

**STATEMENT OF  
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THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON CONTRACTING AND TECHNOLOGY  
COMMITTEE ON SMALL BUSINESS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
IMPROVING CONTRACTING OPPORTUNITIES AND PREVENTING FRAUD FOR  
SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESSES**

**JULY 15, 2010**

Chairman Glenn Nye, Ranking Member Schock and Members of the Subcommittee:

Thank you for the opportunity to present The American Legion's views on Improving Contracting Opportunities and Preventing Fraud for Service-Disabled Veteran-Owned Small Businesses.

The American Legion views small business as the backbone of the American economy. It is the mobilizing force behind America's past economic growth and will continue to be a major factor as we move well into the 21<sup>st</sup> Century. Reports show that businesses with fewer than 20 employees account for 90 percent of all U.S. firms and are responsible for more than 75 percent of all new jobs, generated \$993 billion in income in 2006, and employ 58.6 million people. There are 27 million small businesses in the U.S. and 99.7 percent of all firms are small businesses.

In FY 2007, the Small Business Administration's (SBA's) Office of Government Contracting reported that of more than \$378.5 billion in Federal contracts identified as small business eligible, small businesses only received a total of \$83 billion in prime contract awards and about \$64 billion in subcontracts. Service-disabled Veteran-Owned Businesses (SDVOBs) were recipients of \$3.81 billion, or 1.01 percent of those available contract dollars.

According to opening remarks made by Chair Nydia M Velazquez during a Small Business Hearing in March, "In FY 2009, federal agencies missed their small business contracting goals by 2 percent. Procurement officers will tell you that number is negligible, and no big deal. But while a 2 percent shortfall may not sound like a lot, it ultimately cost entrepreneurs \$10 billion in missed opportunity. Or, to put it another way, it cost Americans \$10 billion in lost job creation. Small contractors, like all other small firms, create roughly 70% of new jobs. So when their ability to win contracts is compromised, employment numbers are too."

America has benefited immeasurably from the service of its 23 million living veterans, who have made great sacrifices in the defense of freedom, preservation of democracy, and the protection of the free enterprise system. Due to the experience veteran's gain in the military the success rate

of veteran-owned businesses is higher than other non-veteran owned businesses. The current War on Terror has had a devastating impact on our armed forces and has contributed to exacerbating this country's veteran unemployment problem, especially within the Guard and Reserve components of our military. According to the Bureau of Labor Statistics, the June unemployment rate for Iraq and Afghanistan veterans was 11.5 percent, and the unemployment for these veterans during the first six months of 2010 is 12.5 percent. The total number of unemployed veterans of the two wars is approximately 200,000. Furthermore, presently one out of every four veterans who do find employment earns less than 25 thousand dollars per year. Unfortunately, many of the thousands of servicemembers who are currently leaving the service are from the combat arms and non-skilled professions that are not readily transferable to the civilian labor market.

As reported earlier in this statement the best way of combating unemployment is through the creation of new jobs. Small business creates an estimated 65 percent to 75 percent of net new jobs, therefore providing a central element for strong economic growth. Government should assist in the creation of new jobs by encouraging qualified entrepreneurs to start and expand their small businesses, and no group is better qualified or deserving of this type of assistance than our veterans.

Increasingly, the growth and stability of this nation's economy is dependent on the long-term success of the small business networks across the country. However, during a time of war there is much to be accomplished. Ironically, for too many years, the very men and women who served in uniform, stood ready to fight, and if necessary die in order to protect and preserve our free enterprise system, are summarily ignored by the Federal agencies responsible for meeting their small business needs.

The U.S. Small Business Administration has the responsibility of supporting veteran business owners, yet the office empowered to oversee our programs remains critically understaffed, underfunded, and still marginalized despite laws championed by The Small Business Committee to further empower veterans' entrepreneurship programs.

The Department of Defense (DOD), who will have the responsibility of directing more than six and a half billion dollars of stimulus infrastructure, continues to be satisfied with an embarrassing, less than 1 percent achievement of the federally mandated 3 percent SDVOB contracting goal. Especially important to note is that all of the stimulus money has been dedicated to construction and infrastructure improvement, and these are two of the strongest areas of SDVOB ownership according to the Federal Central Contractors Registry.

