. Okay. Therefore, do you agree that the intern program at the VA, when we train young talent, many of them are veterans is a good idea to fill these vacancies?

Mr. BURGESS. Yes, sir.

Mr. POLIQUIN. Great. All right, so far, so good.

Why don't you think anybody at the VA would fully support expanding this internship program?

Mr. BURGESS. We have over the years expanded the internship program to the degree that we have deemed appropriate given the workload.

Mr. POLIQUIN. Okay. Well, let's talk about that. How many interns do you think are graduating this year?

Mr. BURGESS. This year I think we are only graduating 30 maybe.

Mr. POLIQUIN. Okay, about 30. How many vacancies are there in these associated jobs at the VA right now, roughly, acquisition jobs?

Mr. BURGESS. Contracting jobs are approximately 2500.

Mr. POLIQUIN. Let me make sure I understand this. Is that you are graduating about 30 interns and you have about 2500 jobs open in this general area?

Mr. BURGESS. This year we are graduating 30. That was a reduction in what our trend has been in the past year.

Mr. POLIQUIN. Okay. So it seems like you need more bodies, right?

Mr. BURGESS. We always are searching for quality contracting officers.

Mr. POLIQUIN. Okay.

Mr. BURGESS. The interns we have graduated to date account for about ten percent of our contracting workforce.

Mr. POLIQUIN. Okay. So I'm guessing that you and I agree that it is a good idea to expand this internship program?

Mr. BURGESS. It is a good idea to expand it. The objection we have is the fixed parameters between two to four times, we don't think that—

Mr. POLIQUIN. Yeah, but you just said that you are graduating 20 or 30 interns and you have hundreds of vacancies in the same area; is that right?

Mr. BURGESS. Our turnover in the 1102 is approximately 150 to 250 a year.

Mr. POLIQUIN. Okay. So why in the heck wouldn't you want to expand it to the extent that we have recommended?

Mr. BURGESS. Again, the language specifies not less than two times and not more than four times. We just think those parameters are arbitrary and we would like to have the flexibility to determine what that number is commensurate with all the other department competing requirements, including funding for such programs.

Mr. POLIQUIN. Okay. Let's move on a little bit.

Mr. Simpson, I know you're here somewhere.

Mr. SIMPSON. Yes, sir.

Mr. POLIQUIN. Mr. Simpson, thank you. The other thing my bill does is it deals with career certification programs to improve training for logistics employees and construction managers. You worked at the VA for 35 years?

Mr. SIMPSON. Almost 38, yes, sir.

Mr. POLIQUIN. Okay. Thank you very much for your service. And the Department of Defense has done what we are already talking about years ago. Do you think that this is something the VA needs to do?

Mr. SIMPSON. In terms of expanding their internship program?



Mr. POLIQUIN. Yeah. Not only that, but also making sure there are certification programs for logistics employees and construction management employees?

Mr. SIMPSON. I don't think it would hurt.

Mr. POLIQUIN. Okay.

Mr. SIMPSON. I think the example of how construction management handled the facility in Aurora, Colorado, perhaps if those professionals had been trained a little bit better that might have prevented that from happening.

Mr. POLIQUIN. And maybe saved a billion dollars for the taxpayers, right?

Mr. SIMPSON. Possibly.

Mr. POLIQUIN. It's not a bad idea. Okay.

Mr. Murray, what do you think?

Mr. MURRAY. Having some personal experience with what is going on in Aurora, I think that, as Mr. Simpson said, this can absolutely help. That situation is a perfect example of ways to improve in a lot of ways.

Mr. POLIQUIN. Great.

Thank you, Mr. Chairman. I yield back my time.

Mr. BERGMAN. Thank you, Mr. Poliquin.

Dr. Dunn, you are recognized for five minutes.

Mr. DUNN. Thank you, General.

He runs a tight ship, so let's keep our answers short.

Ms. Gray, I understand the American Legion supports my bill, that is H.R. 2781, but wants to amend it to go even farther beyond getting a sufficient number of Service-Disabled and Veteran-Owned Small Businesses on the GSA contracts; the Legion would like to see the maximum practical on the contracts. How might we do that and what is the maximum number, in your mind?

Ms. GRAY. Sir, thank you for the question. I will have to get back with you on the answer for that.

Mr. DUNN. That's fine.

Mr. Simpson, it is clear from your testimony that you have some major concerns with this process. Briefly, do you want to add to your concerns?

Mr. SIMPSON. No, sir, just the fact of the redundancy in terms of the organizational structure is very, very confusing for people who want to do business at VA.

Mr. DUNN. Thank you.

How about you, Mr. Murray, concerns on this?

Mr. MURRAY. Just that we would like to see it expanded as much as possible to include as many VOSBs as we can make happen.

Mr. DUNN. Let me say, I am grateful to the VSOs for being here and representing the veterans, I am grateful.

Mr. Burgess, help me understand the VA's position. Your testimony indicated that the VA already has to give veterans veteran business preferences, and if there aren't enough of them on the FSSI contracts, they have to go elsewhere. Do we agree that the FSSI contracts are good contracts, easy to use?

Mr. BURGESS. FSSI is a good Federal-wide program.

Mr. DUNN. Good, good. So wouldn't the best solution be to make sure that we have enough veteran businesses on those so that you

can satisfy your veteran contracting requirements and continue to use those?

Mr. BURGESS. That would be a good solution.

Mr. DUNN. Okay, great. The Secretary apparently issued a memo on May 25th exempting certain VA contracts from small business participation, I understand large-dollar, major construction contracts. Another one was for delivery services specifically mentioned UPS and FedEx.

Can you assure me that there are no other FSSI contracts that are included in the exemption that was granted on May 25th?

Mr. BURGESS. I will have to get back and check on that, sir.

