

**STATEMENT OF
DAVY LEGHORN, ASSISTANT DIRECTOR
NATIONAL VETERANS EMPLOYMENT AND EDUCATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON CONTRACTING AND WORKFORCE
OF THE COMMITTEE ON SMALL BUSINESS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
“SUPPORTING SUCCESS: EMPOWERING SMALL BUSINESS ADVOCATES”**

December 9, 2015

Good morning Chairman Hanna, Ranking Member Velazquez and members of the subcommittee. On behalf of our National Commander, Dale Barnett, and over 2 million members of The American Legion, we thank you for this opportunity to testify at this hearing on the challenges facing veteran owned small businesses seeking federal contracts.

The American Legion identifies three issues that pose obstacles for veteran owned small businesses and service-disabled veterans seeking federal contracts:

- 1) The Federal Strategic Sourcing Initiative;
- 2) The Differences between Small Business Administration and Department of Veterans Affairs procurement policy standards; and
- 3) The abuse and lack of accountability in purchase card.

Federal Strategic Sourcing Initiative:

The American Legion has never thought that the Federal Strategic Sourcing Initiative (FSSI) was good for small business. While this initiative was crafted around assisting federal agencies meet their small business goals faster, it is flawed, in that it drastically reduces competition for government spending. To a certain extent, we've internalized that the current generation of FSSI is here to stay. So rather than fight it, perhaps it's time to see if we can work with this Committee to ensure that veterans small businesses can actually benefit.

Starting with the procurement process itself, it takes two years and thousands of man hours to successfully submit a responsive proposal which does not guarantee an award. This expenditure of company resources will only position a firm as a potential prime under the FSSI. The process of just getting in position to bid is a huge gamble, overly burdensome and cost prohibitive to the majority of small businesses.

Another issue is that the agencies that committed to use this procurement vehicle prior to issuing the solicitation have failed to utilize the FSSI contract vehicle; therefore the few dozen small businesses that invested in the contract process have lost more money in comparison to firms that did not bother to bid and firms that bid, but did not receive awards. This is on account of the

drastic measures a firm has to take to lower their prices in order to compete for an award, but after the award, not receiving the increase in volume the firm was promised prior to the bid.

Nearly two years ago, the General Services Administration (GSA) promised to buy an estimated \$20 million of their janitorial supplies through the FSSI. To the dismay of many small supply retailers that have positioned themselves to be primes under the FSSI, GSA has bought very little through their own FSSI contracting vehicle. Anecdotally, this is not an occurrence relegated to just the GSA and that this is happening within other agencies as well, because the agencies habitually use their preferred and trusted suppliers.

Procurement Center Representatives:

Procurement Center Representatives are supposed to be the small businesses' advocates, they ensure a fair proportion of purchases, contracts & subcontracts are allocated to small business. With SBA being underfunded, there are not enough Procurement Center Representatives (PCRs). In order to work expediently, they are not able to review every contract for compliance. Currently, PCRs do not review outgoing FSSI delivery orders with small business options already built in. However, the contracts that go out in the FSSI are so large that The American Legion believes that it will be to the small business community's advantage if PCRs are required to review outward-bound FSSI contracts.

The American Legion Recommends:

- 1) Making FSSI bidding process easier and shorter for small business .
- 2) Larger number of awards under FSSI.
- 3) Restrict FSSI to small businesses.
- 4) Increasing SBA budget for training and hiring more PCRs.
- 5) PCRs to start reviewing FSSI contracts.

Purchase Card Abuse:

The American Legion believes VA, when they tell us that the money spent on the purchase cards were used to provide adequate medical care and services to veterans. We don't question why VA spent the money, we are concerned with the problems that result from the way they decided to spend the money.

This issue is of the utmost importance to The American Legion as it directly effects the care of our most vulnerable constituents. Federal contracts protect veteran patients with terms and conditions; contracts also hold the supplier or healthcare administrator accountable for defective equipment and mal-practice. None of these protections are in place when medical equipment and services are purchased on the fly without contracts. So never mind the fact that VA is probably being overcharged, because no effort has been made to compete for best prices, or that the abuse of purchase cards is unfair to small business; this is foremost a safety issue that absolutely has to be addressed.

All purchases below the simplified acquisition threshold of \$150,000 but not below \$3500, are exclusively reserved for small businesses. VA's use of the purchase card for medical services and devices took away money that should have been considered for small businesses. Furthermore, VA's procurements made by the purchase cards were not factored into what was reported to the SBA for small business goal purposes. The percentage of the dollar amount that was reported set-aside for small business is flawed because an estimated \$6 billion per year was not reported in Federal Procurement Data System according to the Jan Frye's memorandum to Secretary McDonald.¹

In the past, VA mentioned that they needed additional contracting staff to write and oversee contracts. According to the Frye Memo, the Bronx VA Medical Center spent \$54 million on prosthetics paid with \$24,999 increments on the purchase cards. The American Legion believes that VA contracting officials rely on purchase cards as procurement shortcuts like they did in this instance because of short staffing and a high workload.

The American Legion also believes that purchase card abuse likely stems from bad training. Contracting personnel are trained and taught the same way, they know the small business rules and regulations. But anecdotally, when they get to the VAMCs, they are taught to take shortcuts because this is the way their supervisors have done it and their supervisors are sometimes unknowingly perpetuating an established culture of shortcuts. Which is why many employees who are abusing the purchase cards don't even know that they are breaking the law or realize that there might not be a need to get around regular contracting vehicles. Sometimes, the shortcuts created are not any faster than expediting purchases through VA's sole source authority under Title 38.

