HEARING ON EXCELLENCE IN ACTION: GOVERNMENT SUPPORT OF DISABLED VETERAN-OWNED BUSINESSES

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT & GOVERNMENT PROGRAMS

OF THE

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES

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THURSDAY, JULY 15, 2004

HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMSJOINT HEARING WITH THE COMMITTEE ON VETERANS' AFFAIRS SUBCOMMITTEE ON BENEFITS
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:05 p.m. in Room 311, Cannon House Office Building, Hon. Todd Akin [chairman of the Subcommittee] presiding.

Present: Representatives Akin, Brown, Velazquez, Michaud, Udall, Herseth, Chocola

Chairman AKIN. This is an interesting Committee hearing in that we have essentially two different committees having the same hearing at the same time. And that is a fortunate thing, because I have got another Committee where I have got to be scooting off, so we are going to be turning the hearing over in a couple minutes to my colleague. Henry will handle that after we make an opening statement and get started.

I also think we have two panels of witnesses, is that correct? Okay.

Well, let us go ahead with an opening statement then. And also, we will be hearing a statement from our Minority Member from the Small Business Committee also, Mr. Udall, as well. So that will be good.

Good afternoon, and thank you all for being here today as we examine federal government support of disabled veteran-owned small businesses. I would especially like to thank each of our witnesses who has agreed to testify before our Committee today.

Before we begin I would like to welcome my friend and colleague, Chairman Henry Brown, of the Committee on Veterans' Affairs, Benefits Subcommittee. Mr. Chairman, welcome, and thank you for the opportunity to work together on this issue.

And over the past three and a half years Chairman Brown has worked tirelessly on a multitude of issues, and has been a real champion for America's veterans. I would like to express my gratitude to the good people of the First District of South Carolina for

sending Henry to the House, and also for the peaches that they distributed a couple days ago.

I am very pleased to be able to co-chair this hearing with him, and hope that this is just the first of a long line of veteran small business concerns we can work on together. With President Bush, this Congress has made it a priority to reach out to all of America's entrepreneurs, especially those who served this nation in our armed forces. We must continue this effort to ensure that those who sacrificed and served our nation in uniform have access to contracting opportunities with the federal government.

As many of you know, the Veterans' Entrepreneurship and Small Business Development Act of 1999 set a government-wide goal of 3 percent of all federal prime contracting dollars, and 3 percent of all federal subcontracting dollars, should be awarded to service-disabled veteran-owned small businesses.

However, for the first two fiscal years after enactment, less than one-half of 1 percent of such contracts have been awarded to disabled veteran-owned small businesses.

In order to provide the federal agencies with the necessary tools to meet the 3-percent goal, Congress and President Bush enacted the Veterans' Benefit Act of 2003 on December 16, 2002. This law allows contracting officers to create sole-source contracts for disabled veteran-owned small businesses.

The new law also provides contractors the discretionary authority to restrict certain contracts for disabled veteran-owned small businesses, if at least two such small businesses are qualified to bid on the contract.

Today we have invited a number of federal agency officials to testify on their progress in implementing the Veterans' Benefit Act. Also with us today are several disabled veteran-owned small business owners. They are here to explain their experiences, both before and after passage of the Veterans' Benefit Act.

I am looking forward to hearing the testimony presented today, and hope to hear that each of the agencies represented have taken appropriate steps to meet the 3-percent goal.

I hope that this Congress and our colleagues in the Administration can continue to work with the veterans' community together in order to provide our service-disabled veteran-owned small businesses each opportunity to succeed in the federal contracting agenda.

I now invite my friend and ranking Member, Mr. Udall, to make an opening statement.

Mr. UDALL. Thank you very much, Mr. Chairman. I appreciate you holding this hearing. I think this is an important hearing for veterans, and also for the small business community.

Let me first say that, along with a few other members here today, I have the pleasure of serving on both the Small Business and the Veterans' Committees. And it is a pleasure for us to have our colleagues on both of the Committees here today. We all recognize the importance of this issue before us, and I hope that this hearing will lead to a more effective procurement process for our veteran-owned small businesses.

The Veterans' Benefit Act is legislation built off the work of the Small Business and the Veterans' Committee during the 105th

Congress. Two Congresses ago we passed the Veterans' Entrepreneurship and Small Business Act that created several veterans' business development programs.

Given the sacrifices that our veterans have made and the service they have provided to this country, it only makes sense to provide our nation's veterans with assistance to jump-start small businesses.

A key component for any small business to succeed, not only veteran-owned small businesses, is access to government contracts. That is why we must ensure that veteran-owned, minority-owned, and all small businesses have a fair shake in the federal marketplace.

Today, however, we are focusing more specifically in evaluating the recent implementation of the new program established under the Veterans' Benefits Act. On May 5, 2004, five months after the President signed the legislation into law, the SBA put out the regulations to carry out the procurement program. These provisions allow agencies to set aside contracts for service-disabled veterans.

Unfortunately, in issuing the regulations, the SBA may have missed the mark. The regulations omit important safety and soundness protections, such as a certification program.

In addition, I am very concerned that these regulations not only fall short of the policy goals, but will also create confusion that will result in lost contracting opportunities, not only for service-disabled veterans, but for all small businesses.

The original intent of the bill was to create a fair and just system, to provide entrepreneurial opportunities to those who, for various reasons, have been left behind or left out. In order for this to be successful, we must ensure SBA programs can operate in unison.

Mr. Chairman, we all know how important it is that we provide assistance to all sectors of the small business community. After all, as is repeated often in the Small Business Committee, small businesses are the engine that drives our nation's economy.

It is of particular importance, however, that we provide assistance to our nation's service-disabled veteran entrepreneurs. History has shown that they, along with other particular segments of the population, rely most on the programs and assistance offered through SBA. That is why it is so important that as this new and important procurement program be implemented, we ensure that it is implemented in a manner that truly provides greater access to the federal marketplace for veteran-owned small businesses.

I look forward to hearing the testimony of the witnesses on the panels, and thank them for being here today.

Thank you, Mr. Chairman.

Chairman AKIN. Thank you, Mr. Udall. And then also we have an opening statement from Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. And I want to also extend a warm welcome to everyone here today, Chairman Akin, our Committee Ranking Member, Mr. Udall, for bringing us all together.

American sons and daughters who serve in our military indeed are engaging and resourceful individuals. In few professions do 19- and 20-year-olds, for example, maintain multi-billion-dollar air-

planes or operate multi-billion-dollar missile systems or nuclear-powered submarines, all in defense of our way of life.

Those who are disabled in their service to our nation deserve a full opportunity to participate in the economic system that their service has sustained.

Indeed, during the Colonial era, the First Continental Congress furnished pensions to members of our Continental Army to empower economically after they left the military. In so doing, the Continental Congress established one of our young nation's core values.

Further, during the Homestead Act of 1862, veterans received a priority for receiving parcels of land. This goes beyond gratitude and respect; it is about using scarce public resources in our private economy to empower those who have served.