Mr. DUNN. We would like to have that, we want to be clear. We don't want to sort of paint with a broad brush. We would like to know if there are exceptions, we need to know that for our veterans, if we could, please.

So, Mr. Burgess again, how can we work this out so that the VA can continue to use the major contractors that they want, but in the small business area we really are including the veteran-owned businesses?

Mr. BURGESS. We certainly will continue our collaboration with GSA and the various category and subcategory managers that are putting these solutions in place, we work regularly with them. And we do not award or administer those contracts, and we are not necessarily part of the evaluation process that awards those contracts, but we will continue to make our desires known that an adequate representation—

Mr. DUNN. See, you just got to a good point, you are not really part of that process. Let's go into that. Do I understand that the VA holds a position that it cannot work with the GSA to increase the number of veteran businesses in the contracts?

Mr. BURGESS. We can certainly work with GSA to do that.

Mr. DUNN. Okay, so that is a misunderstanding. You are willing to work with the GSA—

Mr. BURGESS. Absolutely. We work with them all the time.

Mr. DUNN [continued]. —in order to grow the number, the universe of veteran-owned businesses that participate?

Mr. BURGESS. That is our aim, yes.

Mr. DUNN. All right. Finally, in our last minute here, can you convince us on the panel and the VSOs who are present with you that the VA would solve this problem without being directed to by legislation?

Mr. BURGESS. VA is not in a position to unilaterally solve the problem. We need the cooperation of the category managers and, frankly, some of the solutions that are in place today where we don't have access to SDVOSBs and VOSBs is simply a reflection that the SDVOSBs or VOSBs do not have the capabilities in the areas that GSA has solicited for. Some of those are geographic restrictions. Some of the solutions like the building maintenance operations, they have multiple categories ranging from elevator maintenance, HVAC repairs, and when they solicit, they make awards against these categories, and sometimes the VOSBs and SDVOSBs have either not participated or for some reason or another have not been awarded.

Mr. DUNN. We are in our last ten seconds, so let me just, I guess, close before we yield by saying that I would really like—I mean, it sounds like we are gumming up the works with all these requirements and you have a bunch of good veteran-owned businesses, good businessmen who want to provide good service at a reasonable price, and I would ask you to reach out and do everything we possibly could to work with them.

Thank you, Mr. Chairman. I yield back.

Mr. BERGMAN. Thank you, Dr. Dunn.

I guess I am last. It has been certainly an interesting morning of unique sounds through the system, so we will try to get through this here without any other issues with that.

Mr. Burgess, I would like to start with your testimony about H.R. 2749. You noted the VA has some concerns that it would like to address, though it apparently does not oppose the bill. Would you like to elaborate now?

Mr. BURGESS. Do you want to take that?

Mr. LENEY. Mr. Chairman, it is not a case of we don't support the bill. We share the chair's commitment to ensuring that we eliminate pass-throughs from VOSBs who are not doing the work.

Our concern about this bill is you would be locking into place a situation, particularly on our supply contracts, where VOSBs who are pass-throughs are not required to do any work at all on a procurement and could pass the entire amount of the procurement through, and we don't believe that that is your intent.

Mr. BERGMAN. So, Mr. Simpson, would you like to comment on that?

Mr. SIMPSON. I think that one of the things, as long as the VA, what they do is consistent with what the SBA regulations are. As a matter of fact, the National Defense Authorization Act of 2017 tied the Secretary of Veterans Affairs' hands a little bit about how they administer the veterans program over there in terms of procurement, using the same definitions and things. So since they are starting to go in the direction the way SBA is doing things, I don't think that they should have a definite inconsistency with what the SBA regulations are.

If you look at what SBA allows for contracting with similarly situated firms, our concern is that an SDVOSB or VOSB would subcontract out to a non-verified VA firm under a VA set-aside.

Mr. BERGMAN. Mr. Burgess or Mr. Leney, if this bill is enacted, how will VA use company certifications that they are not improperly passing through the work to do a better job of enforcing the pass-through rules?

Mr. LENEY. We would apply the certification provided by the offeror and we have mechanisms to—we have a subcontracting review program whereby we go out and look at the actual performance of prime contractors to make sure they are complying with limitations on subcontracting.

Mr. BERGMAN. Okay.

Mr. BURGESS. So we would have the ability to enforce it. However, I would say again, on many of our contracts there would be no requirement for the prime contractor to do any work on the contract.

Mr. BERGMAN. Okay. Ms. Gray, any thoughts on that?

Ms. GRAY. As far as this bill goes, sir, anything that bolsters service-disabled veteran-owned small business or veteran business in general the American Legion supports.

I have heard anecdotal evidence of veterans having problems with the pass-through and if there is anything that can be done to minimize the pass-throughs, but also keep regulations simple for veterans who are really trying to just get into the contracting role, I think that is all I could ask for, that is all the American Legion could ask for.

Mr. BERGMAN. Thank you.

Mr. Murray, any comments?

Mr. MURRAY. Sir, thank you. Having some personal knowledge of this, I think that it's things that can always be fixed, always made better, and I think this legislation will only continue to do that.

Mr. BERGMAN. Okay. Thanks.

Mr. Burgess, I was reviewing the VA's Small Business Contracting Scorecard for fiscal year 2016. It actually got worse from 2015; the grade is still a B, but the overall score is down. Compared to 2014, the scores are significantly worse in every category. Now, this is in spite of the Kingdomware Supreme Court decision being issued in 2016, toward the end of the fiscal year when VA, you know, was awarding many of its contracts.

Why is VA's small business performance lagging?

Mr. LENEY. Mr. Chairman, I'll answer that for you, if you wouldn't mind. Mainly it is due to changes in our mix of products and services.

For example, in 2016 our use of the Patient-Centered Community Care Program went from about \$1.6 billion to \$2.4 billion. We have had huge increases in programs that have not lent themselves to the use of small businesses.

