

**U.S. DEPARTMENT OF VETERANS AFFAIRS
INTERNAL CONTRACTING OVERSIGHT
DEFICIENCIES**

HEARING
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND
INVESTIGATIONS
OF THE
COMMITTEE ON VETERANS' AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
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CONTENTS

June 27, 2007

	Page
U.S. Department of Veterans Affairs Internal Contracting Oversight Deficiencies	1
OPENING STATEMENTS	
Chairman Harry E. Mitchell	1
Prepared statement of Chairman Mitchell	27
Hon. Ginny Brown-Waite, Ranking Republican Member	3
Prepared statement of Congresswoman Brown-Waite	28
Hon. Timothy J. Walz	4
WITNESSES	
U.S. Department of Veterans Affairs:	
Belinda J. Finn, Assistant Inspector General for Auditing, Office of Inspector General	5
Prepared statement of Ms. Finn	29
Hon. Robert J. Henke, Assistant Secretary for Management	12
Prepared statement of Hon. Henke	31
MATERIAL SUBMITTED FOR THE RECORD	
Post Hearing Questions and Responses for the Record:	
Hon. Harry E. Mitchell, Chairman, and Hon. Ginny Brown-Waite, Ranking Republican Member, Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs, to Hon. George J. Opfer, Inspector General, U.S. Department of Veterans Affairs, letter dated July 16, 2007, and response letter dated August 14, 2007	34
Hon. Harry E. Mitchell, Chairman, and Hon. Ginny Brown-Waite, Ranking Republican Member, Subcommittee on Oversight and Investigations, Committee on Veterans' Affairs, to Hon. R. James Nicholson, Secretary, U.S. Department of Veterans Affairs, letter dated July 16, 2007, and VA responses	37

U.S. DEPARTMENT OF VETERANS AFFAIRS INTERNAL CONTRACTING OVERSIGHT DEFICIENCIES

WEDNESDAY, JUNE 27, 2007

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

The Committee met, pursuant to notice, at 10:12 a.m., in Room 340, Cannon House Office Building, Hon. Harry E. Mitchell [Chairman of the Subcommittee] presiding.

Present: Representatives Mitchell, Walz, and Brown-Waite.

OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. MITCHELL. Good morning and welcome to the Subcommittee on Oversight and Investigations for the June 27th meeting. The hearing this morning will be on the U.S. Department of Veterans Affairs' (VA's) internal contracting oversight deficiencies. This hearing will come to order. And I want to thank everyone for being here this morning.

I am pleased that so many folks could attend this oversight hearing on the VA's internal contracting oversight deficiencies. This will not be the last. We all have work to do.

We are going to begin today by hearing from the Office of Inspector General (IG) concerning the IG's recently completed audit of contracting practices at the Boston Healthcare System in Veterans Integrated Services Network (VISN) 1. The IG's report is extremely disturbing. Senior contracting and fiscal officers at the Boston Healthcare System executed contract modifications in excess of \$5 million that were illegal.

As just one example, in fiscal year 2002, Boston executed a contract for \$16,000 to repair asphalt roadways. In March of 2004, this paving contract was modified to add electrical panel and emergency generator projects totaling \$900,000. These modifications were clearly outside the scope of the original contract and clearly in violation of laws governing the use of expired appropriations.

These were not just technical violations. Not only did the contract modifications violate some of the most basic precepts of government contracting and appropriations law, they also had the following pernicious effects. First, the modifications were not completed. We have no way of knowing whether the taxpayers' interests in obtaining a fair price and good service were protected. Sec-

ond, the Boston Healthcare System decided to put its own needs above all other priorities in VISN-1.

VA does not have unlimited funds and has a process of prioritizing expenditures that Boston evaded. The Inspector General found that VISN-1 deferred renovation of a cardiology unit in another VA hospital because of concerns about an insufficient budget. The VISN had no opportunity to decide whether the cardiology unit at the other hospital was of higher priority than the parking lot in Boston.

We are not here to assess individual responsibility. There are no witnesses from VISN-1 present and we will not be asking the IG or VA about individuals. VA is conducting an Administrative Board of Investigation and we leave that assessment of individual responsibility to that process.

We are here to inquire about VA's internal controls over acquisition, controls that Boston certainly suggests are seriously lacking. For example, VA has a policy that all contract modifications in excess of \$100,000 must be submitted for legal review. This was not done in Boston and the Inspector General indicated in his report that the improper contracting might have been prevented if this policy had been followed. The obvious question is: why did VA's internal controls not require verification of legal review prior to disbursement of funds for contract modifications in excess of \$100,000? Policies are practically worthless if VA has no way of knowing if they are being followed.

In February of this year, the Inspector General told this Subcommittee that the VA does not know what it purchases, who it purchases from, who made or approved purchases, whether a purchase was made by contract or on the open market, what was paid, and whether the prices were fair and reasonable. And this is not a new problem.

In May of 2001, the Inspector General issued a report evaluating VA's purchasing practices. In July of that year, then-Secretary Principi formed a task force to correct the many problems identified by the IG. The task force issued its report in February 2002 with 62 recommendations for change. We look forward to the VA telling us which of these recommendations have been successfully implemented and what VA is currently doing to monitor their completion.

We have little reason to be optimistic about VA's response. Since 2002, VA has spent hundreds of millions of dollars on procurement and deployment of the Core Financial and Logistics Systems, or CoreFLS. CoreFLS has been a complete failure. Congress mandated that VA develop the Patient Financial Services System.

From 2003 to 2006, VA paid a contractor \$30 million for this project, received nothing and terminated the contract with the \$30 million of taxpayers' money wasted. There is a list of Inspector General reports recounting similar problems with VA contracting.

Finally, the Subcommittee cannot help but note that VA's external auditors have found material weaknesses in VA's internal controls that were repeat deficiencies from prior years. Those material weaknesses include VA's integrated financial management system and its operational oversight. As the Inspector General has said,

“The risk of materially misstating financial information remains high because of these material weaknesses.”

We all share the goal of ensuring that the \$10 to \$12 billion VA spends on acquisition each year is well spent. That goal can only be met if VA has reliable internal controls. It is a truism in business—if you can’t measure it, you can’t manage it. VA cannot manage its spending without dramatic improvements in its controls.

I can assure you, we will all be back here in a few months to see what progress VA has made. Between now and then, the Subcommittee expects the VA will work closely with the Subcommittee’s staff so that Congress can stay informed about VA’s progress.

[The prepared statement of Chairman Mitchell appears on p. 27.]

Mr. MITCHELL. Before I recognize the Ranking Republican Member for her remarks, I would like to swear in our witnesses. Would all the witness that are here today please stand and raise their right hand?

[Witnesses were sworn.]

Mr. MITCHELL. Thank you. Now I would like to recognize Ms. Brown-Waite for opening remarks.

OPENING STATEMENT OF HON. GINNY BROWN-WAITE

Ms. BROWN-WAITE. I thank the Chairman very much, and I thank him for holding this hearing. It is important that we bring these concerns about procurement forward for discussion. I have a feeling that it has happened before and we are just repeating history. I know that the Chairman and I have no intention of just having history be repeated, that we are going to take some action. Our Nation’s veterans are certainly a valuable asset and caring for them has to be our first priority.

Procurement is an area in which we can provide services and care to veterans. But it is also an area where if it is not done properly and within the letter of the law, it is subject to abuse and impropriety. According to the VA’s own Office of Acquisitions web page updated last on October 14th, 2006, VA states that its annual expenditures are more than \$5.1 billion for supplies and services, including construction. VA is one of the largest procurement and supply agencies in the Federal Government. Drugs, medical supplies and equipment, information technology (IT) equipment, services and other critical patient care items must be procured and distributed to VA’s healthcare facilities, mainly because it is the largest healthcare delivery system in the country.

Supply support is also provided to regional offices, national cemeteries, automation centers and other various VA activities. Yet today, VA testifies that the \$5.1 billion is now over \$10 billion, almost double the amount from last October. VA’s procurement practices are so decentralized with very little oversight. I wonder if VA really knows how much is being procured and how efficiently resources are being spent.

I also believe that an unknown amount, probably a lot, is listed under that very benign category of miscellaneous obligations. What a great place to put purchases. I hope that we see some clarity to these issues during today’s hearing. I understand that we will hear from the VA’s IG about the egregious procurement improprieties that occurred at the Boston VA Healthcare System.

VA can have policies and procedures stacked all the way to the ceiling, but if there are no controls in place to ensure compliance or noncompliance, what good are these policies. With reports dating back as far as April 1997, ten years ago, it appears the IG and the VA have recognized the existence of the systemic procedure problems. Yet, little has been done to address them. Oh, yes, we have generated reports and recommendations countless times over the past years. But when we see the same recommendations over and over again, we have got to wonder why no one took these seriously and why there has been no effort to punish the perpetrators.

I have strong concerns that VA has failed to act on what they have known has been a problem. These reports speak of professionalizing the VA, optimizing and monitoring the procurement process and making the contracting process fair and accessible. Yet, cases like those found in the Boston VA Healthcare System provide a glaring example of perpetual lack of accountability.

We owe it to our veterans to address the mismanagement in VA procurement once and for all. While we know that there are good VA employees working within the current procurement system, we need assurances that VA is working to fix a broken system. As of today, 19 of the 21 VISNs have taken steps to protect and update their procurement process. The other two VISNs must follow suit.

With backlogged patients not getting the resources they need and the VA executives asking for more and more money, we need to make sure that funds are going where they need to go and not in the hands of procurement employees who spend more than the allotted and legal procurement amounts and methods. The first step of all recovery programs is to admit there is a problem.

So I hope that the facts brought out in today's hearing and the IG's report, coupled with the incidents at Boston, are indicative of a long history of very dysfunctional decentralized acquisition and procurement programs with very little oversight. We hope that these will be a springboard for change within the VA.

Thank you, Mr. Chairman, for yielding. It is important to bring these concerns about procurement forward for discussion. Our Nation's veterans are a valuable asset and caring for them should be our first priority. Procurement is an area in which we can provide services and care to our veterans. But it is also an area where if it is not done properly and within the letter of the law can be subject to fraud, abuse and lots of impropriety.

According to the VA's own Office of Acquisitions Web site which was updated, they said \$5 billion. We're now at \$10 billion. We hope to uncover today exactly what those problems were. And I appreciate the gentleman for yielding.

[The prepared statement of Congresswoman Brown-Waite appears on p. 28.]

Mr. MITCHELL. Thank you. I would like to now recognize Mr. Walz.

OPENING STATEMENT OF HON. TIMOTHY J. WALZ

Mr. WALZ. Thank you, Mr. Chairman, and thank you, Ms. Ranking Member, for your comments.

Thank you, each of you, for coming today and we appreciate your expertise, your experience and your guidance to help us on this.

This hearing is making certain we fulfill our obligation of oversight because we are all partners in this and our ultimate goal is to provide the best care possible for our veterans. And our second obligation is to make sure we are good stewards of the public trust.

So I look forward to having the opportunity to learn from this experience, making sure, as the Ranking Member said, that we do more than learn, that we act on those to ensure that the precious resources that are allocated for our veterans are having the biggest impact. So I see this as an absolute piece of what needs to happen in terms of accountability. I see it as an absolute piece of what needs to happen to make sure that we increase our effectiveness.

So I want to thank each and every one of you for coming and sharing with us what we can do to make this better. And I yield back, Mr. Chairman.

Mr. MITCHELL. Thank you. We will now proceed to panel one. Ms. Belinda Finn is the Assistant Inspector General for Auditing. She's accompanied by Ms. Maureen Regan, the Counselor to the Inspector General and a recognized contracting expert; and Mr. Nick Dahl, the Director of the Bedford Audit Operations Division, which was responsible for the report on the recent abuses in Boston. We look forward to hearing from Ms. Finn and her views on the VA's internal contracting and oversight process and procedures.

Would you please come forward? Ms. Finn, you will have five minutes.

Ms. FINN. Thank you.

Mr. MITCHELL. Thank you.

STATEMENT OF BELINDA FINN, ASSISTANT INSPECTOR GENERAL FOR AUDITING, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY MAUREEN T. REGAN, COUNSELOR TO THE INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND NICHOLAS DAHL, DIRECTOR, BEDFORD AUDIT OPERATIONS DIVISION, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS

Ms. FINN. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to be here today. I will be testifying about our report on the audit of alleged mismanagement of government funds at the VA Boston Healthcare System. The issues we reported in our recommendations were specific to VISN-1 and the Boston Healthcare System. However, we believe that the Veterans Health Administration (VHA) can improve controls to prevent similar incidents elsewhere.

We began our review in response to an anonymous hotline complaint that alleged contract irregularities and the misuse of government funds on contract modifications. The original 24 contracts were executed between fiscal years 2000 and 2003 at a value of \$1.3 million. From 2002 to 2006, Boston Healthcare modified the original contracts 40 times to perform nonrecurring maintenance programs with a combined value of \$5.5 million.

Our review determined that 37 of the 40 contract modifications were outside the scope of the original contracts and should have been competed as new procurements. As illustrated in Chairman

Mitchell's opening statement, the work required by the modifications had little bearing in connection to the original contract. The modifications were worth a total of \$5.4 million, all of which was paid with expired funds. Because the contract modifications were not within the scope of the original contracts, funding the actions with expired funds violated Federal appropriations laws.

Boston Healthcare also failed to comply with Federal acquisition regulations. Several of the actions lacked an adequate statement of work to describe the work or services being required, and by modifying existing contracts, they also avoided competition requirements and did not perform the analyses that would have allowed them to determine if the prices were fair and reasonable.

As already stated, policies and procedures were in place to prohibit the out-of-scope contract modifications and the improper use of expired funds. Controls were not in place to enforce compliance. Policies require VA approval to use expired funds, legal reviews of the contract modifications over \$100,000, and even tracking of the nonrecurring maintenance projects at the VISN level.

Boston Healthcare complied with none of these policies. But neither network nor VHA personnel were aware of the contract modifications, the use of expired funds, or the various nonrecurring maintenance projects being performed.

In closing, the Office of Inspector General (OIG) is committed to working with VA and VHA to correct these deficiencies and help to prevent similar occurrences in the future.

Mr. Chairman, thank you again for the opportunity to be here. My colleagues and I will be happy to answer any questions from you or the other Members of the Subcommittee.

