

**ACQUISITION DEFICIENCIES AT THE  
U.S. DEPARTMENT OF VETERANS AFFAIRS**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON OVERSIGHT AND  
INVESTIGATIONS  
OF THE  
COMMITTEE ON VETERANS' AFFAIRS  
U.S. HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS

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# ACQUISITION DEFICIENCIES AT THE U.S. DEPARTMENT OF VETERANS AFFAIRS

WEDNESDAY, DECEMBER 16, 2009

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

The Subcommittee met, pursuant to notice, at 10:05 a.m., in Room 334, Cannon House Office Building, Hon. Harry E. Mitchell [Chairman of the Subcommittee] presiding.

Present: Representatives Mitchell, Space, Walz, Adler, and Roe.  
Also Present: Representative Buyer.

## OPENING STATEMENT OF CHAIRMAN MITCHELL

Mr. MITCHELL. Welcome to the December 16, 2009, Subcommittee on Oversight and Investigations hearing. Today's hearing is on Acquisition Deficiencies at the U.S. Department of Veterans Affairs (VA).

This hearing will come to order. I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and that statements may be entered into the record. Hearing no objection, so ordered.

I would like to thank everyone for attending today's hearing and especially thank our witnesses for testifying today.

We are here to examine the VA acquisition system and procurement structure. Our hearing will hopefully determine the extent of the reform needed in order to ensure that the acquisition process within the VA is one that is fair, fiscally responsible, and effective, most importantly, serves veterans.

We all know that the acquisition system within the VA has failed to develop a process that is both transparent and fiscally responsible. One recent report produced by the U.S. Government Accountability Office (GAO) revealed that network and medical center staff within the Veterans Health Administration (VHA) failed to use the Federal Supply Schedule (FSS) due to a lack of information and the proper tools needed to use the FSS.

This resulted in lost savings of almost \$8.2 million a year or \$41 million over 5 years. This is simply unacceptable.

Several VA Office of Inspector General (OIG) and GAO reports have detailed major deficiencies within the procurement process at the VA, citing prolific material weaknesses, and how disabled veteran-owned small businesses (VOSBs) are being cheated out of millions of dollars in contract opportunities each year due to a lack of sufficient oversight.

Just last month, the GAO released a report on the Service-Disabled Veterans-Owned Small Business (SDVOSB) Program showing a fragmented structure within the VA and a lack of oversight of companies claiming service-disabled veterans-owned small business status.

Fraud and abuse has allowed ineligible firms to improperly receive millions of dollars in set-aside and sole-source contracts, potentially denying legitimate service-disabled veterans and their businesses the benefits of the veteran and small business program.

With the ineffective oversight and lack of effective fraud prevention controls, these ineligible firms have received almost \$100 million in contracts over the years.

There is no secret that there are major deficiencies in the VA's procurement process and to blame are a number of things, including a lack of centralized acquisition structure, self-policing policies in place that allow fraud and abuse, and continuous material weaknesses.

Although I remain fairly optimistic that reform of this system can be accomplished, legislation to fix these problems may be necessary along with change in policy and procedures.

I am grateful that the GAO, as well as service-disabled veteran-owned small business owners and entrepreneurs, are here today to shed light on issues such as these.

[The prepared statement of Chairman Mitchell appears on p. 51.]

Mr. MITCHELL. Before I recognize the Ranking Member for his remarks, I would like to swear in our witnesses. And I would ask that all witnesses that are going to testify today please stand and raise their right hand.

[Witnesses sworn.]

Mr. MITCHELL. Thank you.

I now recognize Dr. Roe for opening remarks.

#### **OPENING STATEMENT OF HON. DAVID P. ROE**

Mr. ROE. Thank you, Mr. Chairman, for yielding.

Today's hearing entitled, Acquisition Deficiencies at the U.S. Department of Veterans Affairs is important to the Subcommittee as we move forward to assist the Department in guiding it through to better management of its procurement and acquisition processes.

The Department of Veterans Affairs is one of the largest procurement and supply agencies in the Federal Government. Its annual expenditures are more than \$14.1 billion for supplies and services, including construction, drugs, medical supplies, and equipment.

Information technology (IT) equipment and services and other critical patient care items must be procured and distributed to the VA's health care facilities in what is the largest health care delivery system in the country.

Over the past 12 years, the VA and the Office of Inspector General have detailed what can be considered the existence of serious long-term severe systemic procurement problems within the VA.

Last Congress, this Subcommittee held a hearing on miscellaneous obligations, which highlighted how difficult it is to track expenditures at the VA without proper oversight and guidance.

From reading the hearing report of that hearing, it was apparent the frustration felt by all Members present with the brokenness of

the acquisition process within the VA. I understand that the Department followed this hearing by providing its acquisition workforce with new rules and procedures regarding the use of miscellaneous obligations.

I will be interested to hear from the Department how well these new rules are being implemented. I hope that there is improvement in tracking these expenditures since the last hearing.

Additionally, the Government Accountability Office issued a report showing fraud and abuse within the Service-Disabled Veteran-Owned Small Business Program. The findings are extremely disturbing.

And I look forward to testimony from GAO relating to this report and to see if they have any further recommendations to fix these fraudulent practices and make certain that contracting officials who knowingly allow this are held accountable.

I was pleased to join Ranking Member Buyer last week in introducing H.R. 4221, the "Department of Veterans Affairs Acquisition Improvement Act of 2009." I understand that Mr. Buyer will discuss his bill further this morning and look forward to working with him and other Members of this Committee to help Secretary Shinseki fix the acquisition process at the Department of Veterans Affairs.

Holding this hearing is an important step in the right direction. Moving forward legislatively will also be an additional step we can take, and look forward to working with you, Mr. Chairman, in this effort.

And one final comment. With unemployment at 10 percent and not going down, small businesses around this country failing, it is absolutely imperative that we as an organization spend the taxpayers' funds wisely with people losing faith in our government when they see this kind of waste. And I think it is imperative that we show the way for businesses around this country. And I think it is unacceptable what I have read in this report last evening.

And I yield back my time.

[The prepared statement of Congressman Roe appears on p. 51.]

Mr. MITCHELL. Thank you.

Votes have been called. If Mr. Walz and Mr. Buyer want to wait until we get back?

Mr. BUYER. First of all, I would ask unanimous consent that I may participate in the Subcommittee hearing.

Mr. MITCHELL. So ordered.

Mr. BUYER. All right. And, Mr. Walz, do you have an opening statement?

Mr. WALZ. No. I will just submit it for the record.

[The prepared statement of Congressman Walz appears on p.52.]

Mr. BUYER. Okay.

Mr. MITCHELL. You may go ahead.

Mr. BUYER. How much time do we have left for votes?

Mr. MITCHELL. Eleven minutes and 54 seconds.

#### **OPENING STATEMENT OF HON. STEVE BUYER**

Mr. BUYER. All right. I will go ahead and start.  
I want to thank you, Mr. Chairman, for yielding.

I want to thank both of you, Chairman Mitchell and Dr. Roe, for your leadership here.

And, Sergeant Major, thanks for being here.

This is going to be a pretty important hearing, helping to lay out a foundation. Both of these GAO reports, if you had a chance to look at them, have some disturbing facts in them. So I appreciate all of you for holding this hearing on acquisition reform.

Years ago, when I was Chairman of this Subcommittee, we reviewed a number of issues relating to acquisition at the Department of Veterans Affairs, including the VA's own Task Force on Acquisition Reform.

What came out of the hearings we held and the investigations conducted by VA's own Inspector General's Office and the Government Accountability Office and VA's Procurement Reform Task Force ordered by then Secretary Principi in 2001 was a strong sense that the acquisition procedures at the VA were broken, fragmented, and disorganized.

Ranking Member Roe, in his opening statement, alluded to the hearing that you held last Congress on July 31st, 2008, on miscellaneous obligations. That hearing only served to further emphasize the fact that without proper oversight, funds that could be used to better serve our Nation's veterans were being wasted on broken procurement practices with little or no oversight review.

The frustration of all the Members on both sides of the aisle at the hearing was loud and clear. It was obvious that action was needed then to address the problems of acquisition at the VA.

To its credit, the VA commissioned an \$800,000 plus PricewaterhouseCoopers' study to see how dysfunctional and broken the acquisition process was at the VA. This study offered three options.

I believe the VA selected the option that would create the least push back from the bureaucracy, and sent to the last Congress a legislative proposal that would create an Assistant Secretary of Acquisition, but it did not provide any further direction or solution to respond to the universal complaint throughout the VA that glaciers move faster than its own contracting process.

So I started working on legislation to change the way the VA conducts its acquisition business. My staff and I spoke with industry experts, the GAO, VA OIG to formulate a way to fix broken acquisition services at the VA in order to create better accountability.

I have also discussed this issue several times with Secretary Shinseki who has acknowledged that it is imperative for the VA to change its procurement system to expedite the many transformational ways the VA does business.

And I have shared a draft of this bill with him, and I look forward to working not only with him but also with Chairman Mitchell and Chairman Filner and any other Members of the Committee that would like to.

Last week, I was joined by several Members of the Committee, in particular Dr. Roe, in the introduction of H.R. 4221, the "Department of Veterans Affairs Acquisition Improvement Act of 2009."

And I welcome any input, Chairman Mitchell, that you may have or, Sergeant Major. I am completely open to ideas as we proceed not only for myself but also recommendations that we are going to

receive from the OIG and the GAO and working with the Administration.

The only way that we were successful and way ahead to centralize the IT from a decentralized model was we had unanimous support of this Committee. And I think in order for us to be successful on an acquisition model, we have to do the same thing. I think it has to be replicated to do that. This is not going to be an easy task. This is going to be very challenging.

The Administration drafted a bill introduced last Congress by Senator Akaka. This new bill creates a new Assistant Secretary position, the Assistant Secretary for Acquisition, Construction, and Asset Management, who will serve as the Chief Acquisition Officer for the Department of Veterans Affairs.

Our bill also builds the acquisition workforce structure through the use of Deputy Assistant Secretaries to align the VA's business lines and principal Deputy Assistant Secretary.

The bill further requires the Secretary to establish and maintain a comprehensive Department-wide acquisition program, which the Secretary will develop, implement, and enforce a streamlined approach to entering into contracts in purchasing goods and services.

The legislation would thereby provide better oversight and accountability for procurement at the Department of Veterans Affairs.

One of the key points that came out of the Industry Acquisition Roundtable that I held on October 27th was the strong need for a well-trained workforce. This legislation would provide the direction needed to put in place and keep a workforce that is knowledgeable and able to provide acquisition and contracting services to the Department.

The bill also recognizes the VA's separate and dysfunctional procurement construction and asset management processes into distinct entities with contracting expertise.

Mr. Chairman, H.R. 4221 is the first step to provide a centralized oversight and policy for contracting and acquisition within the Department by streamlining the business operations under an Assistant Secretary.

It is my hope that we can work together to improve the bill and create an acquisition model that can eventually be followed by other agencies because VA's acquisition problems are, in fact, governmentwide.

With that, I yield back.

[The prepared statement of Congressman Buyer appears on p. 52.]

Mr. MITCHELL. Thank you.

At this time, we will have a break. There are four votes. So how long will that take? You are the veteran. Thirty minutes? Okay. We will reconvene in about 30 minutes.

Thank you.

[Recess.]

Mr. MITCHELL. We will reconvene the hearing. It is my understanding in the next hour, there is probably another vote.

At this time, I would like to welcome Panel One to the witness table. Joining us for our first panel is Scott Amey, General Counsel for the Project On Government Oversight (POGO); Scott Denniston,

President of the Scott Group of Virginia; Tony Jimenez, President and Chief Executive Officer of MicroTech; and Bob Hesser, President and Chief Executive Officer of Vetre—

Mr. HESSER. Vetrepreneur.

Mr. MITCHELL. There, Vetrepreneur. There it is. As well as Members of the Veterans' Entrepreneurship Task Force or VET-Force.

I ask that all witnesses stay within 5 minutes of their opening remarks. Your complete statements will be made part of the hearing record. We will begin with Mr. Amey.

**STATEMENTS OF SCOTT H. AMEY, ESQ., GENERAL COUNSEL, PROJECT ON GOVERNMENT OVERSIGHT; SCOTT F. DENNISTON, PRESIDENT, SCOTT GROUP OF VIRGINIA, LLC, CHANTILLY, VA, AND DIRECTOR OF PROGRAMS, NATIONAL VETERAN OWNED BUSINESS ASSOCIATION; ANTHONY R. JIMENEZ, PRESIDENT AND CHIEF EXECUTIVE OFFICER, MICROTECH, LLC, VIENNA, VA; AND ROBERT G. HESSER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, VETREPRENEUR, LLC, HERNDON, VA, AND 1ST CO-CHAIRMAN, VETERANS' ENTREPRENEURSHIP TASK FORCE (VET-FORCE)**

**STATEMENT OF SCOTT H. AMEY, ESQ.**

Mr. AMEY. Good morning. Thank you, Chairman Mitchell and Ranking Member Roe, for inviting me to testify.

I am Scott Amey, General Counsel of the Project on Government Oversight, also known as POGO.

Throughout its 28-year history, POGO has worked to remedy waste, fraud, and abuse in government spending in order to achieve a more effective, accountable, open, and ethical Federal Government.

POGO has a keen interest in government contracting matters, and I am pleased to share POGO's thoughts with the Subcommittee today. I am very pleased that the Subcommittee is holding today's hearing.

The VA ranked fifth with approximately \$14.6 billion in contract awards in fiscal year 2009 and has a complex mission that requires the procurement of pharmaceuticals, medical supplies and equipment, as well as building construction, maintenance, and repair services.

Many events over the past 15 years have called into question the effectiveness of the Federal acquisition and contracting system.

Federal spending has grown tremendously, exceeding \$530 billion in both fiscal year 2008 and 2009. Oversight of Federal spending has decreased. The acquisition workforce has been stretched thin and been supplemented by contractors. Spending on services now outpaces goods and stimulus spending is adding to an already complex system. In short, poor contracting planning, management, and oversight decisions are placing taxpayer dollars and sometimes lives at risk.

On a positive note, interest in improvements in Federal acquisition and contracting systems has grown significantly in recent years as Congress, and now the White House, are paying more attention. Multiple executive orders and memos have come out from

the White House mandating that agencies minimize contracting risk and maximize the value of the goods and services procured each year.

Many contracting experts and government officials blame the inadequate size and training of the acquisition workforce for all of today's problems. POGO agrees that the workforce is an issue, but we believe that additional problems deserve equal attention. These problems are inadequate competition, deficient accountability, lack of transparency, and risky contracting vehicles.

My testimony today will focus in on 20 different recommendations which have been provided in my written testimony, but I will just highlight a few of those today.

Although I will point out some positives and negatives in VA contracting, I will defer to today's other panelists to highlight specific failures and ways to improve VA acquisition and contracting systems.

And as already has been mentioned, multiple GAO reports have come out, including one that detailed overruns and delays in VA construction projects.

As far as inadequate competition, competition in contracting is essential to getting the best products and services at the most practical prices. The government needs to reverse the philosophy of quantity over quality. Acquisition is now about speed and competition is oftentimes considered a burden. That is a recipe for waste, fraud, and abuse.

VA's competition numbers are unknown. According to Federal data in 2008, full or limited competition procedures were used 21 percent of the time. Sole-source contracts totaled nearly 21 percent of the acquisition dollars spent. The actual competition numbers is unknown because according to [usaspending.gov](http://usaspending.gov), 54 percent of the dollars awarded, nearly \$8 billion, were listed as not identified as far as their competition category. This Committee might want to inquire about VA's actual extent of competition in its contracts.

VA stimulus contracting is faring a little better. VA programs received approximately \$1.4 billion in Recovery Act funds with \$543 million paid out thus far. And according to GAO, those have been competed approximately 94 percent of the time.

Government wide, agencies must do more to ensure that full and open competition involving multiple bidders is the rule, not the exception. Agencies also need to debundle or break apart contracts to try to lure contractors both large and small into the system. Doing that might also reduce the multiple layers of subcontracting that we have seen in recent years.

Deficient accountability, Congress should not underestimate the value of accountability and oversight. The VA OIG's pre-award and post-award oversight have potentially saved the Agency \$165 million in fiscal year 2009. A question for this Subcommittee is, how much of those potential dollars were actually recovered.

The Committee has already touched on the set-asides for veteran-owned businesses as well as for service-disabled veteran-owned small businesses, so I will not touch on that.

Additionally, I would like to recommend that this Subcommittee investigate service contracts and the high number of unemployed veterans who are out there. In the VA Human Resource or contract

planning, if it is based on tailoring service contracts to contractors rather than former servicemembers, the Agency is doing a major disservice to the vets and that has created a problem and a higher rate of unemployment for returning vets.

POGO also believes that contracting laws should require contractors to provide cost or pricing data to the Government for nearly all contracts and allow all contracting actions, including task and delivery orders, to be subject to bid protest.

My additional testimony touches on lack of transparency and risky contracting vehicles, specifically cost reimbursement, commercial items, and time and material labor hour contracts, but that has all been submitted in my written comments.

Thank you for inviting me to testify today. I look forward to working with this Subcommittee further to explore how the Government and the VA can improve Federal contract spending. Thank you.

[The prepared statement of Mr. Amey appears on p. 53.]

Mr. MITCHELL. Thank you.

And our next speaker, Mr. Denniston.

#### **STATEMENT OF SCOTT F. DENNISTON**

Mr. DENNISTON. Thank you. Chairman Mitchell, Ranking Member Roe, Committee Members and staff, thank you for the opportunity to testify today on the Department of Veterans Affairs Acquisition Program.

I am Scott Denniston, President of Scott Group of Virginia, representing one of my clients, the National Veteran Owned Business Association (NaVOBA) and its over 2,000 veteran small business owners around the country.

Within the past week, I have been contacted by a veteran-owned business in Arizona providing vinyl banners to the VA's Vocational Rehabilitation Service. Shipment to 58 Regional Offices was completed in October 2009.

The veteran is unable to be paid as VA regulations require a receiving report be completed. The veteran business owner when inquiring as to being paid is bounced between the contracting office and the Program Office as to who is responsible for completing the receiving report.

All the veteran knows is he has fulfilled the contract requirements and now suffers. The interest the veteran is paying for operating capital will negate all profit that he expected to earn on the contract. He stated he will never do business with the VA again.

And interestingly enough, just Monday, I received an update from this veteran who said that over the weekend, he sent an e-mail to General Shinseki asking for some assistance and on Monday morning, he received over 20 calls from VA staff who said they needed to report back to the Secretary by the close of business as to why he cannot get the receiving report done. Bottom line, though, he still has not received payment.

Another veteran doing business with VA is frustrated as he is currently working on two contracts with expiration dates of December 31st, 2009. The two contracts represent approximately \$6 million a year in revenue. To date, he has not been told whether VA intends to exercise any of the options. As you can imagine, this

causes great angst for the firm and its employees. Will they have a job come January 1st?

When the business owner inquires to the contracting office, he is told the contracts have been transferred to another contracting office. When he inquires to the new contracting office, he is told there is no contracting officer assigned and no knowledge of who the Program Office is.

When the veteran business owner inquires to VA's Central Office, he is told that the policy is to notify contractors within 60 days of expiration of VA's intent. Nice policy, but who follows it and where does the veteran small business owner go for assistance?

Another common practice at VA, which frustrates veteran small business owners, is VA's practice of advertising a request for proposal (RFP), having vendors incur substantial cost to submit proposals to VA, then VA cancels the opportunity and procures through an existing contract vehicle or enters into agreement with another Federal agency to award a contract for the same services.

The small businesses who submit the original offer did so in vane as now, because the VA's change of mind, they cannot bid on the opportunity.

NaVOBA members continue to be concerned about VA's overly restrictive interpretation of Public Law 109-461, commonly referred to as the Veterans First Contracting Program.

NaVOBA believes the provisions of P.L. 109-461 require VA to provide a preference to service-disabled veteran and veteran-owned small businesses for all goods and services the VA purchases. VA interprets the law's provisions to apply only to open market acquisitions.

As you know, VA spends a large percentage of its acquisition dollars using the Federal supply schedules. Therefore, service-disabled vets and veteran-owned small businesses are not provided a preference on much of what VA procures.

This in addition to VA's efforts to eliminate distributors and resellers from VA's Federal supply schedules, as well as VA's efforts to consolidate contracting opportunities under the guise of strategic sourcing makes selling to VA difficult for veteran-owned small businesses.

NaVOBA understands the Federal supply schedule is the preferred method of doing business, but we also believe that VA has responsibility to provide maximum practical opportunity to veterans on everything the VA buys.

On August 13th, 2009, VA Deputy Secretary Scott Gould hosted a supplier relation transformation forum. The Deputy Secretary is to be commended for hosting this event. The purpose was to hear from large and small vendors to the VA on what issues and impediments exist in doing business with VA. The forum was attended by over 100 people representing 82 vendors from most industries doing business with the VA.

There were many common themes that were expressed during that conference, all of which are in my testimony.

A suggestion NaVOBA would like to have VA consider is that the vendor community today is dynamic, enterprising, and inventive. VA cannot in the normal course of operating maintain ongoing op-

erations and also evaluate new technologies and opportunities to use new products and services to improve care to veterans.

The vendor community is frustrated as VA is reluctant to change. The VA is in our opinion missing opportunities as there is no mechanism to test new products in the VA environment.

We propose the VA establish an organization independent of day-to-day operations to test new products and services through trials, test programs, and field demonstrations to more rapidly bring technologies and solutions to VA's operation. Such an organization could pay huge dividends in caring for our Nation's veterans.

In summary, the VA must be more sensitive to the needs and concerns of the veteran community, especially the veteran small business community. Every VA employee should work in a small business for a period of time and understand the impact of their decisions and inactions on cash flow, retention of employees, bank's lines of credits, and the myriad of issues facing veteran entrepreneurs on a daily basis.

Again, I would like to thank the Committee for this opportunity to testify and look forward to answering any questions.

[The prepared statement of Mr. Denniston appears on p. 60.]

Mr. MITCHELL. Thank you.

Mr. Jimenez.

#### **STATEMENT OF ANTHONY R. JIMENEZ**

Mr. JIMENEZ. Good morning, Chairman Mitchell, Ranking Minority Member Roe, and Subcommittee Members. I greatly appreciate the opportunity to testify at this hearing regarding acquisition deficiencies at the Department of Veterans Affairs, and I am honored to represent other veteran-owned and service-disabled veteran-owned small business owners.

My name is Tony Jimenez and I am the President and Chief Executive Officer of MicroTech. MicroTech is a minority-owned and a certified and verified service-disabled veteran-owned small business. We are also a certified 8(a) small business and we provide information technology, systems solutions, design, installation of telecommunications and video telecommunications systems, as well as product solutions and consulting services.

I retired from the Army in 2003 after serving 24 years on active duty and started MicroTech in 2004. Today I employ over 400 great Americans in an era of layoffs and job cutbacks. MicroTech has become a powerful job creation engine and force for economic development in my community, in my State of Virginia, and in a number of other locations across the Nation.

This year, MicroTech was named America's number one fastest growing Hispanic-owned business. And just last week, our success was celebrated during the NASDAQ Closing Bell ceremony.

Since I first testified before Congress in 2006, MicroTech has grown 3,000 percent in gross revenue and is now a prime contractor on over 100 Federal projects and 14 indefinite delivery/indefinite quantities (IDIQs), blank purchase agreements (BPAs), and Government wide acquisition contracts (GWAC) contract vehicles and we are the prime on all 14 of those.

MicroTech manages over a half a million IT government users daily and provides products and solutions to over 30 government

agencies along with every branch of the military. We have repeatedly been recognized by trade groups, industry publications, diversity organizations as a leading small business that has notably succeeded at supporting the business of government.

MicroTech's exponential growth has led to recognition in a number of different areas, including the Deloitte Tech Fast 500. We were the number one communications and networking small business in the metropolitan area of Washington and Baltimore. We are the number one unified communications specialist according to CRN Magazine, the number one 8(a) business according to Washington Technology Magazine, and we are a Washington Business Journal fast growing company.

Like most veterans who retire from active duty, initially I had no idea what I was going to do when I retired and I knew I wanted to remain close to the fight and continue in some way to serve my country, but I was not exactly sure how to do that.

As an owner of a business that manages large-scale Federal projects, I now have the opportunity to use my unique military skills and expertise to help the Government reach its goals as well as my ability to continue to work closely with veterans and provide jobs to veterans.

My small business targets contracting opportunities based not only on our core competency but also on my opportunity to hire veterans, to hire service-disabled veterans, and to hire wounded warriors, and, more importantly, to give them jobs and perform the work, giving them a chance at a viable second career.

The unfortunate thing is that in the short 5 years I have been doing business with the Federal Government, I have discovered that opportunities for veteran-owned businesses and service-disabled veteran-owned businesses have been extremely hard to find. They are not abundant and they are definitely not as abundant as I assumed they would be.

In the last few years, I have noticed that the emphasis on increasing government contract opportunities for service-disabled veterans is improving, but we have still got a long way to go.

Our experience with the Department of Veterans Affairs regarding the 3-percent rule actually has been very positive. We believe that VA exceeds its service-disabled veteran small business prime contracting goals and will continue to do so and that they reflect a commitment from the top and across the Agency to do the right thing for veterans.

VA awarded 15 percent of its fiscal 2008 contract dollars to veteran-owned small businesses and 12 percent to service-disabled veteran-owned small businesses.

On December 8, the VA displayed their special commitment to veterans by finalizing a new set-aside contract program focused on veteran-owned small businesses, offering them a substantial advantage in VA business contract procurement.

Veteran-owned businesses and even prime contractors that propose using veteran-owned firms or subcontractors now receive special VA preference.

As the rest of the Government has failed to make the 3-percent rule a priority, there are currently no penalties to failing to meet Executive Order 13360 and very few incentives for meeting or ex-

ceeding the established standard. This lack of oversight makes it extremely difficult for agencies to realize the advantage of contracting with veteran-owned businesses and service-disabled veteran-owned small businesses.

There needs to be a significant improvement made to correct the systemic problems in current procurement systems and to add incentives for achieving the 3-percent goal. And I recommend the following steps:

I believe that contract bundling adversely impacts competition and hurts small business. The standard procedures for contract bundling require agencies to provide justifications for bundling decisions and have the decisions reviewed at higher levels.

Consolidate contracts so that small businesses can share in the benefits of bundling. And one of the things I have talked about in the past is that we as a small business have found that we have the ability to manage large contracts provided we partner with the right large contracting organization to large systems integrators.

However, many of the contracts that are presently being procured for do not provide an opportunity for a small business to be, for lack of a better term, the general contractor for the large opportunities.

We believe that placing more orders under small business GWACs would also be a success, particularly those like VETS, which is the Veteran Technology Service governmentwide acquisition contract, and the NASA SEWP contract, the NASA Solutions for Enterprise-Wide Procurement. Those are two excellent examples of contract vehicles that offer multiple award contracts with highly qualified service-disabled veteran-owned small businesses.

And I believe the VA has done an outstanding job of using those GWACs. Obviously it could be improved.

I also encourage the Small Business Administration (SBA) to proceed under the proposed rule making of RIN 3245 AF70. Thank you.

[The prepared statement of Mr. Jimenez appears on p. 62.]

Mr. MITCHELL. Thank you.

Mr. Hesser.

[Witness sworn.]

Mr. MITCHELL. Thank you.

#### **STATEMENT OF ROBERT G. HESSER**

Mr. HESSER. I wanted to make sure I was legal when I am talking.

Good morning, Chairman Mitchell, Ranking Member Roe, other Members of the Subcommittee, fellow veterans, and guests.

Let me first thank you for the opportunity to come before you today to share views on VA acquisition deficiencies and how this Subcommittee can help to increase contracting opportunities for veteran and service-disabled veteran-owned businesses.

I am the 1st Co-Chair of the Veterans' Entrepreneurship Task Force known as the VET-Force. My testimony today is mine and the VET-Force.

My Navy active duty was many years ago. With 22½ years, I was unexpectedly transferred to the disability retirement list as a Master Chief. I was given a check and sent home. At that time, I

could not work a full workday. This has happened to thousands of veterans. The VET-Force and its members want this practice stopped.

Public Law 106-50 and subsequent legislation and rule making has significantly improved the veterans procurement program. This testimony is aimed at the Veterans Administration and number one out of five areas is the Center for Veterans Enterprise (CVE).

CVE personnel are responsible for tasks that require tenfold the assets they now have. Many of their tasks cannot be completed in a timely fashion because they do not have the authority to complete them. In other words, they are frequently micro managed.

Twelve thousand veteran-owned companies desiring verification are waiting their turn. CVE was verifying 200 each month. I do not know what the recent figure is, but there is a lot to go.

Contracting officers in the VA: Not all contracting officers are required to follow regulations and rules. I mean that because the Veterans Integrated Service Networks (VISNs), every VISN is different. They are not always given authority commensurate to their responsibility.

Appropriations and budgets: CVE is a nonappropriated organization and exists only by the grace of the VA supply fund. CVE needs its own line item and significant increase of available funds.

VA General Counsel (GC): The VA has not complied with Public Law 109-461. The date of enactment was supposed to be 180 days and we are within 6 days of it being 3 years. And it does not look like they are going to go anywhere and get it done because they still have to get an agreement between the VA and SBA and that is not getting anywhere.

It is General Counsel's responsibility to ensure regulations are followed in a timely and accurate manner. The result of their ignoring 108-183, 109-461, and Executive Order 13360 is apathy and confusion throughout the VA acquisition community. Every VISN is different.

General Counsel's inaction has caused in some areas within the VA acquisition community derogatory feelings toward the VOSB Procurement Program. Lack of firm direction has been and is still today creating road blocks.

Vocational rehabilitation and employment, we have to have more counselors and money for them to operate. Our wounded warriors are now coming home and when they want to be self-employed, we send them to CVE. They have not had any counseling. So we need to hit that area as well.

Passage of the original concept of Public Law 109-461 was highly supported by the VET-Force and most veteran supporters. It is still supported by the VET-Force. The law is written for the VA.

One requirement is that the VETBIZ database be expanded using both VA and the U.S. Department of Defense (DoD) data. It also requires the VA to make VETBIZ available to the entire Federal Government to view the registrants within the database. It also states the VA will verify all VOSBs and SDVOSBs prior to awarding a Veterans Affairs contract.

Public Law 109-461 does not say that the VA's application of their 38 CFR 74 regulation was to be Federal Government wide.

That was not the original idea. As we understand of the Congressional staff and everybody else, it is “try the VA first.”

Both Public Law 106–50 and 183 direct non-VA contracting officers to accept self-certification. The Federal acquisition regulations (FARs) also require all contracting officers to practice due diligence prior to an award. Only those desiring VA contracts are to be verified by CVE.

VA’s present procedure is to verify the company and issue them a verification pin. The VA then enters in that company’s profile that they are verified.

When a VA contracting officer wants the award contracted SDVOB who is in a VETBIZ queue for VA verification, the contracting officer simply calls CVE and they rush it through. That is very good.

However, when an SDVOB in the VETBIZ queue submits a response to a non-VA, say Department of Labor, SDVOB set-aside request for proposal by a contracting officer who uses VETBIZ, the company not verified will unjustly be considered as not qualified to bid.

The VET-Force has recommended to the VA CVE that all VA verifications remain accessible only to VA acquisition personnel. The VA CVE has not accepted this recommendation. Not doing so is sabotaging the Service-Disabled Veteran-Owned Program.

The first step was the VA only. Then we were going to move off. The second step should have been all the way. We know of cases where a source went out from one Department, one other Agency. She got twenty applications, she went on the VetBiz Web site and found eight of them who had been verified. The only people who got a request for quotation (RFQ) were those eight people. That is wrong. Self-certification is the only thing to require until we get this ball rolling properly.

Thank you, sir.

[The prepared statement of Mr. Hesser appears on p. 66.]

Mr. MITCHELL. Thank you.

And I thank all of you for your testimony.

I have a couple questions, first of Mr. Amey.

There have been several discussions within the Subcommittee about the threat resellers and pass-through entities play in procuring Government waste and abuse.

Do you think this concern is justifiable and what should the VA be doing to mitigate this risk?

Mr. AMEY. It is very justifiable. And I believe last year in the Defense Authorization Bill, if it was not in the 2009 Bill, it was in the 2008 bill, tried to handle that issue with trying to limit pass-throughs, that if there is not value added through a subcontract, and I do not know exactly how they are going to monitor value added in that case, but at that point, then the subcontract opportunity should not be awarded.

I believe that is only DoD. So they are the types of improvements that we need to expand Government wide to hit all agencies to prevent pass-throughs and prevent someone from adding very little value added, but at the same time reaping profits from that procurement.

Mr. MITCHELL. Thank you.

And this question is for Mr. Denniston.

Why do you think the VA has a practice of advertising a request for proposal and then have vendors incur all, as you mentioned, all the substantial costs to submit the proposal only to have the VA cancel the opportunity and procure through an existing contract vehicle? It just does not make too much sense.

Mr. DENNISTON. My feeling on that, sir, is that there needs to be better acquisition planning. And the VA to their credit about a year and a half ago established a process called the integrated product teams, IPTs, where the goal was to get the program people, the contracting people, the small business people, and the General Counsel people together to actually plan acquisitions and know what the statement of work should be, what VA's needs are.

I think if that process was followed, I think we would not have the situations that we have got now where RFPs are requested and then canceled.

Mr. MITCHELL. So there is a policy?

Mr. DENNISTON. There is a policy in place.

Mr. MITCHELL [continuing]. To start following that?

Mr. DENNISTON. I think it needs to be followed more strictly, yes.

Mr. MITCHELL. Thank you.

And, Mr. Hesser, in your testimony, you discussed the displeasure with the VA's General Counsel Office. Specifically you mentioned inaction on the GC's part and the derogatory feelings toward the VOSB, and the SDVOSB procurement programs.

Can you elaborate on why you feel that these derogatory feelings are there toward the veterans and their businesses?

Mr. HESSER. I think first at VET-Force, we deal only with procurement, so we are supported by all the other organizations. So we get a lot of information. And if somebody has a hard time, they will call us. And sometimes it's not too good because it takes a lot of my time.

But we have a case where a very senior individual in the Veterans Administration has told a client who is a vet who is trying to get business there, well, the contracting officers do not like you. And the program, they do not like this program, so do not waste your time literally. And I would be willing to share that, but I do not think it should be done publicly.

We have other cases where the service-disabled veteran has tried to go in, this was maybe as long as 5 or 6 months ago, and tried to sell a product that they did not manufacture. They represented the company, but they used that product to make their business services, et cetera. And they were told that, no, we want to deal directly with the manufacturer. We do not want to deal with the dealer.

Now, most of that has been cleared up because several organizations went in there screaming. But that is strictly against the law, but they do it anyhow.

General Counsel has in many cases made policy directions that are not there. They came out with 38 CFR 74 and it was supposed to be their rule of thumb of going. Now General Counsel is aware of it. CVE is, in fact, saying that you cannot be a service-disabled veteran-owned small business on a part-time basis because you are not fully in control of it.

Like most veterans start in their house. Of course they work for somebody else to make some money and then work their way into the business.

They also say that you cannot own two businesses. And there are cases where we have individuals do that. We have one individual who has two companies because one is very highly tech with doctors and master's degrees and one is not. They are general services, secretaries, et cetera, he provides. He has two separate cost differences there for his labor, so he has to have two. He has been doing it for years.

The General Counsel sticks their head in places and they allow things to happen that they should not be doing. The law is the law. A rule is a rule. And to make that law, rule and everybody tries to follow by it and they do not do it. And, yes, we have some cases we will be happy to discuss.

Mr. MITCHELL. Thank you.

Dr. Roe.

Mr. ROE. Thank you, Mr. Chairman.

And thank you all for testifying and thank you all for your service to our country.

And I just have a couple of comments to start with and then some questions.

I guess the problem I am having with this is that we have hard-working American citizens out there every day, veterans included, and we have disabled veteran businesses, and we have other veteran businesses.

And my job back home in Tennessee before I came here was Mayor of our city, the largest city in our district. And I know it is not a lot of money for Washington, but over the last 6 years, we managed about \$1 billion, a little short of \$1.5 billion.

And we would have projects, and we are talking about \$100 million water and sewer projects. We are talking about building tens of millions of dollars for schools, roads, all the things that local Governments do. It was a very transparent, clear process about how the taxpayers got value for their tax dollars.

If we had an RFP or we had a contract, it was a sealed bid and the lowest bidder meeting all the specifications of that project got the project. It was a fairly quick process. And I would think that the VA, we know the rules for the veteran-owned small businesses and the disabled veteran businesses, and they should have every access to that business.

Master Chief, I agree with you completely. It ought to be transparent. It ought to be easy to do. So that is one of the parts as I read this material last night that was disconcerting to me was that there seems to be a lot of at least, I will not say fraud and abuse, I will say inefficiencies in this system that is wasting a lot of money and is incredibly slow to get done.

And I think this bill that Congressman Buyer has, and I am a cosponsor, will address some of these things. And I would suggest that other Members here take a very close look at it, to have someone who is responsible.

As you said, these veterans are getting the run-around. They are running in a circle. They go here and they are told to go there and they are told to go there and finally they just quit.

And I am sure, Mr. Jimenez, you have probably faced that in your business and I am sure you will share some of that frustration with us.

And, Mr. Amey, on page three of your, on the POGO, on page three of your written testimony, you stated that 54 percent of the contract dollars were listed as not identified.

And are these miscellaneous obligations or are these additional obligations that have not been categorized into some form or does anybody know where the money is?

Mr. AMEY. I hope someone knows. But you do not know. Federal procurement data has always had major data errors in it. You do not know if it is just a problem with the acquisition workforce with not pulling down the right pull-down screen in data entry or if they do not know what type of competition it really was. And that is the problem.

That is the first time in going through a lot of procurement data that I have ever seen half of the pie chart that has been filled in black with unknown amount. And, you know, when it is \$8 billion, that is a lot of amount to kind of have unknown. And it is something that we need to get down to the bottom of.

And that is why the full and open competition number is low. You know, in the normal Federal Government, that number averages about 60 or close to 70 percent. Here it is in the twenties. You know, I am not saying that there is all kinds of waste, fraud, and abuse going on—

Mr. ROE. Right.

Mr. AMEY [continuing]. As far as the extent of competition goes, but without even knowing. And in the data, it is kind of funny because it says like searching for the answer or something like that. Like it is very user friendly, like public, you know, language in it, but that was the same information and tag line they had for the 2008 data as well as the new 2009 data. So it does not seem as if they have righted the ship.

Mr. ROE. I can assure you in my business that I ran, which was a medical practice, that there was not any miscellaneous obligation and I did know where the money was going. And I think most businesses know because either—if they do not know, as Mr. Jimenez will tell you, you do not have a business. You go out of business.

Mr. Jimenez, what criteria did MicroTech have to fulfill in order to become certified and verified as a service-disabled veterans-owned small business? I would like to hear that.

Mr. JIMENEZ. Sir, I do not recall the number of the form, but we filled out a form. All the partners had to sign. All the partners then submitted it along with the documentation required which I believe was proof of 51 percent ownership or more by myself, as well as day-to-day control by myself, as well as my service-disabled veteran status, as well as the other documents required. And it was submitted. It was not a smooth process initially.

In fact, at the time, Mr. Denniston was still employed by the VA and we were hoping we got it done early and we were hoping it would come back. And they were actually very thorough and came back and asked some additional questions and gave us some additional guidance and we got it in.

And we did not experience the problems that other folks are experiencing. But I suspect it was because we were one of the early ones and we heard about it and we got out and got it done.

Mr. ROE. How long a period of time was that?

Mr. JIMENEZ. It probably took us about 2 months.

Mr. ROE. Okay. Thanks very much.

I yield back my time.

Mr. MITCHELL. Thank you.

Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman and Ranking Member.

And thank you all for being here and sharing and help us understand this.

Twofold responsibilities, and I do not think there is probably anything more important that we do here, looking out for the taxpayer dollars and making sure that every dollar that is allocated for our veterans ends up with our veterans.

So this problem at the end of the day ends up being any misspent dollars one less that is going to the care or to creating jobs for those veterans. So this is a really, really important issue.

Mr. Amey, in your written testimony, you talked about a call for a comprehensive review of the VA procurement system. One of the things I found in my short amount of time here in 3 years is we do a lot of those.

And I just have a list here of studies on procurement and acquisition over the last couple of years, an audit of VA medical center procurement of medical prosthetics, audit of Veterans Health Administration (VHA) major construction contract, evaluation of Veterans Benefits Administration of vocational rehabilitation contracts, audit of veterans' procurement of desk-top computer models, on and on and on and on.

What makes you and especially us believe that we have learned anything from this if we are still here today?

Mr. AMEY. Well, I think it is a matter of the procurement system has changed dramatically throughout the years. The dollars spent have dramatically increased. You know, you have gone from an agency in fiscal year 2000 that was about \$3 billion to now over \$14 billion in 9 fiscal years. So that increase far exceeds the Federal contract dollar increase that has gone from \$200 billion to \$530 billion in that same time frame.

At the same time, through tweaks in the contracting system, there has been new contracting vehicles and mechanisms that have been thrown at the contracting officers and the acquisition workforce overall, program staff that have changed as well.

Services now outpace goods. So when you factor all those things in, the procurement system and acquisition continually changes. And at that point, we need to know what we are buying and how we are buying it. They are the two big questions.

And at that point, if there are things that we are outsourcing as far as services go, that may change from the previous studies that have been done that we need to take a look at now.

Mr. WALZ. And I am going to go further in here. You talk about reversing the VA trend toward contracting out services to direct hiring a little bit. You talk about that.

I want to know what role in this that I am very, very appreciative of and they are going to speak here in a little bit, it may go to them, the Office of the Inspector General, it seems to me that we saw a systematic reduction of OIG staff and budgeting at the same time we saw outsourcing of contracts at the same time we saw lost dollars.

So my question in this is, is, yes, the VA can do better, but there is a partnership in inefficiency that works to the private sector also. Can you address that?

Mr. AMEY. Certainly. Yeah. I think contractors have a role in this as well. I think it ends up being, you know, the agencies, the program staff, the acquisition staff, then it is the administrators of the contracts, the oversight staff of the contracts, but it is the contractors as well.

A good contractor is going to say, hey, there is inefficiency, there is waste. We could do this better. And I do not know if those incentives are always built into either the contracts or in the business models for them to come forward with that type of information.

Mr. WALZ. But you think some of this could stay in-house—

Mr. AMEY. Certainly.

Mr. WALZ [continuing]. To be more efficient?

Mr. AMEY. Certainly. And that is where I do not know at what level, but I think the Department of Defense is doing it right now, the Department of Homeland Security is doing an audit of all its service contracts to see what have we outsourced as far as the service go and should we bring those in-house. It may or may not be—

Mr. WALZ. But we do not know where we are saving money. There has been some outsourcing that has absolutely saved us money it would be your opinion and some that has not?