Mr. BURGESS. But overall, I'd like to add, I think the number of actions has actually risen, although the absolute dollar value has not.

Mr. BERGMAN. Thank you.

I see my time is about to expire here, and our colleague and fellow Committee Member Mr. Arrington arrived right on time.

Mr. ARRINGTON. You know, better late than never.

Mr. BERGMAN. You are recognized for five minutes.

Mr. ARRINGTON. Thank you, Mr. Chairman. And thank you, panelists, and I apologize for being late. I would have liked to have heard the testimony, but I have one question for Mr. Burgess about H.R. 2006, that is Mr. Coffman's bill.

The VA, it seems to me, doesn't think it is important to calculate the amount of money it saves by competing contracts and recording that information. Certainly, it is possible to pay more for better quality, I don't think anybody is going to penalize you for doing that. So I would like to see how much money the VA is saving through competition. Why wouldn't we want that—

Mr. BURGESS. Sir, we just don't believe that the approach to calculating the savings provides any data that is useful in the procurement process. It does provide a data point, but the prices are compared during the evaluation process.

If we are going to look at savings, okay, GAO and OMB have consistently provided guidance that says we should try to calculate

savings or cost avoidance against specific benchmarks, so that we can have a little bit more confidence that there are actual cost avoidance and savings, rather than just represented by an instant competitive action, that's all. Something like what is the lowest commercial price known and what do we award against, that might be a more meaningful number than just the difference of the awarded amount and an average or median of all the offers submitted.

Mr. ARRINGTON. So do you do that now where you provide benchmarks, so that you can have some reference for—

Mr. BURGESS. We do not do it across the board, sir, just because we haven't seen the value in that. There are specific categories of procurements that we look at and we report to OMB on.

Mr. ARRINGTON. Do you think it would be a good idea to do it across the board? You said you didn't see any value in that.

Mr. BURGESS. No, sir, I don't, because each contracting action stands on its own. Offers are requested, bids or proposals are submitted, and an evaluation process takes place, and it may be a low-price award, it may be a best-value award. The resulting number is just as I indicated, a data point, it is not a useful reference point in terms of the procurement process. It may be useful for future program managers to try to determine what their budgets might want to be, but from a contracting perspective it doesn't add any value to our process.

Mr. ARRINGTON. Okay.

Mr. BURGESS. This is a fundamental problem that everybody assumes that the contract is everything. Some of the problems are that programs don't have as good of a grasp on programs across government as they should be and that gets reflected in a contract, but again, these data points don't add value to the procurement process.

Mr. ARRINGTON. Thank you, Mr. Burgess.

Mr. Chairman, I yield back.

Mr. BERGMAN. Thank you very much.

Well, thank you to the witnesses for your thoughtful input today. The panel is now excused.

The testimony provided today is an important contribution as this Subcommittee moves forward with the legislation. I appreciate the witnesses' expertise, it is valuable to help us refine and improve the bill texts. We can all agree that acquisition must work properly in the VA.

I appreciate the bipartisan cooperation of all the sponsors and co-sponsors of these pieces of legislation to pursue that end.

I ask unanimous consent that all Members have five legislative days to revise and extend their remarks, and include extraneous material.

Without objection, so ordered.

I would like to once again thank all of you, the witnesses, the fellow Committee Members, and the audience members for joining us here this morning.

This hearing is adjourned.

[Whereupon, at 11:16 a.m., the Subcommittee was adjourned.]

# A P P E N D I X

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**Prepared Statement of Mr. Jan Frye**

**DEPUTY ASSISTANT SECRETARY**

**OFFICE OF ACQUISITION, LOGISTICS, AND CONSTRUCTION**

**DEPARTMENT OF VETERANS AFFAIRS**

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

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

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

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

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

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

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

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

The bill also requires development of standardized procurement templates. VA does not see the need for this provision. VA attempts to standardize the procure-

ment process as much as possible. Contracts are written in accordance with government-wide Federal Acquisition Regulations as supplemented by Department-wide VA Acquisition Regulations (VAAR). These regulations standardize the overall approach to soliciting and awarding contracts.

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

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

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

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

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

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

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

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

As an example, consider our High-Tech Medical Equipment contracts for radiological imaging and similar devices. The dollar value of these products is by far the dominant share of the contract value, so these would be classified as supply contracts. SBA has already provided a class waiver of the nonmanufacturer rule for these items, since no small business manufacturers exist. If these were set-aside for SDVOSB or VOSB distributors, these firms would pass-through the dominant share of the contract value to the large business manufacturer. There would be no requirement for them even to perform any ancillary services, since the performance re-

quirement for services would not apply to a supply contract. Potentially they would collect an administrative overhead cost and pass the entire contract value to others for performance.

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

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

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

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

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

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

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

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

Section 2 would require the Secretary to develop a plan that achieves cost savings from the reduction in duplication and increased efficiency to be used to support the increased participation in the intern program as well as the training and certification programs. In an effort to achieve potential savings, VA is required to centralize procurement and logistics employees. Under this section, VA must not allow an acquisition or logistics employee to be in the customer's supervisory chain of com-



mand. This would require VA to remove logistics personnel, mostly from hospitals (approximately 5K), from their current supervisory chains. Much of VA's acquisition personnel already report through an acquisition supervisory chain of command, but some small number in the Veterans Benefits Administration (VBA) and the National Cemetery Administration (NCA) may still be reporting through their customers chain of command.

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

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

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

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### **Prepared Statement of Patrick Murray**

#### **H.R. 2006, H.R. 2749, H.R. 2781, and DRAFT LEGISLATION**

Chairman Bergman, Ranking Member Kuster, and distinguished members of the Subcommittee, on behalf of the men and women of the Veterans of Foreign Wars of the United States (VFW) and its Auxiliary, thank you for the opportunity to present the VFW's thoughts on these proposed bills.