Mr. Chairman, fast-forward into today. A five-year profile survey of veteran-owned businesses in Massachusetts, conducted in the late 1980s and early 1990s, found that a pool of approximately 2,000 veterans engaged in micro-businesses generating $74 million for the Commonwealth of Massachusetts. That is just for one state.

On February 5, 2003, Veterans' Affairs Committee hearing on the state of veterans' employment took testimony from among other current entrepreneurs who were disabled by their military service. The body of testimony showed these are engaging individuals who are strong and well-positioned to participate in the economic system they fought to defend.

The outgrowth of that 2003 hearing was the bipartisan discretionary set-aside and restricted contract authority for disabled veteran-owned small businesses, established as Public Law 108-183, to which I was an original co-sponsor.

I thank Congressman Renzi for introducing this important bipartisan legislation, of which Chairman Manzullo was the original co-sponsor.

Federal departments and agencies now have additional tools to contract with such small businesses. These are tools that were not available through the bipartisan enactment of Public Law 106-50, authored primarily of former Chairman Talent of this Committee, and Mr. Stump and Mr. Evans of the Veterans' Affairs Committee.

Mr. Chairman, I would note the White House Conference on Small Businesses, convened by President Carter in 1980, recommended set-aside authority in federal contracting for Vietnam-era disabled veterans as part of the aid program.

The 1981 expert report of the Small Business Administration Veterans' Project, written by the Center for Community Economics, made the same recommendation. The bipartisan Congressional Commission on Service Members and Veterans' Transition Assistance of 1998 made similar-type recommendations.

Without objection, Mr. Chairman, I would like to insert into the record the appropriate sections of these reports.

In closing, Mr. Chairman, I would note that in a broad sense, these discretionary contracting authorities for disabled veterans we are discussing today were some 24 years in the making.

This is not something Congress went into lightly, so I am very pleased we are holding this hearing.

Thank you, Mr. Chairman. I look forward to hearing today's witnesses.

Chairman AKIN. Without objection, in terms of the record.

Our next opening statement is going to be from Mr. Michaud.

Mr. MICHAUD. Thank you very much, Chairman Akin, Chairman Brown, and Ranking Member Udall, for working to put this hearing together today.

I have the privilege of serving both, as Ranking Member of Veterans' Affairs Benefits Subcommittee, and sitting on the Small Business Committee. I am very fortunate, and obviously have strong interests in exploring the issues before us today with the panels that we have, and the lengthy discussions.

So with that, Mr. Chairman, I would ask unanimous consent to have my opening remarks submitted for the record.

Chairman AKIN. Without objection, and thank you.

We will now proceed to our first panel of witnesses. And I believe our first witness is going to be Ms. Allegra McCullough, who is the Associate Deputy Administrator for Government Contracting and Business Development for the USSBA.

Allegra, thank you.

Excuse me, I did not mention you have about five minutes, standard format. Thank you.

STATEMENT OF ALLEGRA MCCULLOUGH, GOVERNMENT CONTRACTING & BUSINESS DEVELOPMENT, US SMALL BUSINESS ADMINISTRATION

Ms. MCCULLOUGH. Good afternoon, Chairman Akin, Brown, and Ranking Members Udall, Michaud, and other distinguished Members of the Committee.

My name is Allegra McCullough, Associate Deputy Administrator for Government Contracting and Business Development at the US Small Business Administration.

Thank you for inviting me to appear before you today to speak about our efforts to reach out to service-disabled veteran-owned small businesses, and achieve the 3-percent federal procurement goal.

Mr. Chairman, as you are aware, the Veterans' Entrepreneurship and Small Business Development Act of 1999 created a government-wide goal that 3 percent of the total value of all federal prime and subcontract dollars be awarded to service-disabled veteran-owned small business concerns.

Unfortunately, the federal government has consistently fallen well short of the 3-percent statutory goal. By fiscal year 2003, only three agencies met or exceeded the 3-percent goal. The National Endowment for the Arts—

Chairman AKIN. Allegra, if I could interrupt you for a minute and just ask you to move your mic a little bit closer. I think we will get a little bit better reception. Thank you.

Ms. MCCULLOUGH. By fiscal year 2003, only three agencies met or exceeded the 3-percent goal: the National Endowment for the Arts, the Consumer Product Safety Commission, and the Railroad Retirement Board. Of the large agencies, the Department of Housing and Urban Development has been the most successful in making progress toward the 3-percent goal.

On June 10, 2004, SBA's Office of Advocacy issued a report indicating achievements in this area were low, but also indicating that actual agency accomplishment may be under-reported.

Congress and the President provided federal procurement officials with a valuable tool: The Veterans' Benefit Act of 2003, 108-183. That was signed by the President on December 18, 2003, that authorized bills of procurement set-asides for SDVOSB, and sole-source contracting authority for only one SDVOSB as identified that can meet the government's requirement.

On May 5, 2004, the SBA and the Federal Acquisition Regulatory Council concurrently published interim final rules, implementing the procurement provisions of the Veterans' Benefit Act of 2003, while still providing the public with a 60-day comment period. Both SBA and the FAR Council worked hard to expedite these regulations.

The new regulations permit contracting officers to either restrict competition in contracts, or issue sole contracts to SDVOSB, but then specify dollar thresholds, in accordance with statutory requirements.

Our regulation also establishes procedures for protecting the status of an SDVOSB.

There are some common misconceptions out there that hinder the government's ability to reach the statutory 3-percent goal. Since these procurements are based on a premise other than socio-economic status, educating the federal and private sector contracting communities is very important.

Also, some SBCs are reluctant to identify themselves as service-disabled just to gain the status designation as an SDV. This hinders our outreach efforts, since we are unable to identify our clients.

So educating SDVOSBs to recognize the value added in securing or self-identifying as disabled is very important.

S.B.A. has not achieved its annual procurement goal for SDVOSBs since the inception of the requirement. However, as a result of the recently-enacted legislation and published regulation, SBA is designing an integrated effort that includes specific steps to be taken among our various program areas to utilize the set-asides and sole-source authorities for the purpose of meeting the 3-percent goal.

As a part of SBA's annual acquisition planning process, the agency will include all socio-economic goals, including SDVOSBs in our selection strategy. SBA's Office of Administration will also work closely with our Office of Veteran Business Development to identify potential SDVOSBs to meet SBA's contracting needs.

Where feasible, contracting opportunities will be posted on our home page, as well as highlighted in our vet cassette electronic newsletter, which reaches thousands of veterans.

The SDVOSB procurement goals will be communicated to all program areas, and each area will be encouraged to consider these agency goals when developing its procurement strategy for each planned acquisition.

SBA's outreach goals over the last three years, combined with the efforts of others, have contributed to the increase in veteran participation between 40 to 100 percent in most SBA programs. We

have and will continue to coordinate these efforts internally and with other federal agencies.