Mr. AMEY. Certainly. I am not saying that we cannot outsource, you know, certain services. But at some point, we have to take an audit of those services that we have outsourced and say can we do this cheaper in-house, does it fringe on an inherently governmental function that we want performed by a Government employee rather than a contractor employee and, therefore, bring those in-house. At that point, these are the contractors that—

Mr. WALZ. That is what I was going to say. I want to make sure that these folks, Mr. Jimenez, and thank you for your service, all of you, but this is the type of story we want to hear. We want to make it as easy as possible. We want to make sure you are providing the right services. We want to make sure you have competed out there and won rightfully so.

If we study this and we increase the oversight through the OIG, you are convinced we can do this better and not add your study to the list, to page four?

Mr. AMEY. I think it would be a mix. I think it would be a mixture of studying what is currently taking place, what we are contracting for, how we are contracting for it to make sure we are doing it as efficiently as possible and, if not, bring some of those jobs in-house, you know, hire contractors to do some of those jobs. It is going to be a mixture of all of them.

Mr. WALZ. Okay. I yield back, Mr. Chairman.

Mr. MITCHELL. Thank you.

Mr. Buyer.

Mr. BUYER. Thank you very much.

Sergeant Major, there is a reason we love you. There is no reason you should not be on this legislation. Okay?

Mr. WALZ. We will talk.

Mr. BUYER. So you are going to have to tell me why you are not on it. We will do that at the next vote, okay, because you cannot do that type of statement and you cannot do that line of questioning without embracing what is in this bill. So if there are some things that you are looking for, please, we will develop your thoughts further, okay, because you were right on.

One of the questions I have, have any of you seen the legislation that has been introduced? Have you seen it?

Mr. AMEY. No.

Mr. BUYER. No?

Mr. AMEY. Not in detail.

Mr. BUYER. Well, I will tell you what. We will make sure we get it to you. And for the record, if you can submit your responses to it or if you have other recommendations.

[The witnesses provided responses to Mr. Buyer's request for comments on H.R. 4221, the "Department of Veterans Affairs Acquisition Improvement Act of 2009," which appear on p. 101.]

Mr. BUYER. In response to the Chairman's opening question, Mr. Amey, you made comments about the resellers and actions that DoD had taken. We attempt to cover that.

Back in 2006 when we passed the law and creation of the database and we go into the verification process, you know, it is our hope, we always do this, sometimes we create our legislation and we want departments and agencies then to develop it further.

Sometimes our constituents will ask how come you just introduced a 2,000 page bill. And it is because sometimes we express our intent, but if we really want to, we tell them exactly how to do it.

And so sometimes we sort of back off and so when we talk about putting together a database and for a verification system, we assume, you know, that actually that verification is going to be done in a manner and we do not assume that it is going to be self-verification.

I mean, we get involved in this stuff all the time, so I do not want to be too hard on the VA. I mean, we get in really nasty battles here in Congress on verifications for immigration issues and qualification of benefits and whether they should show an ID or not an ID.

So, Mr. Jimenez, I appreciate you talking about what you had to go through, but obviously something is not working here.

So, number one, we have got the verification issue and we are going to address that further in the legislation. The other is on resellers.

And we have actually put it into the language that the Secretary may not include in the database a small business concern that is the vendor of a commercial item unless the concern is the manufacturer or a regular dealer of the item. And then I give some discretion to the Secretary specifically that provides for waivers for such requirement.

What is your initial reaction to that?

Mr. AMEY. Well, first, I spend a lot of time making public comments to Federal regulations and as they trickle down through the regulatory process, they do not always meet the intent or the mandate that Congress, you know, had in the actual bill and the legislation, the law. So it is not the first time that I have heard this.

It sounds from what I have heard like a worthwhile provision. Too many times I am contacted by third, fourth, and fifth tier subcontractors that are doing something for a prime and it raises many legal issues, who you hold accountable if you are not getting paid, you know, what type of service are you offering, what is the value added, the debundling question that, you know, I had mentioned in my testimony and someone else on the panel had mentioned. Can we break those contracts apart to try to go to those contractors right off the bat rather than having them delegated to a third or fourth tier subcontractor?

So at that point, it sounds like it is a worthwhile provision that will cut out some red tape and it will also provide better benefit probably to the Government.

Mr. BUYER. Mr. Denniston, in your testimony on page three, you mention about the 54 percent of the contract dollars were listed as not identified.

Mr. DENNISTON. That was—

Mr. BUYER. Oh, I am sorry. Was that you?

Mr. AMEY. That was in my testimony.

Mr. BUYER. Okay. I am sorry. Are those miscellaneous obligations?

Mr. AMEY. I do not know. All it is is a list of contract, extent of competition, so it is not by goods or services being provided. It was only by was it full and open competition, limited competition, sole source, one bid, follow-on contract.

So to me, it is very high, 54 percent. I have never seen that pie chart configured in that method. And it would be something that I think people would want to get down to the bottom to is how is that actually done. It seemed odd that for 2 fiscal years, the VA has a very high percentage of unknown in its extent of competition listing.

Mr. BUYER. How will the VA be successful to break the game, the procurement game that is done in this town, that I will just find a front, I will find someone who is a minority service-disabled veteran and I will get a bid on that contract and I am going to use them as the front for the bid and I am the sub and we do the pass-through? And it is a game, a procurement game that goes on in this town. And when that happens—sir?

AUDIENCE. Bar him.

Mr. BUYER. Who said that? I welcome your recommendation.

Let me ask the panel, though. Give me some ideas here on how we end this game in this town because we are squeezing out legitimate business concerns when that happens. Yes?

Mr. JIMENEZ. Sir, I would like to address this. My name is Tony Jimenez.

I think what you need to do, sir, is you need to insist that the contracting officer do due diligence. I mean, if a contracting officer gets a contract and signs a contract and never talks to the con-

tractor, never explores the viability of a contractor to make the determination whether this is a one person, what we like to affectionately call trunk slammers, shame on the Agency for allowing that contracting officer to do that. That is working in a vacuum and not being able to actually attest to the fact that this is a bona fide company.

And we were approached, and I had a discussion prior to sitting down at the panel about the exact same thing, we were approached and continue to be approached to do just that. And the problem with doing just that is I am in business to be in business. I am not in business to make money and take it and go retire. I am already retired.

What I am in business to do is to hire veterans, to hire service-disabled veterans, to create jobs, and to build a business that can be a legacy for other service-disabled veterans.

And when you find companies that are willing to do that, and Mr. Hesser and a number of other organizations are out there to assist in identifying quality businesses, it is then a requirement of the contracting officer and being a former Government contracting officer to make sure that you are giving a contract to somebody that can do what they say they can do and not pass it through.

The contracting officers in many instances unfortunately do not look past the signature. They do not do the due diligence required to ensure that the contract that they are giving to a contractor is, in fact, a viable contract between the Federal Government and somebody that can accomplish the work.

And we write a lot of legislation and we do a lot of things and I think right now we have got more than enough legislation. The problem is there is nobody enforcing it. Nobody is saying shame on you, do not do that, go to jail, shame on you, do not do that, you are out of business, shame on you, go to jail, go be debarred, cannot compete anymore. We continue to come up with more legislation and more ways, but nobody is enforcing them. Nobody is saying enough.

We have now got the GAO report that says guys are out there passing themselves off as service-disabled veterans. Everybody goes, ah, but then nothing is done.

Mr. BUYER. Right. Yes.

Mr. AMEY. And if I may, it does end up being a market research question. I go to a lot of conferences where businesses tell how they procure goods and services and we always talk about best practices and stealing best practices from the private sector. And that is one where they do do their due diligence. That is where they have more requirements as far as down select and getting attractive contractors in, getting bids in, doing the market research that they need to do.

The Federal regulations say contracts are supposed to be awarded to responsible contractors only. Well, that is having the proper finances, the skill, performance. One of those factors is also a satisfactory record of integrity and business ethics.

Well, until last year and it is forthcoming, there was no benchmark to make a determination as far as responsibility for a contractor's level of performance, integrity, and business ethics. There

is soon to be a Federal database, but it will not be publicly available.

And, unfortunately, the two gentlemen in the front may be able to see it, but no one else or no other Members will. It is going to only be seen by Chairmen and Ranking Members with jurisdiction to be able to even see the type of data that is in that integrity and performance database.

Mr. BUYER. Well, when you bring up business integrity or ethics, if, in fact, the business community recognizes that the VA itself is not going to enforce nor bar particular businesses or blacklist them and no one is going to know, then it opens the door for the unscrupulous ones. And it is kind of what is happening here in this town. I do not want to say that is the standard, but we all sort of know.

I mean, how many lobbying firms are out there in this town who make money off of, well, okay, if you want to bid in this particular contract, let me set you up with this particular company because, you know, they will go ahead and make the bids for you. And it is a procurement game.

And when I look at that, and it has really bothered me inside, it has bothered me because it really squeezes out, Mr. Chairman, the legitimate disabled veterans who want a business enterprise.

And legislatively, and that is why I want to work with everyone on the Committee, if we can sort of break that, we can break that mold and allow the VA to make sure that these contracts are awarded to the right person, to the right business entities, and let us stop this game that is being done in this town, I think we will make leaps and bounds of improvements.

I yield back.

Mr. MITCHELL. Thank you.

And I want to thank again the panel for coming and sharing your information and your insight.

Before I dismiss you, I would like to extend our deepest sympathies to Joe Wynn who joins us in the audience today for his recent loss. Joe Wynn was going to be a part of the panel if one of the other panelists could not show up.

As a strong advocate for veterans and veteran small business owners, his advocacy through the years has provided the Committee with insight on how we can improve the lives of our Nation's veterans. Joe has worked tirelessly over the years on behalf of millions of veterans and has been a strong voice in the veterans service organization advocate community.

Thank you for your hard work and we look forward to working with you in the new year. I know that everyone was with you in spirit during the funeral service at St. George Episcopal Church. Please accept our condolences in the loss of your mother who was laid to rest yesterday at Lincoln Memorial Cemetery. And thank you very much.

And this panel is excused.

I welcome Panel Two to the witness table. And for our second panel, we will hear from Kay Daly, Director of Financial Management and Assurance at the U.S. Government Accountability Office; Greg Kutz, Managing Director of Forensic Audits and Special Investigations, U.S. Government Accountability Office; and Maureen Regan, Counselor to the Inspector General, Office of Inspector Gen-

eral, U.S. Department of Veterans Affairs; accompanied by Belinda Finn, Assistant Inspector General for Audits and Evaluations.

And, again, I would like to remind all those who are speaking if they could keep it within the 5 minutes because we are going to be interrupted back and forth for votes.

First I would like to recognize Ms. Daly.

**STATEMENTS OF KAY L. DALY, DIRECTOR, FINANCIAL MANAGEMENT AND ASSURANCE, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; GREGORY D. KUTZ, MANAGING DIRECTOR, FORENSIC AUDITS AND SPECIAL INVESTIGATIONS, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; AND MAUREEN T. REGAN, COUNSELOR TO THE INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY BELINDA J. FINN, ASSISTANT INSPECTOR GENERAL FOR AUDITS AND EVALUATIONS, OFFICE OF GENERAL COUNSEL, U.S. DEPARTMENT OF VETERANS AFFAIRS**

**STATEMENT OF KAY L. DALY**

Ms. DALY. Thank you, Chairman and Members of the Subcommittee. I would like to thank you for the opportunity to discuss the Veterans Health Administration's use of miscellaneous obligations.

My testimony today summarizes the results of our September 2008 report that focused on how VA used miscellaneous obligations during fiscal year 2007 and whether VA's policies and procedures provided adequate controls over their use. I will also discuss the status of VA's actions to implement the recommendations contained in our report.

On the first topic, VHA recorded over \$6.7 billion in miscellaneous obligations during fiscal year 2007. These miscellaneous obligations were used for a variety of mission-related goods and services, things such as fee-based medical services, drugs, medicines, hospital supplies, transportation of veterans to and from medical centers, and logistical support for VA's medical centers nationwide, including rent and utilities.

The results of our audit work over fiscal year 2007 miscellaneous obligations found that VA's policies and procedures did not provide adequate controls over the use of them. Without effectively designed controls, VA is at increased risk of fraud, waste, and abuse, including the risk of unauthorized procurements, overpayments for services, and conversion of Government assets for personal use without detection.

Specifically, although existing policies required contracting officials to review miscellaneous obligations, there was no guidance as to how such reviews should be carried out and documented.

With regard to segregation of duties, the policies and procedures for miscellaneous obligations did not prevent one individual from being able to perform multiple roles in authorizing and executing miscellaneous obligations.

Finally, regarding documentation, VA's guidance did not require key pieces of information to be included on the authorization form.

These systemic design control flaws were confirmed in 42 case studies we conducted at three locations. Our case studies demonstrated that there was a lack of documented oversight by contracting officials in all of the 42 case studies we examined. Inadequate segregation of duties occurred in 30 of the 42 case studies and supporting documentation was not complete in many of these cases.

For example, crucial descriptive information was not included in the purpose field for eight of the case studies. The vendor name was blank for 20 of the case studies and the contract number was not provided in 16 of the case studies.

Without basic controls over the billions of dollars in VHA's miscellaneous obligations, VA is at significant risk of fraud, waste, and abuse. Effectively designed internal controls act as the first line of defense in preventing and detecting fraud and help ensure that an agency can effectively meet its missions and goals, comply with laws and regulations, and provide reliable financial information on its programs.

VA has issued new guidance on the use of miscellaneous obligations in January 2009 aimed at addressing our recommendations. VA's actions are an important step. However, full and effective implementation of these new policies and procedures will be even more important.

We have not yet fully evaluated the extent to which VA's new policies and procedures are in place and operating as intended.

Chairman Mitchell and other Members of the Subcommittee, this completes my prepared statement and I would like to thank you for holding this hearing today. It is important that hearings such as this be held to shed important light on these topics and to help address the problems that are there.

I would be glad to answer any questions you or other Members have at this time.

[The prepared statement of Ms. Daly appears on p. 68.]

Mr. MITCHELL. Thank you.

Mr. Kutz.

#### **STATEMENT OF GREGORY D. KUTZ**

Mr. KUTZ. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to discuss the Service-Disabled Veteran-Owned Small Business Program.

This program honors service-disabled veterans for their incredible service and sacrifice by providing contracting opportunities.

Today's testimony highlights the results of our investigation into allegations of fraud and abuse in this program. My testimony has two parts. First I will discuss cases of fraud and abuse and, second, I will discuss fraud prevention controls.

First we received over 100 allegations of fraud and abuse in this program. I will note that we stopped counting when we hit 100. From these allegations, we investigated ten cases which often included a number of affiliated firms and joint ventures. These ten case studies received \$100 million of service-disabled sole-source and set-aside contracts using various fraudulent schemes.

Two key program eligibility requirements include, first, the firm's day-to-day operations must be controlled by the service-dis-

abled veteran owner and, second, the firm must perform 15 to 50 percent of the work itself.

Cases that clearly did not meet these requirements include, first, a firm that subcontracted 100 percent of its work at a VA hospital to an international corporation headquartered in Denmark with annual revenues of \$12 billion.

Second, a construction firm with no assets and no employees passing through VA contracts to ineligible firms. The owner of this shell company lived 80 miles away and managed a restaurant in another city.

And, third, a firm whose owner was a full-time employee for the State of New Jersey. His shell company serves as a pass-through for five ineligible firms located at the shell company address.

[Slide]

Mr. KUTZ. What is discouraging about many of these cases is the contracting officials are actively involved. For example, the monitor shows the VA hospital in Palo Alto, California, where 100 percent of a \$6 million contract for janitorial services was subcontracted to the Denmark firm that I just described.

The monitor also shows a picture that we took 2 weeks ago of one of the vans with a Denmark firm logo parked at the hospital. It is clear that in pass-through cases like this, contracting officials know exactly who is performing the service.

Moving on to my second point, there are no effective fraud prevention controls in place for this program. For the most part, this has been a self-certification program. As was mentioned, the Veterans Administration is in the process of setting up a process to validate the eligibility of firms looking to do business with the VA. However, two of the fraud cases that we investigated have been certified through this process.

[Slide]

Mr. KUTZ. The monitor shows a screen shot for one of the certified firms in VA's database. Notice the VA seal of approval. This is actually the California firm that I just described. Contrary to program requirements, this is a shell company that passes through work to ineligible firms across the country. We found despite having only five employees, they have received 33 service-disabled sole-source and set-aside contracts for over \$7 million.

In conclusion, for just ten cases, we identified \$100 million of fraud and abuse. This multi-billion dollar small business program has no controls and no consequences for the few that are caught cheating. Unfortunately, the victims of this fraud are legitimate service-disabled veterans that play by the rules.

I look forward to working with this Subcommittee and VA to eliminate fraud and abuse from this important program. Mr. Chairman, that ends my statement and I look forward to your questions.

[The prepared statement of Mr. Kutz, and referenced slides, appear on p. 76.]

Mr. MITCHELL. Thank you.

Ms. Regan.

#### STATEMENT OF MAUREEN T. REGAN

Ms. REGAN. Thank you. Mr. Chairman, Members of the Subcommittee, on behalf of the Inspector General, I would like to

thank you for the opportunity to testify on the findings of the Inspector General relating to the VA's procurement processes.

I am accompanied today by Belinda Finn. She is our Assistant Inspector General for Audits and Evaluations.

As you are aware, procurement is and has been one of VA's major management challenges. We believe the nature and broad spectrum of our work on procurement provides us with a unique nationwide perspective on VA's practices.

For example, from an operational standpoint, our oversight of VA's procurement activities is through our audits, investigations, reviews, and inspections. These can be proactive or they can be reactive from complaints through our hotline, Congressional inquiries, and other referrals.

In addition, our operational work over the last 5 fiscal years had 35 reports addressing some procurement issue and resulted in a cost savings or potential cost savings of \$112 million. I think also during the last 6 years, we did specific reviews of procurement failures showing that VA lost over \$650 million from failed procurements.

In addition, under a memorandum of understanding with the Department, we have an Office of Contract Review. This group is responsible for conducting pre- and post-award reviews of contracts awarded by VA's National Acquisition Center or other entities under the direction of the Office of Acquisition, Logistics, and Construction. And these would all be noncompetitive contracts.

We also conduct pre-award reviews of proposals for health care resource contracts to be awarded on a sole-source basis to VA affiliated universities and medical centers. In the past 5 fiscal years, we have issued 424 reports to contracting officers under the memorandum of understanding.

Our pre-award reviews have identified \$1.54 billion in potential cost savings if a contracting entity negotiates what is recommended as a fair and reasonable price. Of this amount, \$166 million related specifically to health care resource contracts awarded by VA medical facilities.

Our post-award reviews have resulted in the collection of more than \$115 million which has been deposited in VA's supply fund.

Across the board, our work has identified systemic issues that caused or contributed to procurement failures, overpayments, and misuse of funds. These systemic issues include poor acquisition planning, poorly written contracts, inadequate competition, inadequate price reasonableness determinations, and poor contract administration.

We believe the decentralized organizational structure for procurement and activities in VA as well as inadequate oversight and accountability are primary factors contributing to the systemic problems.

As we have testified in previous hearings, VA procurement is so decentralized that on a system-wide basis, VA cannot identify what it bought, who it bought it from, whether the products or services were received, or whether the prices paid were fair and reasonable.

Data systems such as VA's electronic contract management system and the Federal procurement data system should provide accurate information relating to procurements. However, we have found

through our work that both systems contain inaccurate, incomplete information and cannot be relied upon.

Because we do not have a reliable system-wide inventory of contracts, we have had to develop techniques in order to identify contracts for our reviews. For example, if we are looking at how many contracts were awarded to a particular vendor, we may actually have to—we have actually had to go to each medical facility to be included in our review and ask them to produce the contract. Even then, we are not sure that we have an accurate accounting or that we have all the documents in those contracts.

If we have a review going on about a specific type of product or a specific service and how much did VA buy of that product, we actually have to go to the vendors with a subpoena and ask the vendors to provide us with sales transaction information. We cannot get that information from VA.

We have identified the procurement process as three steps involving three groups of individuals. There is the planning, there is the solicitation, negotiation, and award, and there is contract administration. The three groups responsible for this are the Program Office, the contracting entity, and legal counsel. We found problems at all steps in the process and by all three individuals and these problems have led to contract failures.

We recognize that VA has and is taking action to improve its procurement activities. For example, the recently established Acquisition Academy in Frederick, Maryland, provides training needed to develop a more robust acquisition workforce.

The Technology Acquisition Center in New Jersey will consolidate VA's IT acquisitions and will provide the staff with the training and expertise needed to conduct complex IT acquisitions.

Overall, there is minimal oversight of VA procurement activities, particularly at the facility level. Oversight is necessary to identify both deficiencies and best practices.

As noted, the Department has with the memorandum of understanding, we conduct oversight over the large contracts awarded by the National Acquisition Center. One of the effects of the oversight is a deterrent to industry.

Over the last 5 years, out of 164 post-award reviews that were conducted, 97 or 56 percent were the result of vendor voluntary disclosures. You would not have these disclosures if we did not have an oversight program where we go out and look at it on our own initiative.

We also believe that ineffective oversight resulted in or could have prevented some of the criminal conduct and our criminal investigations. We had 254 criminal investigations with 110 arrests during this time period. A lot of that could have been prevented with effective oversight.

This concludes my oral statement and Ms. Finn and I would be happy to answer any questions.

[The prepared statement of Ms. Regan appears on p. 91.]

Mr. MITCHELL. Thank you very much, all of you. Very revealing here.

The first question I have of Ms. Daly is, you stated in your testimony that VA has designated new policies and procedures to ad-

dress the recommendations in your report and miscellaneous obligations.

In your opinion, has the VA taken adequate steps to address those recommendations?

Ms. DALY. Mr. Chairman, I think VA has taken the important first steps by issuing policies and procedures aimed at addressing this. I am concerned in that some of the system patches and other steps they have taken are not as effective as they could because—let me give you an example of that.

VA has put in a patch that identifies whether or not someone with incompatible duties are performing those duties instead of putting in a patch that prevents that person from performing it.

To make it simple, they are doing it so that they detect a problem instead of preventing a problem. And I think that there could be other ways they could try to address that.

Mr. MITCHELL. I think you mentioned they put in some policies or procedures. That is just about what Mr. Buyer said. We have passed laws, but if there is no follow-up or accountability, what good is a policy or procedure if no one is doing it.

Mr. Kutz, one of the key things you have brought to our attention today was the report, which you prior issued a report by fraud of the SDVOSB Federal contractors and potential involvement of Federal contracting officials.

How vulnerable is this program to fraud and kickbacks and collusion with Federal contracting officials?

Mr. KUTZ. It is very vulnerable. For the ten cases we had, we have no specific allegations of that. But when you look at some of these cases, the actual contracting officials were well aware of what was going on in the beginning and, in fact, in some cases, there is evidence they helped arrange the front company to pass the work through.

So given that these front companies are taking a cut and then passing through work to large businesses, is there an opportunity for the contracting officials to get a cut of that money? Absolutely.

Mr. MITCHELL. And how widespread do you feel this is within this program?

Mr. KUTZ. I cannot really say except that we did get over 100 allegations. We are continuing to get allegations. There was a hearing we had on the Small Business Committee several weeks ago and now you are having this hearing. We will probably get a new batch of allegations coming in after your hearing today. So indications are the ten cases we have are just the tip of the iceberg.

Mr. MITCHELL. And the ten cases that you did investigate with the \$100 million of services, since you have finished your investigation, is there any indication that these firms are continuing to receive Federal contracts?

Mr. KUTZ. Yes. Not only that, they are getting service-disabled sole-source and set-aside contracts. And, in fact, it appears in the last month that the company that was the front for the furniture transaction at MacDill Air Force Base was certified by VA through their process that we have described today.

Mr. MITCHELL. So they are still operating?

Mr. KUTZ. Yes.

Mr. MITCHELL. You also mentioned that the SDVOSB firm that has no employees or assets, received a \$900,000 contract for the furniture design in Tampa.

Has this firm been certified or verified by the VA for eligibility?  
[Slide]

Mr. KUTZ. Yes. In fact, I want to show you the firm actually. On the right, there is the firm. It is the individual's house. He is a full-time employee at MacDill Air Force Base. So hard to believe he can control the operations when he is at MacDill. And that picture on the left is actually the mailbox and this is the firm that it appears was certified by VA in the last month or so.

Mr. MITCHELL. Can you tell me, this transaction was referred to as a double pass-through, what do you mean by double pass-through?

[Slide]

Mr. KUTZ. If you look at the picture, I have a slide that kind of shows this that we have used, there are two companies that were middle companies that took a cut of this \$900,000 contract. The first one was the one that I just showed you that was the individual's house. He worked at MacDill Air Force Base.

The second company was a furniture dealer that his wife worked at. They passed it through both of those companies who each took a cut. And then the final company that got this was the furniture manufacturer that you see on the far right there.

So there are two companies that took a cut before the actual company that did the work took it. So that would be something we would call a double pass-through here.

Mr. MITCHELL. Looking at this and the person who in this particular case, do you think this employee has a potential conflict with the MacDill Air Force Base?

Mr. KUTZ. Yes, I would say so. And we have referred that case to the Air Force Office of Special Investigations to look at. Like I said, he worked full-time at MacDill Air Force Base. He knew people in the procurement community. They knew who he was. And it was very clear it was a front company to pass through work to the furniture installer and dealer.

Mr. MITCHELL. Let me ask, because this person got the bid, did you know of any work that other people who bid on this, were there other people who bid on this that did not get it?

Mr. KUTZ. Yes. And, in fact, they filed a protest.

Mr. MITCHELL. I still have some time.

Ms. Regan, in your opinion, what are the three biggest problems with the VA's acquisition process?

Mr. BUYER. Mr. Chairman?

Mr. MITCHELL. Yes?

Mr. BUYER. I am sorry. Do we know the result of the protest?

Mr. MITCHELL. No.

Mr. BUYER. Is it all right if we ask that?

Mr. MITCHELL. Yes, sure.

Mr. KUTZ. It was ultimately withdrawn, but it was initially protested.

Mr. BUYER. All right. Thank you. Thank you.

I am sorry, Mr. Chairman.

Mr. MITCHELL. No, no.

Mr. BUYER. I thought it was important to know.

Mr. MITCHELL. Ms. Regan, what are the three biggest problems with the VA's acquisition process?

Ms. REGAN. In the process itself, there are problems at each step in the process. Poor acquisition planning; the purchasing entity does not know what they want. They do not want to define their needs.

We see a lot of open-ended contracts. Just give me labor hours and I will order off the contracts. I think that was one of the problems with the computer incident reporting capability, the CIRC contract.

One part of it was IDIQ, indefinite delivery, indefinite quantity, and they ordered 10 years worth of services against it in 2 years. So they ran out of money. They do not know what they want. They do not like to plan a lot of times for what they want.

The second biggest problem in the process that we see is probably in contract administration and that is either that contracts that do not set any type of performance standards, just pay, when an invoice comes in.

You also have people who are not trained in contract administration. They pay an invoice without looking for delivery of services, without looking to see if the rates are correct, without looking if the invoice matches the contract.

I think all of this gets into the fact that there is no oversight at all, especially at the field activities with the regular contracting, and the decentralization contributes to that.

Mr. MITCHELL. Could you tell me, how much support do you think the people in the field get from the General Counsel?

Ms. REGAN. Up until recently, there were very few General Counsel people out in the field. I think there were five working mostly with protests and claims. But on day-to-day activities, there was no review of proposals and they were not involved in negotiations.

Now, they have hired some additional attorneys through the supply fund to provide those services, so they are getting more support now than they were in the past.

But I know on our pre-awards working with some of the facilities, they would be going into negotiations and did not know how to develop a negotiation strategy. They are going into negotiation with the universities bringing attorneys and contract officers are going in by themselves. It is not balanced that way. They need that kind of legal support and somebody that is involved in assisting them.

Mr. MITCHELL. And my last question to you, do you get complaints from contracting officers and, if so, what is the biggest complaint you get?

Ms. REGAN. The one we have heard probably the most in the past year is they are being pressured to award contracts when they do not feel that it is in the best interest of the Government.

Mr. MITCHELL. Thank you.

Mr. Roe.

Mr. ROE. Well, as a former Mayor and a doctor and a politician, I did not think I could be made speechless by anybody, but you all have done that. I mean, I have never heard any such testimony

since I have been here. And I guess a couple things I want to pursue on this.

Ms. Regan, first, you astonished me when you said we did not know what we were buying, we did not know what we paid for it, and there were no consequences to any of this. And then when you found out what you paid for, you went to the vendor, and many of them who are honest vendors, I might add, but you went to them to confirm what the VA should have confirmed. It is like asking the fox in the henhouse have you eaten the chicken.

And so, I mean how do you even respond to that? I am flabbergasted when I heard what you said.

Ms. REGAN. It has been very difficult from our perspective to do our work in looking at contracting because a lot of it is hidden. You cannot find it.

We reported in our report on the Replacement Scheduling Activity that some contracts avoid oversight and become invisible to the Department because VA is going to other agencies to contract for them. So those contracts are not seen.

We noted one contract where nobody in the VA could even give us a copy of the contract. We were told we had to write a letter to General Services Administration to get a copy.

So there is just no visibility. It is very difficult. It creates additional work we have to do to look at contracts. We have done workarounds, but we are not always sure we have all the right information or all accurate information when we do our reviews.

Mr. ROE. Well, are there an inadequate number of contracting people at the VA? Is that where they have so much to do, they just, you know, sign them and go? Is that the problem?

Ms. REGAN. No. It is so decentralized that information is not maintained in a centralized database that gives you the visibility.

For example, the Electronic Contract Management System should be keeping track of what contracts have been awarded since, I believe, 2007, but our audit of that system showed people were not using it.

Also, a lot of purchases do not fit the requirements of what is required to be entered into that system. So in looking at the Federal Procurement Data System, we found that that is inaccurate. I believe the prior panel mentioned that also in following up. So there is no place you can go to in VA and get accurate data or complete data on procurements.

Mr. ROE. Well, I have another couple of questions, Mr. Chairman.

One, Mr. Kutz, you got into this a little bit and peeled this onion back a little bit, but you stated that you picked ten of the hundred and all ten of them you found. And you just, I guess, at random picked those ten companies?

Mr. KUTZ. No, not necessarily random. Probably based on the allegations. Some of the allegations were more specific than others. So when we assess allegations, we would take the more credible allegations, one where there might have been some documented evidence or some credibility. So I would not say they were a random sample from the 100.

Mr. ROE. Okay. Would you just name the ten companies? Would you mind doing that?

Mr. KUTZ. Certainly. I can name them. In our report and in our testimony to you, they are numbered case numbers one through ten. And I will list the name of the company and the location of the company if that would meet your request there.

Mr. ROE. Yes, it would.

Mr. KUTZ. Case number one is C. Martin Co. in north Las Vegas, Nevada.

Number two is Corners Construction in Chico, California.

Number three is Teamus Construction Co. in Carnegie, Pennsylvania.

Number four is Sullivan International Group, Inc. in San Diego, California.

Number five is Ron Jon Rentals, Inc. in Barstow, California, and their predecessor company, which is no longer a service-disabled veteran company, is DAV Prime, Inc., from Peoria, Illinois.

Case six is called Veterans Construction Associates in Burlington, New Jersey.

Case seven is McDonald Roofing and Construction, Inc., in Emmett, Idaho.

Case eight is B&J Multi-Service Corps in Leominster, Massachusetts.

Case nine is GMT Mechanical in Grantville, Georgia.

And case ten that I showed you on the monitor is FF&E Office Solutions in Tampa, Florida, near MacDill Air Force Base.

Mr. ROE. It sounds like it is coast to coast, border to border.

Mr. KUTZ. Correct. And the allegations were across the country also.

Mr. ROE. And these particular contracts that are awarded that are either double pass-throughs or pass-throughs probably are preventing legitimate veteran-owned, disabled veteran-owned or veteran-owned businesses from getting this contract or getting these contracts. Am I correct or not?

Mr. KUTZ. Not only that. And I think the first panel discussed that you are talking about jobs for veterans also. How many veterans do you think the international company from Denmark hired?

And if it had been a legitimate service-disabled veteran-owned small business, veterans hire veterans. So I think you are talking about not only the company and the owner of legitimate firms being impacted here, but veterans' job are at stake also.

Mr. ROE. So basically what this company did, this \$6 million contract to this foreign company, somebody just got a cut on the front end and they just paid basically a finder's fee—

Mr. KUTZ. Correct.

Mr. ROE [continuing]. Of this business?

Mr. KUTZ. Yes.

Mr. ROE. That is what happened?

Mr. KUTZ. That is how it worked.

Mr. ROE. How prevalent is that, do you think?

Mr. KUTZ. Well, in these cases, it is very prevalent. And some of the other allegations from the hundred plus that we have received, that appears to be what is going on.

I mean, some people refer it as rent-a-vet. There are various ways it is described, but it is still just having a front company,

somebody taking a cut, and then most of the money going to an ineligible firm, oftentimes large business.

And if you think about the contracting officer, like let us use the VA hospital case, they knew that this ISS Corp. from Denmark was one of the world's best janitorial services contractor. So they are getting the work done the way they want, but they are not giving the work to a legitimate service-disabled company.

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

Mr. MITCHELL. Mr. Buyer.

Mr. BUYER. Thank you very much.

I want to follow your line of questioning on that, on the Denmark firm. The SDVOSB company that was awarded that bid, what was the name of that company?

Mr. KUTZ. Corners Construction in Chico, California, and the hospital was in Palo Alto, California.

Mr. BUYER. Corners Construction, were they certified for eligibility by the VA?

Mr. KUTZ. No.

Mr. BUYER. Wow.

Mr. KUTZ. Oh, they have. I am sorry. Yes, they have been. Yes. That is one of the two. The two that have been are Corners and FF&E. I am sorry.

Mr. BUYER. So only two out of the ten were certified?

Mr. KUTZ. Two of the ten have been certified and three others are in the database awaiting certification, correct. So, yes, Corners is one. I am sorry.

Mr. BUYER. Did you guys hear that?

Mr. MITCHELL. No. Repeat that.

Mr. BUYER. Of the ten cases that he examined, only two of them had SDVOSB certifications. Only two out of the ten.

Mr. KUTZ. From the Veterans Administration. They all self-certified that they were service-disabled veteran-owned small businesses. That is the difference. The two went through the VA process based on the bill you issued in 2006 that requires VA to set up this process. So two have gone through the process the gentleman on the first panel said his company has gone through.

Mr. BUYER. This goes back to that issue of how are we going to do this enforcement and accountability function. Obviously the self-verification is not working.

This Corners Construction, what was their primary line of business?

Mr. KUTZ. Construction.

Mr. BUYER. Not janitorial services?

Mr. KUTZ. Not janitorial. And keep in mind, I said they had five employees, including the two owners, and they have 33 contracts across the country. So it is very clear what is going on here.

Mr. BUYER. They are pretty talented.

Mr. KUTZ. Yes. They are talented at getting the work, certainly.

Mr. BUYER. Now, how could a contracting officer not know that the firm was going to subcontract?

Mr. KUTZ. I suppose there are some cases where they would not know. But in most of these cases, we believe they not only knew, but they helped arrange the transaction and they were involved in some of these cases in these transactions. And, again—

Mr. BUYER. All right. Are you making a specific allegation of collusion?

Mr. KUTZ. Well, it depends. I mean, their incentive is to get the going requirements. Your Committee is getting reports that 12 percent of VA contracting went to service-disabled veteran-owned small businesses.

So the company from Denmark, that contract for \$6 million, that all counted in those numbers that you get and those percentages you get. And those are not what you are thinking that they are.

Mr. BUYER. You know, I just, I do not know, 15, 20 minutes ago, I just turned to my staff and I asked them how much are we driving part of the problem when we set these benchmarks. And years ago when we sent these benchmarks, the budgets were not even close to the way they are today.

So the more we increase these billions of dollars into the pipeline, the more it begins to drive and incentivize individuals to make sure they either meet or exceed their goals and they will figure out some type of way to do it because maybe at the end of the day, because they get a 10 or 12 percent award of those contracts, I may get a bonus at the end of the day.

Mr. KUTZ. Right. And that is the incentive system we have seen and there does not seem to be a lot of incentive for them to actually build integrity into this program. And that is what you are talking about today.

Mr. BUYER. So any of your allegations with regard to collusion is not necessarily that the contracting officers themselves are getting any forms of kickbacks to them, it is they are doing everything possible and imaginable to hit goals within the system?

Mr. KUTZ. Yes. And getting someone who they believe can do the work. And, again, if you have a choice between a new service-disabled entrepreneur company and a \$12 billion international firm with a proven track record, from the standpoint of getting the work done, you are probably going to pick the big company.

Mr. BUYER. Let us talk about the issue of enforcement and debarment. What have you seen about how aggressive, if any, the VA has been with regard to taking action against particular companies?

Mr. KUTZ. Well, I will speak governmentwide. We are not aware of any suspensions, debarments, or prosecutions related to misrepresentations for service-disabled veterans unless the OIG has some specific examples. We have not seen any specific examples of anyone that has had any consequences for this.

Mr. BUYER. Okay. I am speechless. My mouth is just completely wide open. I am stunned.

What about a particular company that has been found to be fraudulent? Do they remain on the list? Do they continue to participate in the Federal contracting procurement?

Mr. KUTZ. Well, I would not say fraud. Some of these have gone through a bid protest process at SBA. And SBA determined that they were ineligible, but no one followed through with suspension, debarment, prosecution, or any consequences.

So the closest we have to a prosecution would be someone that went through a bid protest and the Small Business Administration said you are not eligible and nothing happened.

Mr. BUYER. So the VA does not blacklist?

Mr. KUTZ. No one has blacklisted any of these companies we are aware of for this—

Mr. BUYER. How about OIG? Can you verify that?

Ms. REGAN. Not as far as I know. The Debarment Committee had only received one referral, but that went back to the Program Office. But there have not been any debarments under section 8127 that I am aware of.

Mr. BUYER. Wow.

Mr. KUTZ. Now, we have referred all of our cases to the relevant agencies, including the Veterans OIG along with the Defense Department and SBA, et cetera. So our cases are now out there and we understand criminal investigators are in the field looking at a bunch of these cases.

Mr. BUYER. The VA is sitting there. They are going to be testifying coming up.

But can you help explain, since you have got teams that have done these investigations, help break this down to me? I am a common-sense kind of guy, I hope, and I just cannot figure it out. Why would we not be disbaring bad actors from procurement?

Mr. KUTZ. Well, we should be. And it is to protect the government. I will give you an example of one of the cases we have where the individual lied about being a service-disabled veteran. They were not even a service-disabled veteran and they got \$7.5 million of Federal Emergency Management Agency (FEMA) contracts. In that particular case, we also found in a separate investigation we did several years ago that they lied about trailer inspections and maintenance they were doing on trailers for FEMA in Louisiana and Mississippi.

And so when you get to the integrity issue, the purpose of the suspension and debarment is to protect the government. And so these people that will lie to us about this program are potentially going to over bill us. They are potentially going to do other things fraudulently. And so that is why we believe it is important.

But I agree with you. You are speaking to the choir here. If you do not make poster children out of some of these people, no one will take you seriously for program integrity and enforcement here.

Mr. MITCHELL. Mr. Buyer, let me ask one quick question.

Mr. BUYER. Absolutely.

Mr. MITCHELL. Do we need to pass legislation for that? Is there something already that says if you people lie or do these things or misrepresent, does there need to be a law? Why cannot the SBA or whoever it is that said you are not qualified, where does the ball drop? What needs to be done then?

Mr. KUTZ. Well, if I read your legislation correctly, Public Law 109-461, you already require it for VA that if someone misrepresents themselves to the Veterans Administration, they are to be debarred. So you have already written a law, I believe.

Mr. MITCHELL. It is already there? It is just not being enforced?

Ms. REGAN. I believe there may be in section 8127, there is a provision that if they misrepresented, then the Secretary of VA can debar a vendor from VA contracts for a reasonable period of time.

I think there is some confusion about whether or not the standard in the law or statute is the same standard that you have in

FAR Part 9 debarment, from government procurement, which I think has a much higher standard than misrepresentation.

I think the issue that the Agency has been dealing with right now is it a FAR debarment or is it a nonprocurement, or noncontract debarment such as you would have for eligibility to participate in a program.

So there are differences in the statutes and which rules apply to this type of debarment. Under FAR debarment, you are debarred to protect the Government's interest, also it may be a short period of time.

Section 8127 debarment is a little bit broader in that sense. So I think there are some legal problems about who has what responsibility and what rules apply to the debarment process.

Mr. MITCHELL. I think that certainly needs to be cleared up. But also you mentioned, Mr. Kutz, the person who did the FEMA trailers, twice he was caught.

Mr. KUTZ. Right.

Mr. MITCHELL. And nothing has happened to him.

Mr. KUTZ. They are still out there doing business with the government as far as we can tell.

Mr. MITCHELL. That is just not a VA problem.

Mr. KUTZ. No. This is a governmentwide issue. Our look was governmentwide. It happens that six of our ten case studied were doing business with the Veterans Administration. But we have seen this as going on across the government.

Mr. MITCHELL. Thank you.

Mr. BUYER. Now, Mr. Chairman, you are on the right vein when you talked about the functionality of accountability also has synergies with enforcement.

So if the VA is not going to do these things or if, in fact, the General Counsel has particular concerns, let me go back to my first appeal, I would love to work with you. I will help create a complete disbarment section and we will work with the General Counsel, the VA and let us write the procedures. I mean, I do not know how far you want to take this. But I think what is this testimony here is unconscionable. It is outrageous.

We all get upset. Remember when the veterans came back and some veterans were pinning on medals and we got upset and said, well, those were not medals that you earned in battle and so we passed a law called the Stolen Valor? What is the difference? What is the difference here if someone steps forward and claims they are a disabled veteran so they can get contracts and squeezing out the legitimate disabled veterans? That is stolen valor. This is pretty outrageous.

I want to thank you for doing this kind of hearing and I want to thank all of you for your good work and for your teams. Please pass that word on to your teams for the good work that you are doing here on behalf of a lot of veterans and on behalf of our country.

Ms. Daly, the issue on miscellaneous obligations, now, this is one, Mr. Chairman, we should not have to go with specificity and write this type of thing. I mean, she already has outlined this. She has already worked.

You know, the VA, my gosh, you know, the VA says here we agree, we agree with the GAO's recommend—you know, every time you guys go out and do your work, the VA goes we agree. Enough is enough.

And the fact that you said in all of the 42 obligations that you reviewed, you found no documentation of approval by contracting officials, none, none. You know, and I love how you wrote this about without proper segregation of duties, risk of errors, improper transactions, and fraud, it just increases. So the segregation of those duties and responsibilities is pretty important.