[The prepared statement of Ms. Finn appears on p. 29.]

Mr. MITCHELL. Thank you, Ms. Finn. I have a couple questions. First of all, what control weaknesses allowed the contracting irregularities and the misuse of funds to occur at the Boston Healthcare System?

Ms. FINN. The control weaknesses basically were to ensure compliance. There were no system controls that would have prevented people below the VISN level from charging expired funds. There was no control in place to assure or ensure that the legal reviews were performed. There was no control to perform a further supervisory check on the contract modifications to determine if they were out of scope.

Mr. MITCHELL. Then comes a follow-up. What corrective actions has the VISN-1 Director taken in response to your recommendations and are you satisfied with their actions?

Ms. FINN. Mr. Dahl is going to address that.

Mr. MITCHELL. All right.

Mr. DAHL. In response to recommendations we made to improve controls over the execution of contract modifications, the use of expired funds, following the "nonrecurring maintenance" (NRM) approval process, and staying in compliance with the Federal Acquisition Regulation (FAR), the VISN has developed and issued a number of standard operating procedures and guidance to the field facilities within the VISN to improve the management controls over those aspects of the process.

For example, they have a policy in place that is designed to better ensure that modifications that are funded with prior year funds are within the scope of the original contract. They also have a process in place where modifications that are going to be funded with prior year funds are approved at a level above the contracting officer.

We also made recommendations that they take administrative action against the Chief of the Fiscal Service in Boston and the Chief of the Purchasing and Contracting Section in Boston and we also recommended that they conduct an administrative investigation of the facts surrounding the issues we found during our audit.

In response to that, the VISN Director has charged an administrative board of investigation to conduct an investigation surrounding the facts of the improper modifications and use of expired funds. The board is comprised of employees from outside of VISN-1. They have a short deadline. Their report and conclusions are due to the VISN Director by the end of July and based on their findings and conclusions, the VISN Director has informed us that she plans to take action against any officials for whom it is warranted.

Now, one other recommendation we made was that they make corrective accounting adjustments to properly record the funding of these improper contract modifications. The VISN Director has informed us that these modifications were made in accordance with instructions provided by headquarters.

I would like to close this answer by saying we feel these are steps in the right direction. But we have not validated the actions reported, nor assessed their effectiveness. And I would also like to point out that they are specific to VISN-1. They are not specific to the entire VHA.

Mr. MITCHELL. Thank you. And that brings up the last one I want to ask. Are there any assurances that these deficiencies and problems that have occurred in VISN-1 are not incurring in other VISNs?

Ms. FINN. No. We have no assurance that these actions are not occurring in other locations across the network, or across VHA.

Mr. MITCHELL. Are you looking into others besides just this one? I understand you looked at this one because you had a tip. What about the other VISNs?

Ms. FINN. At present, we don't have any work going on in that area. But in the future we could look at that.

Mr. MITCHELL. Thank you. I yield to Ms. Brown-Waite.

Ms. BROWN-WAITE. I thank the Chairman for yielding. Ms. Finn, you have got to have the most frustrating job in the whole wide world, second only to Members of Congress. How many similar reports of lack of controls in this, in the purchasing area? We know they go back to 1997. How frequently have they been issued? Do you know that?

Ms. FINN. Ms. Brown-Waite, I am fairly new at VA, so I really can't give you an answer on the number. But I know it has been extensive. I did bring help with me and Maureen Regan is the Counselor to the IG. She has done a lot of work in contracting.

Ms. BROWN-WAITE. Perhaps Ms. Regan could answer?

Ms. REGAN. We have done a series of reports primarily on individual contracting actions. There hasn't been the broad national

type of audit in a number of years on this issue. But various contracts—even in the past year I think we have put out three or four, maybe even five reports on various large contracts in which there has been problems at all levels in the contracting process. This is because there are no controls to make sure that the acquisition is properly planned, to make sure that it is properly administered, to be sure that the bills are properly paid. There are problems in all those various areas.

So there is a series of reports from 2001 with our purchasing report, our evaluation of sole source contracts at the medical centers, to affiliates which came out in 2005 and we put out this year the patient financial services system contract, the central incident report center contract, the contract that had to do with hiring the forensic auditors or investigators to look at the data lost last year. We have several CAP reports that I know we have worked with healthcare inspections on contracting actions at various medical centers. I know Dallas is out. We have a couple others coming out there. And all of them show similar lack of controls in planning and administration of contracts.

Ms. BROWN-WAITE. The reason why I said it has got to be the most frustrating job is because you make recommendations that certainly would improve the systems and it appears as if your recommendations are ignored. Would that be a fair statement, Ms. Regan?

Ms. REGAN. A lot of times recommendations end up in policies and whether or not those policies are complied with, there is no oversight to ensure it. With respect to the purchasing report, former Secretary Principi, I think it was mentioned in Mr. Mitchell's statement, put out a Procurement Reform Task Force Report with 62 recommendations. There has been no oversight at all to see if they have been implemented.

In the sole-source to the affiliate, the contract report, VA did put out directive 1663. We are not seeing that that has been complied with in the work that was ongoing in that area. So there is no—even if you put out a policy, there is no oversight for compliance.

Ms. BROWN-WAITE. Ms. Finn, or Mr. Dahl, or Ms. Regan, what would lead the Chief of Fiscal Services to suppose that funds were available from a prior year appropriation? Is it “I want to spend it, so I do it?”

Mr. DAHL. We don't have a—I don't have a clear answer for you on that. I assume that is something similar to that. In the past, I think that these medical centers had more, more control over their own projects before the VISN concept came into place. If a medical center needed work done, they did their own contracting. They had their own funding. That has changed with the whole VISN structure.

They found——

Ms. BROWN-WAITE. Well——

Mr. DAHL. They found creative ways to basically hide money in Boston so that money would be available to them down the road to complete projects that they wanted to have completed.

Ms. BROWN-WAITE. But it was not legal what they did. And Mr. Dahl, you said that actions that are warranted will be taken—that you have been told actions that were warranted would be taken. Do

you feel—do any of the three of you feel as if anybody really is accountable? Just a simple yes or no.

Ms. REGAN. In this particular case or in general?

Ms. BROWN-WAITE. Let's take the Boston case.

Mr. DAHL. Yes.

Ms. FINN. I believe that people are accountable for their actions, yes.

Ms. BROWN-WAITE. No. Do you think that people, the people who were involved should be—are accountable and should be held accountable?

Ms. FINN. Yes.

Mr. DAHL. Yes.

Ms. BROWN-WAITE. Do you believe that will take place?

Mr. DAHL. I have high hopes that that will take place.

Ms. BROWN-WAITE. Would you define accountable to me? Maybe that is where I need to go.

Mr. DAHL. Well, for instance, already—

Ms. BROWN-WAITE. Should they be demoted? Should we make sure they, you know—

Mr. DAHL. The Chief of the Purchasing and Contracting Section, we had also made a recommendation to the Deputy Assistant Secretary for Acquisition and Materiel Management that he determine whether her contract warrant should be revoked. He has already taken action to pull her warrant. I don't know that that is a final action until the Administrative Board has done their work. But that would seem to me, in my opinion, to be suitable, that she can no longer function as a contracting officer.

Ms. BROWN-WAITE. Does she have an ugly twin sister who is doing it also? I mean maybe that is what the problem is.

Mr. Chairman, I appreciate—I have gone over my time and I yield back to you.

Mr. MITCHELL. Thank you. Mr. Walz?

Mr. WALZ. Well, thank you, Mr. Chairman and thank you, Ms. Finn, for your testimony, and each of you. And on this I may be—because I know we are talking more on a micro level about this Boston incident. But having you here in the Office of Inspector General, one of the things that I am concerned about is looking at the macro level, if there is anything we can extrapolate from this to see if the scope of this extends.

I know I may be asking you to maybe make a little bit of a reach. But one of the things we are trying to get a grasp on in this Committee, this Subcommittee and this Committee as a whole and this Congress last week passed some of the most sweeping legislation dealing with the VA in terms of resourcing in the 77-year history of the VA. There is going to be a massive amount of resourcing and my colleagues on these Committees asked what I think were some very pertinent questions and some very important questions.

Resourcing is one piece of it and we all agree that—at least 409 of us and 2 didn't agree that that was appropriate use of taxpayer money. My question is, do you believe that this experience is the tip of an iceberg? Are there systems in place for us to deal with expanding some of the coverage, opening up some traumatic brain injury centers, making sure we reduce that number of the backlog in cases?

What this makes me wonder about is, are we setting ourselves up to have more of this happen as we get those resources in? So I know it is not a pointed or specific question, but the Office of the OIG I see as a very, very important tool in the delivery of quality services at the best, the best use of resources. So Ms. Finn.

Ms. FINN. We have reported in our financial statement audit that the financial management systems at VA are a material weakness for the department. Until we have really an integrated financial system with adequate controls through, that will remain a material weakness.

The lack of a financial management system to truly track and record our obligations and expenditures will prove a problem as we deal with additional resources and requirements.

Mr. WALZ. And one final question, again, I know I am asking you maybe to help us understand this. Again, going back to the OIG and it may extend the scope of this or step outside a little bit of this hearing. I am intrigued, I guess encouraged by, that this came from the use of a hotline, that this system of oversight appears to have worked in this case, at least on a very informal manner.

My question to you is, I guess, do you feel like—being new to this and you are stepping into it, does the OIG have the resources to be able to follow up on these? And I think that the Chairman and the Ranking Member's question was, and Chairman Mitchell's question was, if we had it in Boston, I think, at least my gut feeling would tell me, perhaps we should look at the other VISNs too. But I am wondering if you have the resources or the ability or the authority or if you could help me understand that.

Ms. FINN. We have the ability and the authority. The resources, we would be balancing this need against all of the competing priorities that we have to deal with and we have many. Specifically on hotline complaints, we receive a lot and we have to judge each one of those as to whether we can do a review of that complaint with OIG personnel. Many times we do not have the resources and we would refer it to management to review.

In this case, I think I made the comment and my colleagues all seem to agree with me, that the one control that did work was the OIG hotline.

Mr. WALZ. Yeah. Okay. Well, very good. I appreciate it and I yield back, Mr. Chairman.

Mr. MITCHELL. I have one final question. Do you believe that the VA is in the process of getting an adequate financial management system in place?

Ms. FINN. I know they are in the process of developing a system, but we have not done a review specifically of that. So I would like to defer really until we have resources and time to take a look at that system to give you an honest, complete assessment of that.

Mr. MITCHELL. Thank you. Do you have any other questions?

Ms. BROWN-WAITE. First of all, I am glad to know that the hotline is working and whoever reported it has to also feel very good that actions, you know, that this was followed up. I know sometimes the constituents out there think the hotlines are useful because nobody ever does anything. And I will be very happy to go home and sing your praises because of the follow-up that took place here.

Any of the three of you can try to answer this question. For these egregious acts to have taken place, did the individuals involved have multiple opportunities to catch themselves violating procedure and circumventing controls, like the hurdles of using expired contracts, modifying contracts outside their scope, obtaining proper legal concurrence from the VA regional council, and or the VA expired funds manager, you know, where they saw fit to use prior year's appropriate funds?

I, at one point in my life before I came to Congress, actually was a contracts administrator in a large water management district. That is one of the reasons why I find this whole process so out of control and, you know, there is a way to stop this. So if you could just tell me if they had these multiple opportunities to stop themselves?

Ms. FINN. Yes. I mean they modified the contracts. They did 40 modifications over the years. So obviously, everybody involved had multiple opportunities to stop.

Mr. DAHL. And I would add that, you know, contracting officers are well trained. They know their responsibilities. Also, people that have worked in fiscal service for any amount of time should be well aware of appropriation law and the proper use of funds. I really don't think, in my opinion, that these people had an excuse for what they did.

Ms. BROWN-WAITE. Are we on our way to somebody up there seeing the light that Congress has caught on, that they have ignored all of these other reports?

Ms. FINN. Are you talking about the larger procurement issues?

Ms. BROWN-WAITE. Yes.

Ms. FINN. Yes, I hope so. But I think time will tell.

Ms. BROWN-WAITE. Mr. Chairman, I yield back.

Mr. MITCHELL. Thank you very much. We appreciate you being here and answering our questions. Thank you.

Ms. FINN. Thank you.

Mr. MITCHELL. I would like to welcome panel two to the witness table. Mr. Robert Henke is the Assistant Secretary for Management of the VA and the Department's Chief Financial Officer (CFO). He is accompanied by Mr. Jan Frye, the Deputy Assistant Secretary of Acquisition and Materiel Management, and Mr. Frederick Downs, Jr., the Chief Prosthetics and Clinical Logistics Officer for the Veterans Health Administration who oversees contracting and procurement for the VHA.

We look forward to hearing Assistant Secretary Henke's testimony and if you could please keep it to five minutes, we would appreciate that.

STATEMENT OF HON. ROBERT J. HENKE, ASSISTANT SECRETARY FOR MANAGEMENT, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY JAN R. FRYE, DEPUTY ASSISTANT SECRETARY, OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT, U.S. DEPARTMENT OF VETERANS AFFAIRS; AND FREDERICK DOWNS, JR., CHIEF PROSTHETICS AND CLINICAL LOGISTICS OFFICER, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS

Mr. HENKE. Yes, sir, Mr. Chairman. Let me do that and just basically cut right to the chase. We recognize—I personally recognize that VA's procurement practices are one of the top five major management challenges that our IG has identified for the Department. What I want you to know today is that we understand the challenges and we have many efforts underway to improve our systems and our processes.

Our leadership is engaged from the Secretary down and is committed, and is clearly articulating an expectation that VA must work to improve the quality, efficiency and productivity of our acquisition services.

Mr. Chairman, if I might, I would like to highlight for the Committee some of the things we have accomplished and things we are working to accomplish in the area of acquisition, just to put the problem, the issue in context.

We have reduced from over 200 to 31 the number of heads of contracting activities who oversee contracting, and have implemented 60 of the 62 recommendations in the VA Procurement Reform Task Force. We have consolidated the contracting function at 19 of our 21 healthcare networks and the other two will be done by the end of this year. We established contract review boards and required their use at three critical points in the acquisition process for contracts valued at \$5 million and above.

