STATEMENT OF
STEVE L. GONZALEZ, ASSISTANT DIRECTOR
NATIONAL ECONOMIC COMMISSION
THE AMERICAN LEGION

TO THE JOINT

SUBCOMMITTEE ON ECONOMIC OPPORTUNITY & OVERSIGHT AND INVESTIGATIONS
COMMITTEE ON VETERANS' AFFAIRS
UNITED STATES HOUSE OF REPRESENTATIVES

ON

FOLLOW-UP HEARING ON THE U.S. DEPARTMENT OF VETERANS AFFAIRS SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS CERTIFICATION PROCESS

NOVEMBER 30, 2011

Chairman Bill Johnson, Ranking Member Donnelly and Members of the Subcommittee:

Thank you for the opportunity in allowing The American Legion to submit for the record its views on the Department of Veterans Affairs' (VA) Center for Veterans Enterprise and Veterans First Contracting Program.

For more than half a century, it has been the policy of the federal government to provide "maximum practicable opportunity" for small businesses to participate in federal contracts. To achieve this objective, Congress established an aspirational goal in 1978 for the percentage of annual prime contract spending awarded to small businesses each year. Congress later set the government-wide goal at 23 percent and created a set of sub-goals to support the participation of special segments of the small business community: small disadvantaged businesses (5 percent), women-owned small businesses (5 percent), service-disabled-veteran-owned small businesses (3 percent), and small businesses in Historically Underutilized Business Zones (HUB Zones) (3 percent). These goals help ensure that a diverse set of small businesses share in the jobs and opportunities created by federal contracting.[1]

America has benefited immeasurably from the service of its 23.4 million[2] 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 veterans gain in the military, the success rate of veteran-owned businesses is higher than non-veteran-owned businesses. The current Global War on Terror has had a devastating impact on the Armed Forces and has exacerbated this country's veterans' unemployment problem, especially within the National Guard and Reserve components. According to the most current federal data available, veterans owned 2.4 million businesses. Another 1.2 million firms were at least 50 percent veteran owned[3] within the fifty states and District of Columbia. According to this survey, veteran-owned and co-owned firms accounted for 13.5 percent of all non-farm businesses in the United States, employed 11 million people (4.9 percent of total U.S. employment) and generated $1.655 trillion in receipts.[4]

According to the Department of Labor, the present unemployment rate for recently discharged veterans is as high as 12.1 percent. One way of combating unemployment or underemployment is through the creation of new jobs. 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

[1] http://www.sba.gov/content/interagency-task-force-federal-contracting-opportunities-small-businesses

[2] http://www.va.gov/opa/publications/factsheets/fs_department_of_veterans_affairs.pdf

[3] http://web.sba.gov/faqs/faqIndexAll.cfm?areaid=24

[4] *Survey of Business Owners – Veteran-Owned Firms: 2007*. U.S. Census Bureau. http://www.census.gov/econ/sbo/get07sof.html?17

necessary die in order to protect and preserve the free enterprise system, are summarily ignored by the federal agencies responsible for meeting their small business needs.

The barriers to entry for small businesses are numerous: weak policies and rules that limit the effectiveness of tools that are supposed to facilitate contracting opportunities; inadequate workforce training to help contracting officers, small business advocates, and program offices to successfully use contracting tools; and a lack of coordination among and accessibility to agency training and outreach events designed to help small businesses navigate the contracting system. Action must be taken to remove these barriers and ensure small businesses get access to federal contracts.

THE CENTER FOR VETERANS ENTERPRISE

According to its website, the VA's Center for Veterans Enterprise (CVE) "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 in search of starting their business or continuing to grow their business.

PUBLIC LAW 109-461

On December 22, 2006, President Bush signed Public Law (P.L.) 109-461, The Veterans Health Care, Benefits and Information Technology Act of 2006. This law directs the Secretary of Veterans Affairs to "give priority to a small business concern owned and controlled by veterans, if such business concern also meets the requirements of that contracting preference." 38 U.S.C. § 8128(a). To implement the Veterans Benefits Act, VA established the "Veterans First Contracting Program" on June 20, 2007. *See* AR 38-540 to 541 (New Guidelines for Placing Items and Services on the AbilityOne Procurement List (Apr. 28, 2010) ("New Guidelines")). The program directed VA to consider service-disabled veteran-owned small businesses ("SDVOSB") and veteran-owned small businesses ("VOSB") as a first and second priority when satisfying its acquisition requirements. *Id*. at 38-541. A final implementing rule establishing changes to the Department's acquisition regulations was made effective January 7, 2010. *See* 74 Fed. Reg. 64619-01 (Dec. 8, 2009) (codified in scattered sections of 48 C.F.R. Subparts 802, 804, 808, 809, 810, 813, 815, 817, 819, 828, and 852).