But, Mr. Chairman, you are absolutely right. We should not have to do this.

Mr. MITCHELL. No.

Mr. BUYER. We should not have to do this. And this is exactly something that the Administration should be doing.

I yield back.

Mr. MITCHELL. Thank you.

And I want to thank all of you for what you are doing as Mr. Buyer said.

Votes have been called for again. There are four votes. We will recess this hearing for another 30 to 40 minutes and come back and hear the last panel.

Thank you.

[Recess.]

Mr. MITCHELL. The Subcommittee will continue its hearing.

Joining us on the third panel is Glenn Haggstrom, Executive Director of the Office of Acquisition, Logistics, and Construction, U.S. Department of Veterans Affairs. He is accompanied by Jan Frye, Deputy Assistant Secretary for Acquisition and Logistics; Ed Murray, Deputy Assistant Secretary for Finance, Office of Management; Craig Robinson, Executive Director of the National Acquisition Center; Frederick Downs, Jr., Chief Procurement and Logistics Officer, Veterans Health Administration; and David Canada, Senior Procurement Analyst for the Center for Small Business Utilization, Office of Small and Disadvantaged Business Utilization (OSDBU).

I thank you all for being here, and we will start with you, Mr. Haggstrom.

**STATEMENT OF GLENN D. HAGGSTROM, EXECUTIVE DIRECTOR, OFFICE OF ACQUISITION, LOGISTICS, AND CONSTRUCTION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ACCOMPANIED BY JAN R. FRYE, DEPUTY ASSISTANT SECRETARY FOR ACQUISITION AND LOGISTICS, OFFICE OF ACQUISITION, LOGISTICS, AND CONSTRUCTION, U.S. DEPARTMENT OF VETERANS AFFAIRS; ED MURRAY, DEPUTY ASSISTANT SECRETARY FOR FINANCE, OFFICE OF MANAGEMENT, U.S. DEPARTMENT OF VETERANS AFFAIRS; CRAIG ROBINSON, EXECUTIVE DIRECTOR, NATIONAL ACQUISITION CENTER, U.S. DEPARTMENT OF VETERANS AFFAIRS; FREDERICK DOWNS, JR., CHIEF PROCUREMENT AND LOGISTICS OFFICER, VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT OF VETERANS AFFAIRS; DAVID CANADA, SENIOR PROCUREMENT ANALYST, CENTER FOR SMALL BUSINESS UTILIZATION, OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION, U.S. DEPARTMENT OF VETERANS AFFAIRS**

Mr. HAGGSTROM. Mr. Chairman, Ranking Member Roe, and Members of the Subcommittee, thank you for today's opportunity to update and discuss with you acquisition operations at the Department of Veterans Affairs.

Today I am accompanied by Mr. Jan Frye, VA's Deputy Assistant Secretary for Acquisition and Logistics; Mr. Ed Murray, Deputy Assistant Secretary for Finance, Office of Management; Mr. Craig Robinson, Executive Director of VA National Acquisition Center; Mr. Frederick Downs, Jr., Chief Procurement and Logistics Officer for the Veterans Health Administration; and Mr. David Canada, Senior Procurement Analyst, Office of Small and Disadvantaged Business Utilization.

As VA's Acting Chief Acquisition Officer, I believe there is much good news to report and we will start today by highlighting several of VA's many accomplishments this past year.

VA continues to transform and improve its acquisition operations by increasing centralized decision-making and decentralized execution in VHA.

A study of the Department's contracting offices and processes will be completed this coming February and is likely to result in further centralization of contracting authorities under the Office of Acquisition, Logistics, and Construction.

Mindful of the role private industry plays and as part of VA's transformation to a 21st century organization, we established the Supplier Transformation Initiative. And under the American Recovery and Reinvestment Act of 2009, over 70 percent of VA's facility-related stimulus dollars have been spent with veteran-owned small businesses.

VA made great strides in the last year to recruit and retain a professional acquisition workforce by establishing the VA Acquisition Academy which several HVAC staff members have visited, growing the contract specialist workforce to over 1,400 full-time employees, and we will begin an Acquisition Core Development Program in 2010.

We established the VA Technology Acquisition Center to provide dedicated contracting support to the Office of Information and

Technology (OI&T) and developed an acquisition process to support OI&T's program management accountability system.

We have introduced a procurement governance process establishing the VA Senior Procurement Council and as part of VA's acquisition transformation, implemented other positive steps to create and maintain an effective, integrated, department-wide management capability.

In 2009, VA began conducting acquisition assessments under the Office of Management and Budget's (OMB's) Circular A123, Management, Accountability, and Control, and established a requirement for the use of integrated product teams and contract review boards to minimize contracting risks.

There is an indication our changes have made a difference. In fiscal year 2009, 220 protests were lodged against VA. All but one of these protests has been decided and only one was sustained. These numbers are especially impressive given VA conducted over 230,000 acquisition transactions in fiscal year 2009.

VA remains the Federal leader in contracting with veteran-owned small businesses. The veteran's first contracting program final rule was published in the *Federal Register* on Tuesday, December 8, 2009.

Tentative data for fiscal year 2009 shows VA spent over \$2.7 billion with all veteran-owned small businesses. Nearly \$2.3 billion of that amount was spent with service-disabled veteran-owned small businesses.

This represents over 19 percent and 16 percent of total VA dollars reported in the Federal procurement data system and exceeded VA's goals for these programs of seven percent and 10 percent respectively.

Last, Mr. Chairman, I mentioned at the beginning of my testimony I serve as VA's acting Chief Acquisition Officer. VA has sought to establish an Assistant Secretary for Acquisition, Logistics, and Construction, but has been unsuccessful in this endeavor. Establishment of this Assistant Secretary position is the cornerstone of our efforts to continue transformation of the acquisition culture at VA and provide focused political leadership in this important area.

Such action would embrace the spirit and intent of the Services Acquisition Reform Act of 2003, which requires the appointment of a noncareer Chief Acquisition Officer. Your support in establishing this Assistant Secretary position is essential to the long-term success of VA's acquisition operations.

Mr. Chairman, we appreciate the opportunity to discuss VA's acquisition operations with you. My colleagues and I are available for your questions.

[The prepared statement of Mr. Haggstrom appears on p. 97.]

Mr. MITCHELL. Thank you very much.

I just have to very quickly let you know that we have just been called for votes. There are two votes. And we will have to continue this hearing right after that which will hopefully be 15, 20 minutes.

So this hearing is recessed.

[Recess.]

Mr. MITCHELL. The Subcommittee will reconvene the hearing.

Mr. Haggstrom, I have just a couple questions. You know, prior to the testimony you heard this morning, was the VA aware of the misrepresentations and the fraud and the abuse that the SDVOSB in its contracting program, were you aware of that at all?

Mr. HAGGSTROM. Mr. Chairman, I did read through the GAO report if that is what you are referring to.

Mr. MITCHELL. No. Let me put it this way. Did you know before the GAO report even came out? Were you unaware of any of this happening until the GAO report came out?

Mr. HAGGSTROM. I cannot say that I particularly was appraised of any specific instances because up to this last summer when we started putting verification contracts in place for OSDBU to go out and begin the verification process, it was a self-declaring program where the veterans themselves said this is my eligibility. And so we relied to a great extent on the self-declaration process of what the veterans had told us.

Mr. MITCHELL. Can you explain how the VA certified a firm, and maybe you just did, their eligibility that has no employees, no assets, and no legitimate business location?

Mr. HAGGSTROM. Sir, if I could refer that to Mr. David Canada. He is part of the OSDBU Office, which is responsible for the certification process within the Department.

Mr. MITCHELL. Who is ultimately responsible for all this? You?

Mr. HAGGSTROM. The Secretary is, sir.

Mr. MITCHELL. The Secretary?

Mr. HAGGSTROM. Yes.

Mr. MITCHELL. Okay.

Mr. CANADA. Well, sir, I think what I would like to do is take the specifics back so we can research it on these specific firms that were identified today.

Mr. MITCHELL. So you were not aware of any of this happening either until this report?

Mr. CANADA. Well, these specific instances, no. I mean, I do know that there have been some cases made in the past of different firms at the Center for Veterans Enterprise that they had been removed from this database.

Mr. MITCHELL. So I assume the next question I am going to ask will be the same answer. You know, can you explain how the VA certified a construction firm with only five employees as eligible with a firm that received over 30 contracts in 9 States, including a \$7 million contract for janitorial services? I assume the answer is the same, you did not know anything about it and you are going to study it?

Mr. CANADA. Well, these particular cases, we would like to go back and study them, yes, sir.

[The VA subsequently provided the following information:]

VA's Center for Veterans Enterprise (CVE) conducts its verification program according to statutory criteria specified in Title 38, United States Code, section 8127(f)(4). This provision requires VA to verify that small business concerns listed in the database are owned and controlled by Veterans, and that Veteran owners asserting a service-connected disability are in fact service-disabled.

To carry out this requirement, VA regulations define and authorize collection of information to document direct and unconditional ownership (38 CFR § 74.3), control of day-to-day management and long-term planning

(§ 74.4) and Veteran and service-disabled Veteran status of applicants (§ 74.25).

Not having employees and operating out of the owner's home are not, in themselves, grounds for questioning a firm's legitimacy as a service-disabled or Veteran-owned small business (SDVOSB or VOSB). The vast majority of small businesses have no employees and are operated solely by their owners. In its 2002 Survey of Business Owners (the most recent available), the Census Bureau found that 12.7 million (75.5 percent) of the 16.7 million businesses responding to the survey had no employees. About half of the respondents indicated they were home-based, and largely fell into four industries: professional, scientific, and technical services (19 percent); construction (16 percent); retail trade (11 percent); and other services, such as personal services, and repair and maintenance (10 percent). These tend to be the smallest of small businesses; as the Census Bureau reported, 64.7 percent of businesses with less than \$5,000 in annual receipts were home-based. More information on the 2002 Survey may be found at <http://www.census.gov/econ/sbo/02/cbsf.html>.

Accordingly, VA's verification program does not authorize VA to withhold verification from a firm solely on the grounds that the firm is a home-based, owner-operated firm. Such a requirement would exclude the vast majority of small firms from Government contracting opportunities. Whether such firms have the capability to perform any specific contract is another matter—one that the contracting officer examines as part of evaluating offers in response to a specific solicitation. The solicitation describes the Government's requirements on a particular contract, and the offeror's capabilities must be evaluated in light of whether it has the capabilities to fulfill those requirements. An owner in a home-based business may be able to provide expert consulting for the Government on technical matters within the owner's expertise; the same firm likely cannot construct a multi-million dollar VA Medical Center. This is a determination that will vary from contract to contract and is not a determination that can be made, or even known, at the time a firm seeks verification from CVE.

Of the 10 businesses identified in the GAO report, only two of those submitted an application (VA Form 0877) for VA's Verification program. Below, we have outlined the steps in these two cases.

Corners Construction (Case 2) initially applied for Verification on December 2, 2008. Using the Beneficiary Identification Records Locator Subsystem (BIRLS), CVE confirmed that one of the two owners was an eligible service-disabled Veteran. The VA Form 0877 stated that she owned 51 percent of the firm and that the second owner was a non-Veteran and owned 49 percent of the firm. VA CVE conducted a full verification examination and determined that the service-disabled Veteran owner was not controlling and managing the firm, but the non-Veteran minority owner was really controlling the firm. This decision was made after reviewing the firm's General Partnership Agreement which indicated that the minority business owner, a non-Veteran, provided the "capital investment and the credit for the business." This violates the requirement that the business be controlled by one or more service-disabled Veterans.

On December 16, 2008, VA CVE dispatched a letter to the service-disabled Veteran owner notifying her that the firm, Corners Construction, did not meet the requirements for inclusion in the Verification program and the application was denied. On December 31, 2008, VA CVE received a timely request for reconsideration of the denial from Corners Construction. In the request for reconsideration, Corners Construction satisfied, in written documentation, all the discrepancies noted in the initial denial letter. Prior to the decision to approve Corners Construction, the file and details of the request for reconsideration were reviewed by VA's Office of General Counsel (OGC) for compliance with our regulatory guidelines. OGC agreed that Corners Construction corrected its deficiencies and the business was approved.

However, this business is now past the 1-year verification period and is no longer verified. They have submitted a Verification renewal application and VA CVE has conducted an on-site examination for this business as part of its Verification examination. CVE is also reviewing a SBA status protest decision dated March 26, 2010, that determined that Corners Construction does not qualify as a SDVOSB because the Veteran does not exercise required "control" of the concern. They will not be put back in the database until it is proven that they are in full compliance.

It is possible, even though a verified business meets the criteria for eligibility as far as Veteran status, ownership, and control for the VA Verification program, they may not meet other contract requirements. The nature of the fraud GAO identified regarding Corners Construction is an example of a contractor's failure to conform to contract requirements (i.e., performance fraud). The contractor agreed, in the terms of the contract, that at least 50 percent of the cost of personnel for contract performance work would be incurred by the firm's own employees or those of another SDVOSB. This requirement is a clause in the contract, similar to that in the Federal Acquisition Regulation (FAR), at 52.219-27(c)(1). This information is submitted by the contractor when it submits its contract proposal, and is reviewed during the technical evaluation of that proposal.

During contract performance, the commitment is monitored by the contracting activity's daily oversight of the contractor's work. When the contracting officers became aware of these concerns, they assessed each contract to determine the ramifications of early termination. A determination was made that it would be in the best interest of the Medical Centers to allow Corners to fulfill the current performance period; however, no option years would be exercised.

The fraud cited by GAO in this case was performance fraud.

FF&E Office Solutions, Inc., (Case 10) initially applied for Verification on April 23, 2009. Using the Beneficiary Identification Records Locator Subsystem (BIRLS), CVE confirmed that one of the two owners was an eligible service-disabled Veteran. The VA Form 0877 stated that he owned 95 percent of the firm and that the second owner was a non-Veteran and owned 5 of the firm. VA CVE conducted a full verification examination and determined that the service-disabled Veteran owned business met the requirements for inclusion in the Verification program and the application was approved on August 5, 2009.

The fraud cited by GAO in this case was performance fraud.

Mr. MITCHELL. And Mr. HAGGSTROM. In your testimony, you state that the VA is setting records for spending in veteran-owned small businesses and that the VA awarded 11.76 percent of its contract dollars to SDVOSB and all of this.

Have you validated any of this? I know you have said this. Has anybody validated what you just told us?

Mr. HAGGSTROM. These are validated, sir, not only through the Small Business Administration on what we do, but also through FPDS, the Federal procurement data system, which is the enterprise data system for procurement actions in the Federal Government.

Mr. MITCHELL. Do you think we need to pass any more laws to keep this from happening?

Mr. HAGGSTROM. Sir, I believe that what we have with P.L. 109-461 and the processes that we are attempting to put in place right now are adequate. We do have to do the due diligence and the backup to ensure that what we are looking at is the correct thing and will, in fact, validate the fact that the veteran is the majority owner of the firm, that they have the day-to-day operations, and that they are employing the correct percentage of veterans whether it be in a services area or construction area in order to do that work and not have it just as a pass-through. I believe they are in place to do that.

Mr. MITCHELL. You know, in panel number two, they talked about the person who had the FEMA trailers. Twice, you know, he was ineligible twice and he is still on the list.

Do you audit any of this stuff at all?

Mr. HAGGSTROM. Sir, I was not aware of that particular example. I cannot speak on behalf of FEMA and how their contracting shop

handled that. I can only try to speak on behalf of VA and what we would do in that particular circumstance.

Mr. MITCHELL. Mr. Murray, in Ms. Daly's testimony, she was talking about all the miscellaneous obligations. And some of that were obligations like cars, furniture, scientific equipment.

Are there problems continuing to put all this kind of stuff in miscellaneous?

Mr. MURRAY. To answer your question, sir, the Chief Financial Officer (CFO) organization put a number of controls in place after the GAO report was issued that contain very strong policies signed by our Deputy Secretary requiring four levels of separations of duties to approve a miscellaneous obligation.

We also have audit organizations reviewing the use of miscellaneous obligations in the field. Our management quality assurance service under the CFO and VHA's fiscal quality assurance managers group are reviewing miscellaneous obligations and have reported those results to GAO as well as to VA management. During field facility visits, we make recommendations for corrective actions.

In addition, through our financial management system starting in this fiscal year 2010, we can identify which obligations are related to a purchase order and which obligations are related to a 1358. We have also provided compliance reports to facilities so they can look at separations of duties themselves to make sure they have certain required fields like contract number, vendor, and purpose filled out when they do issue a 1358.

We believe as Ms. Daly said, we are moving very strongly to implement detective controls, but, believe there is more work to be done.

Mr. MITCHELL. Now, just one question about that. All of these sound very good and I think after looking at the GAO report, you think that that is the right thing to do. But all of you have been with the VA for a while.

And did it ever occur to you that these were things that should be in place before or does somebody have to come in and look over your shoulder? You do not have to answer that.

One last question because I have gone over my time. What is the biggest, and this is to Mr. Robinson, what is the biggest complaint you hear from veteran small and disabled business owners?

Mr. ROBINSON. Generally, I think despite what we do as it relates to outreach and our willingness and ability to award those businesses, there is always the feeling that we can do more. I think that is definitely a feeling that comes from the veteran-owned businesses and from the service organizations that represent those businesses.

Mr. MITCHELL. Thank you.

Mr. Roe.

Mr. ROE. Thank you, Mr. Chairman.

I want to just start by asking a couple of questions to anyone here. When these benchmarks of a certain percent of seven or 10 percent of VA owned and disabled veterans, is there any financial incentive for the people at the VA to meet those benchmarks?

Mr. HAGGSTROM. No, sir, there is not.

Mr. ROE. It is not for, you know, for a bonus or is that when the VISN is looking at you? I know you have certain criteria you have to meet when you are bonused money because we have been over those bonuses in the past. And is this any part of the bonus criteria?

Mr. HAGGSTROM. As far as I know, these are not of, in part currently, of the performance work plans that are put in place for employees. There has been some discussion about putting something like this in place so that our employees understand what our goals are for our socioeconomic targets. But as far as an incentive or does their bonus depend on this, not to my knowledge.

Mr. ROE. Okay. Well, the reason I ask the question is that when you have seven to 10 percent, in the seven to 10 percent are people who should never have gotten the contracts to begin with.

These are people, we just heard in the previous testimony an hour or so ago about literally hundreds of businesses and contracts that may have kept eligible veterans out. So that goes into the seven or 10 percent that you have presented to us.

So how do you know that information that you have given us is accurate when it had not been audited?

Mr. HAGGSTROM. The only way I can address that, sir, is because of where we were in terms of the self-certification process up to this past summer where we have started the actual verifications is that we rely on those individual firms for that self-certification and that is what our data mining is based on.

Mr. ROE. So basically it was just self-verifying is what it amounted to?

Mr. HAGGSTROM. That is correct.

Mr. ROE. So you think the guy down there in the house and his wife that was doing the furniture, the double deal, was going to self-certify that he was out of compliance? I do not think so.

Mr. HAGGSTROM. Well, certainly I would agree with you.

Mr. ROE. And that is what I am saying is this data, I cannot, I mean, I cannot—not that I am saying I cannot. The numbers are what they are. I just think they may be inaccurate because of the self-verification that we have had.

Now, maybe since you have started verifying, we will get some better data. But, anyway, on to something else.

What happens and why when we found out that these folks have not been the businesspeople that they should have been to qualify for this, why are they still on the list? Why are they still doing business with the Federal Government?

Mr. HAGGSTROM. Well, with regard to what the gentleman from GAO talked about this morning, that was the first time that I have ever heard the names of those vendors. We have read the report, but in the report, I did not recall seeing any of those, the names of the vendor where we could go out and investigate. And we will go out and investigate if, in fact, VA has done business with them and they—

Mr. ROE. Well, VA has done business with them. I mean, we just heard testimony with the names of the companies. The VA certainly has done business with them. And you will not know because we do not know how many should not be doing business with the VA.

I do not know whether you share my frustration or not. And none of these businesses have been turned down. And if they are, what is the penalty? I mean, this is like I have got a free rein to rob the bank and there is no penalty for it. I can just come back to the bank again next year.

Mr. HAGGSTROM. In the rule that was published this past week in December, there are provisions that the Secretary may take in order to preclude businesses that misrepresent themselves as an SDVOSB or a VOB to be removed from that and not be able to do business with VA.

Mr. ROE. Since last summer when you all started doing a little bit better monitoring, did you ask the GAO for these names of companies or did you not know about that?

Mr. HAGGSTROM. I did not know. The report was just published in November as far as I know.

Mr. ROE. So today was the first time you knew anything about it?

Mr. HAGGSTROM. Today was the first time I had heard the names of the companies out there.

Mr. ROE. Okay. But you did know before?

Mr. HAGGSTROM. I did know of the report.

Mr. ROE. Okay. But—

Mr. BUYER. Will the gentleman yield?

Mr. ROE. Yes, I will yield.

Mr. BUYER. Did you ever bother to ask the GAO for the names of the companies?

Mr. HAGGSTROM. Sir, we have been trying to get those names for the past several days and were unsuccessful in getting those names.

Mr. ROE. Why were you unsuccessful?

Mr. HAGGSTROM. Sir, my staff has been trying to find the contact for those and we were unsuccessful in getting anybody to be able to provide us the specific names of the companies that were referenced in those ten examples.

Mr. ROE. I think after today, we ought to be able to do that.

Mr. HAGGSTROM. And we will. And we will work with our General Counsel on that.

Mr. ROE. I will yield back my time, Mr. Chairman.

Mr. MITCHELL. Mr. Buyer.

Mr. BUYER. I am going to reask a question that was just asked in a different manner. So you said that bonuses are not taken or, actually, if contracting officers exceed the 3-percent threshold that that in no way takes into account whether they receive a bonus or not.

What happens to contracting officers that do not meet their 3 percent? Maybe they blew it off and were only at one or 2 percent. What happens in their reviews then?

Mr. HAGGSTROM. Sir, I cannot answer that because of the way the individual performance work plans are crafted by the respective Administration and those supervisors.

But I would think it would be a fair indication, even though there may be some anomalies here because of the self-certification, when you look at a 16 and a 19 percent, which is well above the Federal mandate of 3 percent and above the Secretary's established

goals of seven and 10 percent, there is a conscious effort on our contracting officers to, in fact, go out and seek veteran-owned business and service-disabled owned businesses to do business with.

Mr. BUYER. You cannot cheerlead numbers. If the numbers are embellished because contracts go to illegitimate companies, do not cheerlead the numbers. Maybe that is part of the leadership that is going to be required within the VA. That is not what our intent is. That is not Congressional intent. That should not be the intent of even the VA.

The intent should be how do we get contracts to legitimate disabled veteran-owned companies. That is what we want to do. This pass-through, this scheme, these frauds that are going on, none of us want that. You guys do not want that either. There is no way. You guys have invested too much of your lives to care for veterans for you to really want that.

Mr. CANADA, let me ask you, who is your boss?

Mr. CANADA. Gail Wegner, sir.

Mr. BUYER. Where is she?

Mr. CANADA. My understanding is she had an urgent family issue to deal with today.

Mr. BUYER. You know what we call that in Congress? You are the sacrificial lamb today. That is all right. You do not have to answer. I think you are. So I get to ask you the tough questions, huh?

So based on the GAO report, give me your personal opinion, so you do not get in trouble with your boss, okay, would you agree that the lack of an active verification program that relies solely on self-verification is allowing businesses that do not meet the requirements of Public Law 109-461 to take contracts away from legitimate, qualified disabled veteran-owned small businesses?

Mr. CANADA. Well, certainly that has happened in some cases. Businesses in the VA's vendor information page database self-represent, may self-represent their status just as they do in the Government central contractor registration database and the online reps and certs database.

As the GAO report identified, self-representation of status does create opportunity for fraud for unscrupulous contractors. The VA has a unique procurement authority that enables us to officially verify ownership and control of veteran-owned small businesses seeking to sell to the VA and to our large prime contractors.

The VA has initiated the official verification program in May 2008. On December 8, 2009, the VA revised its acquisition regulation to inform the public that verification will become a requirement on January 1, 2012.

Mr. BUYER. 2012?

Mr. CANADA. Yes, sir.

Mr. BUYER. 2012?

Mr. CANADA. Yes, sir.

Mr. BUYER. Which means we are going to rely on self-verification for the next couple of years? Is that what that means?

Mr. CANADA. Well, firms can request the verification. It is not going to become mandatory until that date. They have contractor—

Mr. BUYER. Which means in the field, in the field, these companies that have been scheming and doing fraudulent practices will

continue to do this on a self-verification process through 2012 even though you sat here today and learned and have read the GAO and OIG's testimony and read the reports?

Mr. CANADA. Well, certainly those companies identified will be looked at at this point.

Mr. BUYER. Okay. Great. We could send the GAO back out. We could send the OIG back out. And guess what? They are going to give you another 20. They are going to give you another 30.

This is about getting off the heels and on your toes. This is an awareness now that there are frauds and schemes that are actually happening today. So from my perspective, and I do not want to speak for my colleagues here, I do not think we are going to be very satisfied with 2012. This ought to be an immediate change in a system. Yes, no?

Mr. CANADA. Well, there is a logistical issue of backlog and catching up and the contractor support is really part of the reason it could not be immediate.

Mr. BUYER. I do not get it. I do not understand why it cannot be immediate.

Mr. CANADA. There is a process to do the verifications, man hours and site visits and processes that they go through.

Mr. BUYER. If you need a pass, okay, if you need a pass from us, if you need a pass from the Secretary on some 3-percent requirement, we would be more than happy to give you a pass until you can actually implement a system that prevents the schemes and the frauds from occurring because we know that the payoff in the end is going to be best practices.

Would you agree with that?

Mr. CANADA. Yes, sir.

Mr. BUYER. I must be missing something here, Mr. Chairman. My gut here is that 2012 is not an acceptable time frame here. That is just my read on this.

Gentlemen, you have the reports. You have got the GAO. I think we have to move out smartly. And I assure you I do not want to be beating you up. We just recognize these are programs that have been created. People are gaming the system out there and we want to correct this as soon as possible. And I think that is going to be the position that we should be taking.

And, Mr. Chairman, I applaud your questions. This is going to be one of these issues whereby how prescriptive do we need to be.

And we would like to meet you in the middle. He asked you a very legitimate question. What can you do administratively through the executive function of Government that you do not need for us, quote, to legislate? This may be a moment where you need to turn to your General Counsel's Office and say what changes, if any, are necessary legislatively. If we can do this in-house, then proceed smartly, move out. I mean, that is what you have in your military background.

And, Mr. Chairman, that might be exactly where we are. We want to be able to meet you in the middle here so we can have the best contracting procurement system because we know that this is—if this is what is happening here, we know this has got to be happening on our 8(a) and other types of set-aside programs.

With that, I will yield back.

Mr. MITCHELL. Thank you.

You know, one of the things that bothers me is that what these people have been doing, they actually have been stealing. They are getting money that they were not entitled to. And they are doing this all under our noses. That is the frustrating thing. Not that we did not get service for our dollar, the cleaning out there. But they were not entitled to that. And there are all these people out there getting money that were not entitled to it and it was not going to who it should have gone to.

One of the things that I have found being here, that making laws, of course, is the main function of Congress, but I have found that right up there, right next to it oversight and making sure that the laws that we do pass are being carried out in the way that we intended.

And I can assure you this is not the last hearing. I would expect, and I think the Ranking Member would also expect that when we come back, we will see a whole different approach to this than what we have seen today.

If there is nothing else—

Mr. BUYER. May I?

Mr. MITCHELL. Yes.

Mr. BUYER. I do not know all of you on the panel. Mr. Downs, Mr. Frye, I have worked with you in the past. And, you know, I have got legislation out there. I have spoken with the Secretary and I want to work with the VA on how we make this right.

And I know you guys from the past. We want to fix this in a manner that makes it accountable. We can address the miscellaneous accounts issues. And I know that the Secretary has signed off on the GAO report.

But I really at a very personal level, gentlemen, you know, let us have a meeting of the minds here between our legislative package and what you believe you can do through the executive function and let us get this done. Let us do it right. That is my personal appeal to you.

I yield.

Mr. MITCHELL. Mr. Roe.

Mr. ROE. Just to comment. There are six of you all sitting there and there is not one of you out there that wants this going on the way it is. I absolutely believe that. And I think you want it done. There is a law out there. You want it done right. I know good and well that is a fact.

And I think what Mr. Buyer and what the Chairman is saying is that we want to see that happen because we do want to see the resources get to the people and ultimately we want the services to the veterans that we are here to serve.

And sometimes if we are losing resources to people who are doing it fraudulently, then those resources are not only being taken from the taxpayers who are paying the bill but they are also not getting to the intended veteran that we want to serve.

And as I said, I know you all are professional people and you have served this country honorably in many ways. And I want to see you put those assets and resources into making sure this is done right.

This is embarrassing. When I go home and see the VA in my own district, I mean, it is not 2 minutes from my house where the VA is; it will be embarrassing to tell people the story if I am asked this in our local media.

I mean, there is a lot of skill sitting right out in front of me right now. I know that. Let us put those years of experience and skill together for making this right and getting the resources to where it needs to be.

I thank you for being here today and exposing this, but this is a shock to me to see actually how bad this process is. And I agree with Congressman Buyer. I do not think we need to wait 2 years.

And I also appreciate that from reading this material last night that manpower may be an issue as you pointed out, and I think that may be where we have understaffed something. And I notice the amount of money that you save for the amount of money you spend in oversight is considerable. I think \$38 to \$50 to \$1.

So I would encourage you to do that, and I thank you for being here.

And, Mr. Chairman, the rest of the Committee, and the staff especially, let us not forget what time of the year it is. Merry Christmas to everyone.

Mr. MITCHELL. That concludes this hearing.

[Whereupon, at 2:36 p.m., the Subcommittee was adjourned.]

## A P P E N D I X

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

I would like to thank everyone for attending today's Oversight and Investigations Subcommittee hearing entitled, *Acquisition Deficiencies at the U.S. Department of Veterans Affairs*. Thank you especially to our witnesses for testifying today.

We are here to examine the U.S. Department of Veterans Affairs acquisition system and procurement structure. Our hearing will hopefully determine the extent of the reform needed in order to ensure that the acquisition process within the VA is one that is fair, fiscally responsible, and effective. And, most importantly, serves veterans.

We all know that the acquisition system within the Department of Veterans Affairs has failed to develop a process that is both transparent and fiscally responsible. One recent report, produced by the U.S. Government Accountability Office revealed that Network and Medical Center staff within the Veterans Health Administration failed to use the Federal Supply Schedule or FSS, due to a lack of information and the proper tools needed to use the FSS. This resulted in a lost savings of almost \$8.2 million a year or \$41 million over 5 years. This is simply unacceptable.

Several VA Office of Inspector General and Government Accountability reports have detailed major deficiencies within the procurement process at the VA, citing prolific material weaknesses, and how Small Disabled Veteran Owned Businesses are being cheated out of millions of dollars in contract opportunities each year due to a lack of sufficient oversight. Just last month, the GAO released a report on the Service-Disabled Veterans-Owned Small Business Program showing a fragmented structure within the VA, and a lack of oversight of companies claiming Service-Disabled Veterans-Owned Small Business status. Fraud and abuse has allowed ineligible firms to improperly receive millions of dollars in set-aside and sole-source contracts, potentially denying legitimate service-disabled veterans and their businesses the benefits of the veteran small business program. With the ineffective oversight and lack of effective fraud prevention controls, these ineligible firms have received almost \$100 million of contracts over the years.

It is no secret that there are major deficiencies within VA's procurement process, and to blame are a number of things, including a lack of a centralized acquisition structure, self policing policies in place that allow fraud and abuse, and continuous material weaknesses. Although I remain fairly optimistic that reform of this system can be accomplished, legislation to fix these problems may be necessary, along with change in policy and procedures. I am grateful that the GAO as well as Service-Disabled Veteran-Owned Small Business owners and entrepreneurs are here today to shed light on issues such as these.

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### **Prepared Statement of Hon. David P. Roe, Ranking Republican Member, Subcommittee on Oversight and Investigations**

Mr. Chairman, thank you for yielding.

Today's hearing, entitled "Acquisition Deficiencies at the U.S. Department of Veterans Affairs" is important to this Subcommittee, as it will help us as we move forward to assist the Department in guiding it through to better management of its procurement and acquisition processes.

The Department of Veterans Affairs (VA) is one of the largest procurement and supply agencies in the Federal Government. Its annual expenditures are more than \$14.1 billion for supplies and services, including construction. Drugs, medical supplies and equipment, IT equipment and services, and other critical patient care items must be procured and distributed to VA's health care facilities in what is the largest health care delivery system in the country. Over the past 12 years, the VA

and the Office of Inspector General have detailed what can be considered the existence of serious long-term severe systemic procurement problems within the VA.

Last Congress, this Subcommittee held a hearing on Miscellaneous Obligations which highlighted how difficult it is to track expenditures at the VA without proper oversight and guidance. From reading the hearing report from that hearing, it was apparent the frustration felt by all Members present with the brokenness of the acquisition process within the VA. I understand that the Department followed this hearing by providing its acquisition workforce with new rules and procedures regarding the use of Miscellaneous Obligations. I will be interested to hear from the Department how well these new rules are being implemented. I hope that there is improvement in tracking these expenditures since the last hearing.

Additionally, the Government Accountability Office (GAO) issued a report showing “fraud and abuse” within the Service-Disabled Veteran-Owned Small Business program. The findings are extremely disturbing, and I look forward to the testimony from GAO relating to this report, and to see if they have any further recommendations to fix these fraudulent practices, and make certain that contracting officials who knowingly allow this are held accountable.

I was pleased to join with Ranking Member Buyer last week in introducing H.R. 4221, the Department of Veterans Affairs Acquisition Reform Act of 2009. I understand that Mr. Buyer will discuss his bill further this morning, and look forward to working with him and other Members of this Committee to help Secretary Shinseki fix the acquisition process at the Department of Veterans Affairs. Holding this hearing is an important step in this direction. Moving forward legislatively will also be an additional step we can take, and I look forward to working with you, Mr. Chairman in this effort.

Again, thank you for holding this hearing, and I yield back my time.

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#### **Prepared Statement of Hon. Timothy J. Walz**

Chairman Mitchell, Ranking Member Roe; Members of the Subcommittee; thank you for calling this hearing today; thanks also to our witnesses from the Department of Veterans Affairs, the Government Accountability Office, and the private sector from being here today to share their insight and experience on this issue.

I realize that this is not the first time this body has met to discuss the issue of VA procurement, and unfortunately, I do not suffer under the illusion that it will be the last.

Given the scope of the problem, which is literally in the billions of dollars, I think it is clear that this is an issue which requires extraordinary measures to address—certainly well beyond those that have been attempted over the course of the previous decade during which this has been acknowledged problem. To that end, I appreciate the work the proposal that Ranking Member Buyer has put forward, and I look forward to working with him to advance that idea.

For the most part, we come at the issue of procurement reform from the good governance angle: we want to fulfill our duties as stewards of the taxpayers’ money, and we want the government to effectively deliver the services that it is our democratic responsibility to deliver.

But more importantly, we need to remember that every dollar mismanaged or misspent by the Department of Veterans Affairs is a dollar that will not be spent treating a service-related injury, providing benefits to surviving spouses and children, or ensuring a deceased veteran receives a proper burial.

So I look forward to hearing from our witnesses about my progress that has been made in the area of procurement reform, and with that I yield back my time.

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#### **Prepared Statement of Hon. Steve Buyer**

Thank you for yielding me time, Mr. Chairman.

I appreciate the Subcommittee on Oversight and Investigations holding this important hearing on acquisition reform. When I was Chairman of this Subcommittee, we reviewed a number of issues relating to acquisition at the Department of Veterans Affairs, including the VA’s own Task Force on Acquisition Reform. What came out of the hearings we held and the investigations conducted by the VA’s own Inspector General’s office, the General Accounting Office and VA’s Procurement Reform Task Force ordered by Secretary Principe in 2001, was the strong sense that acquisition procedures at the VA were broken, fragmented and disorganized.

Ranking Member Roe in his opening statement alluded to the hearing you held last Congress on July 31, 2008, on Miscellaneous Obligations. That hearing only served to further emphasize the fact that without proper oversight, funds that could be used to better serve our Nation's veterans were being wasted on broken procurement practices with little or no oversight review. The frustration of all the Members on both sides of the aisle at that hearing was loud and clear, and it was obvious that action was needed then to address the problems of acquisition at the VA.

To its credit, VA commissioned an \$800,000 plus Price Waterhouse Cooper study to see how dysfunctional and broken the acquisition process was at the VA. This study offered three options. The VA selected the option that would create the least push back from the bureaucracy, and sent to last Congress a legislative proposal that would create an Assistant Secretary of Acquisition, but it did not provide any further direction or solution to respond to the universal complaint throughout the VA that glaciers move faster than its contracting process.

So, I started working on legislation to change the way VA conducts its acquisition business. My staff and I spoke with industry experts, GAO and VA IG to formulate a way to fix broken acquisition services at the VA in order to create better accountability. I also discussed this issue with Secretary Shinseki who acknowledged that it was imperative for VA to change its procurement system to expedite the many transformational ways VA does business, and I shared a draft of the bill with him.

Last week, I was joined by several other Members of this Committee in the introduction of H.R. 4221, the Department of Veterans Affairs Acquisition Improvement Act of 2009. Like the administration drafted bill introduced last Congress by Senator Akaka, this new bill creates a new Assistant Secretary position, the Assistant Secretary for Acquisition, Construction and Asset Management, who will serve as the Chief Acquisition Officer for the Department of Veterans Affairs. Our bill also builds the Acquisition workforce structure through the use of Deputy Assistant Secretaries aligned to VA's business lines, and a Principal Deputy Assistant Secretary.

The bill further requires the Secretary to establish and maintain a comprehensive Department-wide acquisition program under which the Secretary will develop, implement, and enforce a streamlined approach to entering into contracts and purchasing goods and services. The legislation would thereby provide better oversight and accountability for procurement at the Department of Veterans Affairs.

One of the key points that came out of the Industry Acquisition Roundtable I held on October 27th was the strong need for a well-trained acquisition workforce. This legislation would provide the direction needed to put in place and keep a workforce that is knowledgeable and able to provide acquisition and contracting services to the Department. The bill also reorganizes VA's disparate and dysfunctional procurement, construction and asset management processes into distinct entities with contracting expertise.

Mr. Chairman, H.R. 4221 is a first step to provide a centralized oversight and policy for contracting and acquisition within the Department by streamlining the business operations under an Assistant Secretary. It is my hope that we can work together to improve this bill, and create an acquisition model that can eventually be followed by other agencies, because VA's acquisition problems are in fact governmentwide.

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**Prepared Statement of Scott H. Amey, Esq. General Counsel,  
Project On Government Oversight**

Thank you for inviting me to testify today. I am the General Counsel of the Project On Government Oversight, also known as POGO.<sup>1</sup> POGO was founded in 1981 by Pentagon whistleblowers who were concerned about weapons that did not work and wasteful spending. Throughout its 28-year history, POGO has worked to remedy waste, fraud, and abuse in Government spending in order to achieve a more effective, accountable, open, and ethical Federal Government. POGO has a keen interest in Government contracting matters, and I am pleased to share POGO's thoughts with the Subcommittee today.

Many events over the past fifteen years have called into question the effectiveness of the Federal contracting system and highlighted how drastically the contracting landscape has changed. Contract spending has grown tremendously, exceeding \$530

<sup>1</sup>For additional information about POGO, please visit [www.pogo.org](http://www.pogo.org).

billion in fiscal years 2008 and 2009;<sup>2</sup> oversight has decreased; the acquisition workforce has been stretched thin and been supplemented by contractors; and spending on services now outpaces spending on goods. This new emphasis on services has also increased the risk of waste, fraud, and abuse in contracts, as it is more difficult to assess value on services than on goods. Some acquisition reforms have significantly reduced contract oversight, making it difficult for Government investigators and auditors to identify and recover wasteful or fraudulent spending. These reforms have also created contracting vehicles that often place public funds at risk.<sup>3</sup> In short, poor contracting decisions are placing taxpayer dollars—and sometimes lives—at risk.

On a positive note, interest in improving the Federal contracting system has grown significantly in recent years. Congress created the Commission on Wartime Contracting in Iraq and Afghanistan, which recently released an interim report that discovered many Government and contractor contracting processes.<sup>4</sup> Additionally, the Senate and House have created Committees to dig deep into the contracting weeds.<sup>5</sup> These moves follow efforts in the two most recent National Defense Authorization acts to improve Federal contracting.<sup>6</sup>

The contract oversight bug has also hit President Obama's administration. In his first 100 days in office, President Obama issued a contracting memorandum outlining the Government's obligation to contract wisely by increasing competition and eliminating wasteful spending.<sup>7</sup> The President's budget also mentions concerns with risky contract types, wasteful spending, and contracts awarded without full and open competition.<sup>8</sup> Subsequent contracting and acquisition workforce memoranda have been issued by the Office of Management and Budget.<sup>9</sup>

So far, Congress and the President seem to be well on their way to implementing contracting improvements. On May 22, the President signed the "Weapons Systems Acquisition Reform Act of 2009," which he described as "a bill that will eliminate some of the waste and inefficiency in our defense projects—reforms that will better protect our Nation, better protect our troops, and may save taxpayers tens of billions of dollars."<sup>10</sup> Additional contract-related legislation moved through the Senate

<sup>2</sup>FPDS-NG, *Trending Analysis Report for the Last 5 Years*, no date provided. [http://www.fpdnsng.com/downloads/top\\_requests/FPDSNG5YearViewOnTotals.xls](http://www.fpdnsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls).

FPDS-NG, *List of Agencies Submitting Data to FPDS-NG*, December 10, 2009.

[http://www.fpdnsng.com/downloads/agency\\_data\\_submit\\_list.htm](http://www.fpdnsng.com/downloads/agency_data_submit_list.htm).

<sup>3</sup>The Federal Acquisition Streamlining Act 1994 (FASA) (Public Law 103-355), the Federal Acquisition Reform Act 1996 (FARA) (Public Law 104-106), and the Services Acquisition Reform Act of 2003 (SARA) (Public Law 108-136) have removed taxpayer protections.

<sup>4</sup>According to the Commission on Wartime Contracting in Iraq and Afghanistan, approximately \$830 billion dollars has been spent since 2001 to fund U.S. operations in Iraq and Afghanistan. Commission on Wartime Contracting in Iraq and Afghanistan, *At What Cost? Contingency Contracting In Iraq and Afghanistan*, June 2009, p. 1.