We recognize the need for much stronger, more deliberate and more rigorous acquisition planning and have launched cross-functional IPT's or integrated product teams to develop those requirements and assure the contracting process meets the need. We have deployed nationally an Electronic Contract Management System that automates contract writing, promotes standardization and ensures better accuracy of contracting data. And what this system will do is give management better oversight and better reporting and analytical tools to track and oversee contracting actions that are underway.

We have hired a new Deputy Assistant Secretary for Acquisition. He has 30 years of Army experience in logistics and contracting to include senior command positions in Korea, the UK and stateside. We hired a new executive as VA's acquisition lead. He has 20 years of experience in industry, the Department of Justice, Department of Commerce.

We designated VHA's Prosthetics and Clinical Logistics Officer, that is Mr. Downs seated to my left. And forgive me, Mr. Frye is my Deputy for Acquisition. He is the guy with the Army logistics background.

We have completely reorganized my 440-person acquisition office. We separated in the office the functions of operations and execution from policy development which over time had grown intertwined

and, frankly, a bit confused. I asked for and received two additional executive positions and they were approved by the Deputy Secretary to improve that organization.

We performed the first ever external independent audit of VA's supply fund, the first audit since that fund was established in 1953. We hired a fantastic young executive to lead our national Acquisition Center in Chicago. That position had been vacant for almost two years and now it is filled.

I designated a senior executive at VA as my Acquisition Career Manager to reflect the importance of getting this acquisition work force right and giving them the tools they need to succeed. We have completed a total rewrite of VA's acquisition regulations, the first complete rewrite of them since 1984 and we are going to publish that final rule here sometime this summer.

We have defined the acquisition work force at VA and are dedicating resources to educate, train and certify that work force. At the IG's suggestion, we have established a data mining program to improve compliance and oversight in our purchase card program. In 2004, we established a Business Oversight Office in Texas and staffed it with 108 auditors, system experts, financial experts and acquisition professionals.

We have directed—I have directed a comprehensive, third-party assessment of VA's acquisition model and governance. That solicitation is on the streets and I expect to have an award of a nationally reputable firm here in August and they will come back to us with their assessment of our governance model for acquisition, and whether we are organized properly or not.

We performed 1,632 acquisition reviews last year in my acquisition resources service.

We have embarked on the government's version of Sarbanes-Oxley. We have hired a major national accounting and audit firm to test, to rigorously test our internal controls and to give me the assurance as the CFO that I can sign off on the integrity of our financial statements.

We are in year two of that process and we have identified the 11 key business activities we are looking at and we are testing the controls in every one of them. This year we are testing controls in, among other things, contracting, purchase cards and equipment inventories. And I have established a separate Internal Controls Service in Austin and I am staffing it now.

In summary, Mr. Chairman, we recognize the challenges we have. We know that much work remains. We brought in new leadership to tackle the problem. The people at the table and the people behind us are working together to solve the problem. We believe we are moving forward and making strong progress and we recognize there is more work to do.

That concludes my opening statement and I would be pleased to take your questions, sir.

[The statement of Hon. Henke appears on p. 31.]

Mr. MITCHELL. Thank you, Mr. Henke. The reason we are here today is because of a hotline tip. And I assume that if that tip hadn't come in, business would still be going on as usual. Hopefully that is not the case, but that sure seems to be the case.

Let me ask, could you assure us that the control weaknesses that we found in VISN-1 are not occurring and have not occurred in any of the other VISNs?

Mr. HENKE. Sir, I can assure you that I view what occurred in Boston as an aberration in the system. Frankly, it is unfortunate that it had to get to a hotline inquiry to get it, to bring it to resolution. The hotline is obviously the court of last resort for something. We have literally dozens of actions underway and increased oversight to ensure that a Boston doesn't happen again.

When I read the report and talk to the people in Boston who are involved with this, it is clear to me that the contracting office there, the Chief of the Purchasing Section—anyone in contracting 101 knows you don't do out-of-scope modifications to contracts. Any fiscal officer knows you don't move around expired funds without a very good reason and a under very limited circumstances that get to bona fide need in appropriations law.

I can tell you that we are going to take a number of actions specifically in the VISN-1 area to support them and assist them and assure that they come up to compliance with standards. Sir, I do want to point out that what occurred in Boston occurred in the timeframe of 2000 to 2003, if I recall correctly. That was before we had centralized or consolidated the contracting function at 19 of 21 of our VISNs.

Since that time, we have established positions at the network level to take contracting officers out of the chain of command of the facility director and put them in at the network level, meaning there is a network contract manager who is an 1102 contracting professional. There is a Chief Logistics Officer and a Deputy Network Director at senior levels to oversee the business functions in that network.

Mr. MITCHELL. I understand what you are saying. I think this practice went on clear up until about 2006. But in any case, what I am asking you again is, can you assure us that the things that happened in Boston have not happened in the other VISNs? Have you checked them as you are doing it? And Boston is an aberration that has not occurred in the others?

Mr. HENKE. Can I assure you with a hundred percent certainty that it is not happening anywhere else?

Mr. MITCHELL. Yes. Are you looking into the other VISNs or you are just looking into Boston?

Mr. HENKE. We are looking into other VISNs. I can't assure you that it is not happening elsewhere. But I am taking steps to find out if it is.

Mr. MITCHELL. Thank you. Ms. Brown-Waite?

Ms. BROWN-WAITE. Thank you, Mr. Chairman, for yielding. Mr. Henke, this is not the first instance of contracting going awry at the VA. Earlier this year, we learned of a problem with the contract with UNISYS where the VA ended up paying \$12 million for software that now sits on a shelf unfinished and unusable.

Tell me how you are going to prevent this kind of absolute, total complete waste from happening again.

Mr. HENKE. Yes, ma'am. I am painfully aware of all the IG reports that point out where we have fallen short. What we are doing to fix it is—and the core problem in that case was we don't have

a very strong culture of program management, program management expertise partnered with the acquisition community and acquisition work force to develop clear statements of requirements for what the contract is supposed to do, to develop that contracting vehicle in a collaborative way with legal in the room, with finance in the room, with acquisition and program officials in the room.

So too often we write vague requirements that then aren't executed by a contractor. We also need to improve post-award of that contract. We need to improve our ability to manage that contract. Once the contract is in place, we can't put it on a shelf and hope that things come to fruition. We need to actively manage the contractor to ensure they perform and they deliver.

Ms. BROWN-WAITE. Sir, are you saying you don't have contract managers? You have been in—VA has been in existence and doing these multi-million dollar contracts all these years and you don't have contract managers?

Mr. HENKE. No, ma'am. We need to professionalize our program management work force, not the acquisition people, but the people who determine, "I have a need to acquire something." The program management expertise that frankly DoD is very good at, is lacking in other agencies and the OMB is directing us to make similar improvements in civilian agencies.

Ms. BROWN-WAITE. Sir, you brought up the term "culture" and I think that is exactly what is wrong with the VA's whole purchasing debacles, a decade now of debacles. It is the culture there of anything goes and just spending the taxpayer dollar. You know, the culture of let's just go ahead and spend with little or no oversight is absolutely an insult to the taxpayers. And I hope that you three gentlemen know this and that you take this message back.

It is a complete insult to the taxpayers who want to do right by our veterans. Their tax dollars are paying your salaries and the salaries of people who are supposed to be watching over the procurement process and it just doesn't seem to happen.

Now, one of the things that was mentioned was that you now have contract oversight and you have a person actually in charge of this; is this accurate?

Mr. HENKE. We have, we have staffed up long vacant executive positions in my organization with new leadership. We have established formal contract development processes with integrated product teams and formal contract review boards at critical stages in the acquisition process to ensure that the contracting officer brings their work forward, lays it out for the most senior experienced contracting professionals. Mr. Frye would call them the gray beards in the acquisition world. But those contract officers come in and lay their work out and say here is my plan to accomplish this objective. And they get guidance and direction and oversight from this contract review board with the most senior people.

Ms. BROWN-WAITE. Do those people actually have oversight? Mr. Downs, first of all, thank you very much for your very distinguished military career. But do you actually have oversight? I see your title is Chief Prosthetics and Clinical Logistical Officer. Do you actually have real oversight that ensures tax dollars are spent appropriately?

Mr. DOWNS. The issues before us in oversight means being able to know what is going on out there. And what I—we have done a lot of activities within VHA to begin to conduct the kind of oversight that all of us want to do. So the oversight that we have in VHA is the instruments that we are developing—we have put together in response to the IG for instance, we have put together a crosswalk. When I came into this job I asked what is happening with all these IG reviews.

So what we did is put together a crosswalk and I think it is important to understand that this office in VHA is new. I am the first Chief Officer of Logistics in VHA. There was no office at all. So there was no one to implement national policy at the field level that was developed at the national level. So I think it is important to help put this in perspective, because one of the thing that we now need to do is work as a team with now the national policy developers and first of all, what is going wrong.

And so we built this crosswalk and then we put together, there were 26 groups that I put together. We addressed the OIG cap reviews for 2004 and 2006. We built a crosswalk of what old things have been found. It is embarrassing and the Veterans Health Administration wanted to get it fixed. So I have put this together. We have presented it to our chain of command in VHA.

And Mr. Feeley is the one who has direct line authority over the field. So my authority to accomplish things in the field comes from the chain of command. I provide information to him. And the key to this are compliance reports. So as you said earlier, we can pass policy until the cows come home, but if we can't find out what they are really doing, then it sort of is not productive.

So getting back, we developed these work groups and they are addressing each one of these IG recommendations. We have addressed—and now follow-up is important. The key to this also is the development of a data system so that we can electronically, objectively find out what exactly is happening. And this ties in with lots of other issues that perhaps come forward in this hearing today. So yes, in compliance I feel confident that we are developing the process to conduct the compliance we need.

Now, another thing that goes along with this compliance is the fact that we have this centralization within the VISN, taking the contracting officers away from the facility directors, centralizing under a network contract manager. Now, this was a major change that occurred. It didn't happen perhaps as fast as we would have liked to have had it happen at first, but it has happened. And we have two, as you said, two VISNs that yet have to accomplish this, but they will have it done by October. All 21 VISNs then will have a centralized contracting office. All contracting officers will answer to that individual who then answers to the Chief Logistics Officer and the Network Director.

That is one of the major accomplishments we have made in assuring that we are going to be able to force compliance on contracting within that VISN, because the network contract manager has responsibilities which we have and are in the process of developing instruments, electronic instruments to verify what is being done.

Ms. BROWN-WAITE. Mr. Chairman, I know my time has expired, but I do have some additional questions. And would it be your preference that I yield back or continue?

Mr. MITCHELL. No, go ahead.

Ms. BROWN-WAITE. Who actually—so at the VISN level you have network, a network contract manager?

Mr. DOWNS. Yes, ma'am.

Ms. BROWN-WAITE. Does that person have staff—

Mr. DOWNS. Until recently—

Ms. BROWN-WAITE [continuing]. In each of the VISNs?

Mr. DOWNS. All the VISNs except one have various numbers of staff. VISN-1 did not have staff, but VISN-1 has rectified that in May. The Boston leadership in VISN-1 approved a number of changes. The VA hospital in Brockton will become the primary location in the consolidating contracting activity for all of New England and the CLO, which is the Chief Logistics Officer, the Network Contract Manager and the entire Boston contracting staff which is currently located in Jamaica Plain, will all immediately move to that Brockton facility.

Now, in addition, all positions approve and they have approved 10 new additional staff which will be hired in this consolidation for a total of 16 staff that will be located at Brockton to support that consolidated contracting group and that is—

Ms. BROWN-WAITE. Okay. Who looks at the contracts at the 152 hospitals?

Mr. DOWNS. Excuse me?

Ms. BROWN-WAITE. Who looks at the contracts for the 152 hospitals?

Mr. DOWNS. Each one of the NC—each one of the network contract managers is responsible for reviewing the contracts within their VISN that are being written by the contracting officers who now report to them. And there is something new that has been added too. The contracts are now required to be entered into the new electronic management writing system that Mr. Frye has brought into our agency and this will allow electronic overview of contracts at the national level into the VISN level.

Now, this is going to enable us to, us being anyone actually, even the IG, to look at specific contracts anytime they wish, to review those contracts. Now, the contracts that are written over a certain dollar amount of course have to come back to legal and technical review and the business clearance review through Mr. Frye's shop.

Ms. BROWN-WAITE. One last question, Mr. Chairman, and Mr. Henke, you may want to answer this. Have you looked at and found one VISN that has what would you consider best management practices, BMP's, on procurement and said they are doing it right, let's clone that process?

Mr. HENKE. Ma'am, that is what we, that is what we want to find and identify is a collection of practices, if they are not all in one VISN, they are across VISNs, but share those practices and get them all to adopt the same standards. I would be happy to get back to you on the record for which VISN we think has it most right, or if Mr. Downs could address who has made the most progress in terms of centralizing and improving.

But I—we have made, we have centralized consolidated 19 of 21. The next two are going to get onboard by the end of this year. What we need to do better is find and propagate who does it right in the system to ensure these things don't happen again.

But Mr. Downs, do you have—

Mr. DOWNS. I can recommend that you can go to VISN-6, for instance. They have a superb supplies contracting facility. VISN-12, VISN-22, those are some of our VISNs around the area and we have more centralized contracting facility, or systems that have been set up within the VISN. All of the VISNs are moving in that direction. But VISN-6 is close by, certainly easier for you to get to and I think you will see a superb operation down there.

Ms. BROWN-WAITE. I yield back the balance of my time. Good luck in changing the course of that VA cultureship, wide birth.

Mr. MITCHELL. Thank you. Mr. Walz?

Mr. WALZ. Thank you also, Mr. Henke. Thank you also for coming and of course thank you for your service. We really appreciate your commitment to our veterans. And Mr. Downs, this is a place where your Combat Infantry Badge (CIB) will always get the respect that it so rightfully deserves. And so I thank you for your commitment on this.

As I said, and again, I can't stress this enough, the commitment of this Congress is unwavering, not just in word, but in deed. And we really need to get the part of it, the accountability part right, because we risk undermining the public support for this and nothing can be more important in making sure we provide these services.

I would also at this point say that, I would argue some of the issues, especially with the OIG, which I think has been vastly, maybe draconically short-changed in the past and as the VA being the system that it is and the government system that it is, is a key component of this, yet we see some of the largest ratios of IG's to the amount of ground they have to cover of anywhere in the Federal Government. So it seems to me that we were setting up a self-fulfilling prophecy that they were going to not be able to do what needed to happen.