#### **H.R. 2006, VA Procurement Efficiency and Transparency Act**

For years, the Department of Veterans Affairs (VA) has not properly tracked cost savings in the competitive bidding process. Simple databases would allow VA to have a uniform tracking system that would keep track of savings and allow for enhancements across the entire contracting system. The savings provided for VA would ultimately mean a savings for the taxpayers, and allow for money spent by VA to be better used to support veterans.

The VFW supports this bill which would calculate and track cost savings from competitive bidding. This proposal would implement a database that could track the cost of the average bids, and the winning bid, and produce a cost savings analysis for future use. Having the ability to track cost savings is an essential tool VA can use to award contracts more efficiently, providing more potential savings for VA in the long run. Additionally, the VFW thinks using standardizing procurement templates across the entire department would only streamline the procurement process and help VA become more efficient across the board.

#### **H.R. 2749, Protecting Business Opportunities for Veterans Act of 2017**

Pass-through contracts have been a problem in the Veteran Owned Small Business (VOSB) community for far too long. Hard working veterans who are trying to advance their businesses are plagued by others who are taking advantage of loopholes and under-scrutinized regulations. It has been far too easy for business owners operating in bad faith to pass off work as their own in order to make a quick buck off the system.

The VFW supports this legislation which would help strengthen the regulations regarding VOSBs, and keep those who abuse the system from continuing to do so. VOSBs provide an integral part of our country's business community. They provide veterans with the outlet to start up their businesses and take part in our Nation's free market system. There are, however, some bad actors who take advantage of the VOSB programs offered and try to abuse the system. This legislation would provide the VOSBs operating in good faith the opportunity to flourish, by removing those so-called VOSBs that do not adhere to the rules and regulations. Removing VOSBs that act as a pass-through for larger entities will clean out the field and give those VOSBs that are doing the right thing the ability to grow.

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

Certain contracts in VA are only attainable by certain larger corporations, and smaller VOSBs cannot compete at that level. For example, contracts for items such as office supplies and janitorial equipment are written in ways that allow large suppliers to attain the contracts, but not smaller companies. Making the contracts more open would allow competition and possibly more cost savings. The VFW feels that having certain contracts unattainable for VOSBs is unfair for competitive contracting and this is something that needs to change.

The VFW supports this legislation that would help improve the abilities of VOSBs to attain federal contracts. If the Department of Veterans Affairs Secretary deems the number of VOSBs awarded contracts under the Federal Strategic Sourcing Initiative to be insufficient, the secretary can consult the Administrator of the General Services Administration to increase the number of awarded contracts. This would help raise the number of VOSBs working under federal contracts and help strengthen the VOSB community. Additionally, if the number of contracts awarded in certain categories is too low, the secretary can order the stoppage of contracts awarded in that category if it is too restrictive for VOSBs to participate.

#### **Draft Legislation**

Government agencies have been using internship programs to move veterans into their ranks for years and they are highly successful programs. Thousands of veterans have joined the federal government's workforce through programs such as the Warriors to Workforce Program and the Acquisition Internship Program (AIP). However, VA has been adding veterans to their workforce at a slower rate through these programs. In recent years there have been roughly twenty to thirty participants in VA's AIP, while other agencies are placing almost one hundred candidates annually. Expanding the program to bring in dozens of more veterans is an excellent way to make VA a better government agency.

The VFW strongly supports expanding the AIP. This bill would increase the number of participants in the AIP, more than doubling the current amount. The Warriors to Workforce Program and the AIP provide great pathways for veterans to join VA in procurement or logistics supply chain management fields. More veterans within the ranks of VA will only make it a stronger agency within the federal government. These programs provide in depth on-the-job training that results in well-rounded VA employees at the completion of these two programs. The VFW strongly supports increasing the number of personnel taking part in the AIP.

The VFW supports developing a plan to reduce duplication and to increase efficiencies within the logistics and supply chain management programs within VA. This effort would reduce unnecessary expenses from matching programs running concurrently. This cost savings could be better spent on improving the existing programs instead of being wastefully spent on similar efforts. Consolidating or abolishing duplicate functions of the Procurement and Logistics Office of VA will help eliminate wasteful spending and make the entire office more efficient.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you or the subcommittee members may have.

### **Prepared Statement of Kaitlin M. Gray**

#### **EXECUTIVE SUMMARY**

H.R.2006 - VA Procurement Efficiency and Transparency Act	Support
H.R. 2749 - Protecting Business Opportunities for Veterans Act of 2017	Support
H.R. 2781 - Ensuring Veteran Enterprise Participation in Strategic Sourcing Act	Support with amendments
Draft Bill - <b><i>To improve the hiring, training, and efficiency of acquisition personnel and organizations of the Department of Veterans Affairs, and for other purposes.</i></b>	Support

#### **"PENDING LEGISLATION"**

Chairman Bergman, Ranking Member Kuster, and distinguished members of the Subcommittee, on behalf of Charles E. Schmidt, National Commander of The American Legion, the country's largest patriotic wartime service organization for veterans, comprising over 2 million members and serving every man and woman who has worn the uniform for this country; we thank you for the opportunity to testify regarding The American Legion's position on the pending and draft legislation.

The American Legion knows that small business is the backbone of the American economy. Small business is the mobilizing force behind America's past economic growth and has given the United States a competitive advantage in the global economy. Small business development will continue to be a major factor in our nation's economic and national security well-being as we move further into the 21st Century.

The American Legion views the legislation under review today as having the potential to improve the Department of Veterans Affairs' acquisition systems and processes. What follows is The American Legion's strategic perspective on the bills under consideration.