[http://www.wartimecontracting.gov/docs/CWC\\_Interim\\_Report\\_At\\_What\\_Cost\\_06-10-09.pdf](http://www.wartimecontracting.gov/docs/CWC_Interim_Report_At_What_Cost_06-10-09.pdf).

<sup>5</sup>The Senate Committee on Homeland Security and Governmental Affairs created the Ad Hoc Subcommittee on Contracting Oversight. The House Armed Services Committee created the Panel on Defense Acquisition Reform.

<sup>6</sup>The 2008 and 2009 National Defense Authorization acts include many contract-related provisions. See Pub. Laws 110-181 (January 28, 2008) and 110-417 (October 14, 2008).

<sup>7</sup>Memorandum for the Heads of Executive Departments and Agencies, Subject: Government Contracting, March 4, 2009. [http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/). See Jesse Lee, *The White House Blog*, "Priorities—Not Lining the Pockets of Contractors," March 04, 2009.

[http://www.whitehouse.gov/blog/09/03/04/priorities\\_not-lining-the-Pockets-of-Contractors/](http://www.whitehouse.gov/blog/09/03/04/priorities_not-lining-the-Pockets-of-Contractors/).

<sup>8</sup>Office of Management and Budget, *A New Era of Responsibility: Renewing America's Promise*, pp. 35, 38-39, 2009. [http://www.whitehouse.gov/omb/assets/fy2010\\_new\\_era\\_A\\_New\\_Era\\_of\\_Responsibility2.pdf](http://www.whitehouse.gov/omb/assets/fy2010_new_era_A_New_Era_of_Responsibility2.pdf).

<sup>9</sup>OMB, *Increasing Competition and Structuring Contracts for the Best Results*, October 27, 2009.

[http://www.whitehouse.gov/omb/assets/procurement\\_gov\\_contracting/increasing\\_competition\\_10272009.pdf](http://www.whitehouse.gov/omb/assets/procurement_gov_contracting/increasing_competition_10272009.pdf).

OMB, *Acquisition Workforce Development Strategic Plan for Civilian Agencies—FY 2010-2014*, October 27, 2009.

[http://www.whitehouse.gov/omb/assets/procurement\\_workforce/AWF\\_Plan\\_10272009.pdf](http://www.whitehouse.gov/omb/assets/procurement_workforce/AWF_Plan_10272009.pdf).

OMB, *Improving Government Acquisition*, July 29, 2009.

[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m-09-25.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-25.pdf).

OMB, *Improving the Use of Contractor Performance Information*, July 29, 2009.

[http://www.whitehouse.gov/omb/assets/procurement/improving\\_use\\_of\\_contractor\\_perf\\_info.pdf](http://www.whitehouse.gov/omb/assets/procurement/improving_use_of_contractor_perf_info.pdf).

OMB, *Managing the Multi-Sector Workforce*, July 29, 2009.

[http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m-09-26.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-26.pdf).

<sup>10</sup>The White House, Office of the Press Secretary, Remarks by the President at Signing of the Weapons Systems Acquisition Reform Act, May 22, 2009.

and the House and was signed by the President in the National Defense Authorization Act for FY 2010.<sup>11</sup>

Despite all of those actions, there are more improvements that are needed. In addition to the \$530 billion spent on contracts, agencies and their stretched staffs now awarding hundreds of billions more in Stimulus funds, which is a recipe for waste, fraud, and abuse.

Numerous Government Accountability Office (GAO) and Inspector General (IG) reports highlight contracting deficiencies and recommend ways to correct them.<sup>12</sup> These reports have found that contract planning, requirements definitions, contract types used, administration, and oversight is deficient. These are the leading reasons management of Federal contracts at several agencies remains on GAO's "high risk" list.<sup>13</sup>

Industry has also criticized the current system. The Grant Thornton consulting firm's *14th Annual Government Contractor Survey*, released in January 2009,<sup>14</sup> showed that cost reimbursable contracts are used more frequently than fixed price contracts. Cost-reimbursable contracts have also been a subject of concern for both the White House and Members of Congress, and the survey stated that it "is difficult to equate the high use of cost-reimbursable contracts with the notion that the Government is attempting to use more commercial processes to streamline Federal procurement."<sup>15</sup>

#### Veterans Affairs Procurement Summary

Veterans Affairs (VA) is an agency that has seen its share of growth in contract spending. VA contract jumped to \$14.6 billion in FY 2008 from \$3.9 billion in FY 2000—the last year complete contract data is available.<sup>16</sup> VA's contract portfolio is as follows:

1. Extent of actual competition is unknown because 54 percent (nearly \$8 billion) of the contract dollars were listed as "Not identified."<sup>17</sup>
2. Full or limited competition was used for 21 percent of the dollars award.<sup>18</sup>
3. Sole source contracts totaled nearly 12 percent (nearly \$1.7 billion).<sup>19</sup>
4. Fixed price contracts account for over 98 percent of the amount spent (\$14.3 billion).<sup>20</sup>
5. VA programs received a total of \$1.4 billion in Recovery Act funding, with \$543 million "paid out" as of December 4, 2009.<sup>21</sup>

[http://www.whitehouse.gov/the\\_press\\_office/Remarks-by-the-President-at-signing-of-the-Weapons-Systems-Acquisition-Reform-Act/](http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-signing-of-the-Weapons-Systems-Acquisition-Reform-Act/).

<sup>11</sup> Public Law No: 111–84, §§ 810–848, October 28, 2009.

<sup>12</sup> GAO, *Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts*, GAO–09–643T, April 23, 2009. <http://www.gao.gov/new.items/d09643t.pdf>. Treasury IG for Tax Administration, *Current Practices Might Be Preventing Use of the Most Advantageous Contractual Methods to Acquire Goods and Services*, 2009–10–037, February 10, 2009. <http://www.treas.gov/tigta/auditreports/2009reports/200910037fr.html>.

<sup>13</sup> GAO, *High-Risk Series*, GAO–09–271, pp. 77–84, January 2009. <http://www.gao.gov/new.items/d09271.pdf>.

<sup>14</sup> Grant Thornton, *14th Annual Government Contractor Industry Highlights Book—Industry survey highlights 2008*, January 26, 2009. (Hereinafter Grant Thornton Report). [http://www.grantthornton.com/staticfiles/GTCom/files/Industries/Government%20contractor/14th\\_Gov\\_Con\\_Highlights\\_011409small.pdf](http://www.grantthornton.com/staticfiles/GTCom/files/Industries/Government%20contractor/14th_Gov_Con_Highlights_011409small.pdf). Grant Thornton is an international consulting company that provides services to public and private clients.

<sup>15</sup> Grant Thornton Report, at p. 8.

<sup>16</sup> USAspending.gov, *Contracts from Dept. of Veterans Affairs FY 2000–2009*, as of December 10, 2009. (Hereinafter VA FY 2000–2009).

[http://www.usaspending.gov/fpds/fpds.php?sortBy=u&major\\_agency\\_cat=36&reptype=r&database=fpds&fiscal\\_year=&detail=-1&datatype=T&submit=GO](http://www.usaspending.gov/fpds/fpds.php?sortBy=u&major_agency_cat=36&reptype=r&database=fpds&fiscal_year=&detail=-1&datatype=T&submit=GO).

<sup>17</sup> VA FY 2008.

<sup>18</sup> VA FY 2008. The 21 percent figure includes full and open competition, one-bid offers, and awards based on limited competition.

<sup>19</sup> VA FY 2008.

<sup>20</sup> VA FY 2008.

<sup>21</sup> Office of Inspector General Department of Veterans Affairs, *Semiannual Report to Congress April 1, 2009–September 30, 2009*, November 30, 2009, p. 61. (Hereinafter VA OIG Report). <http://www4.va.gov/oig/pubs/VAOIG-SAR-2009-2.pdf>.

Recovery.gov, *Agency Reported Data—Veterans Affairs*, as of December 11, 2009.

[http://www.recovery.gov/Transparency/agency/reporting/agency\\_reporting1.aspx?agency\\_code=36](http://www.recovery.gov/Transparency/agency/reporting/agency_reporting1.aspx?agency_code=36).

6. Recovery Act contracts were competed 94 percent of the time.<sup>22</sup>
7. Small business contract dollars were approximately 35 percent (nearly \$5 billion).<sup>23</sup>
8. Pre-award and post-award oversight potentially saved the VA over \$165 million in FY 2009.<sup>24</sup>

That data remains relatively consistent to VA's contracting history from 2000 to 2008—with the aggregate totals decreasing in the “not identified” competition category (36 percent), increasing in competitive contracts (nearly 40 percent), and slightly increasing in noncompetitive contract awards (13 percent).<sup>25</sup> Remaining constant was VA's 98 percent figure for fixed price contracts.<sup>26</sup>

Despite the large figure of contract awards where competition was not identified, the data overall paints a relatively positive picture of VA contracting. However, there are some VA contracting areas that are in need of oversight and improvement.

First, VA's contract award total has increased from \$3.9 billion to \$14.6 billion since 2000. That spending increase outpaces the Government-wide figures (\$200 billion in FY 2000 to \$537 billion in FY 2008). Simply stated, VA is increasingly spending a lot of taxpayer dollars on contracts for goods and services and a comprehensive review should be conducted to ensure taxpayer dollars are being spent wisely.<sup>27</sup>

Second, according to a recent GAO report,<sup>28</sup> lax oversight controls and fraud related to Service-Disabled Veteran-Owned Small Business (SDVOSB) and Veteran-Owned Small Businesses (VOSB) contracts allowed ineligible firms to improperly receive approximately \$100 million in SDVOSB contracts, and an additional \$300 million in contracts set aside for other small businesses.<sup>29</sup> Because there are no requirements for improper contract awards, many of those contractors were allowed to continue their work.<sup>30</sup> The Small Business Association (SBA), awarding agencies,<sup>31</sup> and the VA verification process were all blamed for the problem.<sup>32</sup>

Third, the Subcommittee might want to inquire about the frequency of VA outsourcing efforts.

If VA human resource planning is tailored to hiring service contractors rather than servicemembers, the agency is doing a major disservice to the one constituency that it was created to assist—a group who is struggling in the private sector. To help highlight my concern, please consider the following employment statistics. Currently, national unemployment figures run about 10 percent,<sup>33</sup> but the figure for returning servicemembers is approximately 12 percent and 18 percent for service-

<sup>22</sup> GAO, *Recovery Act: Contract Oversight Activities of the Recovery Accountability and Transparency Board and Observations on Contract Spending in Selected States*, November 30, 2009, p. 4.

<http://www.gao.gov/new.items/d10216r.pdf>

<sup>23</sup> Small Business Administration, *FY2008 Official Goaling Report*, no date provided.

[http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/fy2008official\\_goaling\\_report.html](http://www.sba.gov/idc/groups/public/documents/sba_homepage/fy2008official_goaling_report.html)

SBA Department of Veterans Affairs Grade Report, 2008.

[http://www.sba.gov/idc/groups/public/documents/sba\\_homepage/goals\\_08\\_va.pdf](http://www.sba.gov/idc/groups/public/documents/sba_homepage/goals_08_va.pdf)

<sup>24</sup> VA OIG Report, p. 37.

<sup>25</sup> VA FY 2000–2009.

<sup>26</sup> VA FY 2000–2009.

<sup>27</sup> Many other Federal agencies, including Defense and Homeland Security, are looking at their service contracts, examining the services procured and the cost of hiring contractors. A review should pay close attention to inherently Governmental functions and certain services and actions that are not considered to be inherently Governmental functions may approach being in that category. See FAR Subpart 7.503.

[https://www.acquisition.gov/far/current/html/Subpart%207\\_5.html#wp1078202](https://www.acquisition.gov/far/current/html/Subpart%207_5.html#wp1078202).

<sup>28</sup> GAO, *Service-Disabled Veteran-Owned Small Business Program—Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts* GAO–10–108, November 19, 2009.

<http://www.gao.gov/new.items/d10108.pdf>

<sup>29</sup> GAO, Statement of Gregory D. Kutz, Managing Director Forensic Audits and Special Investigations Before the House Committee on Small Business, *Service-Disabled Veteran-Owned Small Business Program—Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts* GAO–10–255T, November 19, 2009, pp. 1, 3, and 9. (Hereinafter GAO–10–255T).

<http://www.gao.gov/new.items/d10255t.pdf>

<sup>30</sup> GAO–10–255T, p. 3.

<sup>31</sup> According to the GAO, “VA exceeded its prime contracting goals for SDVOSBs and VOSBs in fiscal years 2007 and 2008.” GAO, *Department of Veterans Affairs Contracting with Veteran-Owned Small Businesses*, March 19, 2009, p. 3.

<http://www.gao.gov/new.items/d09391r.pdf>

<sup>32</sup> GAO–10–255T, pp. 9–11.

<sup>33</sup> U.S. Bureau of Labor Statistics, *Employment Situation Summary*, December 4, 2009.

<http://www.bls.gov/news.release/emp/sit.nr0.htm>

members who left the military in the past 3 years.<sup>34</sup> Responding to those elevated rates, President Obama issued an Executive Order intended to “enhance recruitment of and promote employment opportunities for veterans within the executive branch.”<sup>35</sup> VA should be doing its best to assist qualified servicemembers find jobs with the agency rather than hiring contractor employees.

### Big Picture Contracting Concerns

Many contracting experts and Government officials blame the inadequate size and training of the acquisition workforce for today’s problems in the contracting system. POGO agrees that workforce reduction is a major problem, but we believe additional problems deserve equal attention. These problems are:

1. Inadequate Competition
2. Deficient Accountability
3. Lack of Transparency
4. Risky Contracting Vehicles

I will discuss all of these issues in detail, and provide realistic recommendations that will improve the way Federal contracts are awarded, monitored, and reviewed. I will defer to today’s other panelists to recommend specific ways to improve contract award, administration, project management, and contract oversight within the VA.

#### *Inadequate Competition*

To better evaluate goods and services, and to get the best value for taxpayers, the Government must encourage genuine competition. At first glance, it may seem that Federal agencies frequently award contracts competitively. For example, the Department of Defense (DoD) claims that 64 percent of its contract obligations were competitive in 2008,<sup>36</sup> and Federal contracting data shows that the Department of Homeland Security competes approximately 70 percent of its contracts.<sup>37</sup> These numbers, however, do not tell the entire story. The “competitive” label includes contracts awarded through less than full and open competition, including competitions within a selected pool of contractors, offers on which only a single bid was received, or a follow-on contract to a previously competed action.

The 110th Congress limited the length of certain noncompetitive contracts and mandated competitive procedures at the task and delivery level,<sup>38</sup> but the Government must do more to ensure that full and open competition involving multiple bidders is the rule, not the exception. Consequently, to accurately track or evaluate competition, the definition of “competitive bidding” should be revised to apply only to contracts on which more than one bid was received.

In addition to redefining competition, Federal agencies must:

1. Reverse the philosophy of quantity over quality. Acquisition is now about speed, making competition a burden; this is a recipe for waste, fraud, and abuse.
2. Debundle contract requirements in order to invite more contractors to the table. Contracts that lump together multiple goods and services exclude smaller businesses that could successfully provide one good or service, but are incapable of managing massive multi-part contracts. Breaking apart

<sup>34</sup> American Federation of Government Employees, *VA Outsourcing Threatens Employment Opportunities For Veterans*, November 30, 2009.

<http://www.afge.org/Index.cfm?Page=PressReleases&PressReleaseID=1080>.

<sup>35</sup> 74 Federal Register No. 218, Executive Order 13518, *Employment of Veterans in the Federal Government*, November 9, 2009, p. 58533.

<http://edocket.access.gpo.gov/2009/pdf/E9-27441.pdf>.

<sup>36</sup> Shay D. Assad, Director Defense Procurement & Acquisition Policy, to the Office of Federal Procurement Policy, March 4, 2009.

<http://www.acq.osd.mil/dpap/cpic/cp/docs/dodfy2008competitionreport.pdf>.

USAspending.gov DoD summary for FY 2008.

[http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj\\_agency\\_cat=97&reptype=r&database=fpds&fiscal\\_year=2008&detail=-1&datatype=T&submit=GO](http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=97&reptype=r&database=fpds&fiscal_year=2008&detail=-1&datatype=T&submit=GO).

<sup>37</sup> USAspending.gov reports 70.4 percent of DHS contracts were subject to competition in 2008.

[http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj\\_agency\\_cat=70&reptype=r&database=fpds&fiscal\\_year=2008&detail=-1&datatype=T&submit=GO](http://www.usaspending.gov/fpds/fpds.php?sortby=u&maj_agency_cat=70&reptype=r&database=fpds&fiscal_year=2008&detail=-1&datatype=T&submit=GO).

<sup>38</sup> Pub. Law 110–181, Sec. 843, January 28, 2008. [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ181.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ181.110.pdf).

Pub. Law 110–417, Sec. 862, October 14, 2008. [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ417.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ417.110.pdf).

- multi-supply or service contracts reduce the multiple layers of subcontracting which can drive up costs while adding little value.<sup>39</sup>
3. Update USAspending.gov to include a searchable, sortable, and user-friendly centralized database of all contracts and delivery/task orders awarded without full and open competition, including all sole-source awards. The database would enhance the requirement created by the National Defense Authorization Act of 2008 to disclose justification and approval documents for non-competitive contracts.<sup>40</sup>
  4. Ensure that waivers of competition requirements for task and delivery orders issued under multiple-award contracts or the Federal supply schedule program are granted infrequently.<sup>41</sup>
  5. Increase emphasis on sealed bidding to receive the lowest prices.<sup>42</sup>
  6. Use reverse auctions more frequently. In a Department of Energy reverse auction for pagers, two companies' submitted initial bids for \$43 and \$51 per pager. At the close of bidding, the Government awarded the contract at the low price of \$38 per pager.<sup>43</sup>

Why is competition in contracting important? In a nutshell, genuine competition between contractors means the Government gets the best quality goods and services at the best price. Competition also prevents waste, fraud, and abuse because contractors know they must perform at a high level or risk being replaced.

#### *Deficient Accountability*

Through the years, the Government has placed a premium on speeding up the contracting process and cutting red tape. Those policies led to downsizing the acquisition workforce and gutting the oversight community. When considering the large-scale increase in procurement spending during the past decade, the contracting and oversight communities lack sufficient resources to watch the money as it goes out the door.

Many acquisition reforms also eliminated essential taxpayer protections. For example, one "reform"—commercial item contracting—made it so Federal contracting officials now lack the cost or pricing data necessary to ensure that the Government is getting the best value. Commercial item contracts, which prevent Government negotiators and auditors from examining a contractor's cost or pricing data, might make sense when buying computers, office supplies, or landscaping services, but has been exploited in some cases, such as the C-130J cargo planes procured by the Air Force. Because the C-130J was determined to be a commercial item, Government auditors were not allowed to have access to have cost or pricing data. After Senator McCain forced the Air Force to convert the contract back to a traditional contracting vehicle, the taxpayers saved \$168 million.<sup>44</sup>

Contract oversight provides great benefits to taxpayers. According to the Veterans Affairs Office Of Inspector General, "OIG audits, investigations, and other reviews identified over \$2.3 billion in monetary benefits, for a return of \$59 for every dollar expended on OIG oversight" for the 2nd half of the FY 2009 and \$38 for entire fiscal year.<sup>45</sup>

<sup>39</sup>The 2009 Defense Authorization bill directed DoD to minimize the excessive use of multiple layers of subcontractors that add no or negligible value to a contract. Pub. Law 110-417, Sec. 866, October 14, 2008.

[http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ417.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ417.110.pdf).

<sup>40</sup>Pub. Law 110-181, Sec. 844, January 28, 2008. [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_public\\_laws&docid=f:publ181.110.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:publ181.110.pdf). On January 15, 2009, a Federal Register notice was issued creating an interim rule and requesting public comment on the proposed public database of justification and approval documents for noncompetitive contracts. 74 Fed. Reg. 2731. <http://edocket.access.gpo.gov/2009/pdf/E9-555.pdf>.

<sup>41</sup>See GAO, *Contract Management: Guidance Needed to Promote Competition for Defense Task Orders*, GAO-04-874, July 30, 2004. <http://www.gao.gov/new.items/d04874.pdf>.

<sup>42</sup>Sealed bidding is a method of contracting that employs competitive bids and the contract is then awarded by the agency to the low bidder who is determined to be responsive to the Government's requirements. FAR Subpart 6.4 and Part 14.

<sup>43</sup>Steve Sandoval, *LANL NewsBulletin*, "Reverse auctions save Lab money," January 23, 2007. [http://www.lanl.gov/news/index.php/fuseaction/nb.story/story\\_id/9654](http://www.lanl.gov/news/index.php/fuseaction/nb.story/story_id/9654).

<sup>44</sup>Secretary of the Air Force, Office of Public Affairs, Press Release (051006), *Officials announce C-130J contract conversion*, October 25, 2006.

<http://www.af.mil/information/transcripts/story.asp?id=123029927>.

<sup>45</sup>VA OIG Report, pp. 1 and 5.

POGO believes that Congress should:

1. Appropriate money to agencies to end their reliance on the industrial funding fees collected from other agencies for orders placed on interagency contracts. This system creates a perverse incentive to keep costs or prices high. In other words, agencies might not be seeking the best prices because program revenue would be lost.
2. Require contractors to provide cost or pricing data to the Government for all contracts, except those where the actual goods or services being provided are sold in substantial quantities in the commercial marketplace.
3. Provide enforcement tools needed to prevent, detect, and remedy waste, fraud, and abuse in Federal spending, including more frequent pre-award and post-award audits to prevent defective pricing.<sup>46</sup>
4. Eliminate the Right to Financial Privacy Act requirement requiring IGs to notify contractors prior to obtaining the companies' financial records. This requirement "tips off" contractors and can harm the Government's ability to investigate Federal contracts.<sup>47</sup>
5. Realize that audits are worth the investment. On average, all IGs appointed by the President return \$9.49 for each dollar appropriated to their budgets—which is low in comparison to the VA oversight returns.<sup>48</sup>
6. Enhance the acquisition workforce through improvements in hiring, pay, training, and retention.
7. Require comprehensive agency reviews of outsourcing practices, especially for contract-related management and consulting service contracts.<sup>49</sup>
8. Pass the Contracting and Tax Accountability Act of 2009 (H.R. 572) prohibiting Federal contracts from being awarded to contractors that have an outstanding tax liability.<sup>50</sup>
9. Hold agencies and contractors accountable when small business contracts are diverted to large corporations and when set-aside dollars don't reach their legally intended targets.<sup>51</sup>

Through the years, measures to ensure Government and contractor accountability have been viewed as burdensome and unnecessary. This attitude needs to be replaced with one recognizing that accountability measures are essential to protecting taxpayers, and should be seen as an acceptable cost of doing business with the Federal Government.

#### *Lack of Transparency*

To regain public faith in the contracting system, the Government must provide the public with open access to information on the contracting process, including contractor data and contracting officers' decisions and justifications.

The following actions should be taken to provide the public with contracting information:

1. USAspending.gov should become the one-stop shop for Government officials and the public for all spending information. This includes actual copies of each contract, delivery or task order, modification, amendment, other transaction agreement, grant, and lease. Additionally, proposals, solicitations, award decisions and justifications (including all documents related to contracts awarded with less than full and open competition and single-bid contract awards), audits, performance and responsibility data, and other related Government reports should be incorporated into USAspending.gov.

<sup>46</sup> National Procurement Fraud Task Force, Legislation Committee, *Procurement Fraud: Legislative and Regulatory Reform Proposals*, June 9, 2008. (Hereinafter *Fraud White Paper*). <http://pogoarchives.org/m/co/npftfc-white-paper-20080609.pdf>.

<sup>47</sup> *Fraud White Paper*, pp. 4–5.

<sup>48</sup> GAO, *Inspector General—Actions Needed to Improve Audit Coverage of NASA*, GAO–09–88, p. 5, December 2008. <http://www.gao.gov/new.items/d0988.pdf>.

<sup>49</sup> Alice Lipowicz, Federal Computer Week, *DHS draws flak for review of services contracts*, June 5, 2009. <http://fcw.com/articles/2009/06/08/news-dhs-contracts.aspx>.

<sup>50</sup> [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h572ih.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h572ih.txt.pdf).

<sup>51</sup> Department of the Interior, Office of the Inspector General, *Interior Misstated Achievement of Small Business Goals by including Fortune 500 Companies*, W–EV–MOI–0003–2008, July 2008.

<http://www.doi.gov/upload/2008-G-0024.pdf>.

Carol D. Leonnig, *Washington Post*, "Agencies Counted Big Firms As Small," A1, October 22, 2008. [http://www.washingtonpost.com/wp-dyn/content/article/2008/10/21/AR2008102102989\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/10/21/AR2008102102989_pf.html).

2. To better track the blended Federal Government workforce, Congress should require the Government to account for the number of contractor employees working for the Government using a process similar to FAIR Act inventories of Government employees filed by Federal agencies.

#### *Risky Contracting Vehicles*

As previously mentioned in my testimony, POGO is concerned with the Government's acceptance of limited competition in contracting as well as its over-reliance on cost-reimbursement, time and material contracts, and commercial item contracts—although as I mentioned previously, the vast majority of VA contracts are awarded on a fixed price basis, which bodes well for taxpayers. POGO realizes that there are benefits to these vehicles in certain circumstances, but we are not alone in voicing concerns about how these contract vehicles are used in practice.

POGO has concerns with the Government placing taxpayer dollars at risk by over-designating many items and services as commercial. The changes to procurement law and regulation during the past fifteen years have been most stark in this area. Designating an item or service as commercial when there is no actual commercial marketplace places the Government at risk because the Government doesn't have access to cost or pricing data that is essential for ensuring the contract is fair and reasonable. The Government's failure or inability to obtain cost or pricing data has been nothing short of shocking, and has invited outright price gouging of the public fisc.

POGO believes that risky contracts can work in practice, but only if additional oversight protections are added, including:

1. For commercial item contracts, goods or services should be considered to be "commercial" only if there are substantial sales of the actual goods or services (not some sort of close "analog") to the general public. Otherwise, the goods or services should not be eligible for this favored contracting treatment.
2. The Truth in Negotiations Act (TINA) should be substantially revised to restore it to the common-sense requirements that were in place prior to the "acquisition reform" era. Specifically, all contract awards over \$500,000, except those where the goods or services are sold in substantial quantities to the general public in the commercial marketplace, should be subject to TINA. This small step would result in enormous improvements in contract pricing, negotiation, and accountability, and save taxpayers billions of dollars per year.
3. All contracting opportunities in excess of \$100,000 – including task or delivery orders, and regardless of whether the action is subject to full and open competition, award against a GSA Federal Supply Schedule or an agency Government Wide Acquisition Contract, or any other type of contracting vehicle – should be required to be publicly announced for a reasonable period prior to award, unless public exigency or national security considerations dictate otherwise.
4. All contracting actions, including task and delivery orders, should be subject to the bid protest process at the GAO. While POGO recognizes that many will decry this recommendation as adding "red tape" to the process, we believe it is the only meaningful way to ensure that contractors are treated on an even playing field, and that the public can be confident in agency contract award decisions.

Thank you for inviting me to testify today. I look forward to working with the Subcommittee to further explore how the Government should improve the Federal contracting system to better protect taxpayers and welcome any questions.

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**Prepared Statement of Scott F. Denniston, President,  
Scott Group of Virginia, LLC, Chantilly, VA, and Director  
of Programs, National Veteran Owned Business Association**

Chairman Mitchell, Ranking Member Roe, Committee Members and staff. Thank you for the opportunity to testify today on the Department of Veterans Affairs acquisition program. I am Scott Denniston, President of the Scott Group of Virginia, LLC, representing one of my clients, The National Veteran Owned Business Association and its over 2,000 veteran small business owners across the country. I would ask that my formal testimony be submitted for the record.

Your letter of invitation asked me to discuss “Acquisition Deficiencies at the U.S. Department of Veterans Affairs”. I will respond to your invitation through the experiences of veteran owned small businesses in dealing with the vast bureaucracy of the VA.

Within the past week I was contacted by a veteran owned small business in Arizona providing vinyl banners to VA’s Vocational Rehabilitation Service. Shipment to 58 regional offices was completed October 20, 2009. The veteran is unable to be paid as VA regulations require a “receiving report” be completed. The veteran business owner when inquiring as to being paid is bounced between the contracting officer and the program officer as to who is responsible for completing the receiving report. All the veteran knows is he fulfilled the contract requirements and now suffers. The interest the veteran is paying for operating capital will negate all profit that he expected to earn on the contract. He has stated he will never do business with VA again if this is the way they treat their vendors.

Another veteran doing business with VA is frustrated as he is currently working on 2 contracts with expiration dates of December 31, 2009. The two contracts represent approximately \$6 million per year in revenue. To date he has not been told whether VA intends to exercise the options. As you can imagine this causes great angst for the firm and its employees. Will they have jobs on January 1st? When the business owner inquires of the contracting office he is told the contracts have been “transferred” to another contracting office. When he inquires of the new contracting office he is told there is no contracting officer assigned and no knowledge of who the program office is. When the veteran business owner inquires to VA’s Central Office he is told the policy is to notify contractors within 60 days of expiration of VA’s intent. Nice policy but who follows it and where does a veteran small business owner go for assistance?

Another common practice at VA which frustrates veteran small business owners is VA’s practice of advertizing an RFP, having vendors incur substantial costs to submit proposals then VA cancels the opportunity and procures through an existing contract vehicle or enters into an agreement with another Federal agency to award a contract for the same services. The small businesses who submitted the original offers did so in vain as now, because of VA’s “change of mind”, they cannot bid on the opportunity.

NaVOBA Members continue to be concerned about VA’s overly restrictive interpretation of Public Law 109–461, commonly referred to as the “Veterans First Contracting Program.” NAVOBA believes the provisions of PL109–461 require VA to provide a preference to service disabled veteran and veteran owned small businesses for all goods and services VA purchases. VA interprets the law’s provisions to apply only to “open market” acquisitions. As you know VA spends a large percentage of its acquisition dollars using the Federal Supply Schedules, therefore service disabled veteran and veteran owned small businesses are not provided a preference for much of what VA purchases. This in addition to VA’s efforts to eliminate distributors and resellers from VA’s Federal Supply Schedules as well as VA’s efforts to consolidate contracting opportunities under the guise of “Strategic Sourcing” makes selling to VA difficult for a veteran owned small business. NaVOBA understands that FSS is the preferred method of purchasing in the Federal Government but we also believe PL 109–461 gives VA responsibility to provide maximum practicable opportunity to service disabled and veteran owned small businesses first! If a veteran owned business can supply the same product with the same terms and conditions VA can get using FSS, VA should buy from the veteran. Why should VA buy from a large foreign firm using FSS when an American veteran owned small business can provide the same product?

As I testified before the Subcommittee on Economic Opportunity on April 23, 2009, our members tell us the biggest impediments to doing business with VA are access to decisionmakers to present capabilities, access to timely information on upcoming contract opportunities, inconsistent implementation of the provisions of PL 109–461, VA’s administration of the Federal Supply Schedules regarding distributors, and VA’s use of contract vehicles such as prime vendor and standardization opportunities.

On August 13, 2009, VA Deputy Secretary Scott Gould hosted a “Supplier Relationship Transformation Forum”. The Deputy Secretary is to be commended for hosting this event. The purpose was to hear from large and small vendors to the VA on what issues and impediments exist in doing business with VA. The forum was attended by over 100 people representing 82 vendors from most industries doing business with VA. There were several common themes expressed:

1. Participants were generally frustrated, and hopeful but skeptical that change will occur.

2. Vendors perceive the acquisition process to be unclear, not applied in a standardized manner and not communicated well.
3. VA does a poor job of matching contract types and terms and conditions to the acquisitions.
4. Similar contracts are managed differently within and across programs.
5. Many contracts are not launched with kickoff meetings; none end with close-outs. Few contain a discovery period, but many require project plans, work breakdown structures, etc. within 5 to 10 days of award.
6. VA is often unclear and unfamiliar with what it is procuring—unclear requirements, cut and paste solicitations, expired dates in solicitations, Questions & Answers that do not clarify, independent Government cost estimates that are very soft, etc.
7. Contracting officers and contracting officers technical representatives are often risk adverse and say no to possible solutions without considering them.
8. Contractors broker communications and problem solving between VA COs, COTRs and project managers.
9. Partnering means sharing risks, but VA puts all risk on the contractor.
10. In reality, best value means lowest cost. VA wants contractor “A” teams but will only pay for “B” or “C” teams.
11. Contract mods—even no cost period of performance extensions can take months to complete, putting contractors and projects at risk.

This list comes from the Executive Summary of the forum prepared by Ambit Group, LLC for VA, and is very consistent with comments expressed by NaVOBA Members.

The vendor community today is dynamic, enterprising and inventive. VA cannot as a normal course of operating maintain ongoing operations and also evaluate new technologies and opportunities to use new products and services to improve care to veterans. The vendor community is frustrated as VA is reluctant to change. VA is, in our opinion, missing opportunities as there is no mechanism to test new products in the VA environment. We propose VA establish an organization, independent of day to day operations, to test new products and services through trials, test programs, field demonstrations to more rapidly bring new technologies and solutions to VA operations. Such an organization could pay huge dividends in caring for our Nation’s veterans.

In summary, VA must be more sensitive to the needs/concerns of the vendor community, especially the veteran owned small business community. Every VA employee should work in a small business for a while and understand the impact of their decisions and inactions on cash flow, retention of employees, bank lines of credit, and the myriad of issues faced by veteran entrepreneurs on a daily basis.

I would like to thank the Committee once again for holding this important hearing and I’m happy to answer any questions.

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**Prepared Statement of Anthony R. Jimenez, President and  
Chief Executive Officer, MicroTech, LLC, Vienna, VA**

Good Afternoon Chairman Mitchell, Ranking Minority Member Roe, and Subcommittee Members. I greatly appreciate the opportunity to testify at this hearing regarding Acquisition Deficiencies at the Department of Veterans’ Affairs (VA), and I am honored to represent other Veteran-Owned and Service-Disabled Veteran-Owned Small Business Owners.

My name is Anthony (Tony) Jimenez and I am the President and Chief Executive Officer of MicroTech. MicroTech is a Minority-Owned, certified and verified Service-Disabled Veteran-Owned Small Business (SDVOSB), and certified 8(a) Small Business providing Information Technology Systems and Services, Strategic Solutions, Audio-Visual Telecommunications Design and Installation, Product Solutions, and Consulting Services.

**MicroTech Success**

I retired from the Army in 2003 after serving 24 years on active duty and started MicroTech in 2004. Today I employ over 400 great Americans—and in an era of layoffs and job cutbacks—MicroTech has become a powerful job creation engine and force for economic development in my community, in the state of Virginia, and in a number of other locations across the nation. This year, MicroTech was named America’s Number One Fastest-Growing Hispanic-Owned Business, and just last week our success was celebrated during the NASDAQ Closing Bell ceremony.

Since the first time I testified before Congress in 2006, MicroTech has grown almost 3000 percent in gross revenue and is now the Prime Contractor on over 100 Federal projects and 14 Contract Vehicles. MicroTech manages over half-a-million Government IT users daily and provides products and solutions to more-than-30 Government Agencies, along with every military branch.

MicroTech has been repeatedly recognized by trade groups, industry publications, and diversity organizations as a leading Small Business that has notably succeeded at supporting the Business of Government. MicroTech's exponential growth has led to recognition this year that includes the prestigious Inc. 500; Washington Business Journal's Third Fastest Growing Co. in the region; the Deloitte Tech Fast 500 Number One Communications–Networking Small Business in the Washington Metro Area; CRN Magazine's Number One "Unified Communications Solutions Specialist;" Washington Technology's Number One Information Technology 8(a) Business; and as a DiversityBusiness.com Top 25 Disabled Veteran Owned Business.

### **Veteran Running a Business**

Like most of the Veterans who retire from active duty, initially I had no idea what I wanted to do when I left the military. However, I knew I wanted to remain close to the fight and continue, in some way, to serve my country.

I told *BusinessWeek* earlier this year in the article, "*What I Learned in the Trenches*," that there is a misperception that people in the military have been trained to shoot and win battles, but when it comes to business savvy, they don't have any. What many don't realize is that running a military unit is just like running a business.

As an owner of a business that manages large-scale Federal projects, I have the opportunity to use my unique military skills and expertise to help the Government reach its goals, as well as the ability to work with and provide jobs for other Veterans.

My small business targets contracting opportunities based not only on our core competencies, but also on the opportunity to hire Veterans and Wounded Warriors to perform the work; giving them a chance at a viable second career. However, in the short 5 years MicroTech has been doing business with the Federal Government, unfortunately I discovered that opportunities for Veteran-Owned Small Businesses (VOSB) and SDVOSBs were hard to find and not as abundant as I assumed they would be. In the last few years, though, the emphasis on increasing Government contracting opportunities for SDVOSBs is improving but still has a ways to go.

It's been 5 years since President Bush issued Executive Order 13360 requiring Federal agencies to provide 3 percent of all contracting opportunities to SDVOSBs. Fewer than a handful have achieved that annual goal, notably the Environmental Protection Agency, the GSA, the Department of Labor, and the VA.

### **Small Business Opportunities are Improving**

Through mostly the efforts of the Small Business Administration and the four agencies mentioned, small business opportunities overall are growing. In Fiscal Year 2008, small businesses won a record \$93.3 billion in Federal prime contracts, an increase of almost \$10 billion from 2007. SDVOSB contracts increased to about one-half (1.49 percent) of the 3 percent goal, from the one-third (1.01 percent) mark a year earlier, and won \$6.4 billion in Federal contracts from the lower FY 2007 mark of \$3.8 billion.

Along with those gains, the Obama Administration's *American Recovery and Reinvestment Act* is playing a role in increasing Federal contracting share to SDVOSBs; they have received 4 percent of Recovery contracting dollars, so far. The current administration has "walked the walk," and proven their commitment to Federal contracting opportunities for Small Business.

### **MicroTech and the VA**

MicroTech's experience with the Department of Veteran Affairs (VA) regarding the 3 percent rule has been very positive. The VA exceeded its SDVOSB prime contracting goals in the last two fiscal years, reflecting a commitment at the top and a broad across-the-agency effort to "do the right thing."

Veteran-Owned Small Businesses seem to enjoy greater success at the VA than non-veteran owned. This is happening because of the superlative efforts of the Veteran's Affairs Committee and others. In addition, the VA, as one expects, wants to take care of our Nation's Veterans, so it makes sense that the VA strongly supports set-aside opportunities. The VA keeps their "eyes on the prize," and works hard to

ensure Veteran-Owned Small Businesses get their fair share of competitive contracts.

### **Three Percent Rule Recommendations**

As for the rest of the Government that has failed to make the 3 percent rule a priority, there are currently no penalties for failing to meet EO 13360, and very few incentives for meeting or exceeding the established standard. This lack of oversight makes it extremely difficult for agencies to realize the advantages of contracting with a Veteran-Owned Small Business. There needs to be significant improvements made to correct systemic problems in the current procurement system and to add incentives in achieving the 3 percent goal. I recommend the following steps be taken in all agencies, government-wide:

#### **Revise Contract Bundling**

Contract Bundling adversely impacts competition and hurts all small businesses. According to VET-Force's reporting of a Rand Corp. 2008 study, for every 100 bundled contracts, Small Business loses 60 contracts. The study is quoted as claiming, "*More than one-half of all DoD prime contract spending is on bundled contracts.*"

The standard procedures for Contract Bundling require agencies to provide justification for bundling decisions and have the decisions reviewed at higher levels. The problem with this is that the decision is often made in a vacuum and the affected small businesses have no means to object. In most of these cases, the small businesses are not even aware that the decision is being made. Instead, they don't discover that their contract has been bundled with a larger requirement until just before the RFP is released. By then, it is too late to do anything except determine how to stay involved in the competitive bid. Supporters say that Contract Bundling saves money. While Contract Bundling may save Contracting Officers time and effort and reduce Government overhead, those dollar savings are often offset by the higher costs associated with doing business with larger organizations.

#### **Consolidate Contracts so Small Businesses Share Benefits of Bundling**

This tactic allows the Government to continue to take advantage of cost savings, price reductions, quality improvements, reduced acquisition cycle times, and better terms and conditions for both parties. Make a fair portion of these bundled contracts specifically Small Business opportunities, and don't assume that because it has been bundled, it has to be large business-focused. In most cases, making the opportunity SDVOSB-focused will lead to the very same team as if it was a full and open opportunity.

#### **Place Orders under a Small Business GWAC**

The Veteran Technology Services (VETS) Government-wide Acquisition Contract (GWAC) and the NASA Solutions for Enterprise-Wide Procurement (SEWP) GWAC are two excellent examples of Contract Vehicles that offer multiple award contracts with highly qualified SDVOSBs. The VA has done an outstanding job of using both of these GWACs; another outstanding example of their commitment to SDVOSBs. This approach should be duplicated throughout the Government.

#### **Solicit Quotes for Federal Supply Service Orders only from Small Business (or Socioeconomic Small Business Groups)**

Small Business set aside programs are rarely used under the GSA Federal Supply Schedule, this most widely used contracting vehicle in the Federal Government. This is due to a common perception that set-asides are not allowed under the schedule program. The use of set-asides as part of the GSA schedule program should be encouraged.

#### **Create a Small Business Participation Enforcement Team**

Consider taking a portion of the savings realized through Contract Bundling to implement a Small Business Plan Enforcement Team that enforces small business participation in accordance with the Request for Proposal (RFP).

### **Establish a Mentor-Protégé Program at SBA for Veteran-Owned Small Business**

A Mentor-Protégé program administered by the SBA that mirrors the current 8(a) program would be a boon to SVDOBs and allow them some of the additional advantages that 8(a) companies currently enjoy.

In order to raise capital for the Protégé firm, the Mentor could own an equity interest of up to 40 percent in the Protégé firm. A Protégé firm could still qualify for other assistance as a Small Business, including SBA financial assistance. And no determination of affiliation or control would be found between a Protégé firm and its Mentor based on the Mentor-Protégé agreement or any assistance provided pursuant to the agreement.

### **Better FAR Enforcement**

The Federal Acquisition Regulation (FAR) already includes provisions intended to help Small Business in the event that bundling occurs. Unfortunately, the FAR does not include enforcement mechanisms, nor does it include a reward or punishment system. If the FAR or Code of Federal Regulations (CFR) were to include mandatory enforcement, it would go a long way toward assisting Small Business. When it comes to FAR requirements for Contract Bundling, they are a good start, but fail to follow through with the most important aspect of the system. Bundled contracts are often made so complex that small businesses are precluded from competing for them.