And I would like to comment on a couple things. And also, with you, Mr. Henke, I really appreciate—I know, I believe you were at GE before; is that correct, so you've come from the private sector?

Mr. HENKE. Yes, sir.

Mr. WALZ. And you were over at DoD, so you bring knowledge of this from the private sector, from a different governmental agency that is very well known for procurement and then coming into the VA. So I hope you can help me with this. Again, I am going to be a little bit macro on this in trying to have you help me figure out what we can do on this and what we can do to get this right, because I think that—I think Ms. Brown-Waite is well-founded in being concerned that as we look at this, how widespread is this, how many problems are we going to have, especially at a time when we are ready to inject huge amounts of resources to get a lot of this right.

So you mentioned, and I am not sure if I have the terminology right on this. I think in your testimony you said 1,632 audits. Are these like spot audits or—

Mr. HENKE. They are contract reviews——

Mr. WALZ. Okay.

Mr. HENKE [continuing]. Above certain thresholds, contracts receive both legal and technical review.

Mr. WALZ. Okay. Of those, what percentage met the standards or were done correctly, if you happen to know that?

Mr. HENKE. I don't have that, but I am happy to get it to you for the record, sir.

Mr. WALZ. That would be great. I mean is it something that stood out to you that there were an inordinate amount of inaccuracies? And I don't know if I would—improper use of fundings or whatever they might be. Does it stand out in your mind or is it something you would rather wait and get the numbers for?

Mr. HENKE. I would rather wait and get the——

Mr. WALZ. Very good.

Mr. HENKE [continuing]. Nnumber right, sir. What I do know, the IG report on Boston makes it clear that those reviews were required but not sought. So that is the weak link we have in that system——

Mr. WALZ. Okay.

Mr. HENKE [continuing]. That policy requires reviews, but the compliance with those reviews is the challenge.

[The following was subsequently received:]

The legal/technical review process allows for changes and corrections to be made as the project moves forward. Some corrections are minor, others are more significant, but the goal of the review is to bring the procurement up to standard without unnecessarily delaying the project. This is not always possible. Some findings are so significant that the submission is rejected and returned for revision and resubmission before it is allowed to continue forward. Of the 1,632 solicitations that were reviewed, approximately 5 percent were rejected and had to be resubmitted.

Mr. WALZ. And I am interested, as you bring in and I know you will be, bringing in the private sector of system analysis, gap analysis, whatever you are going to use to find problems in this. I bring a perspective where I worked as full-time as a lowly technician in a national Guard Armory and it was like moving a mountain to get a gallon of paint through the procurement process.

And so it seemed like there were an incredible amount of checks and balances over me, almost to the point of excess for getting things done I needed to get done. Do you believe it is maybe just the nature of an organization as it grows and gets to the size it is that it becomes more unruly at the top? Maybe either one of you can comment on that.

Mr. HENKE. I take your point, sir, about the difficulty experienced at a working level where work gets done in terms of their challenges to procure items. One of the things that the Federal Government has done as a Federal-wide initiative is said below certain thresholds, micro purchases which they are called, which are \$3,000.00 and below, we now have a purchase card program. So if someone needs a case of office copier paper or something they can, they need to procure quickly, they have the same ability I do to get online or get on the 1-800 office supplies and get those supplies very quickly, not having to go through the contracting formality and process to buy an item that is a low dollar value.

Obviously, there are control risks and tradeoffs in that, too. At VA we have got a great credit card, purchase card program. We have worked to improve that much over time and we think we have got it about right. So there are smart things you can do, frankly, to take work off of the field so they can work on more important, more focused things. And that is the mantra that I try to repeat with the good folks who are in my office. If there is a better way to fix the process and do it so it takes work off the field and relieves them and helps them get it right, that is what we want to do.

Mr. WALZ. Do you believe—just the last question. I see my time is about running out. And again, I am asking you to maybe just kind of speculate a little bit for me. Is the system more prone in your mind to maybe inefficiencies or is there a possibility for fraud in this? Because I am concerned and I know I can't, I am not going to get at the specifics of the Boston thing. But I wonder how necessary those repairs were. It is not going to justify that it was right, that it was, violated the procedure. But I am wondering if this system fraught with the fear that it could be steering contracts for favors, that type of thing, I mean in your opinion, or do you think it is just more unwieldy or they are just not executing properly?

Mr. HENKE. I don't think I would say, sir—I would not say that the system is fraught with that opportunity. Whenever you get, as in the Boston case, you get people who should have known better, probably did know better—this is my opinion—and they knew what controls were in place, but they found a way to do what they needed to get done, what were perhaps valid facility improvement projects, but they did it the wrong way.

Mr. WALZ. Yeah.

Mr. HENKE. So I give them credit for pursuing their mission, but obviously they missed, they overstepped a number of rules and policies.

Mr. WALZ. Very well. Thank you so much. I yield back, Mr. Chairman.

Mr. MITCHELL. Thank you. But that is also the real weakness in the VA because they did that and it was not caught for six years. It should have been caught. They should have known obviously that it was wrong and they shouldn't have done it. But it shouldn't have gone on that long and it should not take a hotline call catch something like this.

Let me just ask another question and it is kind of along the lines of Ms. Brown-Waite's in terms of your procurement. The Inspector General has identified procurement as one of the VA's major management challenges. This past February the IG testified before this Subcommittee that the most significant problem facing deficiencies in the procurement process is VA's decentralized organizational structure for acquisition.

As a result, the VA does not know what is purchased, who it is purchased from, who made or approved the purchases, whether it was a contract or open market, what was paid and whether the price was fair or reasonable. First of all, do you agree with that statement from the IG and second, if not, why is the IG wrong?

Mr. HENKE. Sir, what I would say about that is, I am not convinced that the complete consolidation or centralized model is necessarily the right way to pursue it. We have, as the Procurement Reform Task Force (PRTF) identified, we have moved in that direction by consolidating contracting functions at not 156 or more locations, but 21 locations. So that will improve our span of control and our oversight.

We have, as I said, sir, we have asked for a think tank or a contractor to come in and take a look at our governance model, our acquisition structure in VA. We had a contractor come in and look at Mr. Frye's organization and we have taken steps to fix that because that is important. The next step is the broader look at how we are organized for battle in VA acquisition. What kinds of models are out there in forward-leading Federal agencies for how they have structured their acquisition authority, the acquisition authority that at the end of the day I am responsible for in the Chief Acquisition Officer's Act of 2003.

Mr. MITCHELL. Would you agree or disagree and tell us if it is your opinion. I want to again quote from the IG: "The VA does not know what is purchased, who it is purchased from, who made or approved the purchases, whether it was a contract or open market, what was paid or whether the prices were fair or reasonable."

Mr. HENKE. If the statement is VA did not know in all those cases, I don't agree with that statement, sir. I think that is an excessive characterization.

Mr. MITCHELL. The vast majority of the contracting the VA does is done by VHA. The VHA fiscal and contracting personnel report up through the Under Secretary for Health and not through the Office of the Assistant Secretary for Management. This question is for Mr. Frye. At what level of oversight do you, as the senior procurement executive, have over VHA contracting activities, in particular, those at the VISN and medical center levels?

Mr. FRYE. The level of oversight that we have, Mr. Chairman, is essentially we are a decentralized organization by design. My office develops the policy, the national broad policy, if you will. That policy is promulgated in the field and we rely on the VHA to execute that policy.

Now, we also provide oversight in effect because for procurements over certain dollar amounts, we also require VHA to send the requirement back to us for review, a technical review and legal review. At the same time, I am the individual that signs the warrants for VHA contracting officers so they can execute their contracts.

But on a day-to-day basis, my office does not have purview over those contracts by design.

Mr. MITCHELL. Well, let me ask—it seems like then, that you have responsibility but no real authority.

Mr. FRYE. I have responsibility.

Mr. MITCHELL. And no real authority, and to go on from that, how can the VA expect to solve its serious internal control deficiencies if the senior executive, that is you, for procurement does not even have the direct line of authority over VHA's contracting officers?

Mr. FRYE. Well, I think the real key there is to work very, very closely with the VHA and we are doing that now. Mr. Fred Downs and I are working more closely now than two VA counterparts probably ever have. I meet with him and his staff once a week. I recently, within the last three weeks, went to visit one of the VA hospitals down in Hampton, Virginia. So Mr. Downs and other members of his staff and my staff are working probably more closely together. I think I would leave it to Mr. Downs to characterize that. But we are working more closely together than the two staffs ever have to make sure that there is the proper oversight and that we are in compliance with the Federal Acquisition Regulation and other rules and regulations.

Mr. MITCHELL. I have to excuse myself. I have to go to a markup and I would like to turn the gavel over to Mr. Walz. But just before I leave, I would like to mention something I said at the very beginning in my opening statement. We all share the goals of ensuring that the \$10 to \$12 billion the VA spends on acquisition each year is well spent. That goal can only be met if VA has reliable internal controls. It is a truism in business, if you can't measure it, you can't manage it.

VA cannot manage its spending without dramatic improvements in its controls. I assure you we will all be back here in a few months to see what progress the VA has made. Between now and then, the Subcommittee expects the VA will work closely with the Subcommittee staff so that Congress can stay informed about the VA's progress. It is obvious that there are no more laws that need to be made, or there are no more procedures or any of those. We have got all those in place.

The fact is that we need people to enforce them. And I think the responsibility of this Committee is one of oversight. So you will see us again. Thank you.

Mr. HENKE. Sir, thank you very much and I agree with your statements.

Mr. WALZ. Thank you, Mr. Chairman. Ms. Brown-Waite?

Ms. BROWN-WAITE. I thank the Chairman very much. I have here a copy of a request for information (RFQ) that was issued June 15th and it is to solicit GSA schedule contract holders for this procurement. The object is: (1) to analyze, to examine and analyze VA's current acquisition organization, (2) to recommend a business model that provides three viable solutions with one recommendation path.

However, when you open this up, inside I think is probably even more revealing. It says, "This request for quote has not received the mandatory advisory and assistance approval from the Office of the Secretary. It is, therefore, subject to change or cancelation as a result of the Secretary's decision."

The timing of this RFQ I would have to say is somewhat suspect. Was this put out because you knew this hearing was going—

Mr. HENKE. No, ma'am.

Ms. BROWN-WAITE [continuing]. To be this week?

Mr. HENKE. No, ma'am, it was not. That has been in the works for a number of weeks, if not months.

Ms. BROWN-WAITE. Well, if it was in the works for a number of months, do you think you might have run it by the Office of the Secretary and received approval?

Mr. HENKE. Ma'am, what that reflects is, I have changed the approval process for A&A, advisory and assistance contracts to bring that down to an appropriate level. Every A&A action was going up to the Secretary or the Deputy. That was too cumbersome and frankly was just a burden on people. So that action, I don't recall the expected costs of it, but it would be either at my level or Mr. Frye's level to approve. That reflects no change in our commitment to go ahead and do this study and take it onboard.

Ms. BROWN-WAITE. Have you set aside a sufficient amount of money in the budget for this outside study?

Mr. HENKE. Yes, ma'am, we have. We have the resources to do that, to perform that study. We found the resources to perform the study for Mr. Frye's organization and we had Logistics Management Institute (LMI) come in and give us their best ideas, best brains on that. And we are going to find a similar contractor or a think tank to do this here. We have those resources.

Ms. BROWN-WAITE. Mr. Henke, I know you have only been with the agency a little over a year; is that correct?

Mr. HENKE. Yes, ma'am, 18 months. It might seem like longer some days.

Ms. BROWN-WAITE. I know exactly what you mean. I am sure that there are many new procedures that can be implemented. But again, we get to the question of oversight. Harry Truman had a wonderful plaque on his desk and it said, "The buck stops here." Now, certainly, some would say that the buck stops at the Secretary's office, but I can just tell you that the way I run my organization is, if my district director, which would be comparable to a VISN Director or perhaps a hospital administrator, if my District Office Director messes up or misappropriates or spends money that she was not authorized to do, she would be my former District Office Director.

That doesn't seem to be happening in the VA. I can mention within the VISN that I am in where people don't get demoted, they get moved on. And no one seems to be being held accountable. If I were to say probably the biggest frustration of having—this is my fifth year of serving on this Committee and other Committees also with oversight. That is the biggest frustration. Does anybody ever get fired for mismanagement, for spending unauthorized funds, expired funds? I think the taxpayers deserve an answer and I would appreciate any one of your answering that question.

Mr. HENKE. Yes, ma'am. If people break rules, break laws, there are—first, there are personnel processes in place. The VISN Director has one, if not two, investigation boards underway. People should be held accountable for their actions. I am not going to opine about actions that should be taken in this case, because that would be inappropriate.

But obviously, the IG report has some fairly, in my view, some fairly scathing things in it and the VISN Director has taken action to investigate and mete out whatever administrative or disciplinary action they deem is appropriate and warranted.

Ma'am, I get your point. I understand that I am accountable at the end of the day for the VA acquisition system. I am here today and your oversight, frankly, is helpful to us to help us get, make progress and to move forward. So this is a part of the process as difficult as it is to talk about a report like Boston, but the buck stops here with me as the Chief Acquisition Officer and I hope you understand that we are taking literally dozens of steps to improve and to fix this problem.

Ms. BROWN-WAITE. This report making the recommendations for seeking an outside organization to come in and make recommendations was dated 2002 and I know you weren't at the agency then.

Mr. HENKE. Right.

Ms. BROWN-WAITE. Why has it taken so long to actually do something? This is 2007. The recommendation to go for some outside consulting and to take the problems serious, the Procurement Reform Task Force (PRTF) Report made pretty much the same recommendations that seem to finally now be being implemented in this RFQ. Is it because you brought new eyes to the agency? What took almost as long as I have been in Congress?

Mr. HENKE. Ma'am, the PRTF, that report you have there, did not call for a complete look at VA's acquisition governance. So we are taking this, the PRTF recommendations, goal four, improve VA procurement organization effectiveness, and I could walk down the list there and cite the recommendations 4.1, 4.2, 4.3 to 4.9, many of them are done or are completed and ongoing.