Additionally, the Army Corps of Engineers combined appropriations to improve and construct VA hospital and medical facilities adds up to nearly \$6 Billion. All totaled, there will be more than \$12 Billion spent just out of the stimulus package alone, and the omnibus 2009 appropriations increases that amount by more than \$4.3 Billion for the Army Corps in Construction and Maintenance, and additional billions in DOD spending.

With the more than \$20 Billion dollars being spent on veteran and military related projects, The American Legion finds it unconscionable that veteran business owners remain at the back of the

line when competing for Federal contracts according to the Federal Acquisition Regulation. The Office of Veterans Business Development received less than \$750,000 out of the \$2.1 Million they were scheduled to receive in 2008, a mere 35 percent of their authorization.

And while this country struggles to regain economic stability, The American Legion fails to understand why our nation's veterans continue to be overlooked while they continue to serve this nation as business owners and employers.

### **Small Business and the Credit Crunch**

Small businesses are another casualty of the credit crunch caused by the ongoing financial crisis. By the end of 2008, more than half of the nation's small businesses looking for credit were unable to obtain a loan. This credit freeze will force many businesses to shut their doors, while others will be unable to expand. In either case, it means a loss of American Jobs. Congress should implement current efforts to thaw the credit market for small businesses by establishing a direct lending program within the SBA. This program could provide loans to small businesses that can't otherwise find credit, thereby potentially saving or creating tens of thousands of American Jobs.

During the fourth quarter of 2008, 70 percent of banks reported tightening their lending standards for small firms. As a consequence, fewer than half of the small businesses that tried to get a loan in the fourth quarter of 2008 were able to get one. When small businesses tried to obtain a new line of credit, only three in ten succeeded. The credit crisis is hitting small businesses across the board, including those that have been current in their payments and have no ties to high-risk sectors of the economy such as housing.

From November 2007 to November 2008, more than one quarter of small businesses reported a decline in the number of jobs at their companies. In December 2008, only one in eight small businesses said they planned to hire new employees in the next twelve months, a 48 percent drop since August 2008. In addition, the number of small businesses filing for bankruptcy rose 54 percent from 2007 to 2008.

The 7(a) loan program is the SBA's largest and most used lending program. Under this program, SBA provides a guaranty of up to 85 percent for loans provided by private-sector to small businesses. But because 7(a) loans are offered through private-sector banks, which are reeling from the current crisis, small businesses may not be able to get the relief they need. From the first quarter of 2008 to the first quarter of 2009, the number of loans approved by the 7(a) program dropped 57 percent. Moreover, the SBA is expected to guarantee only about 10 billion dollars in loans this year, down from its historic norm of 20 billion dollars per year.

To help ease the credit crisis for small businesses, The American Legion urges Congress to establish a direct lending program through the SBA. This effort would offer low-interest loans to otherwise healthy veteran-owned and service-disabled veteran-owned business that are having trouble obtaining the credit they need for necessary operating expenses or expansion.

## **Legislation and Veterans Federal Procurement Opportunity**

The American Legion seeks and supports legislation to require a 5 percent goal, with set-asides and sole source authority for Federal procurements and contracts for business owned and operated by service-disabled veterans and businesses owned and controlled by veterans. This includes those small businesses owned by Reserve component members who have been or may be called to active duty, or may be affected by base closings and reductions in our military forces.

The American Legion has encouraged Congress to require reasonable “set-asides” of Federal procurements and contracts for businesses owned and operated by veterans. The American Legion supported legislation in the past that sought to add service-connected disabled veterans to the list of specified small business categories receiving 3 percent set-asides. In addition, The American Legion believes that raising the priority level of Service-Disabled Veteran Business owners in the Federal Acquisition Regulation by changing “may” to “shall” and further by eliminating the “Rule of 2” would allow these individuals to be awarded more contracts within the federal system. The American Legion seeks to support legislation that supports and develops veteran and service-disabled veteran-owned businesses, while providing them equal opportunity to start and/or grow a small business, including establishing numerical goals for all veterans to compete in government procurement.