S.B.A. will work with the agencies' representatives today, and with others, to conduct outreach training and other policy program initiatives, specifically for SDVOSBs and veteran-owned businesses. This effort will include educating procurement officers of the new program, as well as educating service-disabled veteran entrepreneurs on SDV status, size standards, marketing to federal officials, information requirements in the bid of a procurement challenge, and tools for partnering with other SDVOSBs and veteran-owned businesses, and other agency procurement program participants.

Registration and the central contract registration, and the use of the dynamic small business search engine contained in the CCR as a source of market research, along with other federal databases, will be highlighted.

Further, non-SDVOSB prime contractors should also be made aware of subcontracting opportunities and responsibilities for the SDVOSB and veteran-owned businesses. To fully accomplish the objectives of this legislation, SDVOSBs must be prepared to conduct business in a manner consistent with current federal procurement trends.

Today, a large portion of the annual federal procurement dollars are spent through contracting actions using GSA federal supply schedules. While not the only way to provide SDVs with more contracting dollars, the ability of SDVOSBs to be placed on and market their companies on the GSA federal schedule will be a critical portion of their success in the federal market.

Through SBA procurement assistance programs, its business development counselling and training programs, and in partnership with other federal agencies like the ones here today, SBA will continue to identify and work with SDVOSBs to ensure that they have the necessary tools in place to enhance participation on GSA schedules.

Additionally, SDVOSBs must be educated on federal procurement trends, including using federal purchase cards to make purchases under $2500 without competitive quotes. These purchases amount to approximately $16 billion last fiscal year.

Mr. Chairman, the SBA will continue to work with the Committee and with other federal agencies in any efforts to promote programs and contracting opportunities for our veterans.

This concludes my testimony. And I would be happy to answer your questions.

[Ms. McCullough's statement may be found in the appendix.]

Chairman AKIN. Thank you, Ms. McCullough.

I will remind the witnesses, I know Ms. McCullough went a little bit over the five minutes. And I would caution you, if you would, kind of keep your remarks to five minutes. All of your prepared remarks will be entered into the record, but just for the sake of the time line to try to work within, if you would just contain your statements to five minutes.

The next witness is Mr. Frank Ramos, Office of Small and Disadvantaged Business, Office of the Secretary of Defense, US Department of Defense.

Thank you, Mr. Ramos.

STATEMENT OF FRANK RAMOS, OFFICE OF SMALL AND DISADVANTAGED BUSINESS, OFFICE OF THE SECRETARY OF DEFENSE, US DEPARTMENT OF DEFENSE

Mr. RAMOS. Mr. Chairman, if I would, please, I have four interns in the back. And I think there is some significant interest in one of them. If they would stand up.

One is the granddaughter of a US Marine code talker from World War II from the Navajo Nation. And I thought it would be appropriate to bring them here to go through this exercise.

[Applause.]

Chairman AKIN. We had a special ceremony in the Capitol, I guess about a month or so ago, honoring the code talkers. And they certainly played a major role in our victory in World War II. And thank you for bringing her today. Thank you for coming, too.

Mr. RAMOS. Thank you, sir. Right behind me also, sir, is my Deputy, Lynn Oliver, and a new person who is a special assistant to me, a political appointee who is going to be focusing on veterans' affairs for us. He just came on board; he served with the Army Airborne.

I will move on with my statement here, sir.

Good afternoon, Chairman Akin and Congressman Udall; good afternoon, Chairman Brown and Congressman Michaud.

My name is Frank Ramos. I am the Director of the Office of Small and Disadvantaged Business Utilization, in the Office of the Secretary of Defense.

I wish to thank you for the opportunity to testify before this joint subcommittee hearing concerning the Department of Defense implementation plan to execute public law 108-183. This law has helped clarify questions of priority within the competing small businesses' interest. This will help us.

The Defense implementation plan is our roadmap to meet the federal government goal to award 3 percent of all contracts for our war fighters who have become disabled in defense of our nation.

Today I will describe the three arenas of focus to improve our service-disabled veteran business statistics.

Number one. We are developing a strategy to increase service-disabled veteran supplier pool on increasing contract amounts to these businesses.

After I assumed my office, I began collecting data to determine how and what we must do to achieve the goal. In fiscal year 2002, the Department of Defense awarded $204.5 million in prime contract awards to service-disabled veterans, but we only reached .13 percent of that goal.

In fiscal year 2003, we awarded $341.7 million, an increase of $37.2 million. That only raised our goal percentage to .18 percent, a 72-percent increase that still fell short of the 3-percent goal.

The number of DoD service-disabled veteran business contractors grew from 408 in fiscal year 2002, to 692 in fiscal year 2003, an increase of 70 percent.

The government-wide centralized contractor register has only 5,600 active registrants who have identified themselves as service-

disabled veterans. This compares with around 180,000 registrants who identify themselves as small business, as of last week.

Accretion of contract size is a challenge. Right now there are only five firms who have contract awards in excess of $11 million. The balance of contract awards are in the lower ranges, most frequently under $100,000. Those larger Department of Defense awards are in research and development, engineering services, commercial institutional and construction, security, and boat-building.

Our primary tasks are twofold. To grow the number of service-disabled veteran firms that will be able to compete, and to increase the dollar value of our contracts with them, while buying goods and services that the war fighter needs.

The second area of focus is training. In late 2002 I recognized that small business-related training courses were not part of the Defense Acquisition University curriculum. The Undersecretary of Defense for Acquisition, Technology, and Logistics and the President of the Defense Acquisition University were quick to support our small business initiative, to consolidate courses that military services had partially developed for themselves.

We now have our first comprehensive Department of Defense small business training course contracts 260 that will be initiated at the end of August. The course is required for all defense small business specialists, and is encouraged for all acquisition professionals, which will include the service-disabled veteran topics.

Another initiative is to have an electronic continuous learning module. We expect that within 45 days of our pilot course, the electronic course will be available to anyone over the Internet.

We are expanding our defense community practice repository to provide a central electronic location where all acquisition professionals can share information relating to service-disabled veteran-owned small businesses.

Third. In 2003 I raised the service-disabled veterans as a heightened priority within the Department of Defense. For emphasis, we invited two Congressional Medal of Honor recipients—the Honorable Harvey "Barney" Barnum, the Assistant Secretary of the Navy, and Rodolfo Hernandez—to address our mentor/protege conference. The Honorable Everett Alvarez was another keynote speaker. He is the longest-captive prisoner of war decorated service-disabled veteran, and a successful small business owner.

I also had the Honorable Albert Zapanta, Chairman of the Reserve Policy Forces Board, a recipient of the Silver Star and Purple Heart, and small business owner, who addressed the veterans' issues.

That level attention by the distinguished heroes has never been done before at that conference.

I am also proud to state that my support contractor is a very competent service-disabled veteran business. And I guess what I am saying is I practice what I preach.

We have identified our challenges, and we developed a roadmap. We are working hard to achieve our goal.

I would like to close by expressing my appreciation for your interest, and the collaborative effort by our sister federal agencies, to strive toward this patriotic goal of supporting our former war fighters. It is the right thing to do.

I hope you can discern from my testimony that I have a real passion to meet this challenge. Thank you, sir.