What this outside independent look will do is allow us to take it to the next level and identify the governance approach we need, centralized, decentralized, whatever it is in that continuum and move out to implement that and give us ideas and courses of action.

Ms. BROWN-WAITE. Sir, in this report, goal three, for example, was to obtain and improve comprehensive VA procurement information and goal four was improve VA procurement organization effectiveness. So these recommendations, these goals for the agency have been out there for five years. And, you know, it has virtually been ignored.

Mr. HENKE. Ma'am, I would not be able to agree with the characterization that it has been ignored. We implemented—our own IG has said we have implemented 60 of the 65 items in the PRTF. Many of them are ongoing actions. The fifth recommendation is to improve, ensure a talented and sufficient VA acquisition work force. That is a never-ending challenge. The labor market for qualified 1102 contracting officers is very difficult. It has been acknowledged as a national challenge among Federal agencies. So that goal is absolutely ongoing.

So I would not characterize this report as being ignored. We have taken action and we are going to take further action to keep moving the ball down the field.

Ms. BROWN-WAITE. Sometimes I get the opinion that, or the impression that you implement them, but there is no oversight, and you know, it is one more sheet of paper in one more book that gets put up on the bookshelf in an office and there doesn't seem to be the oversight when something is implemented.

And I think that is exactly what has happened with the whole procurement debacle that is taking place. And I would, I would just encourage you to make sure that whatever the results of this recommendation are, if they are implemented, they have to have oversight. You can't just implement them and tell people to go forward and do it and not ensure that they are doing it, or you might as well just save your money, save the taxpayers the money for the study, if there isn't the accompanying oversight.

Mr. HENKE. Yes, ma'am. You are absolutely right. One point of example, if I may. The study we did last year that we solicited on the open market and we had a, just a fantastic group come in, the Logistics Management Institute. They came in with a complete look at organizing my and Jan's Office of Acquisition and Logistics. Are we organized right? Are we structured right? Do we have a strategic plan? We do now. Do we have score cards and metrics in place? We do now.

That organizational plan went from concept last year, development, and it was approved by the Secretary on May 16th. He bottom-lined the implementation of that and the organization of Jan's team so he can bring to fruition the changes that VA knows we need to bring forward.

So this one, the one we did last year is being implemented and we have briefed your staff a number of times on that LMI study. We got it approved and we are in the execution and implementation phase and I am very serious about seeing that through.

Ms. BROWN-WAITE. Well, apparently the LMI study is for headquarters, not for VHA; is that correct?

Mr. HENKE. That was—yes, ma'am, that was by design in the intent—it was to look at Jan's organization inside those lifelines, those 450 people at seven or eight locations around the country and say, is this team set up right, organized right, structured right to do good things. The next step is taking a broader look at the VA acquisition system in totality and that is the study that you cited with the solicitation on the street.

Ms. BROWN-WAITE. I yield back the balance of my time.

Mr. WALZ. Thank you to the Ranking Member. Just a couple of follow-up questions before we adjourn, Mr. Henke. And once again, I get back to this because I know you bring a lot of experience to this and especially your DoD experience. Do you have the ability or do we have the ability to import any of those best practices from DoD, because it does seem to me and I am not sure if this is anecdotal or if we can back it up, the DoD is doing a better job of this. Is there something you can bring in?

And as you answer that, I am wondering with our Ranking Member's characterization, is there something in the VA culture that makes that more difficult to do? And I want to know how that all fits, if you could.

Mr. HENKE. Sir, your first question, can we implement, can we bring in best practices from other agencies? Absolutely. Do we do enough of it? My opinion is no, we don't. And that is one of the reasons we are doing this larger study is to have an organization go out and find how other agencies are organized, how they are structured, the processes they have set up and bring that into VA. So we are reaching out to go get that.

And sir, I am sorry, your second question, I—

Mr. WALZ. Well, I am just—the Ranking Member and many of us are concerned about this and I am a believer that there is something to be said about the culture of any organization, as you well know. You have come from others. Is there anything in the VA, that inertia that stops someone like yourself coming in with a vast amount of knowledge from other organizations, both private sector and government, from implementing some of these, or do you feel that it is just like any other organization?

Mr. HENKE. Sir, it is like any other large organization. VA's culture is unique from DoD, as it is unique from, I am sure, Treasury and Commerce. The culture in VA fundamentally is one of service and performance, and a mission to serve the veteran. And that is the thing that we take most critically, is performing the clinical visits, the benefits delivery and the memorial affairs that are our three business lines.

I have not found the culture too difficult. Sure, there are things we can improve. But at the end of the day, it is the ability to sit down with professionals like Jan and Fred here and work toward a common solution. I don't find the culture to be an inhibitor. I think you have to find ways to build coalitions of people that want to get the same thing done. At the end of the day, my goal is the same as Mr. Downs' goal and Mr. Frye's goal and that is to improve the place so we can better deliver services to the vets. At the end of the day, sir, that, as you said, that is the bottom line. So we have the same goal and we are trying to get aligned to do that.

Mr. WALZ. Well, I appreciate that and I think your comment of talking about how this hearing of oversight is helpful to you, I applaud you for embracing that. I applaud you for embracing the IG as team members in this and all of us working together, because the ultimate goal and as our Ranking Member so clearly pointed out, and is absolutely correct, that the effectiveness in actual implementation and an improvement in delivery to our veterans as well as accountability of our taxpayer dollars is the ultimate goal here. And that is what we need to keep striving for.

So knowing the Chairman of this Committee and the Ranking Member, a long tradition of being a watchdog of our veterans and our resources and that we are just getting started on this, I would ask you to see us as a resource, to see the Congress and Members of this Committee as someone you can come to, someone you can work through, because our goal, rest assured, is exactly what yours is. We just need to figure out how best to get there.

Mr. HENKE. Sir, I appreciate that and if there are legislative ideas that we need to advance and need your help, we will come forward and bring those to you. I got your point, sir. Thank you.

Mr. WALZ. We appreciate it. Ms. Ranking Member, anything else?

Ms. BROWN-WAITE. No.

Mr. WALZ. With no further questions, this Subcommittee on Oversight and Investigations is adjourned.

[Whereupon, at 11:37 a.m., the Subcommittee was adjourned.]

A P P E N D I X

Prepared Statement of Hon. Harry E. Mitchell, Chairman, Subcommittee on Oversight and Investigations

This hearing will come to order.

Thank you all for coming today. I am pleased that so many folks could attend this oversight hearing on VA Internal Contracting Oversight Deficiencies. This will not be the last—we all have a lot of work to do. We are going to begin today by hearing from the Office of the Inspector General concerning the IG's recently completed audit of contracting practices in the Boston Healthcare System in Veterans Integrated Service Network, or VISN, number 1. The IG's report is extremely disturbing. Senior contracting and fiscal officers at the Boston Healthcare System executed contract modifications in excess of \$5 million that were illegal. As just one example, in fiscal 2002 Boston executed a contract for \$16,000 to repair asphalt roadways. In March of 2004, this paving contract was modified to add electrical panel and emergency generator projects totaling \$900,000. These modifications were clearly outside the scope of the original contract and clearly in violation of laws governing the use of expired appropriations.

These were not just technical violations. Not only did the contract modifications violate some of the most basic precepts of government contracting and appropriations law, they also had the following pernicious effects. First, the modifications were not competed. We have no way of knowing whether the taxpayers' interests in obtaining a fair price and good service were protected. Second, the Boston Healthcare System decided to put its own needs above all other priorities in VISN-1. VA does not have unlimited funds and has a process for prioritizing expenditures that Boston evaded. The Inspector General found that VISN-1 deferred renovation of a cardiology unit in another VA hospital because of concern about an insufficient budget. The VISN had no opportunity to decide whether the cardiology unit at the other hospital was of higher priority than the parking lot in Boston.

We are not here to assess individual responsibility. There are no witnesses from VISN-1 present and we will not be asking the IG or VA about individuals. VA is conducting an Administrative Board of Investigation and we leave the assessment of individual responsibility to that process.

What we are here for is to inquire into VA's internal controls over acquisition, controls that Boston certainly suggests are seriously lacking. For example, VA has a policy that all contract modifications in excess of \$100,000 must be submitted for legal review. This was not done in Boston and the Inspector General indicated in his report that the improper contracting might have been prevented if this policy had been followed. The obvious question is: why did VA's internal controls not require verification of legal review prior to disbursement of funds for contract modifications in excess of \$100,000? Policies are practically worthless if VA has no way of knowing if they are being followed.

In February of this year, the Inspector General told this Subcommittee that VA does not know what it purchases, who it purchases from, who made or approved purchases, whether a purchase was by contract or on the open market, what was paid, and whether the prices were fair and reasonable. And this is not a new problem. In May 2001 the Inspector General issued a report evaluating VA's purchasing practices. In July of that year, then-Secretary Principi formed a task force to correct the many problems identified by the IG. The task force issued its report in February 2002 with 62 recommendations for change. We look forward to VA telling us which of those recommendations have been successfully implemented and what VA is currently doing to monitor their completion. We have little reason to be optimistic about VA's response. Since 2002 VA has spent hundreds of millions of dollars on procurement and deployment of the Core Financial and Logistics System, or CoreFLS. CoreFLS has been a complete failure. Congress mandated that VA develop the Patient Financial Services System. From 2003 to 2006 VA paid a contractor \$30 million for this project, received nothing, and terminated the contract

with the \$30 million of taxpayers' money wasted. There is a list of Inspector General reports recounting similar problems with VA's contracting.

Finally, the Subcommittee cannot help but note that VA's external auditors have found material weaknesses in VA's internal controls that are repeat deficiencies from prior years. Those material weaknesses include VA's integrated financial management system and its operational oversight. As the Inspector General has said: "The risk of materially misstating financial information remains high because of these material weaknesses."

We all share the goal of ensuring that the 10 to 12 billion dollars VA spends on acquisition each year is well spent. That goal can only be met if VA has reliable internal controls. It is a truism in business—if you can't measure it, you can't manage it. VA cannot manage its spending without dramatic improvements in its controls.

I can assure you, we will all be back here in a few months to see what progress VA has made. Between now and then, the Subcommittee expects that VA will work closely with the Subcommittee's staff so that Congress can stay informed about VA's progress.

**Prepared Statement of Hon. Ginny Brown-Waite,
Ranking Republican Member,
Subcommittee on Oversight and Investigations**

Thank you, Mr. Chairman for yielding. It is important to bring these concerns about procurement forward for discussion. Our nation's veterans are a valuable asset, and caring for them should be our first priority. Procurement is an area in which we can provide services and care to our veterans, but it is also an area where, if not done properly and within the letter of the law, can be subject to abuse and impropriety.

According to VA's own Office of Acquisitions' web page, last updated October 14, 2006, VA states that its annual expenditures are more than \$5.1 billion for supplies and services, including construction. VA is one of the largest procurement and supply agencies in the Federal government. Drugs, medical supplies and equipment, IT equipment and services, and other critical patient care items must be procured and distributed to VA's healthcare facilities to what is the largest healthcare delivery system in this country. Supply support is also provided to regional offices, national cemeteries, automation centers, and other various VA activities.

Yet today, VA testifies that the \$5.1 billion is now over \$10 billion! . . . Almost doubled since last October. VA's procurement practices are so decentralized with very little oversight, I wonder if VA really knows how much is being procured and how efficiently resources are spent?

I also believe that an unknown amount . . . maybe a lot . . . is listed under that benign category of "miscellaneous obligations". I hope we see some clarity to these issues in today's hearing.

I understand we will hear from the VA's IG about the egregious procurement improprieties that occurred at the Boston VA Healthcare System. VA can have policies and procedures stacked to the ceiling, but if there are no controls in place to ensure compliance or non compliance, what good are these policies? With reports dated as far back as April 1997, it appears the Inspector General and VA have recognized the existence of the systematic procurement problems, yet little has been done to address them.

Yes, reports have been generated and recommendations have been made countless times over the years, but when we see the same recommendations over and over again, one must wonder why no serious actions have been taken to correct the problems and punish the perpetrators. I have strong concerns that VA has failed to act on what they know is a problem. These reports speak of professionalizing the VA, optimizing and monitoring the procurement process, and making the contracting process fair and accessible, yet cases like those found in the Boston VA Healthcare System provide a glaring example of a perpetual lack of accountability.

We owe it to our veterans to address the mismanagement in VA procurement once and for all. While we know that there are good VA employees working within the current procurement system, we need assurance that VA is working to fix a broken system. As of today, 19 of the 21 VISNs have taken steps to protect and update their procurement processes. The other two VISNs must take steps to protect the financial resources they are responsible for maintaining.

With backlogged patients not getting the resources they need and VA executives asking for more and more money, we need to make sure the funds are being used

where they need to go, not into the hands of procurement employees who spend more than allotted and use illegal and illegitimate procurement methods.

The first step of all recovery programs is to admit there is a problem, so I hope that the facts brought out in today's hearing, coupled with the incidences at Boston which are indicative of a long history of very dysfunctional, decentralized acquisition and procurement programs with very little oversight, will be a spring board for change within the VA.

**Prepared Statement of Belinda J. Finn,
Assistant Inspector General for Auditing,
Office of the Inspector General, U.S. Department of Veterans Affairs**

INTRODUCTION

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on facts surrounding the Office of Inspector General's (OIG's) report on the *Audit of Alleged Mismanagement of Government Funds at the VA Boston Healthcare System*, which was issued on May 31, 2007. I am accompanied by Maureen Regan, Counselor to the Inspector General, and Nicholas Dahl, Director of the Bedford Audit Operations Division, who directed the team responsible for the audit. We performed the audit in response to an anonymous hotline call concerning contract irregularities and the misuse of government funds. The issues we reported are specific to the VA Boston Healthcare System, which is one of eight facilities in Veterans Integrated Service Network (VISN) 1; however, I will highlight areas where I believe VHA management can improve controls to help prevent similar incidents from occurring elsewhere in VHA.

BACKGROUND

The complainant listed 24 contracts that allegedly had improper contract modifications associated with them. These 24 contracts were originally executed between fiscal years 2000 through 2003 and had a combined value of \$1.3 million. During fiscal years 2002 through 2006, the Boston Healthcare System executed 40 contract modifications against these contracts with a combined value of \$5.5 million. All 40 modifications involved non-recurring maintenance (NRM) work for the VA Boston Healthcare System.