## **Preventing Fraud**

### **The Center for Veterans Enterprise**

The Department of Veterans Affairs’ Center for Veterans Enterprise (CVE) according to its website “is designed to improve the business climate for veterans, to minimize access barriers and to inform the public about the benefits of working with veteran-owned small businesses.” In addition, CVE provides opportunities for veteran-owned small businesses by collaborating with like-minded individuals and organizations who believe that veterans in business are still serving the American public. They work and link with partner organizations to provide local support to veteran-owned small businesses, because they are the face of a local economy. They also support acquisition teams through procurement coaching, free market research, awareness briefings and provide awards for noteworthy achievements. Their goal is to provide smart business information for those veteran-owned small businesses that are in search of starting their business or continuing to grow their business.

### **P.L.109-461**

Former President Bush signed P.L. 109-461 on December 22, 2006, The Veterans Health Care, Benefits and Information Technology Act of 2006. This law not only pertains to important health care benefits, but also outlining how VA will deal with veteran-owned small businesses in the area of contacting opportunities. Some of the provisions contain in this law are as follows:

- Establishes a set-aside and sole-source award mechanism for Veteran-Owned Small Businesses;
- Requires the Secretary of Veterans Affairs to establish prime and subcontracting goals for SDVOSBs and VOSBs;
- Requires registration SDVOSB and VOSB firms in VA.
- Requires VA to verify ownership and control of the company and the status of veteran owners. Providing ownership and control information to VA is optional and veteran may continue to sell to VA without verifying their status. However, participation in the set-aside and subcontracting program is limited to eligible businesses registered Veterans Information Page (VIP); and,
- Provides for debarment from VA acquisitions of those firms willfully misrepresenting their status.

### **VA'S IMPLEMENTATION OF PUBLIC LAW 109-461**

In March 2007, Scott Denniston, then Director of VA's Office of Small and Disadvantaged Business Utilization (OSDBU) is quoted as stating in his department's local newsletter *Small Business Advocate* that "a major challenge to implementing P.L. 109-461 will be educating and training VA's workforce of the significant changes brought by the law. To that end, OSDBU is available to provide training to acquisition professionals, program officials engineering officers and personnel, purchase cardholders and anyone else involved in the acquisition process that could use this training."

#### Challenges:

- Over the past 10 years, VA has built CVE through non-appropriated funds. CVE markets themselves as a technical training and assistance center that maintains a database of veteran-owned small businesses. With regard to CVE's technical assistance capabilities, this effort represents a negligible impact locally and virtually no impact nationally. CVE maintains one small assistance center in Washington, DC where they see a small amount of clients and field phone calls;
- Takes anywhere from one month to one year to have a company registered with VA. One veteran complained after registering, he was deleted from the data system a few months later;
- Veterans cannot register multiple businesses at one time, and owners must work full time in their registered business;
- Qualifications of CVE staff questioned;
- A 10 case Government Accountability Office study proved approximately \$100 million in SDVOSB sole-source and set-aside contracts through fraud and abuse of the program;
- The website is not user-friendly and needs to be improved; and,
- Not enough communicating between veteran-owned small businesses on the website.

#### Observations:

CVE's marquee program is their VIP database. As the only Federal database focusing strictly on veterans-owned small businesses, the VIP database has established itself as the premiere

database for veterans in the country. CVE has successfully promoted this database commercially, as well as cross agency and has established a strong foundation and infrastructure that can easily be interwoven into other Federal databases such as the Central Contractors Registry (CCR).

VA and the Small Business Administration (SBA) should develop a comprehensive partnership to assist veterans who are interested in participating in Federal procurement. CVE should maintain the database (VIP) and verify accurate veteran/service-connected disabled veterans' status. SBA should retain the responsibility for validating the business ownership, size standards, and structural integrity of the business. SBA should have direct reporting and input authority to the VIP database through the Office of Veterans Business Development once this information is collected. VA should maintain the eligibility status regarding veteran status. SBA is responsible for verifying all other socioeconomic categories for the purpose of Federal procurement. SBA already maintains the infrastructure, expertise and established regulatory guidance to include the veterans' population within their authority.