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

*To amend title 38, United States Code, to improve the procurement practices of the Department of Veterans Affairs, and for other purposes.*

This bill would require the Department of Veterans Affairs (VA) to uniformly track cost savings in its contracting competitions and ensure the use of standardized contracting procedures. Currently, VA procurement officials measure savings using inconsistent local policies and disorganized templates, leading to inaccurate contracting data and inefficient and costly procurement results. Under this practice, the VA has misspent billions of dollars due to its negligence and disregard for procurement rules. This is why it is essential to pass legislation streamlining and modernizing VA's procurement process.

During the 114th Congress, then-Chairman of the House Veterans' Affairs Subcommittee on Oversight and Investigations Representative Mike Coffman, held a series of hearings examining the VA's flawed procurement processes, identifying the waste of billions of dollars. In March 2015, VA's Senior Procurement Executive, Jan Frye, sent a memo addressed to then-VA Secretary Robert McDonald accusing the agency of spending at least \$6 billion a year on improper and unauthorized procurement expenditures. In testimony given at a May 2015 House Veterans' Affairs Committee hearing, Frye followed up by saying, "Over the past five years, some senior VA acquisition and finance officials have willfully violated the public trust while Federal procurement and financial laws were debased. Their overt actions and dereliction of duties combined have resulted in billions of taxpayer dollars being spent without regard to Federal laws and regulations, making a mockery of Federal Statutes."

The Committee's June 2016 hearing, "VA and Academic Affiliates: Who's Benefiting Now?," reviewing VA's academic affiliations with university hospitals, received testimony on the significance of consistently using a uniformed template when procuring medical services for veterans from affiliated hospitals. Testimony further revealed that negotiating these contracts from scratch instead of using standardized contracts resulted in inexcusable wait times - some as long as three years to finalize. Consequently, these long wait times for contract finalization have caused delays for veterans in receiving much needed healthcare.

The VA Procurement Efficiency and Transparency Act, as currently written, sets out a methodology for VA to calculate and report cost savings generated by competitive contracting. Such numbers are calculated and recorded inconsistently now, often based on local practices. This bill encourages the Secretary of Veterans Affairs to make available the use of a Department-wide, standardized procurement templates used by Veteran Affairs Central Office, the Veterans Health Administration, the Veterans Benefits Administration, and the National Cemetery Administration.

However, this bill falls short of giving stakeholders, like The American Legion, sufficient ability to clearly understand the alternative spending solutions, and how those alternatives might have produced greater utility for taxpayer's dollars.

Specifically, this bill would only ensure visibility into the pricing and configurations of vendors who responded to a solicitation or quote. Given this would only represent a subset of the supplier community (i.e., all suppliers are not contractors), the end result would be an incomplete data set, employing a strategy that only looks at those opportunities that were evaluated.

Additionally, this bill does not take into consideration those interdependent solutions that are employed as a unit - but are purchased as a standalone. For example; high-tech medical equipment and services are procured separately by the VA - when it has long been a commercial best practice to combine the purchase - thus producing the cost efficiency opportunity that results from the 'total-lifecycle-solution-management' approach this acquisition strategy affords.

Furthermore, this bill does not take into consideration the fact there may be both tangible and intangible benefits associated with VA paying a higher price for products or services sourced through Veteran-Owned Small Business (VOSB) or Service-

Disabled Veteran-Owned Small Businesses (SDVOSBs). Therefore, the resulting numbers would be unduly skewed and not reflect actionable data (i.e., should VA adopt such a social contracting/pricing practice in the future.).

According to Resolution No. 154, “The American Legion will support development and passage of federal, state, and local veteran business development legislation to provide assistance to all veterans, including disabled veterans and members of Reserve Components of the United States military to ensure equal opportunity for veterans to start or grow a small business, including establishing numerical goals for all veterans to compete in government procurement.”<sup>1</sup> The American Legion supports legislation to ensure equal parity for all veterans in all small business government contracting programs, thus ensuring no veteran procurement program is at a disadvantage.

Notwithstanding the concerns noted above, we see a modified version of this bill producing value and utility for both the taxpayer and this nation’s veterans.

**The American Legion supports H.R.2006 with amendments.**

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

*To amend title 38, United States Code, to improve the oversight of contracts awarded by the Secretary of Veterans Affairs to small business concerns owned and controlled by veterans, and for other purposes.*

When a Service-Disabled Veteran-Owned Small Business or Veteran-Owned Small Business (VOSB) is awarded a contract under VA’s Vets First Program, they are required to perform a certain percentage of the work. However, there is a long-standing problem of improper “pass-throughs” in the program where businesses profit from the contracts while performing little or no work while passing them off to other companies to complete.

H.R. 2749 would require participants in the Vets First Program to certify that they are performing the required percentage of work and directs VA to refer suspected violators to the Office of the Inspector General (OIG) for investigation. Making this a more explicit part of OIG’s mission should encourage them to devote more resources to it. This is crucial (after Kingdomware) because essentially every VA small business contract is now set aside for VOSBs/SDVOSBs.<sup>2</sup>

The bill also directs the VA Secretary to consider whether existing administrative and criminal penalties for fraudulent representation would apply in each case. By protecting VOSBs and SDVOSBs that play by the rules from bad actors that are abusing the system, this bill would improve opportunities for our nation’s veterans. Resolution No. 154: Support Reasonable Set-Aside of Federal Procurements and Contracts for Businesses Owned and Operated by Veterans, supports legislation that will provide assistance to all veterans, including disabled veterans and members of Reserve Components of the United States military to ensure equal opportunity for veterans to start or grow a small business, including establishing numerical goals for all veterans to compete in government procurement.<sup>3</sup>

**The American Legion supports H.R. 2749.**

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

*To direct the Secretary of Veterans Affairs to certify the sufficient participation of small business concerns owned and controlled by veterans and small business concerns owned by veterans with service-connected disabilities in contracts under the Federal Strategic Sourcing Initiative, and for other purposes.*

The American Legion recognizes the contribution small businesses make to the American economy, which is why we are committed to working with the Small Business Administration’s Office of Veterans Business Development to support and foster the community of veteran small business owners. The American Legion stands behind the concept that to have successful partnerships between the Small Business Administration’s Office of Veterans Business Development and small businesses owned by veterans, the following three criteria are paramount.