CONTRACT MODIFICATIONS

A contract can be modified to add additional work only if the work is within the scope of the original contract documents. If the work is outside the original scope of work, a new contract must be awarded using procedures prescribed in Federal Acquisition Regulations, including competitive procedures. Modifications that are outside scope are prohibited cardinal changes to the contract. It is the responsibility of the contracting officer to determine whether a modification is appropriate and for ensuring that all modifications are appropriate. Contracting officials also violated Federal Acquisition Regulations by issuing modifications to contracts that had expired.

APPROPRIATIONS LAW

Appropriations are available to pay for expenses incurred during the years the appropriations are available. If an agency does not obligate funds prior to the expiration of the appropriation, the funds are not available to pay for new obligations. The only exception is if the expenditure meets the "bona fide needs" test set forth in Title 31, U.S.C. Section 1502. Under this test, expired funds can be obligated to pay expenses incurred properly during the life of the appropriation or to complete contracts properly made during this time period.

VALIDATION OF COMPLAINT

We determined that 37 of the 40 contract modifications were outside the scope of the original contracts and that payment with expired appropriations violated Federal appropriations laws. The Chief of the Purchasing and Contracting Section executed 26 of the 37 contract modifications and 4 other contracting officers executed the remaining 11 modifications. The total value of the 37 modifications was \$5.4 million, all paid from expired funds. We concluded that the VA Boston Healthcare System's Chiefs of the Purchasing and Contracting Section and Fiscal Service, along with Engineering Service personnel, collaborated to circumvent internal controls.

The collaboration began when the Chief of Fiscal Service reportedly informed the Chief of Engineering Service that funds were available from prior year appropriations. Engineering Service maintained a list of NRM work needing completion and

provided the names of vendors who had performed work during the appropriation years of the expired funds and the relevant purchase order numbers to the Chief of the Purchasing and Contracting Section. Contracting officers used that information to execute 37 contract modifications that were outside the scope of the original contracts.

For example, the VA Boston Healthcare System executed an original contract in fiscal year 2002 to repair roadways for \$16,000 at the West Roxbury campus of the VA Boston Healthcare System. The first modification, executed in fiscal year 2003, provided \$102,367 to repair parking lot lights. Another modification, executed in fiscal year 2004, provided \$487,000 to replace emergency electrical panels. A third and final modification, executed in fiscal year 2004, provided \$408,500 to replace an emergency generator. The three modifications had a total value of \$997,867, all paid with expired funds.

Personnel within all three services did not follow established procedures and circumvented controls. The Chief of the Purchasing and Contracting Section, and four other contracting officers, exceeded their authority by executing contract modifications against expired contracts and were outside the scope of the original contracts. The contracting officers also did not obtain the required legal concurrence from VA Regional Counsel to execute modifications exceeding \$100,000. In addition, the Chief of Fiscal Service allowed the obligations and did not obtain approval from the VA Expired Funds Manager to use \$5.4 million in expired funds. Finally, Engineering Service personnel did not input non-recurring maintenance project submissions into the VISN Support Service Center Capital Asset Database, which is used to track NRM projects. The effect of these omissions was to reduce the chance that anyone at the VISN or VHA would question and oversee these projects.

In addition, the VA Boston Healthcare System did not comply with other Federal Acquisition Regulations in awarding the contracts. For example, in several cases, they did not develop statements of work (SOW) that adequately described the work to be performed or the services to be rendered. The SOW is in itself a control mechanism that provides an objective measure for the completion of work. By executing modifications to existing contracts, the VA Boston Healthcare System also avoided competition requirements and had no assurance that the prices paid were fair and reasonable.

CONTROL WEAKNESSES

Our review identified policies and procedures were in place to prohibit the improper use of expired funds. However, no controls were in place to ensure compliance or detect noncompliance with prescribed policies and procedures. VA Boston Healthcare System employees' ability to circumvent these procedures puts the effectiveness of these policies and procedures into question.

Although the procedures required the approval of the VISN Chief Financial Officer before obligating expired funds, the Chief of Fiscal Service was able to use expired funds without receiving the required approval and without the VISN or VHA knowing about the obligations of the expired funds. System controls could prevent personnel below the VISN level from obligating expired funds. A more cost effective control would be reports designed to flag obligations of prior year funds.

In addition, the VA Boston Healthcare System was able to execute improper contract modifications without the awareness of VISN or VHA officials. VA acquisition regulations require contracting officers to request legal reviews from the VA Regional Counsel prior to executing modifications greater than \$100,000. When submitting a request for legal review, contracting officers are required to submit a statement as to whether the modification is within the scope of the original contract. VA Boston Healthcare System ignored this procedure and executed 17 modifications over \$100,000, valued at \$4.4 million, without requesting the legal reviews. No controls are in place to identify contracts or modifications that have not had the required legal or technical reviews.

Contracting officers are responsible for safeguarding the interest of the government in contractual agreements. Contract modifications should not be executed to expedite the contracting process or in response to pressure from requesting services. It was ultimately the responsibility of the Chief of the Purchasing and Contracting Section to make the correct determination that modifications were outside the scope of the original contracts and that Fiscal Service could not obligate additional funding to pay for these modifications. We saw no procedures in place at the time that would have alerted the VISN or VHA to the improper modifications. The results of our review suggest that oversight over contracting officials' activities should be increased to improve the accountability of their actions.

We reported the issues identified at the VA Boston Healthcare System to the auditors who are responsible for the annual consolidated financial statement audit.

Standards require that auditors design a financial statement audit to provide reasonable assurance of detecting material misstatements, whether caused by error, fraud, or illegal acts. Although the violations of law cited in the Boston report did not result in material misstatements, the auditors must consider the risk of similar acts occurring elsewhere that could be a material weakness. Our auditors have considered the Boston report in designing their audit procedures for this year. The audit is still underway, with the report due in November.

RECOMMENDATIONS

We made seven recommendations to the VISN-1 Director. Four of the recommendations concerned the improvement of controls over the execution of contract modifications, the use of expired funds, the NRM reporting and approval process, and compliance with the Federal Acquisition Regulations. We also recommended that the VISN-1 Director take administrative actions against the Chiefs of the Purchasing and Contracting Section and Fiscal Service; initiate an administrative investigation; and take actions, if warranted, against other VA Boston Healthcare System employees involved with the issues identified during our audit. Finally, we recommended the necessary accounting adjustments to correctly record the funding of the improper contract modifications.

In addition, we recommended the Deputy Assistant Secretary for Acquisition and Materiel Management determine whether the warrant authority for the Chief of the Purchasing and Contracting Section should be revoked. The Deputy Assistant Secretary subsequently revoked the Chief of the Purchasing and Contracting Section's warrant authority.

VISN ACTION PLAN

In response to our recommendations, the VISN developed and issued standard operating procedures and policy guidance to help improve management controls over the execution of contract modifications, use of expired funds, and the approval of NRM projects. With guidance from VHA accounting officials, VA Boston Healthcare System accounting staff made the necessary accounting adjustments to correctly record the funding of the improper contract modifications.

The VISN-1 Director appointed an Administrative Board of Investigation to conduct an assessment of the facts surrounding the improper contract modifications and use of expired funds. The VISN-1 Director instructed the Board to inquire into all aspects related to the issues, and to obtain testimony under oath or affirmation without a pledge of confidentiality. A final report is due by July 15, 2007.

CLOSING

The OIG will continue to work with VA to improve the oversight of contracting and fiscal activities to prevent similar occurrences in the future.

Mr. Chairman, thank you again for the opportunity to testify. I would be pleased to answer any questions that you or other Members of the Subcommittee may have.

Prepared Statement of Hon. Robert J. Henke, Assistant Secretary for Management, U.S. Department of Veterans Affairs

Mr. Chairman and members of the Subcommittee, I am pleased to have the opportunity to testify on the Department of Veterans Affairs' acquisition system. VA spends over \$10 billion per year through widely dispersed acquisition activities for pharmaceuticals, medical/surgical supplies and equipment, prosthetic devices, information technology, construction, and other acquisition services.

VA procurement practices have been identified by VA's Inspector General as one of the five major management challenges facing the Department. I assure you that VA understands our challenges and is dedicated to improvement. Our leadership is engaged, committed, and is clearly articulating the expectation that VA will work to improve the quality and efficiency of acquisition services. We have many improvement initiatives underway, new people on board, and additional policy and guidance to improve performance.

As VA's Chief Acquisition Officer (CAO), I am responsible for monitoring the performance of acquisition activities and acquisition programs across the agency, as well as advising on appropriate business strategies to achieve VA's mission. My duties also entail managing the direction of acquisition policy and ensuring that VA's acquisition work force is trained and capable of providing the highest level of support to our mission-focused programs.

I would like to cover five of my top responsibilities and initiatives as CAO:

1. Advising on proper business strategies to achieve agency mission and monitor the performance of acquisition activities

VA's acquisition system is very large, complex, and decentralized. To determine whether VA acquisition is organized correctly and has the right quantity and types of acquisition professionals, I have directed that a comprehensive study be conducted by an independent third party contractor with extensive knowledge of the acquisition work force and challenges. The contractor will benchmark our procurement system against other government agencies and provide courses of action for improving VA's acquisition infrastructure and accountability.

We have made very important policy changes within VA to improve our acquisition processes. Contract requirements must be clear, well written and understandable to reduce our risks. To that end we have implemented a collaborative approach to contract requirements definition. For some major acquisitions over \$5 million, we now use cross-functional Integrated Product Teams (IPTs) to develop our requirements. Key program, contracting, legal and finance officials work collaboratively to write acquisition plans, performance work statements and other critical acquisition documents. This approach significantly decreases the risks of developing a poorly defined requirement.

To help ensure that contracting officers develop effective contracts, we have implemented the use of Contract Review Boards (CRBs). CRBs are composed of the most knowledgeable and senior acquisition professionals. As with IPTs, CRBs use a collaborative and structured approach to ensure that good contracts are awarded. Although contracting officers have traditionally had their work reviewed by their peers and legal counsel, they are now required to have their major acquisitions reviewed at three critical junctures by the CRB: prior to issuance of the solicitation, prior to negotiations and prior to award. This simple, common-sense approach to acquisition management is vastly improving our contract award process.

Contract administration is critical to ensuring that the government gets what it pays for. We are currently developing a comprehensive plan that will improve contract administration at VA. Our goal is to create a culture where contracting and program officials work collaboratively to manage contracts throughout their life cycle.

In February 2004, VA consolidated oversight and review of VA's acquisition activities under one office, the Office of Business Oversight (OBO), which reports to me as the VA Chief Financial Officer and CAO. OBO is VA's primary internal quality assurance organization for financial management activities and operations, including acquisition activities. OBO's main focus is to review acquisition activities at decentralized locations for compliance with Federal, Department, and Administration policies and procedures and to provide local management with recommendations to improve their acquisition activities. The consolidation of acquisition oversight within OBO has resulted in a standardization of acquisition review processes and oversight reporting, and has created opportunities to highlight best practices in the field.

The OBO acquisition review team is staffed with a combination of procurement specialists and professional auditors trained in conducting acquisition compliance reviews. The team conducts contract inspections at a number of Veterans Integrated Service Networks each year, reviewing up to 450 contract files at as many as 25 locations. The team also conducts special-topic acquisition audits as needed. OBO began acquisition reviews in the second half of FY 2005 and since that time has issued 11 acquisition reports containing 76 recommendations to improve field station compliance with policies and procedures and to enhance the effectiveness of acquisition operations. This consolidated acquisition oversight team has improved my ability to monitor the performance of acquisition activities across the Department.

We conduct pre- and post-award audits of VA Federal Supply Schedule contracts for medical products and services. We assure that these vendors are charging Federal customers the most favorable customer prices and in FY 2006 identified over \$20 million that could be recovered. The 25 auditors dedicated to perform these services work in the Office of Inspector General and are under a reimbursable agreement paid for by VA's Supply Fund.

Additionally, we have implemented a robust strategic sourcing program. I chair VA's Strategic Sourcing Council, supported by Assistant Secretaries, senior executives, and stakeholders from VA's three administrations. In fiscal year 2006, VA continued to build on its strategic successes. We benchmarked other government agencies, private firms, and current VA suppliers to continually improve our program. We are actively involved in Federal Strategic Sourcing Initiatives for common commodities, including express/ground delivery services, office supplies, wireless communication services, and copiers. Ever mindful of our commitments to small business, particularly those owned by veterans and service-disabled veterans, one of

our goals this fiscal year is to identify strategic sourcing opportunities for these socioeconomic groups.

2. Increasing appropriate use of performance-based contracting and performance specifications

The Office of Federal Procurement Policy has mandated that this year agencies will award 40% of eligible service dollars as Performance-Based Service Acquisitions (PBSA). To that end we targeted two of VA's largest mission-critical services as PBSA: "Project HERO" (Health Effectiveness through Resource Optimization) for the Veterans Health Administration (VHA), and Vocational Rehabilitation and Employment Services (VR&E) for the Veterans Benefits Administration. Project HERO is a pilot program that will improve delivery of healthcare services under VA's fee-basis program, the intent of which is to consolidate like services under fewer contract providers. In support of the VR&E program, we are implementing a national contract strategy that will further consolidate VR&E services under fewer providers. Both actions are currently in progress. We will also be providing PBSA training to acquisition and program officials during their certification process.

3. Making acquisition decisions consistent with applicable laws and establish clear lines of authority, accountability, and responsibility for acquisition decision making.

I have designated the Deputy Assistant Secretary (DAS) for Acquisition and Logistics as VA's Senior Procurement Executive. In that capacity the DAS will serve as my principal advisor in all acquisition matters.

VA currently has 33 Heads of Contracting Activities (HCA) with 413 contracting officers warranted at the \$100,000 and above threshold. These contracting officers are located in VA medical centers, national cemetery offices, and several VA support locations throughout the nation. Each HCA and the 413 contracting officers are delegated contracting authority from the DAS for Acquisition and Logistics who reports directly to me. VA has an established warranting program to ensure contracting officers have the requisite education and experience needed to meet the VA mission.

VHA consolidated its contracting organizations into "Network Contracting Centers." To date, 19 of the 21 networks have been consolidated. Each network has hired Chief Logistics Officers and Contract Managers to provide guidance on and oversight of the acquisition activities.