[Mr. Ramos' statement may be found in the appendix.]

Chairman AKIN. Thank you very much, Mr. Ramos. I know there is a lot of work left to do, and I thank you for your effort in trying to reach that 3-percent goal.

Our next panel member is Mr. Brad Scott, Regional Administrator, Region Six, Heartland Region, US General Services Administration. Welcome.

STATEMENT OF BRAD SCOTT, US GENERAL SERVICES ADMINISTRATION

Mr. SCOTT. Thank you, Mr. Chairman, Ranking Member Udall, Ranking Member Michaud.

I am pleased to report on behalf of Administrator Steve Perry on GSA's continuing efforts to preserve the spirit of the two respective laws enacted to promote government contracting with service-disabled veteran-owned small businesses.

It has been my personal privilege to play a part in developing and implementing programs designed to, first, leverage our relationships within the federal community, to promote achievement of socio-economic goals by our client agencies.

Second, to help service-disabled veterans identify opportunities to do business with the government.

And finally, to enhance GSA's ability to achieve its own goal.

I would like to thank the Congress and the President for providing this tool that I believe will prove to be a meaningful enhancement in creating opportunities for service-disabled veteran-owned small businesses.

When public law 108-183 took effect last December, Administrator Perry challenged the GSA management team to forge an initiative to meet the demands of this new law. In response to this, we initiated a program that is entitled "Operation Fast Break."

Operation Fast Break is a two-pronged approach aimed at creating and improving GSA's external and internal offerings to our federal customers, and to service-disabled veteran-owned small businesses.

The broad goals of Operation Fast Break are first to identify, recruit, train, and assist service-disabled veteran-owned small business owners to get on GSA's multiple-award schedule program. And second, it is to inform client agencies of the new law and the opportunity contained therein to streamline the ability to access service-disabled veteran-owned small businesses.

G.S.A. has worked very closely with the Department of Veterans' Affairs, DoD, the Small Business Administration, and the Defense Logistics Agency to identify ways to expand contracting opportunities to service-disabled veteran-owned small businesses. This partnership has opened lines of communication between the agencies, and enabled the involved partners to embark on joint conferences and joint initiatives to the benefit of all involved.

I would like to hold up for distinction the Department of Veterans' Affairs, and Scott Denniston, who will testify next. GSA is hosting conferences to put service-disabled veterans in touch with federal agencies and prime vendors. Conferences have been held in

Washington, D.C. and New York already. Today there is one being held in Denver, Colorado, and we have one being planned for the Pacific Rim Region, Region 11 in California, and we have one scheduled in my region for October 20.

G.S.A. has utilized the power of the world-wide web to improve offerings to service-disabled veterans through cross-agency coordination and links. In addition, under Operation Fast Break, GSA created a website solely dedicated to service-disabled veterans.

During our internal review, GSA uncovered several dead links from other agencies to GSA. In addition, we found erroneous and outdated information contained on our own sites, as well as others. All of them have been fixed.

Additionally, veterans were frustrated that they were having difficulty talking with live bodies who could provide meaningful information. Not only have we listed points of contact on our website, we created a 1-800 number for veterans. When a service-disabled veteran contacts the hotline, he or she is directed to his or her local GSA Office of Small Business Utilization for more information on how to become a GSA contract holder.

G.S.A. is working with the Association of Procurement Technical Assistance Centers, and has established a memorandum of understanding to create an avenue for service-disabled veterans to receive intensive assistance that we cannot always provide.

G.S.A. has held internal conferences with its Office of Small Business Utilization to coordinate efforts, create a common customer experience, and enhance our offerings to not only our client agencies, but to veterans.

G.S.A. maintains a permanent liaison with the Task Force for Veteran Entrepreneurship.

While still too early to judge the impact of our initiative, we can identify some progress. For instance, at the end of 2003, GSA had 167 schedule-holders designated as service-disabled veterans. In March of this year, after GSA conducted an in-house review and contacted the businesses on schedule to inform them of the passage of the law, that number doubled to 332 businesses. As of June 30, we reached 351 businesses listed on schedule.

Once on schedule, GSA maintains and regularly updates the list of service-disabled veteran-owned small businesses. This list of businesses can be obtained from GSA service-disabled veteran-owned small business website.

In addition to asking for more service-disabled veterans on schedules, federal agencies have asked for a more user-friendly method of identifying service-disabled veterans. We are working to provide that, as well as to expand the pool.

And with that, Mr. Chairman, my time is about up, and I would like to end within the five minutes. We thank you for the honor and privilege of testifying before this august body.

Chairman AKIN. Thank you very much, Mr. Scott.

Our next panel member is Mr. Scott Denniston, Director, Office of Small Business and Center for Veterans' Enterprise, US Department of Veterans' Affairs.

Welcome.

STATEMENT OF SCOTT F. DENNISTON, OFFICE OF SMALL BUSINESS & CENTER FOR VETERANS ENTERPRISE

Mr. DENNISTON. Thank you. Mr. Chairman and distinguished Members of the Committee, thank you for the opportunity to testify on behalf of Secretary Anthony Principi on what VA has done to implement the programs envisioned by public law 106-50 and 108-183.

In 2001, the Department created the Center for Veterans' Enterprise. The Center's principal mission is to promote business ownership and expansion for veterans and service-connected disabled veterans.

The Center, which started with four employees, now has 11 employees in three functional areas: communications, business development, and business expansion.

The mission of the Communications Unit is to ensure awareness of the Federal Veterans' Entrepreneurship Program and the assistance offered by our resource partners: the Association of Small Business Development Centers, the Association of Procurement and Technical Assistance Centers, the Veterans' Corporation, the Veterans' Business Outreach Centers, the Small Business Administration Development Officers, and the Service Corps of Retired Executives.

A principal tool of the Communications Unit is the Center's web portal, vetbiz.gov. The web portal was recognized in the 2004 Edition of the 100 Best Resources for Small Business.

The mission of CVE's Business Development Unit is to efficiently connect veterans with community-based support, and to assess the responsiveness and effectiveness of local services. This unit was established in July of 2003.

A newly-developed tool of the Business Development Unit is the VetBiz Assistance Program, which will allow providers of business assistance services to post their program information for veterans to easily locate. This new program will be unveiled on August 17, 2004, on the fifth anniversary of public law 106-50.

The mission of CVE's Business Expansion Unit is to directly assist veterans who are seeking federal marketplace opportunities, and to minimize access barriers, and to maximize where possible. The principal tool of this unit is the VetBiz Vendor Information pages.

In April, the Administrator of the US Small Business Administration and the Acting Administrator of the Office of Federal Procurement Policy jointly issued a memorandum to all federal agencies encouraging the use of the VetBiz VIP database.

The database accepts information from external sources where veteran-owned businesses may be located, including Department of Defense's central contact registry. For a business to be posted on this Internet offering, the company must answer questions regarding small business size status, and affirm that the company is truly 51-percent owned and controlled by veterans or service-disabled veteran-owned businesses.