<sup>1</sup> The American Legion Resolution No. 154 (2016): Support Reasonable Set-Aside of Federal Procurements and Contracts for Businesses Owned and Operated by Veterans

<sup>2</sup> Kingdomware Technologies, Inc. v. United States, 579 US — (2016).

<sup>3</sup> The American Legion Resolution No. 154 (2016): Support Reasonable Set-Aside of Federal Procurements and Contracts for Businesses Owned and Operated by Veterans

- Ensuring all federal agencies meet the 3 percent standard Service Disabled Veteran Owned Small Business utilization;
- Ensuring there are effective programs in place that allow responsible Access to Capital; and
- Igniting the entrepreneurial spirit within the veteran's community and to educate them.

This bill closes a loophole in 38 USC 8127 procurement requirements and requires VA to set aside the proper amount of contracts for VOSBs/SDVOSBs. Currently, VA obtains its office supplies, janitorial products, and other commodities through government-wide strategic sourcing contracts run by the General Services Administration (GSA). In some categories of these products, VOSBs/SDVOSBs hold few or no contracts. VA is required to work with GSA to increase VOSB/SDVOSB representation on the contracts and veterans must be given all available opportunities to actively pursue the 3 percent standard allotted to SDVOSBs.

We view this bill as having the potential of producing substantial benefits for the VOSB and SDVOSB community. However, The American Legion encourages Congress to implement a measurement that is stronger than "sufficient." We request that term "sufficient" be changed to "maximum extent practicable."

Resolution No. 154: Support Reasonable Set-Aside of Federal Procurements and Contracts for Businesses Owned and Operated by Veterans, supports legislation that will provide assistance to all veterans, including disabled veterans and members of Reserve Components of the United States military to ensure equal opportunity for veterans to start or grow a small business, including establishing numerical goals for all veterans to compete in government procurement.<sup>4</sup>

**The American Legion supports this H.R. 2781 with amendments.**

#### **Draft Bill**

*To improve the hiring, training, and efficiency of acquisition personnel and organizations of the Department of Veterans Affairs, and for other purposes.*

This draft bill will direct VA to expand its acquisition intern programs and increase training for facility management and logistics/supply chain employees. Many other agencies receive the majority of their entry-level acquisition employees from their intern programs which include a full-time developmental job for recent graduates or veterans. This program also benefits from veterans' preference and direct hiring authorities. Additionally, the graduate's sign continuing service agreements which offer the VA a stable workforce. Although the VA has other intern programs, they usually produce only 20–30 graduates annually.

The American Legion supports legislation that will increase the employee capabilities at the VA. We feel that recent graduates and veterans bring much needed new talent into the VA. These intern programs will only help strengthen the VA with talented new employees, which will help veterans in the long run.

Resolution No. 305: Support the Development of Veterans On-The-Job Training Opportunities, supports any legislations that increase training programs for eligible veterans in the public and private sectors.<sup>5</sup>

**The American Legion supports this draft bill.**

#### **Conclusion**

As always, The American Legion thanks this subcommittee for the opportunity to explain the position of the over 2 million veteran members of this organization. For additional information regarding this testimony, please contact Mr. Larry Lohmann at The American Legion's Legislative Division at (202) 861-2700 or llohmann@legion.org.

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#### **Prepared Statement of Wayne A. Simpson**

Mr. Chairman, Ranking Member Kuster, Members of the Subcommittee, thank you for all you do for America's Veterans and their families, and for providing the

<sup>4</sup>The American Legion Resolution No. 154 (2016): Support Reasonable Set-Aside of Federal Procurements and Contracts for Businesses Owned and Operated by Veterans

<sup>5</sup>The American Legion Resolution No. 305 (2016): Support the Development of Veterans On-The-Job Training Opportunities

National Veterans Small Business Coalition with this opportunity to share its views on legislation to strengthen U.S. Department of Veterans Affairs (VA) Acquisitions.

The National Veterans Small Business Coalition is the largest not-for-profit organization of its kind representing America's Veteran-owned small businesses to the Federal government, giving a collective voice to these businesses on legislative, regulatory, and policy issues affecting Federal procurement. We do so to enhance procurement opportunities for veteran small business entrepreneurs engaged in, or seeking to enter, the Federal Marketplace.

Today, I would like to start my testimony discussing the draft bill concerning improving hiring and training of VA Acquisition Personnel and improving the efficiency of acquisition organizations in VA. From our perspective, this is perhaps the most important bill before us today.

The National Veterans Small Business Coalition fully supports any legislation which strengthens VA's acquisition operations and improves the knowledge and skills of the department's acquisition professionals. Procurement reform through legislation at VA is long overdue. Although VA has a robust training program worthy of emulation offered through the VA Acquisition Academy in Frederick, MD, we believe VA's training program could always be strengthened with curricula specifically designed to train VA acquisition and small business personnel in the area of socio-economic procurement preference program goal development, attainment, advocacy, and use of the Veterans First Contracting Program.

VA's acquisition organizational structure on the other hand, leaves much to be desired. VA's continued decentralized approach to its acquisition operations creates duplication of efforts, redundant procurements, waste and inefficiency. Multiple VA contracting activities, all seeking to prove themselves as value-added organizations seek to conduct procurements as if to compete with other contracting activities as to which organization can do the best job. This is troubling to VA's industry partners and has an adverse effect on SDVOSBs and VOSBs. It is dumbfounding as to why VA allows this organizational structure to persist. Veterans and the American taxpayers certainly deserve better, and this can be accomplished through centralizing and strengthening acquisition leadership and programs at the department level. As examples, we offer the following:

VA's Strategic Acquisition Center (SAC) in Fredericksburg, VA, is now conducting most of VA's medical/surgical related procurements, these procurements having migrated there from VA's National Acquisition Center's National Contract Service in Hines, IL. The SAC often using open market procurement methods to conduct its acquisitions.