4. Managing the direction of acquisition policy for VA including implementation of the unique acquisition policies, regulations and standards for VA

I am pleased to inform you that VA published a proposed rule in the *Federal Register* that is its first rewrite of the VA Acquisition Regulation (VAAR) since 1984. The new VAAR will be easier to understand and consolidates changes and modifications that have occurred in the last 23 years. The new VAAR parallels the Federal Acquisition Regulation and eliminates redundant and outdated information.

On December 22, 2006, President Bush signed Public Law (P.L.) 109-461, the Veterans Benefits, Healthcare, and Information Technology Act of 2006. Included in this Act is a unique "Veterans First" approach specific to VA contracting that became effective June 20, 2007. This approach changes the preferences for contracting within VA, placing Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Business (VOSB) first and second, respectively, in satisfying VA's acquisition requirements designed to meet established VA contracting goals. Certain conditions must be met, however, including the need to achieve a fair and reasonable price. We issued Information Letter (IL) 049-07-08 on June 19, 2007, which provides guidance until a change to the VAAR is published in the *Federal Register*.

The Secretary recently approved a reorganization of the newly named Office of Acquisitions and Logistics (OAL). The reorganization positions OAL to better provide the needed leadership to VA's acquisition and logistics community. It separates the policy and operation functions from the purview of a single Associate Deputy Assistant Secretary (ADAS) for Acquisitions into two distinct functions. As a result, operational contracting components will now be separated from the policy development component. This will enable us to provide a greater concentration of effort in both areas, and is designed to improve our overall performance. Acquisition policy will come to the forefront, under the direction of a newly approved Associate Deputy Assistant Secretary for Acquisition and Logistics Programs and Policy. This same senior executive will be responsible for career management of the acquisition work force, to include development of policies and plans for improvement.

Additionally, VA is well represented in the Chief Acquisition Officer Council (CAOC) and the Civilian Agency Acquisition Council (CAAC). Our participation en-

sure that VA's needs are appropriately considered prior to promulgating government-wide acquisition policy.

5. Acquisition Work force and Career Management

Perhaps the most daunting challenge currently facing VA, as well as all Federal agencies, is our ability to attract, develop and retain a competent, professional contracting work force. The dollars obligated by VA have more than doubled since 2000, yet our contracting work force has remained relatively the same size during this period. The agency-wide acquisition study that I mentioned is designed to include data to assess the size and capability of our services.

Wide-spread problems in our central office contracting organization, the Office of Acquisition and Logistics, led me to direct that a study be done to determine if we were organized properly to perform our mission. That study, which was completed last February, resulted in a major reorganization of the Office of Acquisition and Logistics.

Another result of this study includes formation of a new Center for Acquisition Innovation (CAI), which will be located outside the DC area. This new organization focuses on quality, innovation and customer service. The CAI will provide a full complement of cost-efficient acquisition solutions and enterprise "best practices" to support our VA customers. It will become the catalyst for change within VA, transforming VA's acquisition process from a tactical and reactive function to a strategically driven function that ensures maximum value for every acquisition dollar spent. The CAI will provide a wide range of specialized acquisition and logistics services to VA customers. The CAI will be organized into two operating activities, Operations and the Acquisition Leadership Academy.

The operation activity will focus on three business lines: major acquisitions with VA-wide implications, strategic sourcing, and emergency response and recovery acquisitions.

The Acquisition Leadership Academy will implement training and certification programs authorized by the Office of Federal Procurement Policy. It will emphasize three areas: contracting certification (FAC-C); program/project management certification (FAC-P/PM); and acquisition internship. The contracting and program/project management certification programs are designed to be first-rate training venues, and it is our intent to provide the type of training that will put us in a government-wide leadership position. The acquisition intern program is our long-term solution to building a professional contracting workforce. Again, this will be a robust, second-to-none effort, which will train interns for deployment to VA contracting organizations across the United States.

Summary

VA has taken meaningful steps to resolve the current challenges concerning our acquisition programs and practices. VA remains committed to improving its processes and we are confident that our challenges can be overcome for the benefit of both the veterans that we serve and the taxpayers.

This concludes my statement. I would be pleased to answer any questions members of the Subcommittee may have.

POST HEARING QUESTIONS AND RESPONSES FOR THE RECORD

Committee on Veterans' Affairs
Subcommittee on Oversight and Investigations
Washington, DC
July 16, 2007

Honorable George J. Opfer
Inspector General
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Mr. Opfer:

On Wednesday, June 27, 2007, the Subcommittee on Oversight and Investigations of the House Committee on Veterans' Affairs held a hearing on VA's Internal Contracting Oversight Deficiencies.

During the hearing, the Subcommittee heard testimony from Ms. Belinda Finn, the Assistant Inspector General for Auditing. She was accompanied by Ms. Maureen Regan, the Counselor to the Inspector General, and Mr. Nick Dahl, the Director of

the Bedford Office of Audit. As a follow-up to that hearing, the Subcommittee is requesting that the following questions be answered for the record:

1. What internal controls does the OIG suggest be used to ensure compliance or detect noncompliance with prescribed policies and procedures concerning contracting other than more procedural checks?
2. Following your investigation, VISN-1 implemented changes to require approval by the VISN-1 CFO of some of the types of expenditures at issue in your investigation. In your judgment, is this change sufficient to ensure that the types of improper activities disclosed in your investigation do not recur? Do you have any information about whether this change has, in fact, achieved its stated goal?
3. Following your investigation, VISN-1 instituted a new Standard Operating Procedure concerning the use of Estimated Miscellaneous Obligation (VAF 1358). In your judgment, is this Standard Operating Procedure sufficient to prevent the future misuse of VAF 1358 expenditures like those your investigation uncovered? Do you have information that would lead you to believe whether VA has controls in the other VISNs that would prevent similar misuse of VAF 1358 expenditures?

We request you provide responses to the Subcommittee no later than close of business, Friday, August 10, 2007, to Ms. Caitlin Ostomel.

If you have any questions concerning these questions, please contact Subcommittee on Oversight and Investigations Staff Director, Geoffrey Bestor, Esq., at (202) 225-3569 or the Subcommittee Republican Staff Director, Arthur Wu, at (202) 225-3527.

Sincerely,

Harry E. Mitchell
Chairman

Ginny Brown-Waite
Ranking Republican Member

U.S. Department of Veterans Affairs
Washington, DC.
August 14, 2007

The Honorable Harry E. Mitchell
Chairman
The Honorable Ginny Brown-Waite
Ranking Republican Member
Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Enclosed are responses to follow-up questions from the June 27, 2007, hearing before the Subcommittee that were included in a letter from you and the Ranking Republican Member. A similar letter is being sent to the Ranking Republican Member of the Subcommittee.

Thank you for your interest in the Department of Veterans Affairs.

Sincerely,

George J. Opfer
Inspector General

Enclosure

**VA Office of Inspector General Responses to
Follow-Up Questions from June 27, 2007, Hearing
Before the Subcommittee on Oversight and Investigations
Committee on Veterans' Affairs, U.S. House of Representatives**

Question 1: What internal controls does the OIG suggest be used to ensure compliance or detect noncompliance with prescribed policies and procedures concerning contracting other than more procedural checks?

Answer: The inappropriate contracting and fiscal actions in the VA Boston Healthcare System (VABHS) were the result of collaboration between the fiscal and contracting activities at high levels at the medical facility, making existing paper-based checks and balances ineffective. If the contracting entity complied with existing policy that required a legal review for modifications over \$100,000, the deficiencies we found may have been identified and prevented. As the Department moves to a system of electronic procurements, we believe VA should establish checks and balances within the system that may better ensure compliance by preventing the completion of an award or modification that does not comply with statutory, regulatory, and other policy requirements. Using the VABHS situation as an example, if an electronic system required documentation of a legal review before allowing the modifications to proceed, the problems may have been prevented. Also, if an electronic system required input of information relating to scope, price, date of last payment, and a review of this information at a level above the contracting officer, contracting officers may have been prevented from completing actions that were outside scope or were to be funded with expired appropriations. However, the success of any system of checks and balances is dependent on the integrity of the information entered into the system and the people who enter the information in the system.

Question 2: Following your investigation, VISN-1 implemented changes to require approval by the VISN-1 CFO of some of the types of expenditures at issue in your investigation. In your judgment, is this change sufficient to ensure that the types of improper activities disclosed in your investigation do not recur? Do you have any information about whether this change has, in fact, achieved its stated goal?

Answer: It is not a new requirement for the Veterans Integrated Service Network (VISN) CFO to approve contract modifications that will be funded with prior year money. The requirement to obtain VISN CFO approval prior to using expired funds for non-recurring maintenance projects was in effect within VHA during the time the improper activities occurred at the VABHS. However, facility managers chose to disregard the approval process and there was no system control in place to alert VISN officials that expired funds were used illegally. Subsequent to our review, the VISN-1 Financial Quality Assurance Manager started monitoring general ledger account 4650, which accounts for the use of expired funds. If this account is adequately monitored, it will provide greater assurance that expired funds are being spent in accordance with appropriations law.

Question 3: Following your investigation, VISN-1 instituted a new Standard Operating Procedure (SOP) concerning the use of Estimated Miscellaneous Obligation (VAF 1358). In your judgment, is this SOP sufficient to prevent the future misuse of VAF 1358 expenditures like those your investigation uncovered? Do you have information that would lead you to believe whether VA has controls in the other VISNs that would prevent similar misuse of VAF 1358 expenditures?

Answer: VISN-1 SOP 2006-02, Use of Estimated Miscellaneous Obligation (VAF 1358), prescribes policy and circumstances governing the use of the 1358 method of obligating funds, and its issuance helps standardize practices throughout VISN-1. The SOP describes the proper use of 1358s, necessary approvals, and potential personal liability. The SOP only prescribes policy; it does not include corresponding system controls in the information technology systems in which these transactions are processed. Therefore, the VISN must rely on people to follow the policy in order for it to be effective.

Our review focused on specific allegations pertaining to VISN-1. We are not aware of any VA controls in other VISNs that would have prevented similar misuse of 1358 expenditures.

Committee on Veterans' Affairs
 Washington, DC
July 16, 2007

Honorable R. James Nicholson
 Secretary
 U.S. Department of Veterans Affairs
 810 Vermont Avenue, NW
 Washington, DC 20420

Dear Secretary Nicholson:

On Wednesday, June 27, 2007, the Subcommittee on Oversight and Investigations of the House Committee on Veterans' Affairs held a hearing on VA's Internal Contracting Oversight Deficiencies.

During the hearing, the Subcommittee heard testimony from the Honorable Robert J. Henke, the Assistant Secretary for Management. He was accompanied by Mr. Jan Frye, the Deputy Assistant Secretary for Acquisition and Material Management, and Mr. Frederick Downs, Jr., the Chief Prosthetics and Clinical Logistics Officer. As a follow-up to that hearing, the Subcommittee is requesting that the following questions be answered for the record:

1. Following your investigation, VISN-1 instituted new Standard Operating Procedures ("SOP") to address the problems identified in the Inspector General's investigation of the Boston Healthcare System. Is it standard operating procedure for individual VISNs to have their own SOPs concerning matters such as contracting and expenditure of government funds? Were VISN-1's new SOPs reviewed by anyone in VA central office before being implemented?
2. Following your investigation, VISN-1 implemented a new Standard Operating Procedure concerning the use of Estimated Miscellaneous Obligation (VAF 1358). What assurance do you have that the misuse of VAF 1358 expenditures identified in the IG's investigation is not occurring at other VISNs?
3. Following the IG's investigation, VISN-1 implemented changes to increase the authority and responsibilities of the VISN-1 Chief Financial Officer (CFO) in order to prevent future occurrence of the abuse identified by the IG. Have these changes been implemented? How many staff does the VISN-1 CFO have? Does the VISN-1 CFO receive sufficient support to meet his/her new responsibilities? Does the CFO in place at the time of the hearing believe there is enough support to meet these responsibilities?
4. As part of the organizational analysis outlined in the GAO Report dated October 2005, titled "Status of Seven Key Recommendations" relating to the development of a long-term improvement plan, what were the recommendations made by LMI?
5. Of the 1632 audits mentioned in Mr. Henke's testimony, how many of the audits found that things were being done correctly, and how many of the audits found improprieties?
6. In reference to Mr. Henke's testimony, why was it determined that contract-review board process procedures would apply primarily to acquisitions above \$5 million, and has this been done?
7. What is the status of the Electronic Commerce Management System (eCMS) meant to improve efficiency and transparency in the contracting process?
8. As addressed by the VA's goal of improved customer relations, what are the required "extraordinary efforts" that are needed by the entire acquisition chain of command? Have they been made?
9. As referenced in the Procurement Reform Task Force Report of May 2002, how many non-Federal Supply Schedules have been contracted? How many were requested? How many were approved?
10. How many joint pharmacy contracts between the DoD and VA have been negotiated, and how much has been saved? How much has been purchased jointly over the past 3 years?
11. How many national medical-surgical prime vendors have been contracted?
12. What was identified by the 60 new work groups that were formed to standardize 140 new product lines?

13. Have all civilian departments met certification requirements with regards to education, training, and experience for acquisition duties, as stipulated by OFPP Policy Letter No. 05-01?
14. Does the Office of Business Oversight itself act as the arbitrator for various contracts, or does it solely perform an oversight function?
15. Concerning the audits conducted before and after contracts referred to in Mr. Henke's testimony, and the \$20 million that could be recovered, have those funds been recovered and why were those funds unaccounted for until investigating the contract afterward?
16. In the cases of Project HERO and the Vocational Rehabilitation and Employment Services program, how is the consolidation of fewer providers stimulating more competition in prices and service capabilities?
17. Why has the contracting workforce remained relatively the same size as the budget has more than doubled?
18. In Mr. Henke's statement, he mentioned that he had issued an Information Letter (IL) 049-07-08 on June 19, 2007, which provides guidance on changes to the VAAR stemming from Public Law 109-461 for Veteran Owned Small Businesses, and Service-Disabled Veteran Owned Small Businesses. Please provide a copy of this letter for the official record, so that we can see the changes that are being implemented based on that law?
19. When do you anticipate the final regulations on the VAAR will be published in the *Federal Register*?
20. What role is A&MM playing in the implementation of the veteran and disabled veteran-owned small business provisions in Title 5 of PL 109-461?