I would like to mention that these observations have come from The American Legion's National Small Business Task Force. This Task Force is made up of veterans who are successful business owners, Federal agency officials and The American Legion leaders. Their mission is to gather information, data and research regarding the current and future economic status of veteran businesses. These individuals are the very individuals who should be using the CVE and are a part of the database that CVE is maintaining.

### **In-sourcing**

The American Legion is concerned about the Administration's direction toward in-sourcing and how that is affecting small business. The Office of Federal Procurement Policy issued a proposed policy letter in March that defines functions that are "inherently governmental" and therefore should be performed by federal employees. It also calls for federal agencies to give special consideration to using federal employees for functions that are closely associated with inherently governmental functions, and it asks agencies to make sure they have enough employees in-house to manage functions that are critical to the agency's operations and mission.

The American Legion believes the push to in-source thousands of contractor positions could have severe repercussions for small businesses, particularly veteran and service-disabled owned businesses, across the nation and force small businesses to scale back positions or go out-of-business. Listed below is an example of the impact and unintended consequences of in-sourcing on small businesses submitted by one of our Small Business Task Force Members.

#### **Fort Huachuca, AZ**

##### **A. Companies affected:**

- a. Oak Grove Technologies: Service-Disabled, Veteran-Owned Small Business
- b. ISIS: HubZone, small business
- c. Highland Ties: Service-Disabled, Veteran-Owned, SDB, HubZone, small business

##### **B. Impacts (35M HUMINT Instructor)**

- a. Eliminated the NRCC contracts which dropped the Companies listed above off the Human Intelligence Collector Instructor contract (BAE and Akima also lost but are not a part of these talking points).
  - i. **262** current contractor positions
  - ii. **190** contractor positions eliminated (83 NRCC Contract)
  - iii. **72** contractor positions remain – all to large businesses on the War Fighter Focus (WFF) Contract (Raytheon, General Dynamics, Oberon, AGM)
  - iv. **83** positions will be in-sourced. Leaving a total of 155 instructor positions
  - v. **107** individuals out of a job.
- b. Human-Training, Joint Center of Excellence (HT-JCOE) and the 111<sup>th</sup> MI Brigade training contracted under WFF. We are not sure what the contract strategy will be when future contract work is needed for the United States Army Intelligence Center of Excellence (USAICoE) MI training. With the WFF contract currently in place it would be simple to just add any additional work under the WFF contract and not compete this future work. So where does this leave the small businesses in Sierra Vista, AZ when it comes to future MI work on Fort Huachuca? The Service-Disabled, Veteran-Owned Businesses?
- c. Small businesses had a very good retention and fill rate on the HUMINT contract. OGT had a 100% fill rate for over 4 years with very little turnover. WFF's turnover rate was approximately 28%. The information that has not been shared by Ft. Huachuca with the businesses affected by these cuts:
  - i. What was the decision making process and criteria used to select what contracts and what slots were to be removed not only from the 35M HUMINT Instructor contract, but for the other courses as well: Counterintelligence Special Agent Course (CISAC); 35G, 35T and the 35F.
  - ii. What was the final cost analysis from the overall analysis when cutting these slots: was the final decision based on the best cost for the government; or was the decision based on eliminating the additional contracts and consolidating all work under one – making the contract management much simpler? Would like to see how WFF costs compare to small businesses on the same contract doing the same work.
- d. Competition. Has the overall quality of service a contractor provides impacted by the existence of competition? Our small, but fully dedicated and highly capable companies have encouraged an environment of healthy competition which in turn has required all contractors involved to strive to provide the highest levels of quality performance and efficient service possible. This is likely one of the reasons that small businesses were awarded the contracts in the first place. The one large existing company had already demonstrated they were not likely to fill positions during a surge with quality employees in a timely manner. Eliminating our companies from the possibilities of future competition will likely not encourage any large company having a monopoly to strive to exceed the standard (ISIS).
- e. Small Business Loss. An unintended consequence of in-sourcing at Fort Huachuca is the shift of Small Business subcontract positions to Prime contractors in essence putting small businesses at “grave risk” and in one instance shutting the business down. This is not isolated to Ft. Huachuca, since this is a DOD wide implemented program (ISIS).