The SAC charges the Veterans Health Administration (VHA) a three percent Service Level Agreement Fee for this privilege, as opposed to when VHA buys using VA's Federal Supply Schedule Contracts, which includes only a one-half of one percent Industrial Funding Fee. In other words, VHA's cost on many acquisitions increased from one-half of one percent to three percent of every procurement dollar spent, an increase of 600%. While a two and one-half cent fee increase per dollar spent does not sound significant, multiply this against the billion plus dollars VHA spends each year on medical/surgical and related items.

Although buying through the SAC now helps replenish VA's Supply Fund (38 U.S.C. § 8121) it dramatically increases VHA's costs to use these contract vehicles. These fees are paid by VHA from the same funding used for the procurement, most often the Medical Care Appropriation. Increasing its costs to buy has to increase VHA's opportunity costs-what does VHA give up in terms of its opportunity costs? There are those at VA which suggests the costs savings resulting from procurements conducted by the SAC off-set the increased fees to use these contract vehicles, but no empirical data is available to prove this assertion.

Additionally, many within and outside of VA's procurement community are left wondering what the mission of the VA National Acquisition Center's National Contracts Service is now that most of its work has migrated to the SAC, without a commensurate adjustment in staffing. Furthermore, open market procurements undermine VA's Federal Supply Schedule Program and the revenue stream generated by the Industrial Funding Fee to its Supply Fund, which funds a large part of VA's Acquisition operations, and all of VA's Office of Small and Disadvantaged Business Utilization, to include VA's Center for Verification and Evaluation.

This is but only a couple of examples of the nature of VA's decentralized and competing acquisition program, where one contracting element does not appear to communicate with another. VA must be held to account for its acquisition operations, and demanded to improve.

With regards to VA's organizational procurement structure's inefficiencies, VHA has established three "Service Area Offices" also known as "SAOs" all of which appear to be competing within the greater VA procurement community to show the

“value” they, too, add. It is our sincere hope the draft bill will begin to address the long overdue overhaul necessary of VA’s procurement structure and operations, to improve efficiency, accountability to the American taxpayers, while improving opportunities for SDVOSBs and VOSBs. It would seem only legislation will resolve this decades-old problem.

Lastly, for as confusing as VA’s decentralized and dysfunctional procurement structure is to even VA personnel in many cases, imagine the significant confusion this causes for the SDVOSB and VOSB community at large. While the SAC appears to be moving away from the FSS Program, VA NAC continues to award FSS contracts. Throw the SAOs into the mix, SDVOSBs and VOSBs realize the duplicative and competing organizational efforts make contracting with VA confusing and administratively cumbersome. Additionally, how does a SDVOSB or VOSB determine which contracting opportunities to pursue which will result in the best return on their investment? Fortunately, a for-profit SDVOSB or VOSB would never operate their respective procurement operations the way VA does. Congress must resolve this dysfunction, waste and inefficiency, as VA continues to demonstrate it is incapable of doing so.

H.R. 2781 addresses participation by service-disabled veteran-owned and veteran owned small business in contracts under the Federal Strategic Sourcing Initiative. Our concern is how VA will implement this legislation. VA demonstrated in implementing its Veterans First Contracting Program under Public Law 109-461, the Veterans Benefits, Healthcare and Information Technology Act of 2006, its conservative and contradictory stand on legislation benefiting Veteran small businesses. It took the Supreme Court of the United States to resolve this issue. In the case of H.R. 2871, we believe the Congress should explicitly state its intent in this and any other legislation addressing VA procurements in the context of Veteran small businesses, whereby nothing in the legislation should be construed as relieving VA’s obligation of applying the “Rule of Two” consistent with the court’s decision to all competitive VA procurements. Not to do so, we believe, will likely result in another misguided VA implementation which provides VA with a loophole in applying the “Rule of Two.”

The coalition fully supports H.R. 2006, the “VA Procurement Efficiency and Transparency Act,” which we believe will add great utility in VA capturing and understanding its cost savings. Additionally, the use of standardized templates in the conduct of procurements VA-wide should improve the quality of VA solicitations and the contracts awarded resulting from those solicitations. It is clear from the quality of some solicitation issued, supervisory personnel are not monitoring or reviewing the quality of solicitations issued.

The National Veterans Small Business Coalition supports H.R. 2749, the “Protecting Business Opportunities for Veterans Act of 2017.” This legislation is consistent with the U.S. Small Business Administration’s amended regulations allowing for subcontracting of opportunities with “similarly situated” small business concerns, without said subcontracting counting against the prime contractor’s limitation on subcontracting. “Similarly situated” small business concerns are those with the same socioeconomic procurement preference program status, i.e., SDVOSB to SDVOSB, WOSB to WOSB, SDB to SDB, etc. We believe; however, H.R. 2749 would be strengthened by indicating in the context of VA procurements conducted pursuant to VA’s Veterans First Contracting Program (38 U.S.C. § 8127) that a “Similarly situated” SDVOSB or VOSB must have been verified by VA’s Center for Verification and Evaluation and listed in VA’s Vendor Information Pages (VIP) Database to be truly “similarly situated”. This important distinction will ensure verified SDVOSBs and VOSBs do not subcontract to non-verified SDVOSBs and VOSBs, although those businesses are “similarly situated” in they have the same socioeconomic procurement preference program status. Under VA’s program, an SDVOSB or VOSB is not recognized by VA as such, at the prime or subcontracting level, until the firm undergoes verification by VA’s Center for Verification and Evaluation.