We request you provide responses to the Subcommittee no later than close of business, Friday, August 10, 2007 to Ms. Caitlin Ostomel.

If you have any questions concerning these questions, please contact Subcommittee on Oversight and Investigations Staff Director, Geoffrey Bestor, Esq., at (202) 225-3569 or the Subcommittee Republican Staff Director, Arthur Wu, at (202) 225-3527.

Sincerely,

Harry E. Mitchell
Chairman

Ginny Brown-Waite
Ranking Republican Member

Question for the Record

Hon. Harry E. Mitchell, Chairman
Hon. Ginny Brown-Waite, Ranking Republican Member
Subcommittee on Oversight and Investigations
House Committee on Veterans' Affairs
June 27, 2007

Hearing on VA's Internal Contracting Oversight Deficiencies

Question 1: Following your investigation, VISN-1 instituted new Standard Operating Procedures ("SOP") to address the problems identified in the Inspector General's investigation of the Boston Healthcare System.

Question 1(a): Is it standard operating procedure for individual VISNs to have their own SOPs concerning matters such as contracting and expenditure of government funds?

Response: Each veterans integrated service network (VISN) is expected to develop local standard operating procedures based on national policy, directives and handbooks that are to be followed by its facilities.

Question 1(b): Were VISN-1's new SOPs reviewed by anyone in VA central) office before being implemented?

Response: VISN-1's new standard operating procedures were reviewed after implementation.

Question 2: Following your investigation, VISN-1 implemented a new Standard Operating Procedure concerning the use of Estimated Miscellaneous Obligation (VAF 1358). What assurance do you have that the misuse of VAF 1358 expenditures identified in the IG's investigation is not occurring at other VISNs?

Response: At the end of every fiscal year beginning with 2006 procurement history, the Department of Veterans Affairs (VA) has reviewed open *Estimated Miscellaneous Obligations* (VA form 1358), notified facilities with open 1358s, request information on the status of the order and justification for it to remain in open status. Monthly spot checks are being conducted to ensure actions were taken to close out open 1358s.

Question 3: Following the IG's investigation, VISN-1 implemented changes to increase the authority and responsibilities of the VISN-1 Chief Financial Officer (CFO) in order to prevent future occurrence of the abuse identified by the IG.

Question 3(a): Have these changes been implemented?

Response: VISN-1 has implemented changes to increase authority and responsibilities of the VISN-1's chief financial officer (CFO). The procedures that will be used for commitment, transfer, and obligation of funds will directly involve VISN-1's CFO. VISN-1's CFO will forward to the requiring activity or program office responsible for the procurement a statement certifying that funds have been committed. This certification will be forwarded to the assigned contracting officer as part of the procurement request (PR) package.

The standard operating procedure (SOP) has been implemented. The SOP requires that all modifications to be executed with prior year funds (regardless of dollar amount) be approved at one level above the contracting officer responsible for the action. The contract file shall contain a written justification that the modification is within the scope of the original contract and therefore constitutes a bona fide need of the prior fiscal year. In addition, all modifications to be executed with prior year funding shall be approved by VISN-1's CFO.

Question 3(b): How many staff does the VISN-1 CFO have?

Response: No staff report directly to the VISN-1 CFO; however, the VISN-1 CFO works closely with the VISN's financial quality audit manager (FQAM) and CFOs at the medical centers.

Question 3(c): Does the VISN-1 CFO receive sufficient support to meet his/her new responsibilities?

Response: The current staffing meets the needs of the CFO requirements; however, a workload analysis completed by VISN-1's chief logistics officer (CLO) and network contract manager (NCM) identified the need for the following changes to include additional staff and co-location of staff:

- The VA Hospital in Brockton, MA will become the primary location for the consolidated contracting activity (CCA) New England acquisition staff. The CLO, NCM and entire VA Boston contracting staff (currently located in Jamaica Plain) will all immediately move to the Brockton facility. In addition, all positions approved as a result of this workload analysis will be staffed in Brockton.
- By the Fall of 2007, 10 new staff will be hired. The 10 new staff combined with the existing six staff at Boston will be consolidated to the Brockton campus for a total of 16 staff. The Brockton group will perform all of VA Boston's work and take on the overflow from all other facilities. Facility chiefs of procurement and contracting will continue to assign work locally. All consolidated contracts will be completed in Brockton. A core team will continue at the facility, however, as vacancies arise in the network those vacancies will be filled at the Brockton campus. Each facility will be left with a limited amount of staff to maintain a presence at that facility.
- The Brockton *staff* will be organized into three specialty contracting teams (construction, medical services, and commodities). There will be a team leader located in Brockton for each of the three contracting teams, who will be responsible for assigning, reviewing, monitoring and supervising all work performed within that group. The team leader will be responsible for managing the entire workload within the team.

Question 3(d): Does the CFO in place at the time of the hearing believe there is enough support to meet these responsibilities?

Response: At the time of the hearing, preliminary discussions were being held on the need for a staffing plan to assist the VISN CFO. There have been several

changes to processes and procedures in addition to increased workloads that justify the need to obtain more staff. Plans are now in place to develop a viable staffing plan to assist the CFO to effectively carry out their financial responsibilities.

Question 4: As part of the organizational analysis outlined in the GAO Report dated October 2005, titled "Status of Seven Key Recommendations" relating to the development of a long-term improvement plan, what were the recommendations made by LMI?

Response: The Logistics Management Institute (LMI) recommended the establishment of a center for acquisition innovation which would have a headquarters and field components devoted to providing innovative contracting solutions in support of major VA procurements, strategic sourcing initiatives, and emergency response and recovery operations. LMI is assisting the Office of Acquisition and Logistics with the implementation of its strategic plan and balanced scorecard of performance measures, which include initiatives to address the key recommendations in the areas of customer service, communications, recruitment, and retention of a quality work force and the award and administration of contracts.

Question 5: Of the 1632 audits mentioned in Mr. Henke's testimony, how many of the audits found that things were being done correctly, and how many of the audits found improprieties?

Response: The legal/technical review (audit) process allows for changes and corrections to be made as the contract action moves forward. Some corrections are minor and others are more significant, but the goal of the review is to bring the procurement up to standard without unnecessarily delaying the acquisition. Some findings are so significant that the submission is rejected and returned for revision and resubmission before it is allowed to continue. Of the 1,632 solicitations that were reviewed, approximately 5 percent were rejected and had to be resubmitted.

Question 6: In reference to Mr. Henke's testimony, why was it determined that contract review board process procedures would apply primarily to acquisitions above \$5 million, and has this been done?

Response: The contract review board (CRB) process is being implemented in VA as a replacement for the business clearance review (BCR) process. The CRB process adopted the same dollar thresholds used by the BCR process. Both the CRB and BCR processes are thorough and, therefore, very labor intensive. The \$5 million threshold was established in an effort to balance the importance and dollar level of the procurement with the level of effort needed for review. Contracts below \$5 million are reviewed using the legal and technical review process discussed in question 5. The CRB process has been implemented for about two-thirds of VA's qualifying procurements, with the BCR process used for the remaining one-third. The BCR process will be phased out completely over the next year in favor of the CRB process.

Question 7: What is the status of the Electronic Commerce Management System (eCMS) meant to improve efficiency and transparency in the contracting process?

Response: The electronic commerce management system (eCMS) has been deployed VA-wide with the contracting officers (1102 job series) having been trained through a phased approach starting in fiscal year (FY) 2006. As of August 2007, over 55,000 acquisition actions have been entered into eCMS covering the full procurement cycle from acquisition plan through modification. There are currently over 1,000 users of the system. Plans are underway to train 400 purchasing agents and prosthetics purchasing staff in FY 2008. In October, an interface to the General Services Administration e-Buy system will be implemented to facilitate the use of its electronic solicitation mechanism.

Question 8: As addressed by the VA's goal of improved customer relations, what are the required "extraordinary efforts" that are needed by the entire acquisition chain of command? Have they been made?

Response: VA is proceeding with a competitive solicitation for an acquisition study that will provide an analysis of VA's current acquisition structure, delegated lines of authority, and options for new/revised acquisition organizational structures for consideration. The solicitation should be awarded prior to the end of FY 2007. As part of the reorganization of the Office of Acquisition and Materiel Management, we are establishing a new associate deputy assistant secretary (ADAS) for acquisition and logistics programs and policy who will be responsible for the policy and oversight of VA's acquisition program. This newly established position will be re-

sponsible for developing operational and program management performance measures for VA's acquisition program.

Question 9: As referenced in the Procurement Reform Task Force Report of May 2002, how many non-Federal Supply Schedules have been contracted? How many were requested? How many were approved?

Response: At the National Acquisition Center, approximately 322 contracts, which include national contracts, national blanket purchase agreements (BPAs), and national blanket ordering agreements, have been awarded and are in place. These contract vehicles leverage requirements from VA and/or Department of Defense (DoD) and other government agencies to achieve better pricing, terms, and conditions. All requests that contained complete requirements were accepted and processed.

Question 10: How many joint pharmacy contracts between the DoD and VA have been negotiated, and how much has been saved? How much has been purchased jointly over the past 3 years?

Response: We currently have 67 joint contracts and 6 joint BPAs, i.e., incentive agreements, in place. From FY 2004 to FY 2006 (the last full 3-year period), VA has saved a total of \$1.75 billion and spent a total of \$1.12 billion under VA/DoD joint pharmaceutical contracts. VA does not have DoD spend and cost savings data.

Question 11: How many national medical-surgical prime vendors have been contracted?

Response: Seven medical-surgical prime vendor contracts have been awarded. They are awarded by region. Two are to large businesses, and five are to small businesses.

Question 12: What was identified by the 60 new work groups that were formed to standardize 140 new product lines?

Response: After the release of the procurement reform task force report of May 2002, the Veterans Health Administration (VHA) revamped the standardization program, and created 60 integrated product teams (IPT) to identify and award standardization contracts. As of August 2007, 92 national blanket purchase agreements, 88 national contracts, and 23 basic ordering agreements have been awarded under the standardization program. In addition, the current 29 of the 60 IPTs are reviewing and working on awards of an additional 125 products. The standardization program is an on-going project and products are identified for standardization as the requirement is identified.

The following documents are attachments to response:

- A. Active National Medical Surgical Standardization Contract Awards
- B. Current Medical Surgical Standardization Projects
- C. Active Prosthetics Standardization Contract Awards
- D. Current Prosthetics Standardization Projects

Question 13: Have all civilian departments met certification requirements with regards to education, training, and experience for acquisition duties, as stipulated by OFPP Policy Letter No. 05-01?

Response: VA does not have information on progress of other departments/agencies in implementing Office of Federal Procurement Policy (OFPP) policy letter No 05-01. The Office of Management and Budget (OMB), tracks and maintains this information. VA has begun the certification process mandated by OMB. As of September 5, 2007, 105 contract specialists (1102s) have been certified in accordance with the Federal Acquisition in Contracting (FAC-C) certification process. The VA Center for Acquisition Innovation will include an acquisition leadership academy that will have schools with curricula devoted to contracting and program and project management certification.

Question 14: Does the Office of Business Oversight itself act as the arbitrator for various contracts, or does it solely perform an oversight function?

Response: The Office of Business Oversight performs oversight of VA acquisition operations. One of the primary reasons for the creation of the office was to separate the policy and operations functions from the oversight of compliance with those policies and operations. Accordingly, the Office of Business Oversight conducts contract inspections and contract audits of VA acquisition activities and does not act as the arbitrator for contracts.

Question 15: Concerning the audits conducted before and after contracts referred to in Mr. Henke's testimony, and the \$20 million that could be recovered, have those funds been recovered and why were those funds unaccounted for until investigating the contract afterward?

Response: Under the audit review process for Federal supply schedules, pre- and post-award audits are performed. Pre-award audits assist the contracting staff in ensuring that information provided by the contractor is accurate, complete, and current. Depending on the findings of the pre-award review, discrepancies found during contract administration, voluntary disclosures by the contractor, or other circumstances which arise during the administrative execution of the contract, a post-award audit may also be needed or desired. Once a post-award audit is completed, negotiations are held with the company to substantiate findings and to reach a settlement. In some cases, these findings are litigated. The whole process can take 6 months to 2 years before settlement or audit recovery can be reached, depending on the circumstances and recourse taken by the contractor. The \$20 million in post-award audit recoveries were collected during FY 2006.

Question 16: In the cases of Project HERO and the Vocational Rehabilitation and Employment Services program, how is the consolidation of fewer providers stimulating more competition in prices and service capabilities?

Response: The procurement process for these two projects has not been completed yet, therefore, VA cannot fully respond to the question at the present time.

Question 17: Why has the contracting workforce remained relatively the same size as the budget has more than doubled?

Response: Greater efficiencies in our work force have been achieved in recent years. Some efficiencies have been made possible because of improvements in the procurement process resulting from the Federal Acquisition Streamlining Act (FASA) 1995 and the Federal Acquisition Reform Act (FARA) 1996. Other efficiencies are due to consolidations of VA medical center contracting activities and improved work process management. The other reality is that VA and other government agencies have had difficulty in recruiting qualified 1102 contracting officers. We recognize that our current contracting work force needs to be reevaluated to meet future challenges. This reevaluation will be accomplished within the context of the proposed VAt-wide acquisition study to be conducted in FY 2008.

Question 18: In Mr. Henke's statement, he mentioned that he had issued an Information Letter (IL) 049-07-08 on June 19, 2007, which provides guidance on changes to the VAAR stemming from Public Law 109-461 for Veteran Owned Small Businesses, and Service-Disabled Veteran Owned Small Businesses. Please provide a copy of this letter for the official record, so that we can see the changes that are being implemented based on that law?

Response: A copy of Information Letter (IL) 049-07-08 is attached.

Question 19: When do you anticipate the final regulations on the VAAR will be published in the *Federal Register*?

Response: The target date for publication in the *Federal Register* is December 14, 2007.

Question 20: What role is A&MM playing in the implementation of the veteran and disabled veteran-owned small business provisions in Title 5 of PL 109-461?

Response: Interim guidance to VA contracting officers was provided in IL 049-07-08 issued on June 19, 2007. A formal change to the VA Acquisition Regulation to codify VA's implementation of the public law is being finalized and is expected to be published in the *Federal Register* by December 14.