Further, The American Legion believes that VA is not the only party that keeps purchase card expenses off of Federal Procurement Data System (FPDS). We're confident other agencies are doing the same thing. A March 2008 GAO Report², lists several other agencies' cardholders who were bypassing Federal Acquisition Regulations and making noncompetitive procurements with purchase cards.

There seems to be a recurring theme with the need for additional personnel to write, oversee and monitor contracts. Whether they are contracting specialists, contracting officers or PCRs, much of the problems our constituents have had with FSSI and purchase card abuse all stem from a lack of well-trained contracting employees. The contract bundling through FSSI, reverse auctions and large Indefinite Delivery, Indefinite Quantity contracts (IDIQs) were all aimed in part to alleviate the workload of contracting employees, but clearly it's not working because they are still looking for shortcuts and workarounds.

¹ Jan Frye's memorandum to Robert McDonald, Secretary of the U.S. Department of Veteran Affairs, March 2015, accessed December 3, 2015, <http://files.ctctcdn.com/8daee019001/1db6a9ca-27ae-4bcc-ab00-9ef060d9d2c2.pdf>

² U.S. Government Accountability Office. *Governmentwide Purchase Cards: Actions Needed to Strengthen Internal Controls to Reduce Fraudulent, Improper, and Abusive Purchases*, by Gregory D. Kutz. GAO-08-333. 2008 <http://www.gao.gov/new.items/d10106.pdf> (accessed December 3, 2016).

The American Legion Recommends:

- 1) Hiring more contracting staff.
- 2) Ensure that agencies must train and re-train contracting employees.
- 3) Agency must account for purchase card expenditures and start reporting it to FDPS.
- 4) GAO report on whether purchase card abuse is agency-wide and what is so onerous about small business rules that they seek shortcuts or why there is such an appeal for cardholders to make noncompetitive procurements with purchase cards.

Department of Veterans Affairs Verification:

Recently, the Center for Veterans Verification and Evaluation (CVE) has implemented a pilot verification process, which includes the assignment of a case manager to each case and provides counseling to the applicant prior to adjudication. The American Legion applauds VA efforts in engaging the applicant prior to the final adjudication. In 2013, The American Legion testified that there needs to be a human element in the pre-verification process to help an applicant understand why more documentation was warranted as opposed to just denying an application based off of insufficient evidence to establish ownership and/or control. In providing pre-adjudication emails regarding missing information and now incorporating counseling services to applicants, we see that VA has been responsive to our previous testimony.

Over the last two years, VA has made tremendous steps in improving the verification process. The American Legion would be remiss if we did not mention that CVE has significantly cut down the time it takes for a small business owner to receive an initial decision to less than 30 days. This is a stark contrast to 2012, when it took approximately 85 days for CVE to make a determination on an initial application.

However, there are several items left that CVE cannot address without legislative action and The American Legion believes that HR 3945, Improving Opportunities for Service-Disabled Veteran-Owned Small Businesses Act of 2015 introduced by Representative Mike Coffman, a veteran himself, would tie up the remaining loose ends with this program.

HR 3945 would align the definitions of VOSB and SDVOSB, ensuring that differences between the Small Business Act and the Vets First Program are consistent. Furthermore, this bill requires the VA to follow the Small Business Administration regulations when verifying size and control standards of an applicant's company. Last and most importantly, this bill creates an independent appeals process for SDVOSBs to challenge the agency's denials.

Aside from the fact that SBA's Office of Hearings and Appeals has the legal expertise in determining size and control, the intention of this move is to incentivize VA to improve their verification process in order to minimize the cases that are appealed. Under the proposed funding mechanism, VA would pay SBA by the case load; therefore, VA could potentially stop paying when VOSB and SDVOSB firms no longer have reasons to appeal.

The American Legion impresses upon the Committee that (1) including SBA in the appellate process would ensure more consistency in the final decisions being made and ensure impartiality

in not having the agency of original adjudication review their previously denied claim and (2) the intention of moving appeals to SBA has nothing to do with an attempt to create a new preference group within the existing federal small business set-aside programs.

The American Legion believes that Rep. Coffman's bill addresses some of the shortcomings brought to light by GAO's November 2015 testimony before the Committee on Small Business' Subcommittee on Contracting and the Workforce and the Committee on Veterans' Affairs' Subcommittee on Oversight and Investigations.³

This bill addresses the three major concerns the veterans' community had regarding the verification process as outlined by our previous testimony in 2013. Compared to issues elsewhere in VA, CVE and the verification process has been a low hanging fruit for improvement. With this legislative change, this is an instance, when the stakeholders can potentially claim VA's improvements since 2013 as a marked victory.

American Legion Recommends:

Support for H.R. 3945 *Improving Opportunities for Service-Disabled Veteran-Owned Small Businesses Act of 2015* and establish the formal appeals process under SBA OHA.

Conclusion:

As always, The American Legion thanks this committee for the opportunity to explain the position of the over 2 million members of this organization. Questions concerning this testimony can be directed to Matthew J. Shuman, Assistant Director in The American Legion's Legislative Division at (202) 861-2700, or mshuman@legion.org

³ U.S. Government Accountability Office. *Veteran-Owned Small Businesses: Preliminary Observations on Verification Program Progress and Challenges*, by William B. Shear GAO-16-179T. 2015. <http://www.gao.gov/assets/680/673511.pdf> (accessed December 3, 2015).