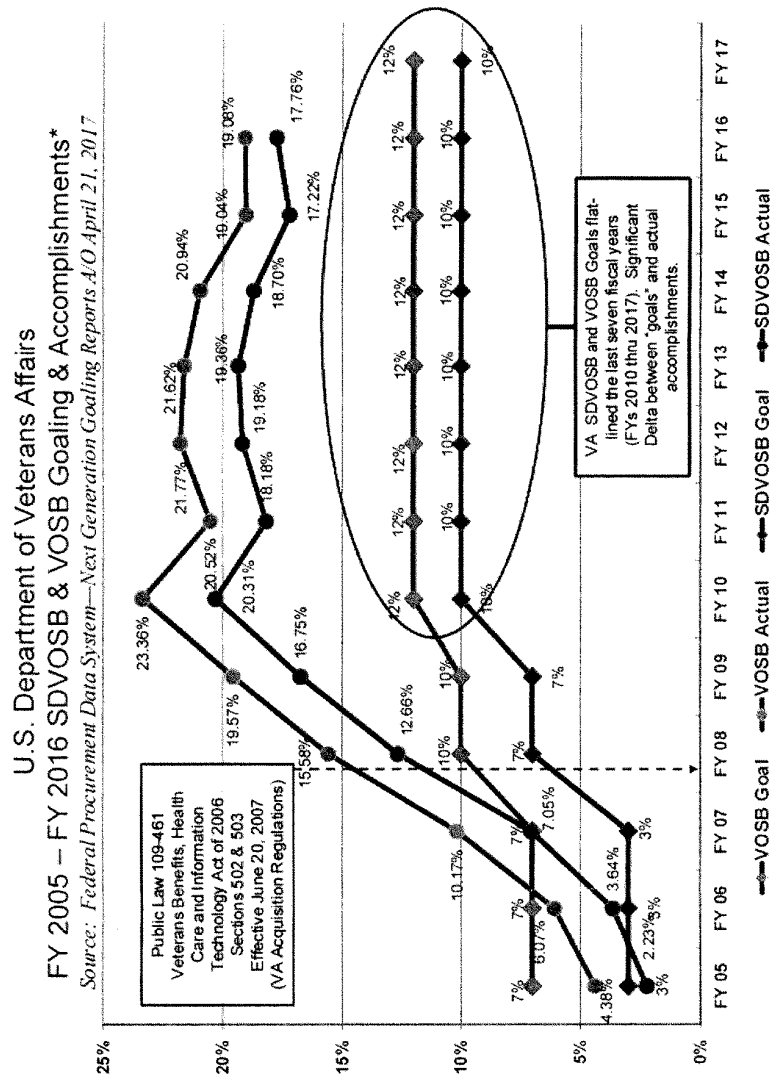
In closing, Mr. Chairman and Ranking Member Kuster, we would like to call to your attention VA has flatlined its SDVOSB and VOSB goals since Fiscal Year 2010, despite substantially exceeding these goals each year. We have provided a chart to the subcommittee which tracks VA’s goals and accomplishments for the last 11 fiscal years. You can appreciate how disturbing this chart is to Veteran entrepreneurs and the coalition.

Clearly, for all intent of purposes, such low goals are truly meaningless and call into question the strength and effectiveness, if not legitimacy, of VA’s advocacy on behalf of Veteran small businesses. VA’s Fiscal Year 2014 goals were not communicated to VA personnel until only 38 days remained in the fiscal year. A recent Freedom of Information Act Request revealed VA’s Secretary did not issue any goaling memoranda for Fiscal Years 2015 and 2016, and the Fiscal Year 2017 goals

were not issued until May 25, 2017, with only 128 days remaining in Fiscal Year 2017. We ask and hope you will use your considerable influence to encourage the Subcommittee on Economic Opportunity to hold a hearing for VA to explain and account for its goals and advocacy to the subcommittee and America's Veterans.

This completes my statement and I will be happy to answer any questions you may have.

*Note: The chart detailing VA's SDVOSB and VOSB Goals and Accomplishments for Fiscal Years 2005 through 2016 referenced in this testimony is incorporated by attachment and made a part of this statement.*



\*FY 2016 Data has not been finalized by SB4 as of 4/21/2017



## Statements For The Record

### The Associated General Contractors of America

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

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

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

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

The problem for many construction businesses contracting with the VA is not that they cannot adjust to meet the changes required to complete the project as the VA desires. Rather, the issue is that many at the VA lack proper training, and this lack of training creates a flow down of problems that affect the construction project. For example, the VA, along with other federal agencies, take months and sometimes a year or more to issue a formal change order notice that a contractor should perform work to address the change-making the agency liable for payment for the work performed. Even after the decision to issue a change order is made, a small business contractor may not actually receive payment for that change order work for a considerable period of time. This is a problem can involve not only the VA construction field representatives, but also contracting officers. Because of schedule requirements under the contract, some construction contractors perform this change order work

without waiting for the formal change order notice from the federal agency. These problems were most recently publicized on the Department of Veterans Affairs' Aurora Hospital project outside Denver, Colorado.

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

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

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

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

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

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

- Improving Training for VA Construction Employees;
- Improving VA Design and Construction Standards/Specifications;

<sup>1</sup> David Migoya & Mark Matthews, Aurora VA Hospital Project Spooked Subcontractors, Causing Cost Hikes, DENV. POST, May 15, 2015 available at <http://www.denverpost.com/news/ci-28125325/aurora-va-hospital-project-spooked-subcontractors-causing-cost>

<sup>2</sup> Id.

<sup>3</sup> Id.

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

<sup>5</sup> Id.

<sup>6</sup> Id.

- Conducting oversight on VA delays with issuing change orders on business construction contracts; and
- Addressing problems in the VA's Minor Construction Program.

Thank you for your time and consideration.