In the past 12 months, more than 59,000 calls and faxes from veterans have been handled by the Center. The web portal established to provide 24/7 access to veterans has received more than 700,000 hits in the first six months of this year.

VA's CVE has joined forces with federal agencies and prime contractors to create a corps of government and corporate advocates for veterans' enterprise, volunteers who stand ready and able to answer questions from entrepreneurial veterans on how to access requirements of their organizations.

I am proud to report that the Center and the Department have been actively sought out by federal agencies and corporations to partner in their outreach efforts. VA has co-sponsored outreach programs with the Air Force, Defense Logistics Agency, Department of Health and Human Services, Department of Housing and Urban Development, Department of Interior, Department of Transportation, General Services Administration, Small Business Administration, General Dynamics and SAIC, to name a few.

Additionally, we have ongoing relationships with the DoD Regional Small Business Councils, the DoD Procurement Technical Assistance Centers, and the Small Business Development Centers.

The CVE has also been invited to address employees of many other federal agencies as part of their acquisition education program.

Last spring, Secretary Principi issued a comprehensive report on recommendations to improve the performance of veteran-owned small businesses. This report contains many important changes. Perhaps the most startling and truly sweeping is the requirement now to include performance with veterans and service-disabled veterans in executives' performance plans within the Department of Veterans' Affairs. This report, coupled with the new set-aside authority which Congress has passed, should result in significantly higher improved achievements for both veterans and service-disabled veterans. This report is posted on the VetBiz web portal for anyone who is interested in using it.

Shortly before President Bush signed the Veterans' Benefit Act of 2003 on December 16, we began receiving enthusiastic calls from service-disabled veterans who had been closely monitoring the legislation. The callers wanted to know how long before the legislation would be implemented within VA and other federal departments and agencies. Obviously, they urged immediate implementation.

Secretary Principi, in consultation with VA's General Counsel, determined that implementing regulations were not necessary to implement the provisions of the law. On February 24, the VA's Office of Acquisition and Material Management issued an information letter which implemented the set-aside provisions of the law for VA immediately.

Thanks to the tremendous efforts and collaboration of the Small Business Administration and the Federal Acquisition Council, both SBA regulations and the Federal Acquisition regulations were revised, effective May 5, to implement the public law. As a result, we rescinded our informational letter.

What is interesting to note is that, since the time that the implementing of regulations went into effect, there have been 86 opportunities advertised in FedBizOps for service-disabled veteran set-asides. And we are pleased that more than half of those, or 48, came from the Department of Veterans' Affairs.

We have been very active in developing and supporting veteran-owned businesses. We think that we have put the tools in place

that will, in the near future, show the results that Congress expects through the set-aside authority.

Thank you for the opportunity to testify, and I would be happy to answer any questions.

[Mr. Denniston's statement may be found in the appendix.]

Chairman AKIN. Thank you, Mr. Denniston.

Our next member is Ms. Nina Rose Hatfield, Deputy Assistant Secretary for Business Management and Wildland Fire, US Department of the Interior.

Thank you.

STATEMENT OF NINA ROSE HATFIELD, BUSINESS MANAGEMENT AND WILDLAND FIRE, US DEPARTMENT OF THE INTERIOR

Ms. HATFIELD. Thank you, Mr. Chairman.

Mr. Chairman and Members of both Committees, I appreciate the opportunity to testify today on behalf of the Department of the Interior in support of the strategies that will increase small business procurement opportunities with service-disabled veterans on businesses.

Fifty percent of the $4 billion spent by our bureaus and offices in fiscal year 2003 were awarded to small businesses. We have consistently been among the leaders of the government in contracting with small and minority businesses. Nonetheless, we recognize the need for continued progress with service-disabled veteran-owned businesses.

Our small business theme is know your neighbor, because we have offices located across the nation, with responsibilities where our veterans reside and are business owners. We understand that we need to do a good job of providing information for those veterans about how they can contract with Interior. And we believe that public law 108-183 will open more doors for those veterans.

Within Interior, many positive steps have occurred in the past two years, but more remains to be accomplished. Prior to the recent passage of the Veterans' Benefit Act, Interior increased SDV procurements from fiscal year 2002 to fiscal year 2003 by about 65 percent. We rank in the upper third of all federal agencies in SDV contracting accomplishments for fiscal year 2003, and we are confident that we can meet our share of the 3-percent government-wide goal for fiscal year 2005, with the additional benefits of the set-asides and sole source authorities that are provided in public law 108-183.

The Interior Department has adopted a model, which has been very successful for us in other areas, to reach this 3-percent goal based on our partnerships, our advocacies, and targeted information for service-disabled veterans. At every forum or Chamber of Commerce opportunity, our small business leaders continue to address our commitment to increase SDV opportunities.

With over 14 national Small Business Associations as our business partners, we are constantly looking for new ways that we can work to involve SDV business owners as mentors and team players.

We are also looking for innovative ways to reach our SDV business owners through partnering with minority-serving institutions business schools across the nations and our territories.

Today, in Denver, Colorado, we are participating with the GSA and the Small Business Administration in the Regional Procurement Fair for service-disabled veterans. We also have participated in other key outreach programs in Albuquerque and Washington as a part of the larger federal commitment to open opportunities.

Internally, we have developed and disseminated DOI guidance within two weeks of the interim rule, for all of the Department. We also have a detailed staff person as a primary point of contact. We are working now with bureaus to identify contracts. And we, too, have modified our website to provide better and more information about getting on the Central Contract Register, and how you do business with the Department.

Building on these efforts, we are very confident that Interior can indeed achieve its 3-percent target of business with SDV small businesses.

And with that, that concludes my testimony. And I will be glad to try to answer questions. Thank you.

[Ms. Hatfield's statement may be found in the appendix.]

Chairman AKIN. Thank you very much, Ms. Hatfield.

At this time we will entertain questions from the panel. Mr. Udall, do you have a question?

Mr. UDALL. Sure, Mr. Chairman, thank you. I would like to ask Allegra McCullough about an issue here.

The SBA moved very quickly on the regulations to implement public law 108-138. Could you talk about some of the reasons why you moved so fast on this?

Ms. MCCULLOUGH. Absolutely. Being able to give back to those who have sacrificed so much for this country, which is certainly a priority with this Administration. And so we tried to, as quickly as we could, pull together our top legal and policy people to make this a number-one priority.

Mr. UDALL. Now, in the process of moving forward, you waived the notice and comment requirements for the interim rule. Was there a reason for doing that? I mean, do you think it might have been a more effective rule if you had gone through the notice and comment requirement?

Ms. MCCULLOUGH. We did go through a comment requirement. But we wanted to also make certain that very little time passed before SDVs were able to take advantage of the benefits of the rule.

Mr. UDALL. Do we have any idea how many businesses fit the category that we are talking about here?

Ms. MCCULLOUGH. No, we do not. And to be perfectly honest, we must work with all of our agencies, making certain that we are using every possible instrument and outreach effort to identify our service-disabled veterans.