VA'S IMPLEMENTATION OF PUBLIC LAW 109-461

In 2006, Congress created the Veteran First contracting program to help provide preference to small businesses owned by veterans and service-disabled veterans over other companies. VA was charged with putting procedures in place to verify the ownership and status of the companies that wanted to participate in Veterans First. The VA has failed time and time again to follow the

"Veterans First" law, which establishes set aside guidelines for service-disabled veteran-owned small businesses. While the GAO has investigated and agreed with the protest's claims, an internal memo from the VA dated October 17th makes the assertion that since the GAO is part of the legislative branch, the VA is not bound by their findings and that the courts would decide the issue.. The memo goes on further to state that "GAO recommendation does not change how VA will acquire goods and services in support of its mission."

On October 26, 2010, the United States Court of Federal Claims (USCFC) set precedence on behalf of all SDVOSB / VOSB, when it ruled in favor of Angelica Textile Services, Inc., in the case of *Angelica Textile Services, Inc., v. United States* (10-496C)[5]. The Federal Court decision confirmed that veterans have a contract preference and priority. Here are some excerpts from the court ruling[6]:

- *"The Veterans Benefits Act is a specific mandate to the Department, and only to the Department, to grant first priority to SDVOSBs and VOSBs in the awarding of contracts."*
- Above "any other provision of law" such as *FAR Part 8 Required Sources of Supply*
- Above "any other provision of law" such as *FAR Part 19.14;*
- Above general federal statues and initiatives
- In all market types such federal supply schedules and open market;
- Exclusively within the VA under 8127 (b), (c), or (d) and 8128

In March 2007, Scott Dennison, Director of the VA's Office of Service-Disabled Veteran-Owned Small Business Utilization (OSDBU) wrote in his department's local newsletter the **Small Business Advocate** "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 itself 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.

- It 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.

[5] http://www.uscfc.uscourts.gov/sites/default/files/LETTOW.ANGELICA102610.pdf
[6] Ibid

- Veterans cannot register multiple businesses at one time, and owners must work full time in their registered business.

- CVE staff qualifications have been questioned by many.

- 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.

- An inability to foster communication between veteran-owned small businesses on the website.

On July 21, 2009, Secretary of Veteran Affairs Eric Shinseki addressed SDVOSB / VOSB at the 5th Annual National Veteran Small Business Conference in Las Vegas and stated, "*VA will begin putting Veterans first – fully first – in our contracting efforts because we recognize the on-time, on-budget, quality solutions that you offer to meet our contracting needs.*"[7] This statement seems to be contradictory to VA Department official's actions when issuing VA contracts to businesses.

RECOMMENDATIONS

The American Legion fully understands and support Title 38 section 8127 and 8128 does not automatically award VA government contracts to SDVOSB / VOSB; however, when qualified SDVOSB / VOSB are being overlooked or ignored by the VA this is cause for great concern.

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. VA should develop clearer and more comprehensive small business contracting policies[8].

[7] http://www.va.gov/opa/speeches/2009/09_0721.asp
[8] http://www.sba.gov/sites/default/files/contracting_task_force_report_0.pdf

Recommendation 1: Update acquisition policies and regulations to provide clear guidance on small business set-asides and related tools.

Recommendation 2: Issue guidance clarifying practices and strategies to prevent unjustified contract bundling and mitigate any negative effects of justified contract bundling on small businesses**.**

Recommendation 3: Identify where focused efforts will likely have the most positive effect on increasing small business utilization in prime contracting.

Recommendation 4: Strengthen the skills of the acquisition workforce by revising existing core certification, requiring training on small business contracting, procurement policies and regulations, and creating focused refresher materials for continuous learning.

Recommendation 5: Use meaningful "carrots and sticks" to create a greater sense of agency accountability for reaching small business federal contracting goals.

Recommendation 6: Facilitate the identification and rapid adoption of best practices across the agencies to maximize successful strategies.

These observations 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 are using the CVE and are a part of the database that CVE is maintaining.

CONCLUSION

While The American Legion applauds the federal government in setting up and implementing a program that is designed to assist Veteran-Owned and Service-Disabled Veteran Owned Small Business to start up and receive government contracts, it is our belief that this program could be improved. VA and SBA should develop a comprehensive partnership to assist veterans who are interested in participating in federal procurement, with each Department utilizing their resources to ensure proper implementation. As interpreted by Federal Court, the VA is mandated by law to purchase all products and services from SDVOSB / VOSB as mandated by the Veteran First law, as long as those SDVOSB / VOSB meet both the legal and contract requirements. Any regulations, policies, and procedures disseminated by the VA that deny SDVOSB / VOSB their contracting preference and priority as defined by the United States Court of Federal Claims is a violation of law.

Unfortunately, SDVOSB and VOSB businesses have been relegated to last in the VA's procurement hierarchy even when Congress and United States Court of Federal Claims said they should be first. The irony and greatest insult is that this agency which was created to help veterans appears to be actively and knowingly shutting them out when it's time to award government contracts.

The American Legion appreciates the opportunity to present this statement for the record. Again, thank you Mr. Chairman, Ranking Member Donnelly, and Members of the Subcommittee for allowing The American Legion to present its views on these very important issues.