### **How to Better Highlight SDVOSBs**

#### **Address VA Contracting Concerns and How to Improve the Process**

Contracting with the VA can be extremely difficult for small businesses, requiring them to not only understand VA-specific contracting and complex procurement requirements, but also to understand the VA organization and culture. At MicroTech, we must constantly educate our customers about public policy like the “Veterans First Contracting Program,” and other initiatives that are designed to help Veteran-Owned Small Business grow. We also have to emphasize that there are enough capable SDVOSBs that have the experience and resources to adequately and competently fulfill Federal contracts. There are many contracting officers at the VA that genuinely want to do business with a Veteran-Owned Small Business; unfortunately policies and regulations designed to make it easier to do business with Veterans are either not clearly promoted, or not understood.

### **GAO SDVOSB Fraud Report**

The October 2009, GAO report on the SDVOSB Program (*Case Studies Show Fraud and Abuse Allowed; Ineligible Firms to Obtain Millions of Dollars in Contracts*) is a telling indictment of the fraud in the program highlighting test cases of ineligible and uncertified businesses that are giving legitimate SDVOSBs a black eye.

The enforcement issues are clear. For example, the SBA is only allowed to investigate suspected SDVOSB fraud if a formal protest is filed questioning the bid process. Even if the SBA finds that a contract was awarded to a fraudulent company, they are not required to restart the bidding process. And because no documentation proving eligibility is required, the SBA has no proven way to confirm status.

In 2008, more than 15,000 Veteran-Owned Businesses were registered in the Central Contracting Register (CCR), a requirement to do business with the Federal Government. The CCR collects, validates, stores and disseminates data in support of agency acquisition missions. Unfortunately the CCR does not call for proof that companies are legitimate Veteran-Owned Businesses.

### **SDVOSB Enforcement Recommendations**

Additional requirements are needed to prove legitimate SDVOSB status. Take the handcuffs off the SBA and allow them to rigidly enforce eligibility. The GAO recommended that the SBA work to develop penalties that would prohibit companies from obtaining Federal work if they are found to knowingly misrepresent their status as a Veteran-Owned Small Business. It also urged the VA to expand its database of validated Veteran-Owned Small Businesses, so that the SBA and other Federal contracting officials across the Government can access it to verify eligibility.

I applaud Representative Hall for his recent decisive action on the issue, and back his reported recommendations of completing the VetBiz database for a truer, more comprehensive picture of all qualified small businesses; to insist on more SDVOSB qualifying documentation; and to share the database with the rest of the Government.

## SUMMARY

### How to Help Veteran-Owned Small Business Grow

I have often heard people in Washington say that we don't need any more laws; we just need to enforce the ones we have. In order to sustain or further increase the VA's ability to contract with VOSBs and SDVOSBs, it will require vigilance, clearer guidance, improved oversight, and effective enforcement. More will also need to be done to educate procurement officials about requirements and about the Government's desire to contract with Veteran-Owned Businesses. We need to do more to get the word out and to let others know procurements that provide opportunities to Veteran-Owned Businesses have the support of the VA leadership, the House and the Senate, and President Obama. I would also ask that you carry the message you're hearing today to the other Committees you serve on, and do everything you can to help educate others in Washington who don't recognize the value and importance of Veteran Entrepreneurs.

Mr. Chairman and Distinguished Committee Members—I appreciate the time you and the other Members of the Subcommittee on Oversight and Investigations have spent on this and other critical topics affecting Veteran Entrepreneurship. Pride means a lot to our Nation's Veterans. We're proud to have served the Nation in wartime, and proud that we can continue to serve our country through supporting the Government's goals. I speak for all Veteran Entrepreneurs when I say thank you for insisting on a level Playing Field for those who have sacrificed so much, and for recognizing their value to Federal Government service. This concludes my testimony. I would be happy to answer any questions you may have.

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### Prepared Statement of Robert G. Hesser, President and Chief Executive Officer, Vetpreneur, LLC, Herndon, VA, and 1st Co-Chairman, Veterans' Entrepreneurship Task Force (VET-Force)

#### EXECUTIVE SUMMARY

Congress passed Public Law (PL) 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006. While this legislation provided a number of benefits for veterans; what's of particular importance for the purposes of this hearing today, is that Title V, sections 502 and 503 of this legislation, authorized a unique "Veterans First" approach to VA contracting. This approach would change the priorities for contracting preferences within the Department of Veterans Affairs (VA), by placing Service-Disabled Veteran Owned Small Businesses (SDVOSB's) and Veteran Owned Small Businesses (VOSB's) first and second, respectively, in satisfying VA's acquisition requirements.

In so doing, it required that certain conditions be met. All SDVOSB's and VOSB's, must register in the VA's Vendor Information Pages (VIP), aka **Veterans Small Business Database**, available at [www.VetBiz.gov](http://www.VetBiz.gov). To be eligible for award of a contract exclusively within the Department of Veterans Affairs and be 'VERIFIED' by the VA's Center for Veterans Enterprise (CVE). Once registered in the database, the veterans' status, ownership, and control would be verified and penalties would be assessed for misrepresentation.

Unfortunately, after more than 2 years, VA's acquisition officials, their General Counsel, and/or the Office of Management and Budget still have not come to an agreement to publish the regulations to fully implement the portion of the law that pertains to VA contracting for veteran business owners. Last week, December 8, 2009, the VA issued the Request for Comments on section 819.307 of the Final Rule 48 CFR 819. Comments are due January 7, 2010. The result is that veteran and service-disabled veteran business owners are continuing to be deprived of millions of dollars in contracting opportunities that could benefit them, their families, and their communities.

There are thousands of capable and qualified veteran and service disabled veteran owned businesses registered in the VA's Veteran Small Business Database. Yet, we often hear from contracting officers and Large Primes that they cannot be found.

Veteran business owners represent America. They are all races, Black, White, Hispanic, Asian, Jewish, they are Male, Female, Old, and Young.

VA must fully implement The Veterans Benefits, Health Care, and Information Technology Act of 2006 now and implement it correctly.

**INTRODUCTION (Verbal Testimony):**

Good Morning Chairman Mitchell, Ranking Member Roe, other Members of this Subcommittee, fellow veterans, and guests.

Let me first thank you for the opportunity to come before you today to share views on the Department of Veterans Affairs' (VA) "Acquisition Deficiencies" and how this Subcommittee can help to increase contracting opportunities for Veteran and Service-Disabled Veteran-Owned Businesses. I am the 1st Co-Chairman of the Veterans Entrepreneurship Task Force known as the VET-Force. My testimony today is mine; not the VET-Force.

My Navy active duty was many years ago. With 22 1/2 years, I was unexpectedly transferred to the Disability Retirement List as a Master Chief (E9). I was given a check and sent home. At that time, I could not work a full workday. This has happened to thousands of veterans. The VET-Force and its Members want this practice stopped. PL 106-50 and subsequent legislation/Rule making has significantly improved the Veteran's Procurement Program.

This testimony concerns five points:

1. Center for Veterans Enterprise (CVE)
  - a. CVE personnel are responsible for tasks that require 10-fold the assets they now have.
  - b. Many of their tasks cannot be completed in a timely fashion because they do not have the authority to complete them. In other words, they are frequently micro-managed.
  - c. 12,000 Veteran owned companies desiring "verification" are waiting their turn. CVE was verifying 200 each month. I do not know the recent figure.
2. Contracting Officers
  - a. Not all contracting officers are required to follow regulations and rules.
  - b. They are not always given authority commensurate to responsibility.
3. Appropriations and Budgets
  - a. CVE is a non appropriated organization and it exists only by the grace of the VA Supply Fund.
  - b. CVE needs its own Line Item and a significant increase of available funds.
4. VA General Counsel
  - a. The VA has not complied with the PL 109-461. The date of enactment was to be 180 days after Dec 22, 2006—the date of the Act. Today, 6 days short of 3 years, the Act has yet to be completely implemented.
  - b. All requirements might not ever be implemented because there is a requirement that VA and SBA execute an interagency agreement pursuant to the Economy Act. Negotiations of this interagency agreement have not yet been finalized.
  - c. It is General Counsel's responsibility to ensure regulations are followed in a timely and accurate manner. The result of their ignoring PL 108-183, 109-461, and Executive Order 13-360 is apathy and confusion throughout the VA acquisition community.
  - d. General Counsel's inaction has caused, in some areas within the VA Acquisition Community, derogatory feelings toward the VOSB/SDVOSB procurement program. Lack of firm direction has been and is still today creating roadblocks.
5. Vocational Rehabilitation & Employment (VR&E) program and CVE
  - a. A significant funds increase is needed for VR&E because CVE cannot assist service-connected disabled-veterans without the VR&E Counseling occurring before the Veteran goes to CVE.

Passage of the original concept of PL 109-461 was highly supported by the VET-Force and most Veteran supporters. It is still supported by the VET-Force. The law is written for the VA. One requirement is that the VETBIZ VIP data base be expanded using both VA and DoD data. It also requires the VA to make VETBIZ VIP

available to the entire Federal Government to view the registrants within the data base. It also states that the VA will verify all VOSB's and SDVOSB's prior to awarding a Veteran Affairs contract. PL 109-461 does not say that the VA's application of their 38 CFR 74 regulations was to be Federal Government wide. Both, PL 106-50 or 108-183 direct non-VA contracting officers to accept self-certification. The Federal Acquisition Regulations also require all contracting officers to practice due diligence prior to award. Only those desiring VA contracts are to be verified by CVE. VA's present procedure is to verify a company and issue them a Verification Pin. The VA then enters in that company's profile that they are VERIFIED. When a VA contracting officer wants to award a contract to a SDVOSB who is in the VETBIZ que for VA verification the contracting officer contacts the CVE and the verification is rushed. However, when a SDVOSB in the VETBIZ que submits a response to a "NON-VA" SDVOSB set-aside Request for Proposal by a contracting officer who uses VETBIZ, the company not verified will unjustly be considered as not qualified to bid. The VET-Force has recommended to the VA CVE that all VA CVE verifications remain accessible to only VA acquisition personnel. The VA CVE has not accepted this recommendation. Not doing so is sabotaging the Service-Disabled Veteran-Owned Small Business procurement program.

The first step was the VA only. The second step should be all the Federal Government.

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**Prepared Statement of Kay L. Daly, Director, Financial Management and Assurance, U.S. Government Accountability Office**

**Veterans Health Administration: Inadequate Controls Over Miscellaneous Obligations Increase Risk Over Procurement Transactions**

**GAO Highlights**

**Why GAO Did This Study**

In September 2008, GAO reported internal control weaknesses over the Veterans Health Administration's (VHA) use of miscellaneous obligations to record estimates of obligations to be incurred at a future date. GAO was asked to testify on its previously reported findings that focused on (1) how VHA used miscellaneous obligations, and (2) the extent to which the Department of Veterans Affairs' (VA) related policies and procedures were adequately designed. GAO also obtained an update on the status of VA's activities to improve controls over its use of miscellaneous obligations.

GAO's testimony is primarily a summary of its prior report (GAO-08-976), and also includes follow-up work to obtain information on the status of VA's efforts to implement our prior recommendations.

**What GAO Recommends**

In its September 2008 report, GAO made four recommendations to VA to develop and implement policies and procedures to improve internal control. VA agreed with GAO's recommendations and has since taken action to develop the recommended policies and procedures. GAO will monitor the effectiveness of VA's implementation of these new policies and procedures.

**What GAO Found**

In September 2008, GAO reported that VHA recorded over \$6.9 billion of miscellaneous obligations for the procurement of mission-related goods and services in fiscal year 2007. VHA officials stated that miscellaneous obligations were used to facilitate payment for goods and services when the quantities and delivery dates are not known. According to VHA data, almost \$3.8 billion (55.1 percent) of VHA's miscellaneous obligations was for fee-based medical services for veterans and another \$1.4 billion (20.4 percent) was for drugs and medicines. The remainder funded, among other things, state homes for the care of disabled veterans, transportation of veterans to and from medical centers for treatment, and logistical support and facility maintenance for VHA medical centers nationwide.

In 2008, GAO found that VA policies and procedures were not designed to provide adequate controls over the authorization and use of miscellaneous obligations with respect to oversight by contracting officials, segregation of duties, and supporting

documentation for the obligation of funds. Collectively, these control design flaws increased the risk of fraud, waste, and abuse. These control design flaws were confirmed in GAO's case studies at VHA medical centers in Pittsburgh, Pennsylvania; Cheyenne, Wyoming; and Kansas City, Missouri. For example, in all of the 42 obligations reviewed, GAO found no documented approval by contracting officials. The systems used did not have a mechanism for contracting officials to electronically document their review of miscellaneous obligations and no manual documentation procedures had been developed. Furthermore, in 30 of the 42 obligations reviewed, one official performed two or more of the following functions: requesting, creating, approving or obligating funds for the miscellaneous obligation, or certifying delivery of goods and services and approving payment. Without proper segregation of duties, risk of errors, improper transactions, and fraud increases. Last, GAO found a lack of adequate supporting documentation at the three medical centers we visited. In 8 of 42 instances, GAO could not determine the nature, timing, or the extent of the goods or services being procured from the description in the purpose field. As a result, GAO could not confirm that these miscellaneous obligations were for bona fide needs or that the invoices reflected a legitimate use of Federal funds.

In January 2009, VA issued volume II, chapter 6 of VA Financial Policies and Procedures—Miscellaneous Obligations which outlines detailed policies and procedures aimed at addressing the deficiencies GAO identified in the September 2008 report. Full and effective implementation of this new guidance will be critical to reducing the Government's risks associated with VA's use of miscellaneous obligations. GAO has not yet evaluated the extent to which these new policies have been fully and effectively implemented.

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Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the findings from our prior work on the Veterans Health Administration's (VHA)—a component of the Department of Veterans Affairs' (VA)—use of miscellaneous obligations,<sup>1</sup> and steps VA is taking to address our prior recommendations. VHA provides a broad range of primary health care, specialized health care, and related medical and social support services through a network of more than 1,200 medical facilities. In carrying out its responsibilities, VHA uses "miscellaneous obligations" to obligate, or administratively reserve estimated funds against appropriations for the procurement of a variety of goods and services for which specific quantities and time frames are uncertain. VHA officials said that they have been using miscellaneous obligations for over 60 years to record estimates of obligations to be incurred at a later time.<sup>2</sup> According to VA policy,<sup>3</sup> miscellaneous obligations can be used to record estimated obligations to facilitate the procurement of a variety of goods and services, including fee-based medical and nursing services and beneficiary travel.

The large dollar amount of procurements recorded as miscellaneous obligations in fiscal year 2007—\$6.9 billion—raised questions about whether proper controls were in place over the authorization and use of those funds. In September 2008 we reported<sup>4</sup> that improvements were needed in VHA's design of controls over miscellaneous obligations.

My testimony today summarizes the findings of our September 2008 report that are most relevant to the subject of today's hearing. Specifically, I will focus on our findings concerning (1) how VHA used miscellaneous obligations during fiscal year 2007, and (2) the extent to which VA's policies and procedures were designed to provide adequate controls over their authorization and use. I will also discuss the re-

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<sup>1</sup>An obligation is a definite commitment that creates a legal liability of the Government for the payment of goods and services ordered or received, or a legal duty on the part of the United States that could mature into a legal liability by virtue of actions on the part of the other party beyond the control of the United States. Payment may be made immediately or in the future.

<sup>2</sup>A Office of Finance Directive, VA Controlling Policy MP-4, part V, chapter 3, section A, paragraph 3A.01 Types of Obligations and Methods of Recording states in pertinent part that "it will be noted that in many instances an estimated miscellaneous obligation (VA Form 4-1358) is authorized for use to record estimated monthly obligations to be incurred for activities which are to be specifically authorized during the month by the issuance of individual orders, authorization requests, etc. These documents will be identified by the issuing officer with the pertinent estimated obligation and will be posted by the accounting section to such estimated obligation."

<sup>3</sup>VA Office of Finance Directive, VA Controlling Policy MP-4, part V, chapter 3, section A, paragraph 3A.02 Estimated Miscellaneous Obligation or Change in Obligation (VA Form 4-1358).

<sup>4</sup>GAO, *Veterans Health Administration: Improvements Needed in Design of Controls over Miscellaneous Obligations*, GAO-08-976 (Washington, D.C.: Sept. 11, 2008).

sults of our limited review of the status of VA's actions to implement our recommendations.

To achieve the first objective, we obtained and analyzed a copy of VHA's Integrated Funds Distribution, Control Point Activity, Accounting and Procurement (IFCAP) database of miscellaneous obligations.<sup>5</sup> According to VA, the IFCAP database provided the best available data on VHA miscellaneous obligations created in fiscal year 2007. We determined that the IFCAP data were sufficiently reliable for the purposes of our report based on (1) testing various required data elements, (2) performing walkthroughs of the system, and (3) tracing selected transactions from source documents to the database. To achieve the second objective, we compared VA policies and procedures governing the use of miscellaneous obligations with Federal appropriations law<sup>6</sup> and internal control standards,<sup>7</sup> interviewed VHA officials in Denver, Colorado, and Washington, D.C., and conducted three case studies at VHA medical centers in Cheyenne, Wyoming; Kansas City, Missouri; and Pittsburgh, Pennsylvania. As part of the case studies, we interviewed VHA financial management and procurement officials, and reviewed a nongeneralizable sample of miscellaneous obligations to provide more detailed data on the extent and nature of any control design deficiencies. We did not review VHA's procurement or service authorization processes. Additional details on our scope, methodology, and findings are included in our September 2008 report.<sup>8</sup> To assess the status of our prior recommendations, we reviewed volume II, chapter 6 of VA Financial Policies and Procedures—Miscellaneous Obligations (dated January 2009) which outlines detailed policies and procedures aimed at addressing the deficiencies we identified in our September 2008 report. We have not tested whether or to what extent VA has effectively implemented these policies and procedures.

We conducted the work for the September 2008 report on which this testimony was based from November 2007 through July 2008 in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We also conducted a limited review of VA's actions to address our recommendations intended to improve its use of miscellaneous obligations.

### **Miscellaneous Obligations Used Extensively for Mission-Related Activities in Fiscal Year 2007**

In fiscal year 2007, VHA used miscellaneous obligations to record over \$6.9 billion against its appropriations for the procurement of mission-related goods and services at 129 VHA stations throughout the country.<sup>9</sup> As shown in figure 1, \$3.8 billion of this total (55.1 percent) was for fee-based medical and dental services for veterans, and another \$1.4 billion (20.4 percent) was for drugs, medicines, and hospital supplies. The remainder covered, among other things, state homes for the care of disabled veterans,<sup>10</sup> transportation of veterans to and from medical centers for treatment, and logistical support and facility maintenance for VHA medical centers nationwide.

<sup>5</sup> IFCAP is used to create miscellaneous obligations at VA and serves as a feeder system for VA's Financial Management System, the department's financial reporting system of record used to generate VA financial statements and other reports.

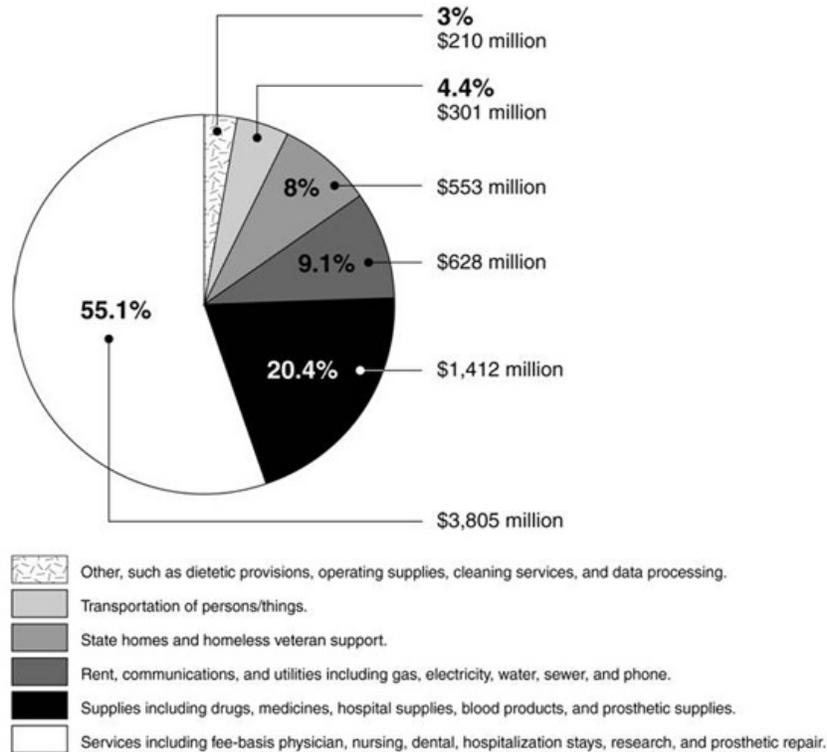
<sup>6</sup> GAO, *Principles of Federal Appropriations Law* third ed vol II, GAO-06-382SP (Washington, D.C.: February 1, 2006).

<sup>7</sup> GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

<sup>8</sup> GAO-08-976.

<sup>9</sup> The IFCAP database of miscellaneous obligations included 129 VHA stations. A VHA station may include more than one medical center and is located in one of VHA's 21 Veterans Integrated Service Networks (VISN). A VISN oversees the operations of the VHA stations (various medical centers and treatment facilities) within its assigned geographic area.

<sup>10</sup> State veterans homes are established by individual states and approved by VA for the care of disabled veterans. The homes include facilities for domiciliary nursing home care and adult day health care.

**Figure 1: VHA Miscellaneous Obligations for Fiscal Year 2007**

Source: GAO analysis of VHA data

VHA officials said they used miscellaneous obligations to administratively reserve estimated funds required to facilitate the payments for goods and services for which specific quantities and time frames were uncertain. Specifically, a miscellaneous obligation can be created for an estimated amount and then modified as specific quantities are needed or specific delivery dates are set. In contrast, when a purchase order is used to obligate funds, the obligated amount cannot be changed without a modification of the purchase order. According to VHA officials, the need to prepare numerous modifications to purchase orders could place an undue burden on the limited contracting personnel available at individual centers and could also require additional work on the part of fiscal services personnel. Therefore, VHA officials view the use of miscellaneous obligations as having the benefit of reduced workload.

Another cited benefit was that miscellaneous obligations simplify the procurement process when no underlying contract or purchase order exists. For example, providing medical care on a fee-basis to veterans outside of VHA medical centers may involve the services of thousands of private physicians nationwide. Attempting to negotiate a separate agreement or contract with each of these individuals would be a difficult task for VHA's contracting staff. Under the policies and procedures in place during fiscal year 2007, VHA centers could use miscellaneous obligations as umbrella authorizations for fee-based medical services performed by a number of different physicians. In effect, in cases for which there is no preexisting contract, the miscellaneous obligation form becomes the record of an obligation.<sup>11</sup>

<sup>11</sup> VA officials said that this practice is consistent with 38 C.F.R. 17.52, which provides that infrequently used services, such as fee-basis services, may be initiated using individual authorizations. They said that individual authorizations for fee-basis care are not subject to procurement regulations, and that procurement regulations apply when the need for like medical serv-

Continued

### Deficiencies in Design of Controls over Miscellaneous Obligations Increase the Risk of Fraud, Waste, and Abuse

In September 2008, we reported that VA policies and procedures were not designed to provide adequate controls over the use of miscellaneous obligations. The use of miscellaneous obligations carries inherent risk due to a lack of a negotiated contract. Without effectively designed mitigating controls, the use of miscellaneous obligations may also expose VHA to increased risk of fraud, waste, and abuse. VHA did not have effective basic internal controls nor mitigating controls with respect to oversight by contracting officials, segregation of duties, and supporting documentation for recording the obligation of funds. Our *Standards for Internal Control in the Federal Government*<sup>12</sup> state that agency management is responsible for developing detailed policies and procedures for internal control suitable for its agency's operations and ensuring that they provide for adequate monitoring by management, segregation of duties, and supporting documentation for the need to acquire specific goods in the quantities purchased. We identified control design flaws in each of these areas, and we confirmed that these weaknesses existed in our case studies of VA fiscal year 2007 transactions at Pittsburgh, Cheyenne, and Kansas City, as shown below in table 1. Collectively, these control design flaws increase the risk of unauthorized procurements, overpayments for services rendered, and the conversion of VHA assets for personal use without detection.

**Table 1: Summary of Case-Study Results**

Station	Number of obligations reviewed	Dollar value of obligations reviewed	No documented approval by contracting officials	Inadequate segregation of duties <sup>a</sup>	Inadequate supporting documentation		
					Incomplete purpose description <sup>b</sup>	Blank vendor field	Blank contract field <sup>c</sup>
Pittsburgh	14	\$6,694,853	14	9	3	6	3
Cheyenne	11	\$2,076,648	11	11	1	6	4
Kansas City <sup>d</sup>	17	\$27,274,395	17	10	4	8	9
<b>Total</b>	<b>42</b>	<b>\$36,045,896</b>	<b>42</b>	<b>30</b>	<b>8</b>	<b>20</b>	<b>16</b>

Source: GAO analysis of VHA data.

<sup>a</sup> In 30 of the 42 obligations we reviewed, one official performed two or more of the following functions: requesting, creating, approving, or obligating funds for the original miscellaneous obligations, or certifying delivery of goods and services and approving payment.

<sup>b</sup> In 8 of 42 instances, we could not determine the nature, timing, or the extent of the goods or services being procured from the description in the purpose field without reference to supporting invoices.

<sup>c</sup> In these instances, we confirmed that contracts existed, but no contract number was listed on the miscellaneous obligation document.

<sup>d</sup> Includes facilities located in Kansas City, Kansas; Wichita, Kansas; Columbia, Missouri; and eastern Kansas.

### Inadequate Oversight of Miscellaneous Obligations

The 42 miscellaneous obligations we reviewed at three VHA stations had no evidence of approval by contracting officials. The systems used did not have a mechanism for contracting officials to electronically document their review of miscellaneous obligations, and no manual documentation procedures had been developed.<sup>13</sup> Furthermore, none of the three sites we visited had procedures in place to document review of the miscellaneous obligations by the appropriate contracting authorities. As a result, VHA lacks assurance that miscellaneous obligations are being reviewed and that related policies are being followed. Effective oversight and review by

ices from the same medical provider is frequent enough to warrant the use of standard acquisition processes.

<sup>12</sup> GAO/AIMD-00-21.3.1.

<sup>13</sup> To help minimize the use of miscellaneous obligations, VA policy (VA Office of Finance Bulletin 06GA1.05) entitled *Revision to MP-4, Part V, Chapter 3, section A, Paragraph 3A.02—Estimated Miscellaneous Obligation or Change in Obligation (VA Form 4-1358)* (Sept. 29, 2006) stated that miscellaneous obligations would not be used as obligation control documents unless the contracting authority for a station had determined that purchase orders or contracts would not be required. VA policy also required a review of miscellaneous obligations by contracting officials to help ensure proper use in accordance with Federal acquisition regulations, but did not address the intended extent and nature of these reviews or how the reviews should be documented.

trained, qualified officials is a key factor in helping to assure that funds are used for their intended purposes, in accordance with laws, while minimizing the risk for fraud, waste, or abuse. Without control procedures to help ensure that contracting personnel review and approve miscellaneous obligations prior to their creation, VHA is at risk that procurements do not have the necessary safeguards.

For example, in our case study at the VA Pittsburgh Medical Center, we found 12 miscellaneous obligations, totaling about \$673,000, used to pay for laboratory services provided by the University of Pittsburgh Medical Center (UPMC). The Chief of Acquisition and Materiel Management for the VA Pittsburgh Medical Center stated that she was not aware of the UPMC's laboratory testing service procurements and would review these testing services to determine whether a contract should have been established for these procurements. Subsequently, she stated that VISN 4—the Veterans Integrated Service Network (VISN) that oversees the operations of the VA Pittsburgh Medical Center—would revise procedures to procure laboratory testing services through purchase orders backed by reviewed and competitively awarded contracts, instead of funding them through miscellaneous obligations.

In the absence of review by contracting officials, controls were not designed to prevent miscellaneous obligations from being used for unauthorized purposes, or for assets that could be readily converted to personal use. Our analysis of the IFCAP database for fiscal year 2007 identified 145 miscellaneous obligations for over \$30.2 million that were used for procurement of such items as passenger vehicles; furniture and fixtures; office equipment; and medical, dental, and scientific equipment. Although VA's miscellaneous obligation policy did not address this issue, VA officials stated that acquisition of such assets should be done by contracting rather than through miscellaneous obligations. Without adequate controls to review miscellaneous obligations and prevent them from being used for the acquisition of such assets, it is possible that VHA may be exposing the agency to unnecessary risks by using miscellaneous obligations to fund the acquisitions of goods or services that should have been obtained under contract with conventional controls built in.

#### **Inadequate Segregation of Duties**

VA policies and procedures and IFCAP's control design allowed a single official to perform multiple key roles in the process of creating and executing miscellaneous obligations. Control point officials were authorized to create, edit, and approve requests for miscellaneous obligations. In addition, these same individuals could certify the delivery of goods and services and approve payment. Similar weaknesses have been reported by agency auditors as well.<sup>14</sup> Federal internal control standards provide that for an effectively designed control system, key duties and responsibilities need to be divided or segregated among different people to reduce the risk of error or fraud.<sup>15</sup> These controls should include separating the responsibilities for authorizing transactions, processing and recording them, reviewing the transactions, and accepting any acquired assets. Without proper segregation of duties, risk of errors, improper transactions, and fraud increases. The lack of segregation could allow for improper expenditures to occur without detection.

Our case studies showed inadequate segregation of key duties in 30 of the 42 obligations we reviewed. In these instances, controls were not designed to prevent one official from performing two or more of the following key functions:

- requesting the miscellaneous obligation,
- approving the miscellaneous obligation,
- recording the obligation of funds, or
- certifying delivery of goods and services and approving payment.

For example, in one case in Pittsburgh, one official requested and approved a miscellaneous obligation of over \$140,000 for medical services and then certified receipt and approved payment for at least \$43,000 of those services. In another case in Cheyenne, we found one miscellaneous obligation for utilities where one official requested, approved, and certified receipt and approved payment of over \$103,000 in services. Such weak control design could enable a VHA employee to convert VHA assets to his or her personal use, without detection.

<sup>14</sup>Department of Veterans Affairs, Office of Inspector General, *Audit of Alleged Mismanagement of Government Funds at the VA Boston Healthcare System*, Report No. 06-00931-139 (Washington, D.C.: May 31, 2007); Grant Thornton, *Department of Veterans Affairs, OMB Circular A-123, Appendix A—Findings and Recommendations Report (Procurement Management)* (July 18, 2007).

<sup>15</sup>GAO/AIMD-00-21.3.1.

### **Lack of Adequate Supporting Documentation**

Control design flaws in VA's policies and procedures resulted in several instances of insufficient documentation to determine whether the miscellaneous obligations were reviewed as part of our case-study analysis represented a bona fide need. Specifically, VA policies and procedures were not sufficiently detailed to require the type of information needed such as purpose, vendor, and contract number that would provide crucial supporting documentation for the obligation. Internal control standards provide that transactions should be clearly documented and all documentation and records should be properly managed and maintained.<sup>16</sup> Adequate documentation is essential to support an effective funds control system; is crucial in helping to ensure that a procurement represents a bona fide need; and reduces the risk of fraud, waste, and abuse. When a legal obligation is recorded, it must be supported by adequate documentary evidence of the liability.<sup>17</sup> An agency should use its best estimate to reserve an amount for future obligation when the amount of the Government's final liability is undefined. Further, the basis for the estimated liability and the computation must be documented.

We found that 8 of the 42 miscellaneous obligations had insufficient data to determine whether the miscellaneous obligation represented a bona fide need. This level of documentation was not sufficient for an independent reviewer to determine what items were procured and whether the appropriate budget object code was charged. As a result of these deficiencies, in several cases we had to rely on invoices to determine the probable purpose of the miscellaneous obligation and whether it represented a bona fide need.

For example, in Kansas City, we found one miscellaneous obligation for over \$1.3 million whose purpose was listed as "To obligate funds for the Oct 06 payment," while the associated invoices showed that the miscellaneous obligation was used to cover the services of medical resident staff. In Pittsburgh, we found a miscellaneous obligation for over \$45,000 whose purpose was listed as "LABCORP 5/1-5/31/07," while the associated invoices showed that the obligation was for laboratory testing services. Without procedures calling for more definitive descriptions of the purpose, we could not confirm that these miscellaneous obligations were for bona fide needs or that the invoices reflected a legitimate use of Federal funds. Other instances of inadequate supporting documentation we found during our case-study analysis included the absence of vendor names for 20 of the 42 miscellaneous obligations, and missing contract numbers for 16 of the 42 miscellaneous obligations.

Inadequate control requirements for supporting documentation and completing data fields concerning the purpose of the obligation, vendor information, and contract numbers can hinder oversight by senior VA management officials. The Deputy Assistant Secretary for Logistics and Acquisition<sup>18</sup> said that he and other VHA officials use the IFCAP database to monitor the extent and nature of miscellaneous obligations nationwide, including analyzing the number and dollar amounts of miscellaneous obligations and identifying the types of goods and services procured using miscellaneous obligations. He told us that he was concerned with the extent and nature of the use of miscellaneous obligations at VA, that he lacked adequate oversight or control over procurements made through miscellaneous obligations, and that he often did not know what was being bought or whom it was being bought from. Our analysis of the IFCAP database found that over 88,000 (69 percent) of 127,070 miscellaneous obligations did not include vendor information, accounting for over \$5 billion of the \$6.9 billion in recorded miscellaneous obligations in fiscal year 2007. Similarly, the IFCAP database did not contain a description of what was purchased or information on the quantities purchased. As a result, important management information was not available to senior VA procurement officials.

### **VA Has Made Improvements in Its Policies and Procedures, but Implementation Has Not Been Assessed**

Our September 2008 report included four recommendations to VA to develop and implement policies and procedures intended to improve overall control. These recommendations focused on the need to better ensure adequate oversight of miscellaneous obligations by contracting officials; segregation of duties from initiation through receipt of the resulting goods and services; maintaining supporting docu-

<sup>16</sup> GAO/AIMD-00-21.3.1.

<sup>17</sup> 31 U.S.C. § 1501(a).

<sup>18</sup> This official acts as VA's Senior Procurement Executive and oversees the development and implementation of policies and procedures for department-wide acquisition and logistics programs supporting all VA facilities.

mentation for miscellaneous obligations; and establishing an oversight mechanism to ensure control policies and procedures are fully and effectively implemented. In comments on a draft of that report, VA concurred with our recommendations and has since taken action to develop policies and procedures to address them. Specifically, in January 2009, VA issued volume II, chapter 6 of VA Financial Policies and Procedures—Miscellaneous Obligations which outlines detailed policies and procedures aimed at addressing the deficiencies we identified in our September 2008 report.

Key aspects of the policies and procedures VA developed in response to our four recommendations were the following:

- Oversight of miscellaneous obligations by contracting officials—VA issued procedures regarding the review of miscellaneous obligations by contracting officials. Specifically, the request and approval of miscellaneous obligations by contracting officials are to be reviewed by the Head of Contracting Activity or delegated to the Local Head of Contracting Activity. In addition, the obligation document will be returned to the initiating office if the miscellaneous obligation is not appropriately signed off by the Head of Contracting Activity.
- Segregation of duties—VA issued procedures that require that no one official may control all key aspects of a transaction or event. Specifically, no one official may perform more than one of the following key functions: requesting the miscellaneous obligation; approving the miscellaneous obligation; recording the obligation of funds; or certifying the delivery of goods and services or approving payment.
- Supporting documentation for miscellaneous obligations—New procedures require completion of the purpose, vendor, and contract number fields on VA Form 1358, Estimated Miscellaneous Obligation or Change in Obligation. The procedures permit that a new miscellaneous obligation can only be processed if the appropriate information is recorded in the purpose, vendor, and contract field. The purpose field must be specific, contain adequate references, and note the period of performance; the vendor name and address must be provided, except in the case of multiple vendors; and the contract number must be included on the miscellaneous obligation document.
- Oversight mechanism to ensure control policies and procedures are fully and effectively implemented—VA developed procedures requiring oversight to help ensure the new policies and procedures are followed. For example, each facility is now responsible for performing independent oversight of the authorization and use of miscellaneous obligations. In addition, facility reviews must be performed quarterly, at a minimum, and should include all new miscellaneous obligations or changes to existing miscellaneous obligations that occurred in the previous quarter. The facility may use sampling to conduct the quarterly reviews. Further, the results of the independent reviews are to be documented and recommendations tracked by facility officials.

VA actions taken to develop policies and procedures intended to address the deficiencies found in our September 2008 report represent an important first step. However, full and effective implementation of VA's new policies and procedures will be even more important. We have not yet fully evaluated the extent to which VA's new policies and procedures are in place and operating as intended. Further, VA's ability to fully and effectively address the deficiencies identified in our September 2008 report concerning miscellaneous obligations may be adversely affected by continuing financial system weaknesses reported by agency auditors. Specifically, one of the weaknesses we reported on in November 2009<sup>19</sup> was that VA lacked a system to track obligations and purchases by vendors, resulting in VA relying on those vendors to supply operational sales data on medical center purchases. Consequently, this type of deficiency exposes VA to continued risk of errors in financial information and reporting, potentially impacting actions VA has made in developing policies and procedures intended to increase accountability and controls over its use of miscellaneous obligations.

In summary, our September 2008 report demonstrated that without basic controls in place over billions of dollars in miscellaneous obligations, VA is at significant risk of fraud, waste, and abuse. Effectively designed internal controls serve as the first line of defense for preventing and detecting fraud, and they help ensure that an

<sup>19</sup>GAO, *Department of Veterans Affairs: Improvements Needed in Corrective Action Plans to Remediate Financial Reporting Material Weaknesses*, GAO-10-65 (Washington, D.C.: Nov. 16, 2009).

agency effectively and efficiently meets its missions, goals, and objectives; complies with laws and regulations; and is able to provide reliable financial and other information concerning its programs, operations, and activities. VA management has made progress to reduce the risks associated with the authorization and use of miscellaneous obligations by developing policies and procedures that improve overall control design over miscellaneous obligations. However, full and effective implementation of this new guidance will be critical to reducing the Government's risks associated with VA's use of miscellaneous obligations.

Mr. Chairman and Ranking Member Roe, this concludes my prepared statement. I would be happy to respond to any questions you or other Members of the Subcommittee may have at this time.

#### **GAO Contact and Staff Acknowledgments**

For further information about this testimony, please contact Kay L. Daly, Director, Financial Management and Assurance at (202) 512-9095, or [dalykl@gao.gov](mailto:dalykl@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony. Major contributors to this testimony included Glenn Slocum, Assistant Director; Carla Lewis, Assistant Director; Richard Cambos; Debra Cottrell; Francine DelVecchio; Daniel Egan; W. Stephen Lowrey; Robert Sharpe; and George Warnock.

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### **Prepared Statement of Gregory D. Kutz, Managing Director, Forensic Audits and Special Investigations, U.S. Government Accountability Office**

#### **Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts**

#### **GAO Highlights**

##### **Why GAO Did This Study**

The Service-Disabled Veteran-Owned Small Business (SDVOSB) program is intended to provide Federal contracting opportunities to qualified firms. In fiscal year 2008, the Small Business Administration (SBA) reported \$6.5 billion in Governmentwide sole-source, set-aside, and other SDVOSB contract awards. Given the amount of Federal contract dollars being awarded to SDVOSB firms, GAO was asked to determine (1) whether cases of fraud and abuse exist within the SDVOSB program and (2) whether the program has effective fraud prevention controls in place.

To identify whether cases exist, GAO reviewed SDVOSB contract awards and protests since 2003 and complaints sent to GAO's fraud hotline. GAO defined case-study firms as one or more affiliated firms that were awarded one or more SDVOSB contracts. To assess fraud prevention controls, GAO reviewed laws and regulations and conducted interviews with SBA and Department of Veterans Affairs (VA) officials. GAO did not attempt to project the extent of fraud and abuse in the program. In addition, GAO did not attempt to assess the overall effectiveness of VA's validation process to prevent or address fraud and abuse in VA SDVOSB contracts.

##### **What GAO Found**

GAO found that the SDVOSB program is vulnerable to fraud and abuse, which could result in legitimate service-disabled veterans' firms losing contracts to ineligible firms. The 10 case-study firms that GAO investigated received approximately \$100 million in SDVOSB sole-source and set-aside contracts through fraud, abuse of the program, or both. For example, contracts for Hurricane Katrina trailer maintenance were awarded to a firm whose owner was not a service-disabled veteran. GAO also found that SDVOSB companies were used as pass-throughs for large, sometimes multinational corporations. In another case a full-time Federal contract employee at MacDill Air Force Base set up a SDVOSB company that passed a \$900,000 furniture contract on to a company where his wife worked, which passed the work to a furniture manufacturer that actually delivered and installed the furniture. The table below provides details on 3 of the 10 cases, all of which included fraud and abuse related to VA sole source or set aside SDVOSB contracts.

**Details of Three Ineligible SDVOSB Cases**

Industry	Award—agencies	Notes
Construction, maintenance, and repair	\$39.4 million—VA	SBA determined the firm was ineligible because a non-service-disabled veteran manages daily operations.  Service-disabled veteran owned and managed a restaurant in another city 80 miles away when the contract was awarded.  Despite being ineligible, VA allowed the firm to continue multiple SDVOSB contracts.
Construction and janitorial services	\$5 million—VA, U.S. Fish and Wildlife Service, Agricultural Research Service, and U.S. Forest Service	Firm is ineligible because it subcontracts 100 percent of the work to non-SDVOSB firms.  Our investigation found that the SDVOSB firm utilizes employees from a large non-SDVOSB foreign-based corporation, which reported almost \$12 billion in annual revenue in 2008, to perform contracts.  Firm is currently listed in VA database of verified SDVOSB firms.
Construction, maintenance, and medical equipment	\$8.1 million—VA	Firm is ineligible because the service-disabled veteran owner is a full time New Jersey state employee and does not manage day-to-day operations.  Our investigation found that the firm's 49 percent non-service-disabled veteran owner owns five additional construction firms at the same address as the SDVOSB firm receiving contracts.

Source: GAO analysis of FPDS-NG, ORCA, CCR, and contractor data and interviews.

GAO found that the government does not have effective fraud prevention controls in place for the SDVOSB program. However, in response to the Veterans Benefits, Health Care, and Information Technology Act of 2006, VA is developing a certification processes for SDVOSB firms, but currently the certification will only be used for contracting by VA. VA officials stated that the certification process could include reviews of documents, validation of the owner's service-disabled veteran status, and potential site visits to SDVOSB firms. To be effective, VA's processes will need to include preventive controls, detection and monitoring of validated firms, and investigations and prosecutions of those found to be abusing the program. In a report GAO issued in October 2009, GAO suggested Congress consider providing VA with additional authority necessary to expand its SDVOSB verification process governmentwide.