Mr. UDALL. Is there anybody else on the panel that has an idea of how many service-disabled veteran-owned businesses there are? I mean, wouldn't it be helpful to have that kind of information to target what we are trying to do here? Any comments?

Mr. DENNISTON. Mr. Udall, the best numbers that we have on the number of service-disabled veteran-owned businesses come from some statistical samples that have been done by the Department of Commerce, Bureau of Census. And they range anywhere

from about 350,000 to 500,000. That is about the best number that we have been able to come up with.

Mr. UDALL. Three hundred and fifty to 500 thousand. Okay. I think that is good for me here, Mr. Chairman. Thank you, and I yield back.

Chairman AKIN. Thank you, Mr. Udall.

Do you have a question? Welcome to the panel.

Ms. HERSETH. Thank you very much, Mr. Chairman, and thank you for your testimony here today.

Just maybe a little bit of a follow-up on Congressman Udall's question there. It seems that maybe there has been some trouble in identifying and reaching these businesses that meet the eligibility requirements for those veterans that have service-connected disabilities.

So it leads me to question, under the new tool that we have here, the authority to sole-source or restrict certain contracts, your ability to use those new tools may be somewhat limited until we make more effort or make sure you have the resources, not just financial resources, but information network resources, to best identify the businesses that qualify. Right? I get the sense that there might be a consensus just in some nodding of the heads here.

Ms. MCCULLOUGH. If I may speak, yes and no. Yes, there has been difficulty identifying. And I think I speak for everyone that we are determined to make an all-out effort to use every tool necessary to identify and to outreach to every segment of America to make certain that we are articulating this rule, that we are letting service-disabled veterans know about the goals that the federal agencies would like to achieve, educating them on how to contract with the federal government.

Ms. HERSETH. I just want maybe to point out, as you go forward, that while we want to move forward to the 3-percent goal as best possible, and now have some authority that has been granted to help us achieve that goal, I do not want any businesses for veterans who have the service-connected disabilities to be at a disadvantage when someone is making a determination that they can sole-source if there is no reasonable expectation that bids are going to be offered. But yet if there are businesses out there that would be in a position to offer, but they are just not as familiar with this program because they have not been identified, we have not effectively reached out to them.

I am just pointing out maybe this inherent tension a little bit, and to be cognizant of that moving forward, that we do not start putting certain businesses at a disadvantage because we have not done enough at the outset to identify them.

Mr. DENNISTON. I think there are two issues here. Number one, going back to Congressman Udall's question about how many service-disabled veterans are there in the United States. And if we look at the number that are participating in federal contracting, it is a very small percentage. So I think that is issue number one, how do we get more businesses involved in the federal procurement process.

I think Mr. Ramos hit the other nail on the head. The fact that those we have identified have been working in the small contract

area, and what this authority will allow us to do will be to grow those businesses that we have identified now as part of the process.

Ms. HERSETH. Thank you. And the last question I will pose is, from your testimony I do not get the sense from any of you that you feel the 3-percent goal is unattainable.

Ms. HATFIELD. I think we agree that we can reach the goal. I would agree, though, with the rest of the panel members and the issues that you have raised. It is very important in terms of doing the outreach to the veterans so they are aware of what those opportunities are, and help us in terms of identifying who may be available to do business.

Mr. BROWN. Thank you very much. And I know that we must have a benchmark to work towards, and maybe we might not reach that 3 percent. But if we keep working together, maybe we will find some folks that they will be interested and we can help along the way.

We are very privileged today to have joined with us the Ranking Member of the Small Business Committee, Ms. Velazquez. Any questions?

Ms. VELAZQUEZ. I do.

Mr. BROWN. I have some questions myself, but I am going to submit those in writing to you later, just for the sake of time.

Ms. VELAZQUEZ. Thank you, Mr. Chairman. And I am really happy that you are conducting this joint hearing.

I think this provides for the Committee and Subcommittee to fulfill its duty of oversight. And conducting these types of hearings will help us fix some of the problems that we are having with the legislation that we passed.

My personal opinion is that we made some mistakes, and this is an opportunity now to fix out the mistakes that were made.

Ms. Allegra McCullough, I am curious about your interpretation of the statute in the promulgation of the implementing regulations, allowing agency contracting officers to choose whether to use the 8(a) program or the Hub Zone program or the new SDV program. In light of the mandatory language contained in both the 8(a) program and the Hub Zone, why has the SBA chosen to allow the permissive language, the so-called "may" language, to take a priority?

Ms. MCCULLOUGH. That is the language that was actually passed in the statute. We did not really have the discretion to change that language.

However, we would be happy to revisit that language.

Ms. VELAZQUEZ. Can you speak up, please?

Ms. MCCULLOUGH. You were talking about the use of the word "may" rather than "shall," in terms of sole-sourcing?

Ms. VELAZQUEZ. No. I am talking about you, the agency allowing contracting officers giving parity, when we have the statutory language that says that the 8(a) program or the Hub Zone program, that they have priority over the SDV program.

Ms. MCCULLOUGH. Well, the language, I mean, there is parity between the 8(a) and the other programs. But the language in the statute indicates "shall," which clearly indicates a mandate.

In the statutes for the SDV, it indicates "may," which indicates that it is up to the discretion of that federal contracting officer.

This is certainly language that, if Congress wishes to revisit, we would be more than happy to revisit that issue with you.

Ms. VELAZQUEZ. The service-disabled veteran on business procurement programs has discretionary language. A contracting officer may use the program.

Under the SBA implementing regulation for PL 108-183, I see that it allows the SBA to release a requirement under the 8(a) program.

Would you please describe in what circumstances the SBA will agree to such a release?

Ms. MCCULLOUGH. Releasing the contracting officer from sole-sourcing? Is that what you are asking? I am not quite sure that I understand your question.

Ms. VELAZQUEZ. It would allow for releasing the requirement of the 8(a) program, specifically the 8(a) program.

Ms. MCCULLOUGH. If I am understanding you correctly, what it articulates is that there would have to be, if they cannot find more than one 8(a) participant, then they could sole-source it. But that is something that they must consider.

I hope I am answering your question. If not, I would be more than happy to answer it for you at a later time, when I am sure about—

Ms. VELAZQUEZ. I will allow you to answer me at another time.

Ms. MCCULLOUGH. Okay, I will be happy to.

Ms. VELAZQUEZ. You will be able to send a written submission to the Committee?

Ms. MCCULLOUGH. I would love to. Thank you.

Ms. VELAZQUEZ. Ms. McCullough, on May 24 the SBA published a final rule to the Hub Zone program. In this regulation, the SBA proposal to provide parity for the 8(a) and the Hub Zone program was not finalized. Am I correct?

Ms. MCCULLOUGH. On parity with the 8(a) program, that it was not finalized?

Ms. VELAZQUEZ. Yes. On May 24?

Ms. MCCULLOUGH. Yes.

Ms. VELAZQUEZ. Okay. In fact, the SBA said it will further examine issues raised, and will not amend the rule at that time. Is that correct?

