EXECUTIVE SUMMARY OF
KAITLIN M. GRAY, ASSISTANT DIRECTOR
NATIONAL VETERANS EMPLOYMENT AND EDUCATION DIVISION
THE AMERICAN LEGION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES
ON
"PENDING LEGISLATION"

JUNE 29, 2017

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

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

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

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

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

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

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

During the 114th Congress, then-Chairman of the House Veterans' Affairs Subcommittee on Oversight and Investigations Representative Mike Coffman, held a series of hearings examining

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

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

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

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

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

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

Furthermore, this bill does not take into consideration the fact there may be both tangible and intangible benefits associated with VA paying a higher price for products or services sourced through Veteran-Owned Small Business (VOSB) or Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). Therefore, the resulting numbers would be unduly skewed and not reflect actionable data (i.e., should VA adopt such a social contracting/pricing practice in the future…).

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

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

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

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

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

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

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

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

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

[2] *Kingdomware Technologies, Inc. v. United States*, 579 US _ (2016).

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

The American Legion supports H.R. 2749.

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

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

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

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

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

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

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

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

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

Draft Bill

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

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

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

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

The American Legion supports this draft bill.

Conclusion

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

[5] The American Legion Resolution No. 305 (2016): *Support the Development of Veterans On-The-Job Training Opportunities*