- f. Economic impact. Small Businesses stand to lose 100% of their current contracted/subcontracted work due to in-sourcing and the decisions being made on who to cut and by how much. The Impact on these companies will be devastating. In the case of the 35M HUMINT Instructor contract – OGT, ISIS, BAE, Highland Ties and Akima all were eliminated while WFF remained on contract.

While the Administration's effort to bring contracted jobs back into agencies temporarily addresses some challenges, it is essential the Government foresees the unintended consequences of in-sourcing especially to small businesses, and hopefully not break the back of Small Business which is the effect that is occurring.

### **Noncompetitive Contracts**

The American Legion concurs with National Veteran Owned Business Association's assessment in their statement submitted for this hearing regarding the White House announcement that executive agencies shall not engage in noncompetitive contracts. The press release makes no distinction between the billions of dollars awarded to large businesses such as KBR and Halliburton or the critically important sole source awards to productive and efficient small businesses under the SDVOSB, HUB Zone, or 8(a) programs. Specific guidance needs to be provided to contracting officers as to whether the administration is restricting the use of legitimate contracting mechanisms to support the nation's small businesses, or to restrict multi-billion dollar non-competitive awards to large prime contractors.

The American Legion also agrees that pressures being exerted on the Federal contracting community will probably result in greater use of the General Services Administration's (GSAs) Federal Supply Schedule Program, and while this program holds a higher contracting preference compared to the small business programs, it unfortunately does not allow set-asides for any small business group. The American Legion agrees that expanded use of this program will further diminish opportunities for small businesses, especially small businesses owned by veterans.

Therefore, The American Legion recommends:

- Service-disabled, veteran-owned small businesses set-asides should be allowed under the Federal Supply Schedule Program. Currently, GSA schedules are exempt from FAR part 19. Without this change SDVOSB will be limited in their quest for small business opportunities to compete for Federal contracts.
- Implementation of a coordinated standardize training program for procurement staff that focuses on SDVOSB procurement strategies in their respective agency.
- President Obama should reissue Executive Order 13-360 "Providing Opportunities for Service-Disabled Veteran Businesses" to increase Federal Contracting and Subcontracting opportunities for veterans, and require that its tenets be incorporated into SBA Regulations and Standard Operating Procedures.

- The SBA needs to emphasize Executive Order 13-360 and establish it as a procurement priority across the Federal sector. Federal agencies need to be held accountable by the SBA for implementing the Executive Order and the SBA needs to establish a means to monitor agencies progress and where appropriate, establish a report to identify those that are not in compliance, and pursue ongoing follow-up.
- In order to achieve the mandates of Executive Order 13-360, the SBA must assist Federal agencies to develop a strategic plan that is quantifiable, and will assist them in establishing realistic reporting criteria.
- The American Legion also recommends that the House Small Business Committee embrace and promote development of stronger policy and legislative language that champions the utilization of Veteran-Owned Small Business (VOSB) Joint-Venturing (JV) as a ready solution to the Small Business Spending requirements of the Stimulus Spending initiative.
- Hold the agency leadership responsible for meeting the 3 percent congressionally mandated goal. We recommend the Committee schedule a hearing with all Federal agencies who consistently do not meet their federal procurement goals with SDVOBs.

## CONCLUSION

The mission of The American Legion's National Economic Commission is to take actions that affect the economic well being of veterans, including issues relating to veterans' employment, home loans, vocational rehabilitation, homelessness, and small business. Small business continues to be a primary job generator and a major trainer for American employees. The small firm workforce includes more young and entry-level workers than colleges and large businesses combined. It is vital that Veteran-Owned and Service-Disabled Veteran-Owned Businesses receive a fair and proportionate amount of Federal contracts so these veterans can build and maintain successful businesses while they contribute to this down economy.

We look forward to continue working with the committee to enhance entrepreneurship among America's veterans. The American Legion appreciates the opportunity to present this statement for the record.

Again, thank you Chairman Nye and Ranking Member Shock for allowing The American Legion to present our views on this very important issue.