Ms. MCCULLOUGH. That is correct.

Ms. VELAZQUEZ. But on May 5, the SBA seems to imply, with the regulations for the service-disabled veteran-owned business procurement program, that, except for existing 8(a) contracts, contracting officers can pick and choose whether they will use either the 8(a) program, the Hub Zone program, or the newest program.

My question to you is, what is the priority among these programs, in light of the fact that 13 CFR 126.607 has not been modified?

Ms. MCCULLOUGH. We are making certain that we articulate to our federal partners that it is extremely important that they consider meeting the goals of all of these programs, as best as they can.

Ms. VELAZQUEZ. The problem that I have is that you are not allowed to pick and choose, in terms of the regulation. You cannot

pick over one or the other, unless you modify the regulation. Did you modify the regulation?

You answered to me that on May 24, when I asked you, that the regulation was not finalized. You said that I am correct.

Ms. MCCULLOUGH. That is correct.

Ms. VELAZQUEZ. Yes. But then on May 5, the SBA seems to imply, with the regulation that you issued, that for the service-disabled veteran-owned business procurement program, that except for existing 8(a) contracts, contracting officers can pick and choose whether they will use either the 8(a) program, the Hub Zone, or the newest program. But you did not finalize the rule, the regulation.

Ms. MCCULLOUGH. We really wanted to make certain that very little time passed before SDVs were able to take advantage of the rule.

Ms. VELAZQUEZ. Based on the May 5, can you tell me which of the programs has the priority? When a contracting officer is going to decide how they are going to do it.

Ms. MCCULLOUGH. SBA does not have the discretion to actually make that rule. And it is something that we would certainly like to revisit with Congress on. But we do not have that discretion.

Ms. VELAZQUEZ. Okay, you do not have it. So tell me, who created this priority? The current priority listing for 8(a) and Hub Zone companies, located at 13 CFR 126.607(e), 8(a) companies located in a Hub Zone; two, 8(a) company; third, Hub Zone competitive procedures; and fourth, Hub Zone sole-source procedures.

Ms. MCCULLOUGH. You are saying who established that?

Ms. VELAZQUEZ. Yes. Do you have the legal counsel from SBA?

Ms. MCCULLOUGH. We will have to get back to you on that.

Ms. VELAZQUEZ. Who issued this regulation?

Ms. MCCULLOUGH. Excuse me?

Ms. VELAZQUEZ. Who issued? Who issued this regulation that established this order?

Ms. MCCULLOUGH. The original issuer?

Ms. VELAZQUEZ. The one that I just read. Was it SBA?

Ms. MCCULLOUGH. SBA issued that rule.

Ms. VELAZQUEZ. Ms. McCullough, in the fourth pages of your testimony, you say not one word regarding how the SBA is going to police this new procurement program. These are the parameters for a joint venture program in the new rule that is different than for any other SBA program. The ownership requirements for this program are different than for any other SBA program. The percentage of work requirements are different than for any other SBA program.

And yet, you have not said one word in your testimony about how the SBA is going to ensure this program is not abused. Can you please comment on this?

Ms. MCCULLOUGH. I will be happy to. With all due respect, SBA has and never has had the power to police any procurement program offered throughout the federal government.

We do, however, intend to, through our relationships with our federal partners and combined outreach and marketing efforts.

Ms. VELAZQUEZ. So how are you going to make sure that the program is not abused?

Ms. MCCULLOUGH. We will certainly have to make certain that this is articulated to our federal partners, that, by all means necessary, the integrity of this program must be obtained.

But again, we do not have the authority to police any of our programs throughout the federal agencies.

Ms. VELAZQUEZ. With all due respect, you are wrong. You are totally wrong. And legal counsel is there behind you, and they can tell you that you are wrong.

Thank you, Mr. Chairman.

Chairman AKIN. Okay. Thank you, Ms. Velazquez.

Members of the panel, thank you very much for coming and enlighten us on these regulations. And we will now proceed to the second panel.

[Recess.]

Chairman AKIN. Let me extend a warm welcome to our second panel. And we are pleased to have you come and testify on such an important issue.

Our first two members, participating members, one will testify and the other will not. Is that correct, Mr. Lopez? As Co-Chairman of the Task Force on Veterans' Entrepreneurship, and Mr. Rick Weidman is the Chairman of the Task Force on Veterans' Entrepreneurship. So which will testify?

Mr. WEIDMAN. Mr. Lopez. We decided to give the kid his shot at it, Mr. Chairman.

Chairman AKIN. Okay. Welcome, Mr. Lopez.

STATEMENT OF JOHN K. LOPEZ, TASK FORCE FOR VETERANS ENTREPRENEURSHIP

Mr. LOPEZ. Good afternoon, gentlepersons. I believe there is a lady remaining.

Thank you for your kind invitation to testify before the distinguished Committees regarding government support of service-disabled veteran-owned businesses.

My name is John Lopez. I am Chairman of the Association for Service-Disabled Veterans, and I am Co-Chairman of the Task Force for Veterans' Entrepreneurship. I am here with my colleague, Rick Weidman, who is the Chairman of the Task Force, as well as the Director of Government Relations for the Vietnam Veterans of America.

Without objection, I would ask to submit our testimony for the record, and summarize our observations for the Members, in respect for your time and indulgence. No objections.

On behalf of the nation's over 60-million-person veteran community, and especially the disabled-in-military-service and prisoner-of-war veteran businesses, I would like to express the appreciation of the veterans' community for the exemplary accomplishments of your committees, on behalf of America's service-disabled and prisoner-of-war veterans.

The Members have demonstrated the highest level of commitment, concern, and service to our nation's veterans. It is a privilege to address the Members of these two Committees.

In the four years since the enactment of public law 106-50, and the year since the enactment of public law 108-183, the impact of the legislation has been negligible. Since March, 2003 few agency

acquisition and contracting officials have demonstrated an increased interest in the legislative direction to assist service-disabled veterans to maintain their rehabilitation through self-employment, as federal prime and subcontractors.

The United States Small Business Administration has minimally increased the integration of service-disabled veterans into some of the special assistance effort of that agency. Outreach materials, standard publications, and routine announcements now mention support and assistance for service-disabled-veteran enterprises. The level of effort and outreach in early 2003 had implied to the procurement community that there is no commitment by the federal government to assist service-disabled veterans.

To urge government outreach, and as a stakeholder in the outcome, the Association for Service-Disabled Veterans, a member of the Task Force for Veterans' Entrepreneurship has financed and expanded a previous certified disabled veteran interactive database, containing more than 20,000 service-disabled-veteran enterprises that is a follow-on of a certification process started in 1989. The intent was if they were unable to find service-disabled veterans, there was a database that had been developed since 1982, starting in California, which has over 20,000 vetted by the legislative directive of the California Legislature service-disabled veterans.

The second year, the yearly release of data pertinent to agency small business procurements, the summary, what is called the Summary of Actions and Dollars Reported on SF279 and SF281 by Agency, continues to report minimal progress to the 3-percent legislative goal for disabled-veteran participation.