Mr. Chairman and Members of the Subcommittee:

The Small Business Administration (SBA), which, along with Federal procuring agencies, administers the Service-Disabled Veteran-Owned Small Business (SDVOSB) program, reported in fiscal year 2008 that \$6.5 billion<sup>1</sup> in Federal contracts were awarded to firms that self-certified themselves as SDVOSBs. Government contracts to SDVOSBs accounted for only 1.5 percent of all Government contract dollars paid in fiscal year 2008. Since the SDVOSB program began, the Government has not met its annual mandated goal of 3 percent.<sup>2</sup> However, in fiscal year 2008 the Department of Veterans Affairs' (VA) SDVOSB contracts accounted for \$1.7 billion, or 12 percent, of all VA small business eligible contracting dollars. In addition to SBA's statutory authority over administration of the SDVOSB program, several other Government agencies have separate authority over issues re-

<sup>1</sup>SBA calculates its SDVOSB total by including all dollars awarded to SDVOSBs, not just those received through set-aside or sole-source contracts.

<sup>2</sup>SBA's Small Business Procurement Scorecards report the annual percentage share of SDVOSB awards.

lated to the SDVOSB program. The Veterans Benefits, Health Care, and Information Technology Act<sup>3</sup> requires VA, among other things, to maintain a database of SDVOSBs and Veteran-Owned Small Businesses (VOSB) so contractor eligibility can be verified on VA SDVOSB and VOSB contracts. In addition, the Office of Federal Procurement Policy (OFPP), within the Office of Management and Budget, provides overall direction for Governmentwide procurement policies, regulations, and procedures to promote economy, efficiency, and effectiveness in the acquisition processes. The office's primary focus is on the Federal Acquisition Regulation (FAR), the Governmentwide regulation governing agency acquisitions of goods and services, including SDVOSB set-aside and sole-source contract actions.

My statement summarizes our report issued in October 2009.<sup>4</sup> This testimony discusses (1) whether cases of fraud and abuse exist within the SDVOSB program and (2) whether the program has effective fraud prevention controls in place.

To identify examples of firms that received SDVOSB contracts through fraudulent or abusive eligibility misrepresentations, we reviewed SDVOSB contract awards and protests filed with SBA since the program's inception in 2003. We also reviewed allegations of fraud and abuse sent to our fraud hotline, FraudNET. In addition, we posted inquiries on our Web page and on several veteran advocacy group Web pages and in newsletters seeking information on fraud or abuse of the SDVOSB program. We received over 100 allegations of fraud and abuse in the SDVOSB program. From these sources, we selected 10 cases for further investigation based on a variety of factors, including facts and evidence provided in protests and allegations, whether a firm received multiple SDVOSB contracts, and whether a firm received other non-SDVOSB contracts. To investigate these case studies, we interviewed firm owners and managers and reviewed relevant documentation, such as business filings and tax returns, to determine if SDVOSB eligibility requirements had been met. We also analyzed data from the Federal Procurement Data System—Next Generation (FPDS-NG) for 2003 through 2009<sup>5</sup> to identify SDVOSB contracts received by the firms since the program's inception. Furthermore, we reviewed certifications made by firms, such as certifications about a firm's size, SDVOSB status, and line of business, in the Federal Government's Online Representations and Certifications Application (ORCA).<sup>6</sup> To determine whether the program has effective fraud prevention controls in place, we reviewed relevant laws and regulations governing the SDVOSB program. We also interviewed agency officials about their responsibility for the program and controls currently in place to prevent or detect fraud and abuse. We did not attempt to project the extent of fraud and abuse in the program. In addition, we did not attempt to assess the overall effectiveness of VA's validation process to prevent or address fraud and abuse in VA SDVOSB contracts. Additional details on our scope and methodology can be found in our report issued in October 2009.<sup>7</sup>

We conducted our audit work and investigation from October 2008 through December 2009 in accordance with U.S. generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives. We performed our investigative work in accordance with the standards prescribed by the Council of the Inspectors General on Integrity and Efficiency.

### **Ineligible Firms Obtain Millions of Dollars in SDVOSB Contracts**

Fraud and abuse in the SDVOSB program allowed ineligible firms to improperly receive millions of dollars in set-aside and sole-source SDVOSB contracts, potentially denying legitimate service-disabled veterans and their firms the benefits of this program. We identified 10 case-study examples of firms that did not meet

<sup>3</sup> Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. No. 109-461, 120 Stat. 3433 (2006).

<sup>4</sup> GAO, *Service-Disabled Veteran-Owned Small Business Program: Case Studies Show Fraud and Abuse Allowed Ineligible Firms to Obtain Millions of Dollars in Contracts*, GAO-10-108 (Washington, D.C.: Oct. 23, 2009).

<sup>5</sup> FPDS-NG is the central repository for capturing information on Federal procurement actions. Dollar amounts reported by Federal agencies to FPDS-NG represent the net amounts of funds obligated and deobligated as a result of procurement actions. Because we did not obtain disbursement data, we were unable to identify the actual amounts received by firms.

<sup>6</sup> ORCA was established as part of the Business Partner Network, an element of the Integrated Acquisition Environment, which was implemented by the Office of Management and Budget's OFPP and the Chief Acquisition Officers Council. ORCA is the primary Government repository for contractor-submitted representations and certifications required for conducting business with the Government.

<sup>7</sup> GAO-10-108.

SDVOSB program eligibility requirements but received approximately \$100 million in SDVOSB contracts, and over \$300 million in additional 8(a), HUBZone, and non-SDVOSB Federal Government contracts. Six of these 10 case studies were awarded one or more sole-source or set-aside SDVOSB contracts by VA. For example, 1 firm was awarded a \$3.5 million contract by VA for janitorial services at a VA hospital, but subcontracted 100 percent of the work to an international firm. SBA found 4 of the 10 firms, including 2 firms that were awarded VA contracts, ineligible for the SDVOSB program through the agency's bid protest process.<sup>8</sup> Nevertheless, because there are no requirements to terminate contracts when firms are found ineligible, several contracting agencies allowed the ineligible firms to continue their work. In addition to the 4 firms SBA found to be ineligible, we identified 6 other case-study firms that were not eligible for the SDVOSB program. The misrepresentations case-study firms made included a firm whose owner was not a service-disabled veteran, a serviced-disabled veteran who did not control the firm's day-to-day operations, a service-disabled veteran who was a full-time Federal contract employee at MacDill Air Force Base, and firms that served as "pass-throughs" for large and sometimes foreign-based corporations. In the case of a pass-through, a firm or joint venture lists a service-disabled veteran as the majority owner, but contrary to program requirements, all work is performed and managed by a non-service-disabled person or a separate firm.

Federal regulations set requirements for a small business to qualify as an SDVOSB. Specifically, SDVOSB eligibility regulations mandate that a firm must be a small business<sup>9</sup> and at least 51<sup>10</sup> percent owned by one or more service-disabled veterans<sup>11</sup> who control the management<sup>12</sup> and daily business operations of the firm. In addition, SDVOSB regulations also place restrictions on the amount of work that can be subcontracted. Specifically, regulations require the SDVOSB to incur a mandatory percentage of the cost of the contract performance that can range from 15 percent to 50 percent, depending on the type of goods or services. The FAR requires each prospective contractor to update ORCA to state whether the firm qualifies as an SDVOSB under specific North American Industry Classification System codes. Pursuant to 15 U.S.C. § 657 f(d), firms that knowingly make false statements or misrepresentations in certifying SDVOSB status are subject to penalties. Of the 10 cases we identify, all 10 of them represented to be SDVOSBs in the Central Contractor Registration (CCR).<sup>13</sup> Table 1 provides details on our 10 case-study firms that fraudulently or abusively misrepresented material facts related to their eligibility for the SDVOSB program. We have referred all 10 firms to appropriate agencies for further investigation and consideration for removal from the program.

<sup>8</sup> 15 U.S.C. § 631 *et seq.*, 13 C.F.R. Parts 125 and 134.

<sup>9</sup> The criteria for a small business are defined in 13 C.F.R. Part 121.

<sup>10</sup> For any publicly owned business, not less than 51 percent of the stock must be owned by one or more service-disabled veterans.

<sup>11</sup> The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable. 38 U.S.C. § 101(2). Service-disabled means, with respect to disability, that such disability was incurred or aggravated in line of duty in the active military, naval, or air service.

<sup>12</sup> In the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran may control the business.

<sup>13</sup> CCR is the primary contractor registrant database for the U.S. Federal Government. CCR collects, validates, stores, and disseminates data in support of agency acquisition missions.

**Table 1: Case-Study Firm Details**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
1	Maintenance/repair North Las Vegas, Nev.	\$7.5 million—Federal Emergency Management Agency (FEMA)	<ul style="list-style-type: none"> <li>• Firm is ineligible because majority owner is not a service-disabled veteran.</li> <li>• Firm's ineligibility was determined by SBA during a bid protest in June 2007.</li> <li>• After the SBA protest, in July of 2007 FEMA sent the firm a letter providing it approximately 30 days to vacate SDVOSB contract awards.</li> <li>• Company continues to receive tens of millions in non-SDVOSB contracts.</li> <li>• SBA determined that the firm was ineligible; however, the firm has not been suspended or debarred from receiving Federal contracts.</li> </ul>
2	Construction and janitorial services Chico, Calif.	\$5 million—VA, U.S. Fish and Wildlife Service, Agricultural Research Service, and U.S. Forest Service	<ul style="list-style-type: none"> <li>• Firm is ineligible because it does not perform any work and subcontracts 100 percent of the work to non-SDVOSB firms.</li> <li>• Our investigation found that the firm employs three full-time workers and performs SDVOSB contract work with employees from a large international-based corporation that reported almost \$12 billion in annual revenue in 2008.</li> <li>• Firm received over 20 SDVOSB contracts since 2008.</li> <li>• Firm is currently listed in VA's database of verified SDVSOB firms.</li> </ul>

**Table 1: Case-Study Firm Details—Continued**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
3	Construction/maintenance/repair Carnegie, Pa.	\$39.4 million—VA	<ul style="list-style-type: none"> <li>• Firm is ineligible because a non-service-disabled veteran manages and controls the firm's daily operations.</li> <li>• Firm's ineligibility was determined by SBA during a bid protest.</li> <li>• Despite the firm's being determined ineligible, VA allowed the firm to continue multiple SDVOSB contracts because there are no requirements for agencies to terminate contracts awarded to ineligible firms.</li> <li>• A non-SDVOSB construction company, located at the same address, manages and performs the SDVOSB contract work.</li> <li>• Service-disabled veteran owned and managed a restaurant in another city over 80 miles away when the contract was awarded.</li> <li>• SBA determined that the firm was ineligible; however, the firm has not been suspended or debarred from receiving Federal contracts.</li> </ul>

**Table 1: Case-Study Firm Details—Continued**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
4	Construction/ environmental/defense technology/maintenance San Diego, Calif.	\$12.2 million— Environmental Protection Agency and FEMA	<ul style="list-style-type: none"> <li>• Firm is ineligible because it is not a small business.</li> <li>• Our investigation determined that Federal agencies have obligated approximately \$171 million for payment to the firm during fiscal years 2003 to 2009, exceeding SBA size standards for average annual receipts.</li> <li>• Firm is also ineligible because it has formed at least five SDVOSB joint ventures, violating SBA joint-venture rules.</li> <li>• Firm uses the employees from the large firm in the joint ventures to perform the SDVOSB contract work.</li> </ul>

**Table 1: Case-Study Firm Details—Continued**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
5	Septic tank and related services/facilities support services/rental and leasing services Austin, Tex.	\$200,000—U.S. Army	<ul style="list-style-type: none"> <li>• Firm and its SDVOSB joint ventures are ineligible for the program because a non-SDVOSB firm performs the work.</li> <li>• Firm and first joint venture were determined ineligible during an SBA bid protest.</li> <li>• After the SBA determination, the non-SDVOSB firm used another SDVOSB joint venture to continue to receive SDVOSB contracts.</li> <li>• Over \$5 million in Federal contracts has been obligated to the firm and its SDVOSB joint ventures since SBA ruled the firm and its first SDVOSB joint venture ineligible for the program.</li> <li>• Service-disabled veteran used to qualify for current contracts lives over 1,800 miles from contract performance location.</li> <li>• SBA determined that the firm was ineligible; however, the firm has not been suspended or debarred from receiving Federal contracts.</li> </ul>

**Table 1: Case-Study Firm Details—Continued**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
6	Construction/maintenance/repair/medical and surgical equipment Burlington, N.J.	\$8.1 million—VA	<ul style="list-style-type: none"> <li>• Firm is ineligible because the service-disabled veteran owner is a full-time New Jersey state employee and does not manage the firm's day-to-day operations.</li> <li>• Our investigation also found that the firm's 49 percent owner, who is not a service-disabled veteran, owns five additional non-SDVOSB construction firms at the same address as the SDVOSB firm receiving contracts.</li> <li>• SBA bid protest initially determined that the SDVOSB firm was ineligible because the service-disabled veteran did not own at least 51 percent of the firm. SBA later reversed its decision when the firm submitted revised paperwork.</li> </ul>
7	Construction/roofing Boise, Idaho	\$3.9 million—VA, Public Buildings Service, and U.S. Army	<ul style="list-style-type: none"> <li>• Firm is ineligible because a non-service-disabled veteran manages and controls the firm's daily operations.</li> <li>• Our investigation found that the service-disabled veteran is an employee of the firm performing the contract work.</li> <li>• Joint venture was established as a pass-through for a non-SDVOSB roofing firm.</li> <li>• SDVOSB joint venture and non-SDVOSB firm share employees and adjust payrolls to meet program percentage of work requirements.</li> <li>• Service-disabled veteran received only 26 percent of the joint venture's profits.</li> </ul>

**Table 1: Case-Study Firm Details—Continued**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
8	Construction/specialty trade contracting Leominster, Mass.	\$13.8 million—VA, U.S. Coast Guard, U.S. Army, Public Buildings Service, and National Park Service	<ul style="list-style-type: none"> <li>• Firm is ineligible because a non-service-disabled veteran manages and controls the firm's daily operations.</li> <li>• During our investigation, firm executives admitted that the service-disabled veteran is not involved with SDVOSB construction contracts.</li> <li>• Service-disabled veteran is an information technology specialist who currently works from home on nongovernment contracts.</li> <li>• All the company construction contracts are managed by the non-service-disabled partner of the firm.</li> <li>• The service-disabled veteran does not receive a salary from the company and received less in Internal Revenue Service 1099 distributions than the 10 percent minority owner of the firm.</li> <li>• Ten percent minority owner of the SDVOSB firm is also the president of another construction company located at the same address as the SDVOSB firm.</li> </ul>

**Table 1: Case-Study Firm Details—Continued**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
9	Construction/ maintenance/repair Luthersville, Ga.	\$2.8 million—VA, U.S. Coast Guard, Department of Agriculture, and U.S. Army	<ul style="list-style-type: none"> <li>• Firm is ineligible because a non-service-disabled veteran manages and controls the firm's day-to-day operations and because the SDVOSB firm is a pass-through for a non-SDVOSB firm.</li> <li>• Firm was determined ineligible through an SBA bid protest.</li> <li>• Through interviews and our review of documents submitted by the firm, we found that the SDVOSB firm only has four employees and the owner of a non-SDVOSB firm is responsible for day-to-day operations of SDVOSB contracts.</li> <li>• The SDVOSB firm submitted 10 joint-venture bids within a 5-month period, violating Federal regulations.</li> <li>• After being found ineligible by SBA, the firm continued to receive approximately \$1.8 million in new SDVOSB contracts.</li> <li>• SBA determined that the firm was ineligible; however, the firm has not been suspended or debarred from receiving Federal contracts.</li> </ul>

**Table 1: Case-Study Firm Details—Continued**

Case	Industry and location	SDVOSB contracts <sup>a</sup> for years 2003–2009, <sup>b</sup> and awarding agencies	Case details
10	Furniture/merchant wholesaler Tampa, Fla.	\$900,000—U.S. Air Force	<ul style="list-style-type: none"> <li>• Firm is ineligible because it does not perform any work; it subcontracts 100 percent of the work to non-SDVOSB firms.</li> <li>• Our investigation found that the firm's service-disabled veteran owner works full-time as a Department of Defense contract employee at MacDill Air Force Base—the same location as the contract award.</li> <li>• SDVOSB firm served as a pass-through to a company where the service-disabled veteran's wife works, which passed the work to a furniture manufacturer that designed, delivered, and installed the furniture.</li> <li>• Manufacturer performed planning, design, and installation of contracted goods.</li> <li>• This manufacturer is also on the General Services Administration schedule and could have provided the contracted goods at a significantly lower price.</li> <li>• The firm's physical address is the owner's home and its mailing address is a mailbox rental store.</li> <li>• Contracting officials at MacDill Air Force Base were aware of the pass-through structure of the firm and approved the award knowing that the SDVOSB would not perform the required percentage of work.</li> <li>• Firm is currently listed in VA's database of verified SDVSOB firms.</li> </ul>

Source: GAO analysis of FPDS–NG, ORCA, CCR, and contractor data and interviews.

<sup>a</sup>Obligation amounts are rounded to the nearest \$100,000.

<sup>b</sup>Year 2009 amounts are through July 2009.

### VA Plans to Develop Fraud Prevention Controls for VA SDVOSB Contractors

We found that the Federal Government does not have an effective fraud prevention system in place for the SDVOSB program. The 10 case studies discussed above show the impact of the significant control weaknesses in the Governmentwide SDVOSB program, which allowed ineligible firms to receive millions in SDVOSB contracts. The lack of effective fraud prevention controls by SBA and agencies awarding contracts allowed these ineligible firms to receive approximately \$100 million of sole-source or set-aside SDVOSB contracts over the last several years. Recently, VA has taken steps to develop a validation program for contracts it awards to SDVOSBs and VOSBs. According to VA officials, these controls are being developed to validate eligibility for awarding VA contracts only. However, currently the VA validation program is not fully implemented.

A well-designed fraud prevention system should consist of three crucial elements: (1) up front preventive controls, (2) detection and monitoring, and (3) investigations and prosecutions. For the SDVOSB program this would mean (1) front-end controls over program eligibility prior to contract award, (2) fraud detection and monitoring of firms already receiving SDVOSB contracts, and (3) the aggressive pursuit and prosecution of individuals committing fraud, including suspension and debarment and, if appropriate, termination of the contract. In addition, agency officials should also use “lessons learned” from detection and monitoring controls and investigations and prosecutions to design more effective preventive controls.

VA’s proposed validation program is encouraging in that it attempts to address at least the first of the three essential elements of a fraud prevention framework. The Veterans Benefits, Health Care, and Information Technology Act<sup>14</sup>—which took effect in June 2007—requires VA, among other things, to maintain a database of SDVOSBs and VOSBs so that contractor eligibility can be verified. It also requires VA to determine whether SDVOSBs and VOSBs are indeed owned and controlled by veterans or service-disabled veterans in order to bid on and receive VA contracts. Last, it requires that VA set-aside and sole-source awards be made only to firms that have had their eligibility verified. At the time the act took effect, VA already maintained an online database, VetBiz Vendor Information Pages, referred to as VA’s VetBiz database, in which nearly 16,500 firms had self-certified as SDVOSBs or VOSBs. While not yet fully implemented,<sup>15</sup> VA’s planned validation program includes steps to verify a firm’s eligibility for the program, including validating the service-disabled status claimed by an owner and his/her control of day-to-day operations. The VA program also includes plans for document reviews and site visits to firms seeking VA certification as SDVOSBs or VOSBs. Requiring submission of documents to demonstrate ownership and control of an SDVOSB has some value as a deterrent—ownership documents could have prevented instances demonstrated in our case studies where the service-disabled veteran was receiving less than 51 percent of the profits. The most effective preventive controls involve the verification of information, such as verifying service-disabled status with VA’s database and service-disabled veteran participation in the business through an unannounced site visit. Verification of service-disabled veteran status through VA’s database could have prevented the most egregious example of fraud where the owner was not even a service-disabled veteran. Although VA’s proposed system was not intended for Governmentwide use, once the certification system is in place, all SDVOSBs wishing to do business with VA will eventually have to be certified.

Although preventive controls are the most effective way to minimize fraud and abuse, to be effective, VA’s process will need to include the remaining two elements of the fraud prevention model. The second element, monitoring and detection, involves actions such as data mining for fraudulent and suspicious applicants and evaluation of firms by contracting officers and program officials to provide reasonable assurance that contractors continue to meet program requirements. The final element of an effective fraud prevention system is the aggressive investigation and prosecution of individuals who commit fraud against the Federal Government. In a report we issued in October 2009, we suggested that Congress consider providing VA with the additional authority necessary to expand its SDVOSB eligibility verification process to all contractors seeking to bid on SDVOSB contracts Government wide. In addition, we recommended that the Administrator of SBA and the Secretary of Veterans Affairs coordinate with OFPP to explore the feasibility of re-

<sup>14</sup>Veterans Benefits, Health Care, and Information Act of 2006, Pub. L. No. 109–461, 120 Stat. 3433 (2006).

<sup>15</sup>See GAO, *Department of Veterans Affairs Contracting with Veteran-Owned Small Businesses*, GAO–09–391R (Washington, D.C.: Mar. 19, 2009).

quiring that all contractors that knowingly misrepresent their status as an SDVOSB be debarred for a reasonable period of time.

VA generally agreed with our two recommendations. In its response, VA expressed that specific authority would be required for other agencies to be able to rely on the department's VetBiz database and exclude firms from acquisitions if not "verified" in this database. SBA's response, provided by the Associate Administrator for Government Contracting and Business Development, generally agreed with our recommendations; however, in its general observations and specific responses to our recommendations, SBA stated that it has limited responsibility for the SDVOSB program and questioned the efficacy of one of our recommendations. Specifically, SBA stated that agency contracting officers bear the primary responsibility for ensuring that only eligible SDVOSB firms perform SDVOSB set-aside and sole-source contracts. SBA also stated that it is only authorized to perform eligibility reviews in a bid protest situation, and contracting officers, not SBA, are responsible for taking appropriate action after a bid protest decision is made. The Associate Administrator maintained that SBA was under no legal obligation to create a protest process for the SDVOSB program, and that its only statutory obligation is to report on other agencies' success in meeting SDVOSB contracting goals. In addition, SBA expressed that it was not obligated to institute any type of fraud prevention controls within the SDVOSB program.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or other Members of the Subcommittee may have at this time.

#### Contacts and Acknowledgments

For additional information about this testimony, please contact Gregory D. Kutz at (202) 512-6722 or [kutzg@gao.gov](mailto:kutzg@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Jonathan Meyer, Assistant Director; Gary Bianchi; Bruce Causseaux; Randy Cole; Victoria De Leon; Beth Faraguna; Ken Hill; John Ledford; Deanna Lee; Barbara Lewis; Vicki McClure; Andrew O'Connell; George Ogilvie; Gloria Proa; Barry Shillito; and Abby Volk made key contributions to this testimony.

#### GAO Slide Presentation



## Denmark Firm Performing SDVOSB Work at VA Hospital




Source: GAO.

### Case Study Pass-through Firm Certified by VA

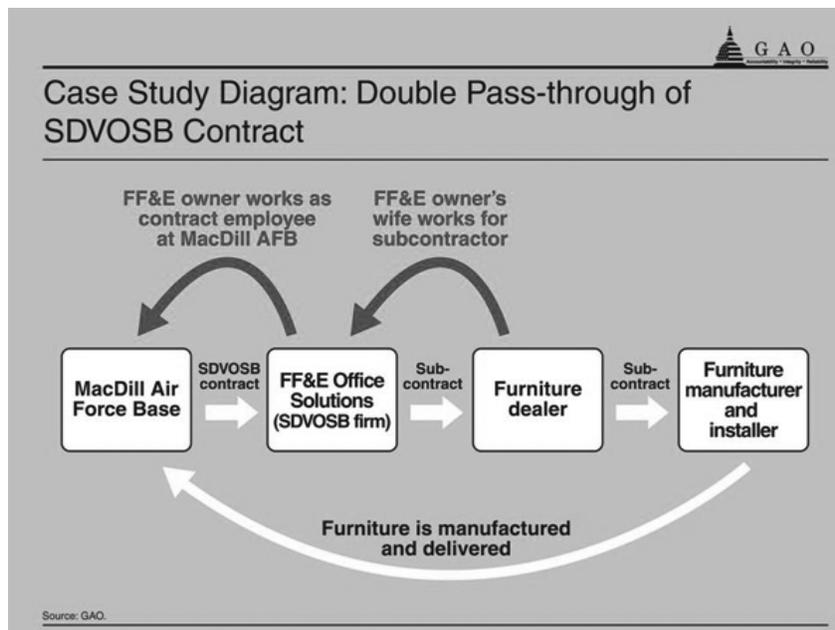


Source: VA.

### Business Mailing Address and Physical Address for Case-Study Firm



Source: GAO.



**Prepared Statement of Maureen T. Regan, Counselor  
to the Inspector General, Office of Inspector General,  
U.S. Department of Veterans Affairs**

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to testify on the findings of the Office of Inspector General (OIG) relating to VA procurement processes. I am accompanied today by Belinda Finn, Assistant Inspector General for Audits and Evaluations.

**BACKGROUND**

Procurement is one of VA's major management challenges. Our oversight of VA's procurement activities is through audits, investigations, reviews, and inspections. In addition, the Office of Contract Review conducts pre- and post-award reviews of contracts awarded by VA's National Acquisition Center. These include Federal Supply Schedule (FSS) contracts for pharmaceuticals; medical and surgical supplies; health care services contracts; and national contracts for major medical equipment. The Office of Contract Review also conducts pre-award reviews of proposals for health care resources to be awarded to VA affiliated universities and medical centers on a sole-source basis. Our work provides us with a unique nationwide perspective on VA's procurement practices. A list of published reports from fiscal years 2004 through 2009 is attached to our testimony.

In the past 5 fiscal years, the OIG has published more than 35 reports relating to VA's procurement practices. These reports identified \$112 million in better use of funds. Another 424 reports relating to pre and post-award reviews of FSS contracts awarded by VA's National Acquisition Center and pre-award reviews of health care resource contracts issued by VA medical facilities were issued directly to contracting officers during this time period and are not publically available because they contain proprietary information. The pre-award reviews identified \$1.54 billion in potential cost savings if the contracting entity negotiated the recommended fair and reasonable prices. Of this amount, \$166 million related to health care resource contracts awarded by VA medical facilities. The post-award reviews collected more than \$115 million, which was deposited in VA's Supply Fund.

During this same time period, we conducted 254 criminal investigations relating to procurement that resulted in the arrest of 110 individuals.

In addition, an audit of payments made under Veterans Health Administration's (VHA) non-VA outpatient fee care program estimated about \$1.126 billion in overpayments and \$260 million in underpayments over a 5-year period due to poor oversight and administration of claims for payment. The audit found systemic program weaknesses similar to those we have identified in VA's procurement processes. We found that VA medical facilities were not properly justifying and authorizing fee services for 80 percent of outpatient care payments. In addition, VA improperly paid 37 percent of fee claims by making duplicate payments, paying incorrect rates, and through other payment errors such as paying for the wrong quantity of services.

Across the board, our audits, reviews, and investigations have identified systemic issues that caused or contributed to procurement failures, overpayments, and misuse of funds, including poor acquisition planning; poorly written contracts; inadequate competition; no price reasonableness determinations; and poor contract administration.

We believe the decentralized organizational structure for procurement activities in VA as well as inadequate oversight and accountability are primary factors contributing to these problems. As we have previously testified, VA procurement is so decentralized that on a system-wide basis, VA cannot identify what it bought, who it bought it from, whether the products or services were received, or whether prices were fair and reasonable.

Data systems such as VA's Electronic Contract Management System (eCMS) and the Federal Procurement Data System (FPDS), which should provide accurate information relating to procurements, contain inaccurate and incomplete data. Because of VA's lack of a system-wide inventory of contracts, we have had to develop techniques for identifying each universe of contracts for audits, investigations, and other reviews. For example, our audit of non-competitive clinical sharing agreements required that we contact each medical center selected for review to obtain their listing of agreements. Although we took steps to assess the information we received, we cannot be certain that we had a complete inventory of agreements for review. If an audit, investigation, or other review involves the purchase of items other than pharmaceuticals purchased through the pharmaceutical prime vendor program, we have to request VA sales data with line item visibility from the vendor as the information is not contained in any VA centralized database.

## **DEFICIENCIES IN THE PROCUREMENT PROCESS**

The procurement process involves at least three critical steps and three groups of individuals who must work together for a successful procurement. The three steps include planning, solicitation/negotiation/award, and contract administration. The three groups of individuals involved in the process are the program office requiring the goods or services, the contracting entity, and the Office of General Counsel. Breakdown at any step in the process or by any of the three groups of individuals can result in the failure of the procurement. Through our oversight activities, we have identified breakdowns at all three steps in the procurement process and by each group of individuals involved in the process.

### *Procurement Planning*

Planning involves identifying requirements, identifying potential sources through market research, developing an Independent Government Cost Estimate, and developing a comprehensive statement of work that clearly defines the requirements, deliverables, and performance measures. Our reports on the failure of contracts for the development of the Core Financial and Logistics System (CoreFLS), the National Vietnam Veterans Longitudinal Study, the development of the Patient Financial Services System, the Centralized Incident Response Capability (CIRC), and the development of the Replacement Scheduling Application identified the inability of the responsible program offices to adequately identify and define their needs as a significant factor in the poor outcome. These failures resulted in losses to VA that exceeded \$650 million. (Report Nos. 04-1371-177, 04-02330-212, 06-03285-73, 04-03100-90, 09-01446-203.) Other reports that address deficiencies in procurement planning include the evaluation of sole-source health care resource contracts, a national audit of open market medical equipment and supply purchases, a national audit of the acquisition and management of selected surgical device implants, and the contract with the University of Texas Southwest Medical Center for Gulf War illness research. (Report Nos. 05-01318-85, 08-01519-172, 06-03677-221, and 09-0175-164)

The national audit of VHA open market medical equipment and supply purchases reported that VHA medical facility staff needed to plan medical equipment and supply purchases more effectively to reduce purchases on the open market and increase purchases through the FSS. Medical facility staff lacked the knowledge, information, and proper tools to effectively use the FSS. We estimated that VHA could reduce its supply costs by about \$41 million over 5 years if it improved its acquisition planning and oversight processes and increased the use of the FSS to purchase medical equipment and supplies. (Report No. 08-01519-172)

Issues identified in these and other OIG reviews include the failure to develop complete and comprehensive statements of work containing specific deliverables and performance measures, which made them difficult to administer and ensure compliance. Our review of the Interagency Agreement between VA and the Department of Navy, Space and Naval Warfare Systems (SPAWAR), found that VA lacked qualified and experienced program personnel to plan and manage IT enterprise development. As a result, VA personnel were unable to develop the required statements of work and essentially abdicated responsibility for IT development to SPAWAR and ultimately to SPAWAR contractors. (Report No. 09-01213-142)

#### *Solicitation / Negotiation / Award*

The solicitation, negotiation, and award process can involve the award of a new contract, a modification to a contract to add services or change terms and conditions, or the issuance of a task order or purchase order against an existing contract. One of the most frequent issues we have identified is the failure to comply with Federal laws and regulations requiring competition. As an example, our recent review of the contract awarded to develop the Replacement Scheduling Application showed that the contract was improperly modified at the direction of the program office to change the scope of work when it was determined that there was no commercial off-the-shelf product available for the program. (Report No. 09-01926-207) An audit of the use of expired funds and related contracting practices at the Boston Healthcare System, the subsequent national audit addressing the same issues, and our review of the CIRC contract also identified that contracts were improperly modified at the direction of program officials to add services that were outside the scope of the original statement of work. These improper cardinal changes to the contracts allowed VA medical facilities to noncompetitively obtain goods and services. (Report Nos. 06-03677-221, 08-00244-213, and 04-03100-90)

In a report issued in February 2007, we found that VA conducted a procurement in the middle of the night on a weekend to obtain the services of forensic analysts to review electronic media relating to the theft of an employee's external hard drive containing information about 26 million veterans. This was done at the direction of the program office to avoid competition and steer the contract to the vendor preferred by the program office. A separate administrative investigation found that a contracting officer who expressed concern over the inappropriateness of the procurement was subject to retaliation by a former VA supervisor. Further, we found that the program office approved and authorized payment for additional work that was outside the scope of the task order without consulting with or notifying the contracting officer and authorized payment for travel expenses without verifying the charges. (Report No. 06-02238-84)

Two reviews conducted in response to complaints received through the OIG Hotline identified the failure at facilities in Veterans Integrated Systems Network 7 to comply with Federal Acquisition Regulations (FAR) when purchasing services. Two of the purchases were off General Services Agency (GSA) FSS contracts. We found that a contract was awarded to a retired VA employee on a sole source basis without the justification required by FAR Part 6. In two others awards, the competition requirements in FAR Part 8.4 were not followed because the program office, not the contracting entity, negotiated the procurement. In one, the program officials identified and contacted the contractor, asked the contractor to hire a retired VA employee to perform the work, negotiated the hourly rates, wrote the task orders, and then submitted it to the purchasing agent for signature. In addition, we found that the task order was for services outside the scope of those on the vendor's FSS contract and the services were inherently Governmental in nature. (Report Nos. 08-02110-02 and 08-01866-61)

Another issue we have repeatedly identified is the failure to accurately assess price reasonableness. Our review of VA's contract with QTC Medical Services, Inc., to conduct disability rating examinations showed that VA failed to make a fair and reasonable price determination prior to award. We found indicators that VA may have paid more than fair and reasonable prices for the services provided. When an independent audit conducted at the request of the Veterans Benefits Administration

and a subsequent review by the OIG Office of Contract Review identified overcharges, VA officials declined to recover \$2.6 million of the \$6 million in overcharges. (Report No. 07-02280-104)

Our national audit of VHA's Government purchase card practices examined more than 700 purchase card transactions. We found that for 17.4 percent of the transactions examined, the cardholders did not maintain the documentation needed to confirm price reasonableness or ensure the most efficient use of funds. The results supported the need for VHA to strengthen controls to ensure cardholders maintain adequate documentation of the receipt of goods and services to ensure purchases are made for valid medical facility needs at reasonable prices. (Report No. 07-02796-203)

Our review of the contract awarded to Dell for the lease of computers found that in addition to limiting competition, the price analysis was faulty and that it would have been more cost effective to purchase rather than lease the equipment. (Report No. 08-02213-138)

Our report on FSS contracts awarded to resellers found that contracts and contract modifications adding products and increasing prices were awarded without obtaining the information necessary to determine price reasonableness. For 63 percent of 11,576 products added to four contracts via 28 modifications, the contracting officer failed to document that an adequate price reasonableness determination had been made. (Report No. 05-01670-04)

Our 2005 report relating to our reviews of 72 proposals for sole-source contracts awarded to affiliated institutions to purchase health care services found that VA was overpaying for services provided at the VA medical facility on a per procedure basis because VA was paying 100 percent or more of the applicable Medicare part B rate, which consists of four components – practice expense, physician expense, malpractice insurance, and a geographic adjustment. The rate should have been reduced because VA was already incurring the costs associated with the practice expense component. (Report No. 05-01318-85) VA subsequently issued policy requiring that the practice expense be excluded from the Medicare rate when negotiating prices. However, a 2008 audit of the administration of these contracts found the policy was not followed. The audit concluded that exclusion of the practice expense component could result in a savings of \$2.5 million annually. (Report No. 08-00477-211)

#### *Contract Administration*

Once a contract has been awarded or a purchase or task order issued against an existing contract, it must be administered. This process includes ensuring that the right product or service is delivered in a timely manner, at the agreed upon price, and in accordance with the terms and conditions of the contract. Contract administration is the responsibility of the contracting officer and/or the contracting officer's technical representative. When the contractor fails to perform, action must be taken in a timely manner to ensure compliance or the termination of the contract. We have identified numerous systemic problems in contract administration.

A national audit of 58 contracts for health care resource clinical services awarded non-competitively to affiliated institutions showed that VA lacks reasonable assurance that it receives the services it paid for because of ineffective controls to monitor performance. We identified problems in all contracts in the sample reviewed and found that for 52 percent of the contracts, the vendor was overpaid. We estimated that by strengthening controls, VA could save \$9.2 million annually. (Report No. 08-00244-213)

During our recent reviews of contracts for primary medical services provided at VA Community Based Outpatient Clinics (CBOCs) we found that VA overpaid for the services because the Contracting Officer Technical Representatives (COTRs) were not properly administering the contracts. For example, we found that the COTRs were not disenrolling patients in a timely manner, reviewing invoices for accuracy and completeness before authorizing payment, and monitoring performance according to performance measurements in the contract. (Report Nos. 09-01446-233, 09-01446-226, and 09-1446-37)

A national audit of Consolidated Mail Outpatient Pharmacy (CMOP) contract management showed that poor monitoring controls during contract administration put VA at significant risk to overpay for services on contracts valued at \$40.7 million. (Report No. 09-0026-143)

In our review of the contract between VA and QTC for rating examinations, we found that neither the contracting officer nor the COTR identified the applicable Medicare Current Procedural Terminology (CPT) codes for laboratory and other tests that QTC was allowed to charge for under the contract. As a result, the COTR

approved invoices for payment that included procedural codes created by QTC. In addition, neither the contracting officer nor the COTR ever calculated the actual price that QTC could charge for each CPT code. Notwithstanding the absence of this key information, the COTR approved the invoices for payment. (Report No. 07-02280-104) Our review of the CIRC contract found that VA paid the invoice every month without verifying deliverables. We also found that under the contract VA purchased almost \$35 million in equipment but did not know whether the VA ever obtained possession of the equipment and, if so, where the equipment was located. (Report No. 04-03100-90)

A national audit of VHA's Home Respiratory care program found that the program office, including the COTRs, lacked documentation to support purchases, and lacked invoices and delivery tickets to support certification for payment. We estimated that proper contract administration could reduce program costs by about \$16.8 million over 5 years. (Report No. 06-00801-30)

We also have found that VA is reluctant to take appropriate and timely action when a contractor does not perform under the contract or does not comply with contract terms and conditions. For example, when Unisys consistently failed to submit deliverables for the Patient Financial Services System within the time frames established in the contract, it was almost 4 months before VA began any action to obtain compliance or terminate the contract for default. Despite the delay, the termination process was proceeding when the Office of General Counsel decided unilaterally that a termination for default was not feasible. Instead, VA terminated the contract for convenience, paid the contractor for the level of effort as of the date of termination, and took possession of the work that had been completed. We were told that a termination for convenience was necessary because it was VA's intent to obtain the work completed to date and contract with another vendor to finish the project. Shortly thereafter, VHA canceled the project, thus wasting the \$30 million paid to Unisys. (Report No. 06-03285-73) Similarly, our review of the contract between VA and the University of Texas Southwest Medical Center for Gulf War illness research, showed that the contracting officer was precluded by internal and external forces from timely initiating the process to require compliance or terminate the contract for default when the contractor blatantly refused to comply with key terms and conditions of the contract. (Report No. 09-1075-164.)

## CAUSATION

Deficiencies in VA's procurement program are caused by a variety of factors, including:

### *Decentralization of the acquisition function and lack of oversight*

The vast majority of contracting officers and contract specialists work directly for the program office requesting the service. We have found that they experience undue pressure to comply with the desires of program office and/or facility management rather than complying with applicable laws and regulations. As a result, the interests of the Government are not protected.

In addition, there is inadequate oversight of procurement within VA. This is due to the decentralization of the process and the failure of VA entities with dedicated contract specialists to establish an oversight program. VA has expended resources to conduct pre-award and post-award reviews of FSS contracts and pre-award reviews of health care resource contracts awarded sole-source to affiliated institutions. VA has also vigorously campaigned against efforts to remove contract provisions that would prohibit oversight of FSS contracts through pre-award and post-award reviews. These reviews have not only resulted in significant dollar savings and recoveries as discussed above, but they have had a deterrent effect. Of the 164 post-award reviews conducted in the past 5 fiscal years, 97 (59 percent) were the result of voluntary disclosures.

Effective oversight is difficult because there is no central database that captures contracting and purchasing information. For example, in 2007, the Office of Acquisition, Logistics and Construction (OAL&C) began requiring contracting entities to use eCMS for procurements over \$25,000 to gain better oversight of VA procurements and to ensure better contracting. However, our audit of the system found that it was far from a complete inventory of acquisitions. We estimated that only 17 percent of procurement actions that were required to be recorded were recorded in VA's eCMS system and 30 percent of VA procurement actions that were recorded in the FPDS were not recorded in eCMS records as required. We concluded that the reports generated by eCMS were unreliable and could not be used in making management decisions.

We also have found that some procurements are made invisible to oversight by having other Government agencies do the procurement. This problem was identified in our review of the Interagency Agreement between VA and SPAWAR and in our report on the Replacement Scheduling Application. In the latter report, we found that GSA is awarding contracts on behalf of VA for IT related services. We found that these contracts did not appear in any VA system, that VA did not have a copy of the contract or task order, and the COTR was located at GSA even though the services were provided at a VA location.

This lack of oversight within VA has been the common denominator in the criminal investigations involving procurement fraud we have conducted during the last 5 years. For example, until we arrested the third CMOP Director, VHA oversight of local CMOP contracts for supplies and services was non-existent. The former Director of the Dallas CMOP steered a \$55 million services contract to a company and was arrested after he attempted to extort an ownership share of this company. The former Director and Associate Director of the Murfreesboro CMOP were arrested after we developed evidence that the pair had received \$350,000 in kickbacks from supplies and services purchases without competition, including the purchase of 115,000 rolls of inferior quality red tape meant to secure controlled substance packages. The former Director of the Hines CMOP was arrested after we were notified by a supervisory contracting officer at the Great Lakes Acquisition Center of suspected collusion between this Director and a favored contractor who had been awarded \$10 million in service and supply contracts non-competitively in the previous 10 years. Our investigation revealed that the Director had not only accepted gratuities in exchange for this favoritism but also knowingly allowed his Associate Director to operate a fraudulent 8A firm that received at least \$7 million in sub-contracts for services from another company doing business with VA.

We noted in our National audit of CMOP contract management that in response to criminal investigations involving the CMOP program, the National CMOP Office began centralizing all CMOP procurement at the CMOP in Leavenworth, Kansas. In addition, the authority over CMOP contracting officers transferred from the National CMOP Office to VA's National Acquisition Center. (Report No. 09-00026-143) We believe this centralization of the two functions in different offices will result in better procurements and decrease the potential for similar criminal activity.

#### *Noncompliance with VA policies and regulations*

In addition to statutes and regulations, VA has established internal procurement policies. Our reviews have consistently found non-compliance. For example, after a report on VHA's purchasing practices that we issued in 2002, VA convened the Procurement Reform Task Force to address the issues raised in the report. One result was a purchasing hierarchy that required VHA to purchase medical/surgical supplies and equipment and pharmaceuticals from VA-awarded national contracts, including FSS contracts, before entering into a local contract or purchasing products open market. In 2004, 2007, and again in 2009, we issued audit reports showing that VA facilities were not complying with the purchasing hierarchy yet could save significant amounts of money if they used national contracts and blanket purchase agreements instead of purchasing health care products on the open market. (Report Nos. 02-01481-118, 06-03677-21, 08-01519-172)

Similarly, in response to our 2005 report on sole-source contracts with medical schools and other affiliated institutions, VA Directive 1663 established specific requirements for contracts awarded for health care services pursuant to 38 U.S.C. §8153. Our subsequent pre-award reviews of proposals for these contracts have found little compliance with the provisions of the policy. To gain better oversight of VA procurements and to ensure better contracting, in 2007, OAL&C issued policy requiring contracting entities to use eCMS for certain procurements. A recent audit found that the system was ineffective, in part, because VA personnel were not using the system as mandated. As a result, the reports generated by the system were unreliable and could not be used in making management decisions.

#### *Lack of Training and Expertise*

In the last couple of years, VA has made a significant effort to recruit and train a strong acquisition workforce. However, we still find that contracting personnel lack training and expertise in the types of procurements they are asked to process. Contracting officers who do not understand the nature of the goods or services being procured and their relationship to the needs of the program office are unable to assist program officials in the planning, awarding, and administration of the contract. IT procurement is one example. As noted in our 2009 report on the failure of the

contract for the Replacement Scheduling Application, the contracting officer had no experience or expertise in the award and administration of contracts for IT system development. To help resolve this problem relating to IT procurements, VA is in the process of consolidating IT procurements under OAL&C at a facility in Fort Monmouth, New Jersey. We have identified the same problem at VHA facilities with respect to the award and administration of contracts for health care resources. Our pre-award reviews and our audit of the administration of the sole-source contracts to affiliated institutions have identified that the contracting officers and COTRs lack training regarding the use of Medicare rates even though prices are based on Medicare rates.

We also have found that program officials often do not have the training and expertise needed to define requirements, develop statements of work, or monitor contract performance. This results in poor contract development and administration. This problem was highlighted in our review of the Interagency Agreement with SPAWAR. We found that VA's Office of Enterprise Development had relinquished its authority and responsibility for IT program development to SPAWAR and SPAWAR contractors.

Mr. Chairman, this concludes our statement and we would be pleased to answer any questions that you or other Members of the Subcommittee may have on these issues.

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**Prepared Statement of Glenn D. Haggstrom, Executive Director,  
Office of Acquisition, Logistics, and Construction,  
U.S. Department of Veterans Affairs**

Mr. Chairman, Ranking Member Roe, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss and update you on acquisition operations at the Department of Veterans Affairs (VA). As VA's acting chief acquisition officer, I believe there is much good news to report. It is a privilege for me to represent the many dedicated and hardworking acquisition and logistics professionals throughout the Department who provide mission-critical support every day to ensure quality care and benefit delivery for our Nation's most special citizens—Veterans. I am accompanied here today by Mr. Jan Frye, VA's Deputy Assistant Secretary for Acquisition and Logistics, who also serves as VA's senior procurement executive; Mr. Ed Murray, Deputy Assistant Secretary for Finance, Office of Management; Mr. Craig Robinson, Executive Director, VA National Acquisition Center; Mr. Frederick Downs, Jr., Chief Procurement and Logistics Officer for the Veterans Health Administration (VHA); and Mr. David Canada, Senior Procurement Analyst, Center for Small Business Utilization, Office of Small and Disadvantaged Business Utilization (OSDBU).

I will start today by providing a brief update on VA's accomplishments under the American Recovery and Reinvestment Act (ARRA) of 2009. Transparency is the hallmark of VA's Recovery spending; all acquisition opportunities are advertised in the Federal Business Opportunities System. Through November 30, 2009, VA obligated approximately 32 percent of its non recurring maintenance stimulus funds for facilities projects and is on track to have 50 percent obligated by March 31, 2010. Over 95 percent of these contract awards were accomplished competitively, and over 70 percent of VA's Recovery contract dollars have been spent with Veteran-owned small businesses. VA's acquisition professionals have negotiated better prices than estimated, allowing VA to reallocate remaining funds to other needed projects. Using the Department's enterprise contract writing system for all contracting actions associated with facilities projects has given VA valuable insight on ways to improve measurement and quality control systems. Improvements affect cycle cost, data integrity, and automated tools used to track progress.

VA continues to transform and improve its acquisition operations. Recommendations from a 2008 PricewaterhouseCoopers study of the VA acquisition program resulted in implementation this year of a new acquisition business model increasing centralized decision-making and decentralized execution. As a result of this study, VHA has realigned its acquisition staff under a centralized structure with four regional offices focused on the internal business process of running an acquisition organization, to include a focused approach to training and oversight. Further, this structure allows each Veterans Integrated Service Network (VISN) Contract Manager to drive organizational standardization, individual performance, and allows for direct responsibility and accountability through a professional certified workforce. A follow on study will be completed in February 2010 and is likely to result in further enhancements to the acquisition business model.

Mindful of the innovation of private industry and as part of VA's transformation to a 21st century organization, VA recently established an innovative Supplier Transformation Relationship Initiative; for the first time ever, VA's supplier community is being treated as a critical component to VA's success. This initiative improves VA's acquisition process by establishing better and more transparent communications with vendors, which increases VA's access to industry's best practices and innovation. Dialog began in August 2009 with a subset of VA's industry partners at a VA-hosted forum to support this initiative, attended by 140 individuals from more than 90 companies representing every material, service, and socioeconomic area of VA's contracting expenditures. Critical feedback was provided on the VA acquisition process and this initiative is further developing to expand the dialog to include more than 15,000 of VA's industry partners.

VA made great strides in the last year to recruit and retain a professional acquisition workforce. The VA Acquisition Academy, the only Federal civilian agency acquisition academy, was established and represents a significant investment in growing, training and retaining the VA acquisition workforce. The academy comprises three schools: the Intern School, the Contracting Professional School, and the Program Management School. The academy has received extensive favorable press as well as Congressional and other Federal agency interest. The Office of Management and Budget's (OMB) Chief Acquisition Officer Council awarded the academy the 2009 Team Excellence Award for VA's efforts to recapitalize its acquisition workforce. Additionally, the Federal Acquisition Certification for Contracting rate for VA contracting officers has increased from 65 percent to over 93 percent, and use of the Acquisition Career Management System has increased from 30 percent to nearly 94 percent.

In Fiscal Year 2010, VA will begin an "Acquisition Corps Development Program." This program will develop transformational leaders in order to leverage best practices and executive leadership skills to develop business solutions optimizing VA's mission results. The goal of the Acquisition Corps Development Program is three-fold:

- first, to develop a professional cadre of VA acquisition experts to focus on the visible, highly complex and enterprise-wide programs;
- second, to increase the bench strength to support succession planning for critical and senior-level positions; and
- third, to enhance retention of high performers by feeding their desire to excel.

We continue to grow VA's acquisition workforce to meet our ever-increasing contracting workload. The GS-1102 contract specialist occupational series has increased by 45 percent since Fiscal Year (FY) 2003, from 766 to 1,405 full time employees. Additionally, VA recognizes having trained program managers is critical to the overall acquisition life cycle, formulating an acquisition strategy, and taking responsibility for ensuring contract results in terms of cost, schedule, and performance. To this end, the VA Acquisition Academy's Program Management School developed a "Boot Camp" Program Management Course to train up to 10,000 individuals involved in managing the department's programs. Upon successful completion of the course, these individuals will be certified as FAC-P/PM level one program managers.

Additional workforce increases associated with establishment of the VA Technology Acquisition Center (TAC) will further enhance our ability to support VA's transformation. The TAC, located in Eatontown, New Jersey, was established to provide exclusive contracting support to the Office of Information and Technology (OI&T). The TAC, a departmental strategic asset, will dramatically improve the operational effectiveness of VA's procurement. VA moved swiftly and creatively to capitalize on the opportunity presented by the closure of the Fort Monmouth Army Post, recruiting the highly skilled and experienced cadre of acquisition professionals from one of the Army's premier contracting activities.

To support our acquisition professionals, VA deployed a fully operational electronic contract writing system. We also established a new program management office reporting directly to the Deputy Assistant Secretary for Acquisition and Logistics to support this system and other enterprise-wide acquisition systems to ensure VA exploits technology at every opportunity to support our acquisition operations.

VA is conducting more competitive acquisitions. Our competition rate increased in 1 year from 49 percent to 72 percent, bringing VA in line with most of the Federal community.

VA's OI&T instituted a Performance Management Accountability System (PMAS) that enhances the acquisition process. This system ensures deliverables on information technology contracts are received and reviewed incrementally, thereby forcing adherence to delivery and performance schedules. The contracting community is in

lockstep with OI&T and has developed an acquisition model that fully supports the PMAS objectives.

We have introduced a procurement governance process, establishing the VA Senior Procurement Council. This council will build on best practices across VA, leverage resources, and ensure consistency of service and response to needs. The council will share information and develop a common understanding of VA's strategic procurement needs, OMB regulations and actions to meet these needs and regulations, thereby synchronizing procurement to develop departmental solutions for improved acquisitions. The ultimate goal of the council is to remove procurement roadblocks so products and services can reach Veterans faster and with greater quality.

As part of VA's acquisition transformation, VA instituted other positive steps to improve the effectiveness of its acquisition operations.

In 2009, VA began conducting acquisition assessments under OMB Circular A-123. These assessments will provide VA's senior acquisition leadership insight and information about the operation contracting activities and business processes. Assessment results will provide early opportunities to correct identified deficiencies, processes and policies before they become unmanageable. The A-123 process also ensures compliance by monitoring findings and following-up on corrective actions.

Also in 2009, VA established a requirement for the use of Integrated Product Teams (IPTs) for all acquisitions with estimated values of \$5 million or greater. IPTs consist of subject matter experts from program offices, procurement, legal counsel and the Office of Small and Disadvantaged Business Utilization. These cross-functional teams work collaboratively to develop strategies and approaches to meet particular objectives and have been successful in streamlining the acquisition process.

Contract Review Boards (CRBs) are now required for all acquisitions of \$5 million or greater. CRBs minimize vulnerabilities leading to protests, disputes, claims and litigation against VA. CRBs ensure compliance with Federal and VA acquisition regulations, policies and procedures. They provide senior-level advice on contracting actions to support the contracting officer, and provide consistency of procurements across VA. CRBs also improve the knowledge of VA acquisition personnel as they embrace and implement good business practices.

I spoke a moment ago of how CRBs minimize protests and would like to add VA has impressive statistics for protests. In Fiscal Year 2009, 154 protests were lodged with the Government Accountability Office (GAO). All but three of these protests have been decided. Of the 151 decided, only one protest was sustained by GAO. GAO denied 15 and dismissed 106, and 29 were withdrawn. A total of 21 agency-level protests were lodged with the Deputy Assistant Secretary for Acquisition and Logistics (VA's Senior Procurement Executive). Eight were denied, 10 dismissed and 3 withdrawn. Forty-five protests were lodged at the contracting officer level; 12 were denied, 31 dismissed and two withdrawn. These numbers are especially impressive given VA conducted over 230,000 acquisition transactions in Fiscal Year 2009.

VA remains the Federal leader in contracting with Veteran-owned small businesses. The final rule formally amending VA's acquisition regulations to reflect VA's implementation of the "Veterans First Contracting Program" back on June 20, 2007, was published in the *Federal Register* on Tuesday, December 8, 2009. VA acquisition professionals continue to use the extraordinary and unprecedented contracting authorities granted VA under Public Law 109-461 extensively, setting records for spending with Veteran-owned small businesses. Tentative data for FY 2009 show VA spent over \$2.7 billion with all Veteran-owned small businesses, and nearly \$2.3 billion of that amount was spent with service-disabled Veteran-owned small businesses. This represents over 19 percent and 16 percent, respectively, of total VA dollars reported in the Federal Procurement Data System. For FY 2008, the latest data officially certified by the Small Business Administration, VA awarded 11.76 percent of its contract dollars to service-disabled Veteran-owned small businesses, and 14.72 percent to all Veteran-owned small businesses. These comfortably exceed VA's goals for these programs, of 7 percent and 10 percent respectively.

VA has worked tirelessly to improve its acquisition operations. At this time there are no major outstanding GAO issues and management agreements are in place addressing all Office of Inspector General issues. But as proud as we are of the many improvements in VA's acquisition operations, we recognize the need for continuous improvement and will continue to work diligently to improve upon them and set a standard worthy of emulation throughout the Federal acquisition community and maintains the confidence of the American public and the Congress.

Last Mr. Chairman, I mentioned at the beginning of my testimony I serve as VA's "acting" chief acquisition officer, having served in this capacity since October 2008. VA has sought to establish an Assistant Secretary for Acquisition, Logistics, and Construction, but has been unsuccessful in this endeavor. Establishment of this as-

sistant secretary position is the cornerstone of our efforts to transform the acquisition culture at VA. This assistant secretary would provide the laser-focused critical political leadership in this important area, and allow VA to designate a chief acquisition officer. There are cogent and compelling reasons for establishing a new assistant secretary position. Considering the VA spend has increased by over 300 percent since FY 2002, VA's acquisition programs have become increasingly complex and highly visible, as evidenced by this very hearing. Such action would embrace the spirit and intent of the Services Acquisition Reform Act of 2003, which requires the appointment of a non-career chief acquisition officer. Your support in establishing this assistant secretary position is essential to the long-term success of transforming VA's acquisition operations.

Mr. Chairman, we appreciate the opportunity to discuss VA's acquisition operations with you. My colleagues and I are available for your questions.

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**Statement of Hon. Cliff Stearns, a Representative  
in Congress from the State of Florida**

Thank you, Mr. Chairman.

I appreciate the opportunity to be here this morning, and I thank the Chairman for holding this important hearing.

Unfortunately, the Department of Veterans Affairs procurement system is broken. And the fact that the procurement process is broken is hardly a secret. Problems stemming from VA's fragmented and decentralized procurement system have been documented for over 10 years, and the VA has openly acknowledged that there are serious deficiencies. These deficiencies have led to hundreds of millions of taxpayer dollars being wasted.

In recognizing that VA needs to improve its procurement structure, a VA Procurement Reform Task Force was created, and in 2002 it issued a report that included 65 recommendations on how the VA could improve the efficiency and effectiveness of its procurement acquisition system. Despite the Task Force recommendations, very few issues with VA's procurement structure have actually been addressed.

Several GAO reports have revealed significant weaknesses with the VA procurement process, and poor financial management oversight has been reported as a major material weakness since fiscal year 2005.

The Inspector General of the VA has estimated that in 2004 alone, VA could have saved \$1.4 billion over 5 years if the VA had improved procurement practices at its medical centers.

Unfortunately though, the VA does not have its 152 hospitals and over a thousand outpatient clinics utilize a procurement system that ensures the VA is getting the best available price. This has resulted in \$41 million over a period of 5 years being wasted. Overall, the VA IG has identified millions of dollars that could be put to better use if the VA were to reform its procurement process. This is a blatant abuse of taxpayer dollars and is particularly troubling given the current state of our economy and our rising national debt.

Even more troubling is the fraud and abuse that is occurring as a result of VA's lack of oversight over companies claiming Service Disabled Veteran Owned Small Business (SDVOB) status. Due to VA's lack of oversight – a direct result of its fragmented acquisition structure – ineligible firms that have falsely claimed SDVOB status have been able to receive approximately \$100 million of sole-source or set-aside SDVOB contracts. These companies are wrongfully taking job opportunities away from our Nation's service disabled veteran owned businesses and are getting away with it due to the fact there is no requirement to terminate these contracts even after they are found to be ineligible and the firms are allowed to self-certify themselves.

Clearly Mr. Chairman, we are facing a major problem at the VA. Billions of dollars are at stake – these are taxpayer dollars— and the VA Office of Acquisition, Logistics, and Construction is doing a poor job of overseeing acquisition contracts. Additionally, small veteran owned businesses are being cheated out of millions in Federal contracts.

I look forward to hearing from the VA today on how they plan to reform their procurement process once and for all, and I hope the VA will also provide our Committee with an accurate dollar amount as to how much the VA spends on procurement annually.

**MATERIAL SUBMITTED FOR THE RECORD**

Project On Government Oversight  
 Washington, DC  
*February 12, 2010*

## EXPOSING CORRUPTION EXPLORING SOLUTIONS

Chairman Harry E. Mitchell  
 House Committee on Veterans' Affairs  
 Subcommittee on Oversight and Investigations  
 335 Cannon House Office Building  
 Washington, DC 20515

Ranking Member David P. Roe  
 House Committee on Veterans' Affairs  
 Subcommittee on Oversight and Investigations  
 335 Cannon House Office Building  
 Washington, DC 20515

Dear Chairman Mitchell and Ranking Member Roe:

The Project On Government Oversight (POGO) provides this supplement to the Subcommittee's December 16, 2009, hearing on "Acquisition Deficiencies at the U.S. Department of Veterans Affairs." During that hearing, Representative Buyer asked panelists to comment or give recommendations regarding legislation that he introduced with Representative Roe, the "Department of Veterans Affairs Acquisition Improvement Act of 2009" (H.R. 4221). POGO supports the general intent of the bill, but defers to recommendations by the U.S. Department of Veterans Affairs acquisition staff and the Inspector General as to specific agency needs to improve contract spending and oversight.

POGO provides specific comments regarding the following sections of the bill:

1. Section 2 of the bill includes the creation of an Assistant Secretary for Acquisition, Construction, and Asset Management. POGO believes that there might be some redundancy with the existing Assistant Secretary of Procurement, and therefore the VA should establish a clear mission for each of those positions to avoid duplication of efforts.
2. Section 2 also establishes seven (7) Deputy Assistant Secretary positions. POGO supports the creation of those offices so long as the agency finds a need for all of them. The legislative creation of more bureaucracy might have the indirect consequence of burdening the system.
3. Section 3 assigns the newly created Assistant Secretary for Acquisition, Construction, and Asset Management as the Chief Acquisition Officer (CAO) with duties including managing and monitoring VA missions, strategies, and contracting processes. That assignment should benefit the agency and result in improved acquisition and contracting policies and accountability.
4. Section 4 mandates the establishment of a Department-wide acquisition policy centralized under the newly created CAO. The establishment of a comprehensive Department-wide acquisition program should integrate many VA policies and result in improved accountability. POGO warns, however, that streamlining efforts in the past included the termination of many oversight protections that have caused many of the contracting issues that exist today. Speedy contracting without oversight is a recipe for disaster.
5. Section 4(c) refers to the use of Federal Supply Schedule 65 or 66. The specific mention of those Supply Schedules in legislation might create a problem down the road if there are any modifications to the schedule system. The mentions of those specific schedule numbers might be more appropriate in the legislative history rather than the bill. The bill should include a list of the goods or services included under those schedules.
6. Section 5 provides authority to enter into certain personal services contracts. Personal services contracts are those that make "contractor personnel appear to be, in effect, government employees," FAR Subpart 2.101. Those contracts circumvent Federal employment hiring processes and are permitted only when authorized by law. The bill creates three (3) such carve-outs, which runs afoul of the general prohibition against the use of personal services contracts and as a result might place critical functions in the hands of contractor employees rather than public officials.
7. POGO strongly supports section 6 and its intent to ensure that the VA has the authority to conduct pre- and post-award audits on contracts using cer-

tain Federal supply schedules. In addition, POGO would like to see oversight officials provided with supplementary enforcement tools that are needed to prevent, detect, and remedy waste, fraud, and abuse in VA spending, including improved access to contractor cost or pricing data. Furthermore, Congress needs to eliminate the “Right to Financial Privacy Act,” which requires Inspectors General to notify contractors prior to obtaining the companies’ financial records. This requirement “tips off” contractors and harms the Government’s ability to investigate Federal contracts.

8. Section 7 proposes changes to VA’s small business contracting policies. POGO would recommend that any additions involving commercial items or services be predicated on the fact that those items or services should be considered “commercial” only if there are substantial sales of the actual goods or services to the general public. We have seen many instances where goods or services have been called “commercial” without a genuine commercial marketplace existing.
9. POGO applauds section 7’s mandate that certain small business contractors be listed and verified prior to receiving an award with less than full and open competition. We also believe that the verification process should occur for any contractor representing itself as a small business.

Thank you for this opportunity to share POGO’s views on the “Department of Veterans Affairs Acquisition Improvement Act of 2009.” I would be pleased to answer any additional questions and to work with the Subcommittee in the future.

Sincerely,

Scott H. Amey  
General Counsel

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#### COMMENTS ON H.R. 4221 BY NATIONAL VETERAN-OWNED BUSINESS ASSOCIATION (NaVOBA)

The National Veteran-Owned Business Association (NaVOBA) would like to thank the House Veterans’ Affairs Committee for the opportunity to comment on H.R. 4221. Our comments are as follows:

**Section 2:** NaVOBA fully supports the establishment of the position of Assistant Secretary of Veterans Affairs for Acquisition, Construction, and Asset Management. The importance of acquisition as evidenced by the growth of the acquisition budget, interest of the Congress in VA acquisition, and the complexity of VA’s mission all require the elevation of the acquisition process in VA. We believe however, that this position should be responsible for oversight, policy development, compliance, and training of the acquisition workforce. We do not believe all acquisition functions must be centralized under this position. We firmly believe that acquisition, like IT, is a tool to be used by the service delivery units of VA to provide services and benefits to veterans. The people responsible for the delivery of veteran services should control the tools necessary to get the job done. Therefore, we do not support the establishment of the Deputy Assistant Secretary positions envisioned in Section 2 of the bill. We also believe the establishment of these positions is too prescriptive and limits the VA’s ability to meet the needs of veterans.

**Section 3:** There needs to be added to the responsibilities of the Chief Acquisition Officer: “Establishment of Policies, Procedures, and Accountability for accomplishment of VA’s small business contracting goals with emphasis on goals for contract awards to veteran and service-disabled veteran-owned small business.” As contemplated in the bill, the Assistant Secretary for Acquisition, Construction, and Asset Management will be responsible for, and have acquisition officials reporting to him/her, therefore this person will have the most control over small business goal attainment and should therefore be held accountable.

**Section 4:** There needs to be added to the “elements” of the “Department-wide acquisition policy” an element addressing accomplishment of the small business contracting goals with emphasis on contract awards to veteran and service-disabled veteran-owned small businesses. As evidenced by various laws Congress has determined that contract awards to veteran and service-disabled veteran-owned small business is in this Nation’s best interest. Therefore this goal warrants inclusion in VA’s policies.

**Section 8129:** The goal of this new section under “Acquisition Requirements” appears to be the standardization and centralization of VA health care acquisitions. This goal concerns NaVOBA and our members as VA traditionally has used similar goals as a way to exclude veteran and service-disabled veteran-owned small busi-

ness from health care acquisitions. In those instances where veteran and service-disabled veteran-owned small business have been successful in winning standardized contract they have been severely impacted as VA has no mechanism in place to monitor compliance.

We also believe this section will unreasonably tie VA's hands in providing world class health care to veterans given the process contemplated in the bill with the Secretary or Assistant Secretary for Acquisition, Construction and Asset Management substituting his/her knowledge for that of a medical doctor.

**Section 6 and Section 8130:** The goal of these sections appears to be further restricting which firms are eligible to compete on Federal Supply Schedules and places additional requirements on such firms. As the Federal Supply Schedules are administered by the General Services Administration and historically have provided "best value" to the Government we question why the authors of this bill require contract clause requirements which GSA finds unnecessary and burdensome on small business. Federal Supply contracts are competitively awarded and orders against schedules are competitively awarded. Competition will drive "best value" to the Government, not overly restrictive clauses.

**Section 7:** NaVOBA fully supports the provisions requiring that veteran and service-disabled veteran-owned small businesses be listed in the data base maintained by the Secretary. In fact we believe ALL firms claiming to be veteran or service-disabled veteran-owned small business wishing to do business with the Federal Government must be verified by VA. We also support the provision requiring any vendor of a commercial item to be a manufacturer or regular dealer.

We strongly object to the provision requiring the Secretary to specify the North American Industry Classification System (NAICs) code that VA may procure from such firm. This is overly restrictive and burdensome on the veteran small business community and is not required by any other special emphasis small business program in the Federal Government, except for the 8a Business Development Program. This Committee has maintained the intent of the veteran small business program is not business development but merely contract opportunity. Small business firms in their normal course of growth and development change NAICs depending on the opportunities and their strategic business plan. To require approval by the Secretary of any change is burdensome, unnecessary, and given VA's track record in verification could never be done in a timely manner.

We thank the Committee for the opportunity to comment on the proposed legislation and look forward to discussions to improve the bill.

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**Comments on H.R. 4221 from Anthony Jimenez,  
President and Chief Executive Officer MicroTech, LLC**

Concerning **H.R. 4221** proposal, we have only one area to highlight. Our concern revolves around section 8127 (c)(a)(3). As we understand it, the intent of this paragraph is help SDVOSBs become a true value add to the products they sell and to keep large businesses from taking advantage of SDVOSBs by making them nothing more than a "pass through". The term "regular dealer" used in section 8127 (c)(a)(3) as defined in section 7(e)(5), does not do enough to eliminate that problem. In order for the small business to be a true value add, it needs to be authorized by the Original Equipment Manufacturer (OEM) and obtain all of the rights and responsibilities that go along with that authorization. This would also ensure that where the OEM sells exclusively through distribution channels the small business would be forced to go directly through the distributor (as opposed to another large business reseller), and would not be forced to act as a "pass through" for a large business. To that end, we recommend the following changes:

**38 section 8127 (c)(a)(3)**

Strike the words "**regular dealer**" and substitute with "**a reseller authorized by the original equipment manufacturer and purchased through authorized distribution channels.**"

This revision would then require the striking of section 7(e)(5) which is the definition of "regular dealer".

Thanks again for the opportunity to participate in this effort and my sincere appreciation to CM Buyer and your team for working so hard to make things better for vets and small business. Please do not hesitate to call upon me.

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Veterans' Entrepreneurship Task Force (VET-Force)  
Silver Spring, MD  
February 18, 2010

Diane Kirkland  
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335 Cannon HOB  
Washington, DC 20515

This file is the VET-Force response to your email request of January 27th requesting comments on the proposed H.R. 4221. We have sent two files. One is this letter called "VET-FORCE Recommendations on H.R. 4221 2 18 2010 BH1.doc." The second is "Attach 1 to VET-FORCE Recommendations on H.R. 4221 2 18 2010.doc" Within Attachment 1 are the different documents of concern for H.R. 4221 IH. We did this so you and others have all documents.

"38 U.S.C. Sec 8127.doc" as the basic document as of 1/5/2009.

"H.R. 4221 sec 8127.doc" as the recommended changes to 38 U.S.C. Sec 8127.

"H.R. 4221 sec 8127 with recommended additions in RED.doc" with recommended changes. These changes were originally in the past proposed H.R. 2300 by Congressman Buyer.

"38 U.S.C. Sec. 8127 with H.R. 4221 changes.doc" Taking a look at the final section 8127 after the existing H.R. 4221 changes.

"38 U.S.C. Sec. 8127 with H.R. 4221 changes + H.R. 2300.doc" Taking a look at the final section 8127 after the existing H.R. 4221 changes and H.R. 2300 are incorporated.

"H.R. 4221 IH section 7 (d)(9) and 7(e)(5) Change.doc" section 7 (d)(9) is deleted. The definition of 'regular dealer' is changed to our recommended definition of a person or firm marketing, selling, delivering and supporting products purchased by the Federal Government from a veteran-owned small business.

We believe these documents will provide ample words to support our position on H.R. 4221. We want to thank Congressman Buyer for H.R. 4221 and hope our recommended changes are taken into consideration. The VET-Force can not support H.R. 4221 in its present form.

Respectfully,

Bob Hesser  
1st Vice-Chairman

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***Attachment One to VET-FORCE 12-16 HVAC Subcommittee Response to H.R. 4221.doc***

**38 U.S.C. Sec. 8127**

01/05/2009

EXPCITE

TITLE 38—VETERANS' BENEFITS  
PART VI—ACQUISITION AND DISPOSITION OF PROPERTY  
CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMICILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY  
SUBCHAPTER II—PROCUREMENT AND SUPPLY

HEAD

Sec. 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

STATUTE

(a) Contracting Goals.—(1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall—

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled

by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph (1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) Use of Noncompetitive Procedures for Certain Small Contracts.—For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)), a contracting officer of the Department may use procedures other than competitive procedures.

(c) Sole Source Contracts for Contracts Above Simplified Acquisition Threshold.—For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if—

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) but will not exceed \$5,000,000; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.

(d) Use of Restricted Competition.—Except as provided in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

(e) Eligibility of Small Business Concerns.—A small business concern may be awarded a contract under this section only if the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f).

(f) Database of Veteran-Owned Businesses.—(1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

(2) To be eligible for inclusion in the database, such a veteran shall submit to the Secretary such information as the Secretary may require with respect to the small business concern or the veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) In maintaining the database, the Secretary shall carry out at least the following two verification functions:

(A) Verification that each small business concern listed in the database is owned and controlled by veterans.

(B) In the case of a veteran who indicates a service-connected disability, verification of the service-disabled status of such veteran.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(g) **Enforcement Penalties for Misrepresentation.**—Any business concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.

(h) **Treatment of Businesses After Death of Veteran-Owner.**—(1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

- (A) The date on which the surviving spouse remarries.
- (B) The date on which the surviving spouse relinquishes an ownership interest in the small business concern.
- (C) The date that is 10 years after the date of the veteran's death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability.

(i) **Priority for Contracting Preferences.**—Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

- (1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.
- (2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).
- (3) Contracts awarded pursuant to—
  - (A) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or
  - (B) section 31 of such Act (15 U.S.C. 657a).

(4) Contracts awarded pursuant to any other small business contracting preference.

(j) **Applicability of Requirements to Contracts.**—(1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any Governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services.

(2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

(k) **Annual Reports.**—Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

- (1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.
- (2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.
- (3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.
- (4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) **Definitions.**—In this section:

(1) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term “small business concern owned and controlled by veterans” means a small business concern—

(A)(i) (A)(i) not less than 51 percent of which is owned by one or more veterans or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) the management and daily business operations of which are controlled by one or more veterans; or

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

#### SOURCE

(Added Pub. L. 109–461, title V, Sec. 502(a)(1), Dec. 22, 2006, 120 Stat. 3431; amended Pub. L. 110–389, title VIII, Sec. 806, Oct. 10, 2008, 122 Stat. 4189.)

#### REFTEXT

#### REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (j)(2), is Pub. L. 85–536, Sec. 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

#### MISC1

#### AMENDMENTS

2008—Subsecs. (j) to (l). Pub. L. 110–389 added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

#### EFFECTIVE DATE

Pub. L. 109–461, title V, Sec. 502(d), Dec. 22, 2006, 120 Stat. 3435, provided that: “This section [enacting this section and provisions set out as a note below] and the amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006].”

#### TRANSITION RULE

Pub. L. 109–461, title V, Sec. 502(b), Dec. 22, 2006, 120 Stat. 3435, provided that: “A small business concern that is listed in any small business database maintained by the Secretary of Veterans Affairs on the date of the enactment of this Act [Dec. 22, 2006] shall be presumed to be eligible for inclusion in the database under subsection (f) of section 8127 of title 38, United States Code, as added by subsection (a), during the period beginning on the effective date of that section [see Effective Date note above] and ending one year after such effective date. Such a small business concern may be removed from the database during that period if it is found not to be a small business concern owned and controlled by veterans (as defined in subsection (k) of such section).”

#### ***H.R. 4221 section 8127***

(a) Additional Requirement—section 8127(c) of title 38, United States Code, is amended—

(1) in paragraph (2), by striking ‘and’ at the end;

(2) in paragraph (3), by striking the period and inserting the following: ‘; and’; and

(3) by adding at the end the following new paragraph:

‘(4) in the case of a contract for the purchase of a commercial item, the vendor of the item is a manufacturer or a regular dealer.’

(b) Complaint Process for Use of Restricted Competition—Subsection (d) of such section is amended—

(1) by striking ‘Except as provided’ and inserting ‘(1) Except as provided’; and

(2) by adding at the end the following new paragraph:

‘(2) Any complaint regarding the noncompliance of a contracting officer with this subsection shall be submitted to the Secretary.’.

(c) Eligibility—Subsection (e) of such section is amended—

(1) by striking ‘only if the small business concern and the veteran’ and all that follows and inserting ‘only if—’; and

(2) by adding at the end the following new paragraphs:

‘(1) the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f);

‘(2) the Secretary has performed the verification functions of the Secretary under paragraph (4) of such subsection with respect to the small business concern; and

‘(3) the contract is only for the procurement of a good or service with North American Industry Classification System code specified by the Secretary under paragraph (9) of that subsection for the small business concern.’.

(d) Database—Subsection (f) of such section is amended by adding at the end the following new paragraphs:

‘(7) The Secretary may not include in the database a small business concern that is the vendor of a commercial item unless the concern is the manufacturer or regular dealer of the item, unless the Secretary specifically provides for a waiver of such requirement for such concern.

‘(8) The Secretary shall establish specific criteria to be used in carrying out the verification functions under paragraph (4), including criteria requiring specific documentation and certifications from each small business concern proposed to be included in the database.

‘(9) For each small business concern included in the database, the Secretary shall specify the North American Industry Classification System code or codes of the goods and services that may be procured by the Department from such concern.

(e) Definitions—Subsection (l) of such section is amended by adding at the end the following new items:

‘(3) The term ‘commercial item’ has the meaning given that term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 203(12)) as long as items and services directly relating to the sale of such a commercial item are offered to commercial customers.

‘(4) The term ‘management and daily business operations’ includes—

‘(A) with respect to a contract for the provision of services, the services to be performed by a contract awarded under this section; and

‘(B) with respect to a contract for the provision of goods that are not manufactured by the small business concern in question, the provision of services relating directly to the sale of such goods.

‘(5) The term ‘regular dealer’ with respect to any contract means a person who owns, operates, or maintains a store, warehouse, or other establishment in which the commodities or goods of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.’

***H.R. 4221 section 8127 with Recommendations in RED [Recommendations in RED appear in Italics]***

(a) Additional Requirement—Section 8127(c) of title 38, United States Code, is amended—

(1) in paragraph (2), by striking ‘and’ at the end;

(2) in paragraph (3), by striking the period and inserting the following: ‘; and’; and

(3) by adding at the end the following new paragraph:

‘(4) in the case of a contract for the purchase of a commercial item, the vendor of the item is a manufacturer or a regular dealer.’

(b) Complaint Process for Use of Restricted Competition—Subsection (d) of such section is amended—

(1) by striking ‘Except as provided’ and inserting ‘(1) Except as provided’; and

(2) by adding at the end the following new paragraph:

‘(2) Any complaint regarding the noncompliance of a contracting officer with this subsection shall be submitted to the Secretary.’

(c) Eligibility-Subsection (e) of such section is amended—

(1) by striking ‘only if the small business concern and the veteran’ and all that follows and inserting ‘only if—’; and

(2) by adding at the end the following new paragraphs:

‘(1) the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f);

‘(2) the Secretary has performed the verification functions of the Secretary under paragraph (4) of such subsection with respect to the small business concern; and

‘(3) the contract is only for the procurement of a good or service with an North American Industry Classification System code specified by the Secretary under paragraph (9) of that subsection for the small business concern.’

(d) Database-Subsection (f) of such section is amended by adding at the end the following new paragraphs:

‘(7) The Secretary may not include in the database a small business concern that is the vendor of a commercial item unless the concern is the manufacturer or regular dealer of the item, unless the Secretary specifically provides for a waiver of such requirement for such concern.

‘(8) The Secretary shall establish specific criteria to be used in carrying out the verification functions under paragraph (4), including criteria requiring specific documentation and certifications from each small business concern proposed to be included in the database.

‘(9) For each small business concern included in the database, the Secretary shall specify the North American Industry Classification System code or codes of the goods and services that may be procured by the Department from such concern.

‘(10) *Ownership and control by a veteran or veterans of more than one small business concern shall not be grounds for disqualification of any of such concerns from inclusion in the database under this subsection.*’

(e) Definitions—Subsection (l) of such section is amended by adding at the end the following new items:

‘(3) The term ‘commercial item’ has the meaning given that term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 203(12)) as long as items and services directly relating to the sale of such a commercial item are offered to commercial customers.

‘(4) The term ‘management and daily business operations’ includes—

‘(A) with respect to a contract for the provision of services, the services to be performed by a contract awarded under this section; and

‘(B) with respect to a contract for the provision of goods that are not manufactured by the small business concern in question, the provision of services relating directly to the sale of such goods.

‘(5) The term ‘regular dealer’ with respect to any contract means a person who owns, operates, or maintains a store, warehouse, or other establishment in which the commodities or goods of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.’

‘(6) *The term ‘control of management and daily business operations’ with respect to a business concern means the authority to make final decisions affecting financial, operational, management policy, and employment issues, irrespective of the number of hours worked by the individual with such authority or the location of such individual with respect to the business concern.*’

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**38 U.S.C. Sec. 8127 with H.R. 4221 Proposed changes using Track Changes—**

01/05/2009

EXPCITE

TITLE 38—VETERANS’ BENEFITS

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY  
 CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMI-  
 CILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE  
 LEASES OF REAL PROPERTY  
 SUBCHAPTER II—PROCUREMENT AND SUPPLY

HEAD

Sec. 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

STATUTE

(a) Contracting Goals.—(1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall—

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph (1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) Use of Noncompetitive Procedures for Certain Small Contracts.— For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)), a contracting officer of the Department may use procedures other than competitive procedures.

(c) Sole Source Contracts for Contracts Above Simplified Acquisition Threshold.— For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if—

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) but will not exceed \$5,000,000; ~~and~~

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.; *and*

*(4) in the case of a contract for the purchase of a commercial item, the vendor of the item is a manufacturer or a regular dealer.*

(d) Use of Restricted Competition.—~~Except as provided~~ (1) *Except as provided* in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States..

(2) *Any complaint regarding the noncompliance of a contracting officer with this subsection shall be submitted to the Secretary.*

(e) Eligibility of Small Business Concerns.—A small business concern may be awarded a contract under this section ~~only if the small business concern and the veteran only if~~—

- owner of the small business
- concern are listed in the database
- of veteran-owned businesses
- maintained by the Secretary under
- subsection (f).

*(1) the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f);*

*(2) the Secretary has performed the verification functions of the Secretary under paragraph (4) of such subsection with respect to the small business concern; and*

*(3) the contract is only for the procurement of a good or service with a North American Industry Classification System code specified by the Secretary under paragraph (9) of that subsection for the small business concern.*

(f) Database of Veteran-Owned Businesses.—(1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

*(7) The Secretary may not include in the database a small business concern that is the vendor of a commercial item unless the concern is the manufacturer or regular dealer of the item, unless the Secretary specifically provides for a waiver of such requirement for such concern.*

*(8) The Secretary shall establish specific criteria to be used in carrying out the verification functions under paragraph (4), including criteria requiring specific documentation and certifications from each small business concern proposed to be included in the database.*

*(9) For each small business concern included in the database, the Secretary shall specify the North American Industry Classification System code or codes of the goods and services that may be procured by the Department from such concern.*

(2) To be eligible for inclusion in the database, such a veteran shall submit to the Secretary such information as the Secretary may require with respect to the small business concern or the veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) In maintaining the database, the Secretary shall carry out at least the following two verification functions:

(A) Verification that each small business concern listed in the database is owned and controlled by veterans.

(B) In the case of a veteran who indicates a service-connected disability, verification of the service-disabled status of such veteran.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(g) Enforcement Penalties for Misrepresentation.—Any business concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.

(h) Treatment of Businesses After Death of Veteran-Owner.—(1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

- (A) The date on which the surviving spouse remarries.
- (B) The date on which the surviving spouse relinquishes an ownership interest in the small business concern.
- (C) The date that is 10 years after the date of the veteran's death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability.

(i) Priority for Contracting Preferences.—Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

- (1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.
- (2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).
- (3) Contracts awarded pursuant to—
  - (A) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or
  - (B) section 31 of such Act (15 U.S.C. 657a).
- (4) Contracts awarded pursuant to any other small business contracting preference.

(j) Applicability of Requirements to Contracts.—(1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any Governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services.

(2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

(k) Annual Reports.—Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

- (1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.
- (2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.
- (3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.
- (4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) Definitions.—In this section:

(1) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term “small business concern owned and controlled by veterans” means a small business concern—

(A)(i) not less than 51 percent of which is owned by one or more veterans or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) the management and daily business operations of which are controlled by one or more veterans; or

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

(3) The term ‘commercial item’ has the meaning given that term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 203(12)) as long as items

and services directly relating to the sale of such a commercial item are offered to commercial customers.

(4) The term 'management and daily business operations' includes—

(A) with respect to a contract for the provision of services, the services to be performed by a contract awarded under this section; and

(B) with respect to a contract for the provision of goods that are not manufactured by the small business concern in question, the provision of services relating directly to the sale of such goods.

(5) The term 'regular dealer' with respect to any contract means a person who owns, operates, or maintains a store, warehouse, or other establishment in which the commodities or goods of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

#### SOURCE

(Added Pub. L. 109–461, title V, Sec. 502(a)(1), Dec. 22, 2006, 120 Stat. 3431; amended Pub. L. 110–389, title VIII, Sec. 806, Oct. 10, 2008, 122 Stat. 4189.)

#### REFTEXT

#### REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (j)(2), is Pub. L. 85–536, Sec. 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

#### MISC1

#### AMENDMENTS

2008—Subsecs. (j) to (l). Pub. L. 110–389 added subsec. (j) and redesignated former subsecs. (j) and (k) as (k) and (l), respectively.

#### EFFECTIVE DATE

Pub. L. 109–461, title V, Sec. 502(d), Dec. 22, 2006, 120 Stat. 3435, provided that: “This section [enacting this section and provisions set out as a note below] and the amendments made by this section shall take effect on the date that is 180 days after the date of the enactment of this Act [Dec. 22, 2006].”

#### TRANSITION RULE

Pub. L. 109–461, title V, Sec. 502(b), Dec. 22, 2006, 120 Stat. 3435, provided that: “A small business concern that is listed in any small business database maintained by the Secretary of Veterans Affairs on the date of the enactment of this Act [Dec. 22, 2006] shall be presumed to be eligible for inclusion in the database under subsection (f) of section 8127 of title 38, United States Code, as added by subsection (a), during the period beginning on the effective date of that section [see Effective Date note above] and ending 1 year after such effective date. Such a small business concern may be removed from the database during that period if it is found not to be a small business concern owned and controlled by veterans (as defined in subsection (k) of such section).”

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**38 U.S.C. Sec. 8127 with H.R. 4221 + H.R. 2300 Proposed changes Using Track Changes—**

01/05/2009

TITLE 38—VETERANS' BENEFITS

PART VI—ACQUISITION AND DISPOSITION OF PROPERTY

CHAPTER 81—ACQUISITION AND OPERATION OF HOSPITAL AND DOMILIARY FACILITIES; PROCUREMENT AND SUPPLY; ENHANCED-USE LEASES OF REAL PROPERTY

SUBCHAPTER II—PROCUREMENT AND SUPPLY

#### HEAD

Sec. 8127. Small business concerns owned and controlled by veterans: contracting goals and preferences

## STATUTE

(a) Contracting Goals.—(1) In order to increase contracting opportunities for small business concerns owned and controlled by veterans and small business concerns owned and controlled by veterans with service-connected disabilities, the Secretary shall—

(A) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans who are not veterans with service-connected disabilities in accordance with paragraph (2); and

(B) establish a goal for each fiscal year for participation in Department contracts (including subcontracts) by small business concerns owned and controlled by veterans with service-connected disabilities in accordance with paragraph (3).

(2) The goal for a fiscal year for participation under paragraph (1)(A) shall be determined by the Secretary.

(3) The goal for a fiscal year for participation under paragraph (1)(B) shall be not less than the Government-wide goal for that fiscal year for participation by small business concerns owned and controlled by veterans with service-connected disabilities under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(4) The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.

(b) Use of Noncompetitive Procedures for Certain Small Contracts.—For purposes of meeting the goals under subsection (a), and in accordance with this section, in entering into a contract with a small business concern owned and controlled by veterans for an amount less than the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)), a contracting officer of the Department may use procedures other than competitive procedures.

(c) Sole Source Contracts for Contracts Above Simplified Acquisition Threshold.—For purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department may award a contract to a small business concern owned and controlled by veterans using procedures other than competitive procedures if—

(1) such concern is determined to be a responsible source with respect to performance of such contract opportunity;

(2) the anticipated award price of the contract (including options) will exceed the simplified acquisition threshold (as defined in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) but will not exceed \$5,000,000; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price that offers best value to the United States.; and

*(4) in the case of a contract for the purchase of a commercial item, the vendor of the item is a manufacturer or a regular dealer.*

(d) Use of Restricted Competition.—~~Except as provided~~ *(1) Except as provided* in subsections (b) and (c), for purposes of meeting the goals under subsection (a), and in accordance with this section, a contracting officer of the Department shall award contracts on the basis of competition restricted to small business concerns owned and controlled by veterans if the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States.

*(2) Any complaint regarding the noncompliance of a contracting officer with this subsection shall be submitted to the Secretary.*

(e) Eligibility of Small Business Concerns.—A small business concern may be awarded a contract under this section ~~only if the small business concern and the veteran only if—~~

- owner of the small business
- concern are listed in the database
- of veteran-owned businesses
- maintained by the Secretary under
- subsection (f).

*(1) the small business concern and the veteran owner of the small business concern are listed in the database of veteran-owned businesses maintained by the Secretary under subsection (f);*

*(2) the Secretary has performed the verification functions of the Secretary under paragraph (4) of such subsection with respect to the small business concern; and*

*(3) the contract is only for the procurement of a good or service with an North American Industry Classification System code specified by the Secretary under paragraph (9) of that subsection for the small business concern.*

(f) Database of Veteran-Owned Businesses.—(1) Subject to paragraphs (2) through (6), the Secretary shall maintain a database of small business concerns owned and controlled by veterans and the veteran owners of such business concerns.

*(7) The Secretary may not include in the database a small business concern that is the vendor of a commercial item unless the concern is the manufacturer or regular dealer of the item, unless the Secretary specifically provides for a waiver of such requirement for such concern.*

*(8) The Secretary shall establish specific criteria to be used in carrying out the verification functions under paragraph (4), including criteria requiring specific documentation and certifications from each small business concern proposed to be included in the database.*

*(9) For each small business concern included in the database, the Secretary shall specify the North American Industry Classification System code or codes of the goods and services that may be procured by the Department from such concern.*

*‘(10) Ownership and control by a veteran or veterans of more than one small business concern shall not be grounds for disqualification of any of such concerns from inclusion in the database under this subsection.’*

(2) To be eligible for inclusion in the database, such a veteran shall submit to the Secretary such information as the Secretary may require with respect to the small business concern or the veteran.

(3) Information maintained in the database shall be submitted on a voluntary basis by such veterans.

(4) In maintaining the database, the Secretary shall carry out at least the following two verification functions:

(A) Verification that each small business concern listed in the database is owned and controlled by veterans.

(B) In the case of a veteran who indicates a service-connected disability, verification of the service-disabled status of such veteran.

(5) The Secretary shall make the database available to all Federal departments and agencies and shall notify each such department and agency of the availability of the database.

(6) If the Secretary determines that the public dissemination of certain types of information maintained in the database is inappropriate, the Secretary shall take such steps as are necessary to maintain such types of information in a secure and confidential manner.

(g) Enforcement Penalties for Misrepresentation.—Any business concern that is determined by the Secretary to have misrepresented the status of that concern as a small business concern owned and controlled by veterans or as a small business concern owned and controlled by service-disabled veterans for purposes of this subsection shall be debarred from contracting with the Department for a reasonable period of time, as determined by the Secretary.

(h) Treatment of Businesses After Death of Veteran-Owner.—(1) Subject to paragraph (3), if the death of a veteran causes a small business concern to be less than 51 percent owned by one or more veterans, the surviving spouse of such veteran who acquires ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse were that veteran for the purpose of maintaining the status of the small business concern as a small business concern owned and controlled by veterans.

(2) The period referred to in paragraph (1) is the period beginning on the date on which the veteran dies and ending on the earliest of the following dates:

(A) The date on which the surviving spouse remarries.

(B) The date on which the surviving spouse relinquishes an ownership interest in the small business concern.

(C) The date that is 10 years after the date of the veteran’s death.

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability.

(i) **Priority for Contracting Preferences.**—Preferences for awarding contracts to small business concerns shall be applied in the following order of priority:

(1) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans with service-connected disabilities.

(2) Contracts awarded pursuant to subsection (b), (c), or (d) to small business concerns owned and controlled by veterans that are not covered by paragraph (1).

(3) Contracts awarded pursuant to—

(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a)); or

(B) section 31 of such Act (15 U.S.C. 657a).

(4) Contracts awarded pursuant to any other small business contracting preference.

(j) **Applicability of Requirements to Contracts.**—(1) If after December 31, 2008, the Secretary enters into a contract, memorandum of understanding, agreement, or other arrangement with any Governmental entity to acquire goods or services, the Secretary shall include in such contract, memorandum, agreement, or other arrangement a requirement that the entity will comply, to the maximum extent feasible, with the provisions of this section in acquiring such goods or services.

(2) Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided under the Small Business Act (15 U.S.C. 631 et seq.).

(k) **Annual Reports.**—Not later than December 31 each year, the Secretary shall submit to Congress a report on small business contracting during the fiscal year ending in such year. Each report shall include, for the fiscal year covered by such report, the following:

(1) The percentage of the total amount of all contracts awarded by the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(2) The percentage of the total amount of all such contracts awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(3) The percentage of the total amount of all contracts awarded by each Administration of the Department during that fiscal year that were awarded to small business concerns owned and controlled by veterans.

(4) The percentage of the total amount of all contracts awarded by each such Administration during that fiscal year that were awarded to small business concerns owned and controlled by veterans with service-connected disabilities.

(l) **Definitions.**—In this section:

(1) The term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 632).

(2) The term “small business concern owned and controlled by veterans” means a small business concern—

(A)(i) not less than 51 percent of which is owned by one or more veterans or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(ii) the management and daily business operations of which are controlled by one or more veterans; or

(B) not less than 51 percent of which is owned by one or more veterans with service-connected disabilities that are permanent and total who are unable to manage the daily business operations of such concern or, in the case of a publicly owned business, not less than 51 percent of the stock of which is owned by one or more such veterans.

(3) *The term ‘commercial item’ has the meaning given that term in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 203(12)) as long as items and services directly relating to the sale of such a commercial item are offered to commercial customers.*

(4) *The term ‘management and daily business operations’ includes—*

(A) *with respect to a contract for the provision of services, the services to be performed by a contract awarded under this section; and*

(B) with respect to a contract for the provision of goods that are not manufactured by the small business concern in question, the provision of services relating directly to the sale of such goods.

(5) The term ‘regular dealer’ with respect to any contract means a person who owns, operates, or maintains a store, warehouse, or other establishment in which the commodities or goods of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.

(6) The term ‘control of management and daily business operations’ with respect to a business concern means the authority to make final decisions affecting financial, operational, management policy, and employment issues, irrespective of the number of hours worked by the individual with such authority or the location of such individual with respect to the business concern.’

#### SOURCE

(Added Pub. L. 109–461, title V, Sec. 502(a)(1), Dec. 22, 2006, 120 Stat. 3431; amended Pub. L. 110–389, title VIII, Sec. 806, Oct. 10, 2008, 122 Stat. 4189.)

#### REFTEXT

#### REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (j)(2), is Pub. L. 85–536, Sec. 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (Sec. 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

#### MISC1

#### AMENDMENTS

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#### EFFECTIVE DATE

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#### TRANSITION RULE

Pub. L. 109–461, title V, Sec. 502(b), Dec. 22, 2006, 120 Stat. 3435, provided that: “A small business concern that is listed in any small business database maintained by the Secretary of Veterans Affairs on the date of the enactment of this Act [Dec. 22, 2006] shall be presumed to be eligible for inclusion in the database under subsection (f) of section 8127 of title 38, United States Code, as added by subsection (a), during the period beginning on the effective date of that section [see Effective Date note above] and ending 1 year after such effective date. Such a small business concern may be removed from the database during that period if it is found not to be a small business concern owned and controlled by veterans (as defined in subsection (k) of such section).”

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#### ***H.R. 4221 IH section 7 (d)(9) and (e)(5) Change.doc*** [Recommendations in RED appear in Italics]

***H.R. 4221 IH section 7 (d)(9)*** ~~“(9) For each small business concern included in the database, the Secretary shall specify the North American Industry Classification System code or codes of the goods and services that may be procured by the Department from such concern.”~~

***H.R. 4221 IH section 7 (e)(5)*** ~~“(5) The term ‘regular dealer’ with respect to any contract means a person who owns, operates, or maintains a store, warehouse, or other establishment in which the commodities or goods of the general character described by the specifications and required under the contract are bought, kept in stock, and sold to the public in the usual course of business.”~~

The above verbiage has been around for many years. Today, it is unrealistic and is not followed by contracting officers, manufacturers, wholesalers, distributors or dealers.

1. Internet has decreased purchase order, funding and manufacturer/ distributor invoicing costs significantly because products are touched only once between manufacturer and customer or twice between manufacturer/ customer and distributor.
2. Quality Assurance is lessened when another point of shipment, storage, stocking point is added.
3. Small business bill of material/product costs are less because shipping costs are borne only once to the customer.
4. When selling to the Federal Government, States exempt sales tax and all States have mechanisms in place that takes into consideration sales to the Federal Government based on a contract. Most States levy sales tax when product is maintained within a dealer's premises located within the dealer's State of business.
5. GSA Schedule sales for product require F.O.B. (Freight On Board) Destination on purchased product.
  - Manufacturers/distributors accept these GSA Schedule requirements within their Letters of Supply and price items to the Dealer accordingly.
  - It is advantageous to both the originating point and the receiving point to have only one shipment.
  - GSA Schedule buys almost always allow for thirty days deliver After Receipt of Orders (ARO). Small business competes with large business when the Federal Government uses the GSA Schedule for purchasing because FAR Part 8.404-1 exempts small business for orders placed against Federal Supply Schedules contracts. Adding additional shipping costs almost always loses the bid for small business competing with large business because large businesses ship direct from manufacturers/distributors.
  - If veteran owned businesses are required to meet the proposal in H.R. 4221 IH section 7(e)(5) they will be unjustly put out of business.
6. Prior to 1996 there were at least 25 small business manufacturers of micro-computers. In 1997/1998 all were gone or were manufacturing niche products. More than 20 were gone by 1999. The reason was the price wars between the large microcomputer manufacturers. There was no way small business could compete. The SBA did not modify the non-manufacturer rule thus maintaining the requirement that small business sell only small business manufactured computers through an "other than full-competition" contract awarded through the Small Business Act. This forced small businesses into accumulating large expenses in order to get a GSA Schedule. The rule of only selling small business products does not apply to GSA Schedules. When those small businesses entered into contracts with the large business manufacturers to sell large business products the large business got an increased marketing staff because the small business GSA Schedule holders had very slim margins of profit and were controlled by the competition between the large manufacturers. Every large business discount to the Federal Government reduced the bottom line of small business. The only way the small business can compete with large business is to keep PRODUCT prices extremely low and create profit through special SERVICES provided with the dealer sales. This paragraph discusses only computers. These examples apply to the entire spectrum of product sales; e.g. furniture, automobiles, drugs, and office supplies. If VETERAN owned businesses are required to meet the proposal in H.R. 4221 IH section 7(e)(5) VETERANS will be unjustly put out of business.

The recommended H.R. 4221 IH section 7(e)(5) is:

*'(5) The term 'distributor, manufacturer representative, or dealer' with respect to any Federal veteran owned small business contract means a person who owns, operates, or maintains a business, warehouse, or other establishment in which the commodities or goods of the general character described by the specifications and required under the contract are bought and sold to the public in the usual course of business. A 'wholesaler' meets the definition contained in this paragraph and has exclusive rights to market, within a given Federal Government territory, the goods of the applicable manufacturer or company.'*

Committee on Veterans' Affairs  
 Subcommittee on Oversight and Investigations  
 Washington, DC  
*January 11, 2010*

Honorable Eric K. Shinseki  
 Secretary  
 U.S. Department of Veterans Affairs  
 810 Vermont Avenue, NW  
 Washington, DC 20420

Dear Secretary Shinseki:

Thank you for the testimony of Glenn Haggstrom, Executive Director of the Office of Acquisition, Logistics and Construction, accompanied by Ed Murray, Deputy Assistant Secretary for Finance, Office of Management, U.S. Department of Veterans Affairs; Jan R. Frye, Deputy Assistant Secretary, Office of Acquisition, Logistics and Construction; Frederick Downs, Jr., Chief Procurement and Clinical Logistics Officer, Veterans Health Administration; Craig Robinson, Executive Director of the National Acquisition Center; and David Canada, Senior Procurement Analyst, Center for Small Business Utilization, Office of Small and Disadvantaged Business Utilization, U.S. Department of Veterans Affairs on the hearing entitled, "Acquisition Deficiencies at the U.S. Department of Veterans Affairs."

Please provide answers to the following questions by Tuesday, February 23, 2010, to Todd Chambers, Legislative Assistant to the Subcommittee on Oversight and Investigations.

1. What is the Office of the General Counsel's role in assisting you in VA acquisition operations?
  - a. The Subcommittee is concerned that the legal opinions from the General Counsel's office, specifically Group 5, in relation to contract and acquisition issues are fragmented, piecemealed, and does not provide adequate guidance. Are you satisfied with the quality or value of the legal technical review being released from the General Counsel's office regarding VA acquisitions?
  - b. When was the last time the quality or value of this group's legal technical review of its legal opinions were evaluated for satisfaction from people requesting its assistance in the field? What were the results of that evaluation?
    - i. If one has not been conducted, when will VA conduct one?
2. GAO's testimony noted that many miscellaneous obligations did not include adequate information on the purpose, vendor, and contract number—crucial information related to the miscellaneous obligation. Does VA have system patches to now require this type of information?
  - a. Are those patches working?
  - b. In your opinion, if GAO went out and reevaluated this issue again, would GAO be satisfied with the results and say "problem solved?"
3. In your testimony, you state that VA is setting records for spending with veteran-owned small businesses and that VA awarded 11.76 percent of its contract dollars to SDVOSB and 14.72 percent to all VOSBs. Have you validated this data?
  - a. When was the last time VA conducted an audit on this data?
4. What is VA's opinion on resellers or "pass-through entities" in VA acquisition, the adverse impact they have on the VA, and the role they play in wasting taxpayer dollars?
5. Annually, the VA reports to SBA the percentage of small business contracting that the VA has awarded to SDVOSBs. After being informed of GAO's testimony at this hearing and the findings contained in its report issued in October 2009, do you believe that the VA goal reports are an accurate account of the small business contracts VA has awarded to SDVOSBs?
6. According to the VA OIG, the data systems such as VA's Electronic Contract Management System (eCMS) and the Federal Procurement Data System (FPDS), which should provide accurate information relating to procurements, contain inaccurate and incomplete data. How can VA allow inaccurate and incomplete data to be included in eCMS and FPDS, what is VA's plan to correct this, and who is being held accountable?

7. A 2004 GAO report stated that though VA had implemented policies and procedures that required medical centers to purchase medical products and services through VA's contract programs, a VA OIG report found that medical centers continued to make many less cost efficient purchases from local suppliers. What specific procedures has VA implemented to provide oversight and compliance?
8. During the July 31, 2008 hearing, VA testified that starting in fiscal year 2009, the Office of Business Oversight would be reviewing 70 to 80 stations with a special emphasis on segregation of duties and how miscellaneous obligations are handled. What were the findings of the review, and what actions has VA taken to correct each deficiency found?
  - a. Please specify actions VA has taken to correct each deficiency found?
9. VA published VA Financial Policies and Procedures, chapter 6, Miscellaneous Obligations, was previously known as the VA Directive and Handbook 4533. This was supposed to address all the egregious issues uncovered at last year's hearing on Miscellaneous Obligations. Please inform the Committee on how this new guidance has corrected the problems detailed during the July 31, 2008 hearing.
  - a. Why did a recent audit show that 242 of 476 (51%) miscellaneous obligations that were reviewed where not in compliance with the Directive?
  - b. Why did 47 of 56 (84%) of miscellaneous obligations requiring the Head of Contracting Authority (more commonly known as the HCA) not go to the HCA for approval as required?
  - c. Why did 13 of 47 (28%) miscellaneous obligations for goods and services named in the directive were invalid uses of miscellaneous obligations?
10. Since Public Law 109-461 was enacted on December 22, 2006, what has VA done to put the verification program in place and what kind of documentation must a business provide to VA in order to be listed in the database.
  - a. How extensively are other Federal agencies utilizing the database?
11. Based on the GAO report issued on November 19, 2009, it appears there is a lack of an active verification program that relies solely on self-verification is allowing businesses that do not meet the requirements of PL 109-461 to take contracts away from legitimate qualified disabled veteran-owned small businesses. Please list all steps VA is taking to address this issue?
12. Please describe, in detail, the process through which an SDVOSB is certified by the VA, and how a contracting officer determines that a business has been certified by the VA?
13. Last year, several of our Committee staff had the opportunity to visit the Acquisition Academy in Frederick, Maryland. While there, they had the opportunity to meet with several attendees of the internship program. One of the concerns our staff came back with was once these interns graduated from the Academy, there was nothing to keep them from leaving the VA for other opportunities within or outside of the Federal Government.
  - a. What is VA doing to keep these highly trained individuals at VA?
  - b. What is the annual cost of running the Academy?
  - c. How many individuals will be placed into the acquisition workforce in 2010, 2011 and 2012?
14. Recently, minority and majority staff met with the acting director of the Center for Veterans Enterprise. During that meeting, Ms. Wegner stated that VA was allowing small businesses to be listed on the VIP database without the veteran or ownership and control status being verified by VA. Both staff reminded her of previous conversations in which they made Ms. Wegner aware that the law required VA to verify the ownership and veteran's status before being listed. They also explained that affixing a logo to a business to indicate a business's status as verified was not sufficient to comply with the law.
  - a. Are unverified businesses still listed in the database?
  - b. If they are, when will VA remove them from the database?
15. What is the status of the contract for assistance with verifying ownership and control and what is the process by which the contractor will accomplish that function and what will be VA's role in that process?

Thank you again for taking the time to answer these questions. The Committee looks forward to receiving your answers. If you have any questions concerning these questions, please contact Subcommittee on Oversight and Investigations Majority Staff Director, Martin Herbert, at (202) 225-3569 or the Subcommittee Minority Staff Director, Arthur Wu, at (202) 225-3527.

Sincerely,

HARRY E. MITCHELL  
*Chairman*

DAVID P. ROE  
*Ranking Republican Member*

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**Questions for the Record,  
The Honorable Harry E. Mitchell, Chairman, and  
The Honorable David P. Roe, Ranking Member  
Subcommittee on Oversight and Investigations  
House Committee on Veterans' Affairs  
Acquisition Deficiencies at the U.S. Department of Veterans Affairs  
December 16, 2009**

**Question 1:** What is the Office of the General Counsel's role in assisting you in VA acquisition operations?

**Question 1(a):** The Subcommittee is concerned that the legal opinions from the General Counsel's office, specifically Group 5, in relation to contract and acquisition issues are fragmented, piecemealed, and does not provide adequate guidance. Are you satisfied with the quality or value of the legal technical review being released from the General Counsel's office regarding VA acquisitions?

**Response:** Office of General Counsel (OGC) officials would like to meet with Subcommittee staff to better understand the nature and bases for the expressed concern. As is further detailed below in response to question 1.b., the first question is puzzling because surveys have shown consistently strong levels of client satisfaction with the legal assistance provided by Professional Staff Group V.

There may be some misunderstanding underlying this question. "Technical review" is a term of art referring not to reviews conducted by OGC, but rather by acquisition-program professionals. These are designed to ensure that procurements are conducted in accordance with prescribed policies. Once these technical reviews are conducted, OGC attorneys are frequently asked to perform legal evaluations of the matters and to suggest revisions/corrections of the proposed courses of action as necessary.

We are also surprised by the question because OGC now has considerably greater legal resources to support departmental procurement activities than was the case just a few years ago, and client offices have voiced their deep appreciation. Over the 2006-2008 time frame, OGC not only trained over twenty existing VA Regional Counsel attorneys in contract law, it also was permitted to hire (from the revolving Supply Fund) 22 attorneys to work in support of the supply system. While these attorneys report to Regional Counsels, Staff Group V coordinated their training and developed mentor-mentee relationships between them and its headquarters legal experts. Staff Group V itself is larger now than ever before, now totaling 35 staff attorneys who report to supervising attorneys under the management of a single Assistant General Counsel for purposes of ensuring coordination and consistency of advice. This staff is strategically located not only in VA Central Office (VACO) but also at the Austin Information Technology Center in Austin, Texas; the National Acquisition Center in Hines, Illinois; and the new Technology Acquisition Center in Eatontown, New Jersey. Client offices have been very pleased with the expanded availability of this legal expertise.

**Question 1(b):** When was the last time the quality or value of this group's legal technical review of its legal opinions were evaluated for satisfaction from people requesting its assistance in the field? What were the results of that evaluation? If one has not been conducted, when will VA conduct one?

**Response:** This question further suggests some underlying misunderstanding of OGC's role in the procurement process. Specifically, we do not understand what is meant by "legal technical review of its legal opinions," and we reiterate our desire to meet with Subcommittee staff to better understand the concern that prompted the question.

To the extent it is helpful, we can tell you that client satisfaction with the legal services provided by Staff Group V and all other OGC components is measured on a regular basis, most recently in 2009. The cumulative client-satisfaction scores for Staff Group V have been strong. In 2009, they achieved an overall score of 4.29 on a scale of 5, with 5 being the highest possible satisfaction level. Scores for the immediately prior surveys, as conducted every other year, were also consistently high: 4.24 in 2007, 4.37 in 2005, and 4.39 in 2003. These surveys have proven useful in not only reinforcing our understanding of what we are doing well, but also allowing us to identify and focus efforts on areas of client concern.

**Question 2:** GAO's testimony noted that many miscellaneous obligations did not include adequate information on the purpose, vendor, and contract number—crucial information related to the miscellaneous obligation. Does VA have system patches to now require this type of information?

**Response:** A system patch was released in September 2009, which enables local management at facilities to have improved oversight over the use of miscellaneous obligations.

This first patch (Patch PRC\*5.1\*131) to VA's Integrated Funds Distribution, Control Point Activity, Accounting, and Procurement (IFCAP) system provides two sets of functionality. The first enhances the reporting capabilities of the National Logistics Database. Reports are now available that identify those obligations that do not have the required procurement information and those that were created in violation of separation of duties policies so that management can take corrective action. The second functionality of the IT patch allows the financial system (FMS) to identify if a financial transaction originated as a "Miscellaneous Obligation" (VA Form 4-1358) or as a "Request, Turn-In and Receipt for Property or Services" (Form 2237).

Further development work on 4-1358 remediation caused a resource conflict with VA's Financial and Logistics Integrated Technology Enterprise (FLITE) system. FLITE is composed of the Integrated Financial Accounting System (IFAS) and the Strategic Asset Management (SAM) system. IFAS and SAM impact, and eventually will replace, the IFCAP system. In August 2009, VA determined the best use of limited IFCAP developers would be to re-direct these resources away from developing any additional interim IFCAP patches and toward developing and implementing the FLITE program, whose requirements fully address GAO's recommendations on miscellaneous obligations, and which will be the permanent system solution.

Although the IT resources were re-directed to FLITE from any follow-up 4-1358 remediation work, mitigation processes and policies are in place from a management controls perspective.

**Question 2(a):** Are those patches working?

**Response:** Yes. The first patch is working as programmed. At present we are getting additional information from all IFCAP sites. This additional information allows us to prepare better management reports to ensure compliance of 4-1358's written policy. Reports that are currently being developed include showing if separation of duties and if a vendor has been attached to the procurement. These and other reports will continue to be developed and shared with the various program offices as they become available.

**Question 2(b):** In your opinion, if GAO went out and reevaluated this issue again, would GAO be satisfied with the results and say "problem solved?"

**Response:** Through the combination of the release of the national policy on the use of miscellaneous obligations and the release of the IFCAP system patch discussed in 2a, we expect to see significant improvements in audits beginning with FY 2010 data and that the problem identified by GAO will be addressed satisfactorily.

**Question 3:** In your testimony, you state that VA is setting records for spending with veteran-owned small businesses and that VA awarded 11.76% of its contract dollars to SDVOSB and 14.72 percent to all VOSBs. Have you validated this data?

**Question 3(a):** When was the last time VA conducted an audit on this data?

**Response:** VA is proud of its record with respect to service-disabled Veteran-owned small business (SDVOSB) and Veteran-owned small business (VOSB) contracts, and is committed to meeting and exceeding our annual contracting goals with these categories of business. A part of that commitment is to ensure data accuracy when reporting agency contracting dollars in the Federal Procurement Data System-Next Generation (FPDS-NG). Effective Fiscal Year (FY) 2010, VA began an ongoing independent verification and validation (IV&V) initiative of agency data through the

services of an IV&V contractor. The IV&V contractor samples and validates data quarterly and makes recommendations for adjustments to VA policies, procedures, and training to improve the accuracy of the data reported in FPDS-NG. Data pertaining to SDVOSBs and VOSBs is included in the IV&V reviews. Data accuracy is a key performance measurement indicator and will be reviewed quarterly by senior leadership in the Office of Acquisition, Logistics, and Construction.

In addition, the data is certified by VA's Office of Small and Disadvantaged Business Utilization during the first quarter following the end of each fiscal year. The socio-economic data was last certified in November 2009.

**Question 4:** What is VA's opinion on resellers or "pass-through entities" in VA acquisition, the adverse impact they have on the VA, and the role they play in wasting taxpayer dollars?

**Response:** Resellers are companies that buy goods or services with the intention of reselling them rather than using or consuming them. VA does not object to resellers participating in VA acquisitions, so long as they comply with applicable Federal law, policies, and requirements, including the Federal Acquisition Regulation and General Services Administration's Federal Supply Schedule program policies and requirements, such as limitations on the percentage of work on a SDVOSB/VOSB set-aside award that can be subcontracted to a non-SDVOSB/VOSB firm. The Government has the obligation to determine price reasonableness in all contracts regardless of the business type (e.g., resellers, manufacturers, or wholesalers). Price reasonableness is determined by comparing the value of offered products or services relative to similar offerings in the commercial marketplace. VA seeks and awards contracts that are in the best interest of the Government and are fair and reasonably priced.

**Question 5:** Annually, the VA reports to SBA the percentage of small business contracting that the VA has awarded to SDVOSBs. After being informed of GAO's testimony at this hearing and the findings contained in its report issued in October 2009, do you believe that the VA goal reports are an accurate account of the small business contracts VA has awarded to SDVOSBs?

**Response:** VA goal accomplishment reporting for SDVOSB and VOSB contracts is based upon the award data actually transmitted to FPDS-NG, which includes all contract awards over \$25,000. VA data used in these reports is extracted from FPDS-NG which is the most accurate assessment tool available. This data will now be subject to sampling by VA's IV&V contractor further described in VA's response to Question No. 3, above.

The issue does not address the legitimacy of the firms which have self-certified. This information will be verified through the full implementation of VA's Veteran's First program, which includes a vendor status verification program.

**Question 6:** According to the VA OIG, the data systems such as VA's Electronic Contract Management System (eCMS) and the Federal Procurement Data System (FPDS), which should provide accurate information relating to procurements, contain inaccurate and incomplete data. How can VA allow inaccurate and incomplete data to be included in eCMS and FPDS, what is VA's plan to correct this, and who is being held accountable?

**Response:** VA is committed to ensuring accurate and complete data records in its acquisition systems. The agency has taken steps to improve both the operational processes and the automated systems to address this issue. VA has developed features within the enterprise-wide electronic contract management system (eCMS) to prohibit contracting officers from finalizing awards before records have been sent to FPDS-NG for awards over \$25,000. In addition, VA Information Letters (IL) have been developed and issued addressing utilization and accuracy of FPDS-NG data. Specifically, Information Letter 049-07-09, "FPDS Data Verification and Validation," addresses data integrity and assigns accountability to each contracting officer as well as the office manager. This data is also included in the IV&V contractor's data sampling (see VA's response to Question No. 3).

One root cause of inaccurate data in the acquisition systems is the existence of a knowledge gap within the acquisition workforce in fully understanding the system features of FPDS-NG and eCMS. In an effort to further reduce the occurrence of inaccurate data entry, VA is holding new and refresher training courses for both eCMS and FPDS-NG users. VA has also established a web-based central repository of detailed acquisition policies and procedures, which is accessible to all acquisition professionals to augment their classroom training. In addition, VA has appointed on-site experts in each administration and contracting office to provide training and oversight for eCMS and FPDS-NG system use. VA's Office of Acquisition, Logistics

and Construction will be accountable for eCMS and FPDS-NG program management and for ensuring data accuracy and completeness at the agency.

**Question 7:** A 2004 GAO report stated that though VA had implemented policies and procedures that required medical centers to purchase medical products and services through VA's contract programs, a VA OIG report found that medical centers continued to make many less cost efficient purchases from local suppliers. What specific procedures has VA implemented to provide oversight and compliance?

**Response:** VA contracting officers are required to purchase medical equipment and supplies from Federal Supply Schedule (FSS) contracts awarded by VA. This requirement to award contracts off of FSS is based upon a delegation of procurement authority from the General Services Administration (GSA) pursuant to the VA Acquisition Regulation. Also, VA hired Price Waterhouse Coopers (PWC) to complete a review of the existing acquisition structure, and to recommend an acquisition organization business model. As a result, the recommended regional model provides administration decision makers with more authority in executing strategic procurement programs, uses procurement oversight organizations resources effectively, and provides the best opportunity for stewardship responsibilities with mission focus.

Under this model all acquisition workforce members (GS 1102 and acquisition related GS 1105 and GS 1106s) will report to the Network/Program Contract Manager (NCM/PCM), the Service Area Officer (SAO), the Deputy Chief Procurement Officer (DCPO), and Chief Procurement and Logistics Officer.

Implementation of the acquisition realignment process began the second quarter of FY 2009, and has been completed, with the exception of the realigning of the GS 1105 and GS 1106 workforce under the NCM, which will conclude September 2010.

Each NCM has been authorized an additional Full-time Employee Equivalent (FTEE) for a Compliance Officer, and each SAO will be staffed with three Compliance Officers to ensure proper oversight.

**Question 8:** During the July 31, 2008 hearing, VA testified that starting in fiscal year 2009, the Office of Business Oversight would be reviewing 70 to 80 stations with a special emphasis on segregation of duties and how miscellaneous obligations are handled. What were the findings of the review, and what actions has VA taken to correct each deficiency found?

**Response:** In FY 2009, the Office of Business Oversight analyzed a total of 476 VA Form 4-1358s at 39 sites VA-wide. We found no fraud. We found instances of separation of duty violations, inadequate supporting documentation, VA Form 4-1358 not being submitted to the Head of Contracting Authority (HCA) as required and instances of invalid uses.

**Question 8(a):** Please specify actions VA has taken to correct each deficiency found?

**Response:** In FY 2009, the Office of Business Oversight issued 35 recommendations for improving compliance with VA Form 4-1358 procedures. All affected facilities submitted corrective action plans as required in response to the recommendations. Twenty-five recommendations have since been closed.

**Question 9:** VA published VA Financial Policies and Procedures, Chapter 6, Miscellaneous Obligations, was previously known as the VA Directive and Handbook 4533. This was supposed to address all the egregious issues uncovered at last year's hearing on Miscellaneous Obligations. Please inform the Committee on how this new guidance has corrected the problems detailed during the July 31, 2008 hearing.

**Question 9(a):** Why did a recent audit show that 242 of 476 (51%) miscellaneous obligations that were reviewed were not in compliance with the Directive?

**Question 9(b):** Why did 47 of 56 (84%) of miscellaneous obligations requiring the Head of Contracting Authority (more commonly known as the RCA) not go to the HCA for approval as required?

**Question 9(c):** Why did 13 of 47 (28%) miscellaneous obligations for goods and services named in the directive were invalid uses of miscellaneous obligations?

**Response:** As stated in a recent Management Quality Assurance Service Report, the primary cause of the reported shortcomings was a "lack of knowledge or timely receipt of the initial policy issued in August 2008." VHA provided electronic distribution of national policy (all Administrations) to the VHA financial community in January 2009. VA anticipates significant improvement in subsequent reviews.

**Question 10:** Since Public Law 109–461 was enacted on December 22, 2006, what has VA done to put the verification program in place and what kind of documentation must a business provide to VA in order to be listed in the database?

**Response:** VA leadership receives weekly reports, and VA has taken numerous steps to implement the program:

- Re-organized and expanded the Office of Small and Disadvantaged Business Utilization (OSDBU);
- Hired a Senior Executive Service official to manage the operations;
- Acquired contractor support to supplement full-time staff and provide advisory and assistance services to improve the program’s efficiency, effectiveness and performance measures;
- Completed certification and accreditation of the Center for Veterans Enterprise’s (CVE’s) integrated electronic signature system in May 2009, culminating a 3-year period of research, planning and development;
- Formally trained CVE examiners in business operations through George Mason University’s School of Public Policy;
- Purged 207 inactive business profiles from the database;
- Published an Interim Final regulation in the Federal Register informing the public of how VA will manage the Verification Program (see 38 CFR Part 74);
- Launched formal examination of ownership and control of applicant businesses on May 19, 2008;
- Completed awareness training for business owners through 254 conferences and outreach activities since May 19, 2008;
- Supported 38,285 calls through CVE’s Customer Interaction Center since May 19, 2008;
- Initiated on-site visits to applicants in October 2009 after acquiring contractor support;
- Re-engineered the VetBiz.gov web portal to conform to VA’s new transparency guidelines in November 2009; and
- Received 7,776 applications and completed action on 4,004 (as of January 28, 2010).

The database requires all owners to address five eligibility questions before they may be listed in the database. In addition, owners who apply for the Verification Program must submit VA Form 0877, authorizing VA to examine their individual eligibility status (Veteran, service-disabled Veteran, eligible surviving spouse) and agreeing to permit VA to examine business records. The listing of records that VA may examine is contained in 38 CFR 74.12.

**Question 10(a):** How extensively are other Federal agencies utilizing the database?

**Response:** The Vendor Information Pages (VIP) database is publicly available on the Internet. In Fiscal Year 2009, the database was visited 33,893,747 times. VA does not track individual visitor characteristics, so we are not able to more specifically answer the question. The Verification Program is applicable only to VA and to its prime contractors.

**Question 11:** Based on the GAO report issued on November 19, 2009, it appears there is a lack of an active verification program that relies solely on self-verification is allowing businesses that do not meet the requirements of P.L. 109–461 to take contracts away from legitimate qualified disabled veteran-owned small businesses. Please list all steps VA is taking to address this issue.

**Response:** P.L. 109–461 provides contracting advantages for service-disabled and other Veteran-owned small businesses only when contracting with the VA. It does not extend to non-VA Federal agencies. Only 3 of the 10 examples provided in the GAO report relate to contracts with the VA.

In May 2008, VA began to officially verify ownership and control of Veteran-owned small businesses. To develop a sufficient number of verified concerns eligible to receive set-aside and sole source contracts, businesses may self-represent their status until December 31, 2011, in accordance with VA Acquisition Regulation (VAAR) Part 804.1102. At the present time, any business that is registered in the VIP database—self-verified or not—that is putatively selected for a contract will first undergo a full verification before the contract will be awarded.

**Question 12:** Please describe, in detail, the process through which an SDVOSB is certified by the VA, and how a contracting officer determines that a business has been certified by the VA.

**Response:** The Attachment is a process flow chart which details the steps involved in verifying a SDVOSB. Once a business has been approved for verification, a “Center for Veterans Enterprise (CVE)— verified” logo appears on the company’s profile in the database. Until December 31, 2011, VA contracting officers may award to any business that is listed in the VIP database. However, if a business is found to lack SDVOSB/VOSB status through a verification examination or a status protest, the firm will be removed from the VIP database.

This process is intended to verify that small business concerns listed in the database are owned and controlled by Veterans, and that Veteran owners asserting a service-connected disability are in fact service-disabled. To carry out this requirement, VA collects information to document direct and unconditional ownership, control of day-to-day management and long-term planning, and Veteran and service-disabled Veteran status of applicants. OSDBU would be pleased to brief Subcommittee staff on how this process achieves those objectives.

**Question 13:** Last year, several of our Committee staff had the opportunity to visit the Acquisition Academy in Frederick, Maryland. While there, they had the opportunity to meet with several attendees of the internship program. One of the concerns our staff came back with was once these interns graduated from the Academy, there was nothing to keep them from leaving the VA for other opportunities within or outside of the Federal Government.

**Question 13(a):** What is VA doing to keep these highly trained individuals at VA?

**Response:** The Internship School’s holistic training approach includes a number of activities intended to promote VA loyalty. VA integrates mission service activities throughout the program in an effort for interns to (1) gain a better understanding of the interrelation and significance of their positions to VA’s mission, vision and core values; and (2) promote a connection and allegiance to VA by visiting VA medical centers and working with the Veterans they support. As part of the interns’ leadership development, they are trained on the mechanisms by which junior personnel can effect change in organizations. VA is also implementing a change management strategy for VA contracting organizations to ensure the vision of the contracting professional as a “trusted business advisor” is accepted and its application widely understood throughout VA.

In addition to these early measures promoting VA loyalty, the Academy is currently exploring various retention strategies as VA begins to transition the first intern class into the VA Workforce during the late summer/early fall 2010. Some of these strategies include: (1) student loan repayment; (2) retention incentives; or (3) relocation incentives. Implementation of these strategies would require a continuing service agreement (CSA). However, interns hired on Excepted Service Appointments are not authorized to enter into a CSA. To retain and continue the intern’s employment with VA, the intern can be converted to Career-Conditional Appointment at which time a CSA could be applicable.

**Question 13(b):** What is the annual cost of running the Academy?

**Response:**

<b>VA Acquisition Academy Internship School FY 2009 and 2010 (projected) Operating Costs</b>	
<b>FY 2009</b>	
*Personnel Services & Benefits	\$ 2,198,144
Non-Personnel Costs	\$ 934,391
<b>Total Operating Costs</b>	<b>\$ 3,132,535</b>

<b>VA Acquisition Academy Internship School—Continued FY 2009 and 2010 (projected) Operating Costs</b>	
<b>FY 2010</b>	
**Personnel Services & Benefits	\$ 4,131,489
Non-Personnel Costs	\$ 1,745,287
<b>Total Operating Costs</b>	<b>\$ 5,876,776</b>
*FY 2009 Includes costs for Vice Chancellor, Asst. Vice Chancellor and 30 Interns.	
**FY 2010 Includes costs for Vice Chancellor, Asst. Vice Chancellor and 60 Interns.	

**Question 13(c):** How many individuals will be placed into the acquisition workforce in 2010, 2011, and 2012?

**Response:** Based on the size of the intern classes, VA estimates the following number of interns to be placed into the VA workforce.

<b>Year</b>	<b>Number of Interns Fused Into the VA Workforce</b>
2010	26
2011	30
2012	30

**Question 14:** Recently, minority and majority staff met with the acting director of the Center for Veterans Enterprise. During that meeting, Ms. Wegner stated that VA was allowing small businesses to be listed on the VIP database without the veteran or ownership and control status being verified by VA. Both staff reminded her of previous conversations in which they made Ms. Wegner aware that the law required VA to verify the ownership and veteran's status before, being listed. They also explained that affixing a logo to a business to indicate a business's status as verified was not sufficient to comply with the law.

**Question 14(a):** Are unverified businesses still listed in the database?

**Response:** There are two sets of businesses in the database: self-representing businesses and those which have been officially verified for ownership and control by staff in the Center for Veterans Enterprise.

**Question 14(b):** If they are, when will VA remove them from the database?

**Response:** VAAR Part 804.1102 permits businesses to self-represent their status until December 31, 2011.

**Question 15:** What is the status of the contract for assistance with verifying ownership and control and what is the process by which the contractor will accomplish that function and what will be VA's role in that process?

**Response:** VA has two contracts for assistance with verifying ownership and control. The Verification Batch Processing Support Contract engages a support contractor to examine approximately 400–500 applications per month. The Onsite Examinations Contract engages a support contractor to perform onsite examinations at the applicant's place of business. The Verification Batch Processing Support contractor also examines published business information in accordance with the CVE's approved Verification Guidelines. The Onsite Examination contractor conducts site visits in accordance with the Site Visit Protocol that was created under a third support contract for Verification Advisory and Assistance Services. VA's role is to review the results of the examinations performed by the contractors, request additional information when appropriate, and based on VA's review of all the information gathered, decide whether the applicant is a legitimate VOSB or SDVOSB in conformance to the provisions of the laws and regulations.

**Attachment  
Implementation of VA's Veteran-Owned Small Business Verification  
Program**

(SUPPLEMENT TO QUESTION 12)

The Verification process in its current state is laid out in the following flowchart (3 pages). This is a swim lane diagram that shows the responsibilities of each team and how they interconnect.