A telephone sample by ASDV of that method of calculation of that report, of the method of calculation of the data in those reports, reveals no increased accuracy of dollars, action, or appropriate categorization in those reports. Inevitably, the erroneous information misleads the US Congress, and subverts the intent of public law 106-50 and public law 108-183.

Sadly, a perceived lack of commitment has also been repeatedly voiced to service-disabled-veteran enterprises by off-the-record comments of procurement officials. Such as, service-disabled veteran assistance is just a goal. If the Congress had been serious about helping service-disabled veterans, they would have legislated mandatory requirements, not unaccountable goals.

While the Task Force firmly believes that the Congress is serious about service-disabled veterans, the perception advanced by procurement officials contrasts sharply with the legislative intent of public law 106-50 and public law 108-183.

The commitment of the private sector prime contractor is even more abysmal. Service-disabled-veteran enterprise requests to participate as subcontractors has been met with negative responses and disinterest.

As a routine response to service-disabled-veteran enterprise requests for procurement participation, prime contractors initially profess ignorance, and protest that government procurement officials never mentioned service-disabled-veteran enterprises. This is followed by subsequent protestation that prime contractors are exempted from participation by variously-invoked parsing of the reg-

ulatory language, special procurement official dispensation, or that they are not performing contracts that are subject to regulation.

There are no clear villains in the failure to assist the service-disabled veterans of our nation. Rather, there is a need for more specific direction from the United States Congress, even at the risk of cries of Congressional micro-management by the federal bureaucracy.

It is imperative that your Committee takes initiative in establishing the legislative requirements that will permit our nation's disabled-in-service and prisoner-of-war veterans to participate more fully in the economic system they sacrificed to preserve.

It is respectfully requested that public law 106-50 and public law 108-183 be amended and expanded to provide authorized, directed, specific, and mandatory participation by service-disabled veterans and prisoner-of-war veterans, in all federal procurement, whether through inclusion in the various set-aside provisions of the Small Business Act, as amended, or in the newly-included sections of that Act.

Only the active application of this Committee's authority will ensure that entrepreneurship is an available rehabilitation alternative to those that sacrificed for the security and prosperity of our nation.

Thank you. I would be pleased to respond to any questions, as would my colleague, Mr. Weidman.

[Mr. Lopez's statement may be found in the appendix.]

Mr. BROWN. [presiding] Thank you very much, Mr. Lopez. And we will have questions at the very end.

Next is Professor Steven L. Schooner, Co-Director of the Government Procurement Law Program, George Washington University Law School. Welcome.

STATEMENT OF PROFESSOR STEVEN L. SCHOONER, GOVERNMENT PROCUREMENT LAW PROGRAM, GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

Mr. SCHOONER. Chairman Brown, Congressman Michaud, Chairman Akin, Congressman Udall, and members of the Subcommittee, thank you. I appreciate this opportunity.

Let me begin by joining the chorus of those who recognize that service-disabled veterans deserve our respect and attention for their lasting sacrifices. Having spent my entire life affiliated with the United States Army, these issues strike particularly close to home.

While this program was intended to benefit a deserving class of businesspeople, however, I fear that the rush to implement the program risks inefficiency in the procurement system, and at worst, potential abuse.

My primary concerns are, first, empirically it is unclear that the program is the most efficient tool to achieve the desired end.

Second, rather than creating new business opportunities, the program merely escalates infighting within the small business community.

Third, certain aspects of the program raise troubling issues of accountability and oversight.

And fourth, the program further burdens an already-thin federal acquisition work force.

For example, the initial regulatory flexibility analysis and SBA's analysis makes clear we do not know how many and what type of service-disabled veteran-owned small businesses exist. A survey or study, possibly a joint effort of the SBA, the VA, and the Commerce Department, might be immensely valuable.

If, for example, a significant percentage of these firms fall into the comp demo categories, the set-aside provisions would be deemed ineffective. As this Committee well understands, the small business competitiveness demonstration program bars agencies from setting aside contracts for small businesses in certain industries where small businesses historically have proven themselves competitive.

A better understanding of the SDVOSB market and its capabilities, the industries in which the capacity exists, the extent to which the capacity is utilized by the federal government will permit a much more targeted and effective outreach, and hopefully business development, program.

Further, the program creates no new opportunities for small business; it merely redistributes opportunities. The program further subdivides the existing small business piece of the government's procurement pie by pitting small businesses against each other.

Similarly, government-wide goals may not be the most effective tools if your purpose is to broadly distribute contract opportunities to emerging firms.

Experience suggests that once an aggressive goal is in place, it favors the most successful or strongest existing firms. Because the goal focuses upon the percentage of dollars in contract awards, contracting officers have an incentive to award the largest possible contract to the smallest number of eligible firms. So the chief beneficiary tends to be robust small- to mid-sized firms, many of which strategically avoid formal growth by subcontracting or outsourcing tasks.

In addition, the system will be very difficult to police. First, self-certification opens the door for abuse. That is why both the SDV and the Hub Zone programs require certification, and I think that is appropriate here.

In addition, sole-source contracting contradicts one of the fundamental premises upon which our system is based: competition. And we are all familiar with the Competition in Contracting Act, and why it is in place.

In addition, sole-source contracting presents significant risks to emerging veteran-owned firms. Small firms that may not fully understand the contractual obligations are all too eager to assume their appropriate risks. When those firms fail, it disrupts the government operations. But in addition, because the government increasingly relies on past performance evaluations, this can prove potentially fatal, a professional death knell, to an emerging small business in the government marketplace.

Finally, further proliferation of set-asides in small business programs adds complexity and inefficiency in the procurement system,

and that is problematic because throughout the 1990s, Congress mandated acquisition work force reductions.

There is an insufficient number of qualified federal acquisition professionals left to conduct appropriate market research, plan acquisitions, maximize competition, comply with Congressionally-imposed social policies, administer contracts to assure quality control and compliance, resolve protests and disputes, and close out contracts.

I remain disappointed by Congressional unwillingness to intervene on behalf of the acquisition work force, particularly in light of the recent experience in Iraq, where, for example, our Program Management Office outsourced its management of its contractors. The acquisition work force crisis is exacerbated by the Administration's emphasis on competitive sourcing, and it will get worse before it gets better. So asking this work force, without additional resources, to cater to special interest groups is unrealistic, and arguably fiscally irresponsible.

The bottom line is in attempting to balance these competing concerns, providing good opportunity to veterans and small businesses, while obtaining supplies in an economically-efficient manner, patience seems to be an appropriate response.

That concludes my testimony. Thank you for the opportunity, and I would be pleased to answer any questions.

Mr. BROWN. Thank you very much, Mr. Schooner.

Gentlemen, I am going to skip over you and go to Mr. Hudson, if that is in order. And Mr. James Hudson is the Marketing Director of Austad Enterprise, Inc.

And thank you, Mr. Hudson.

STATEMENT OF JAMES C. HUDSON, AUSTAD ENTERPRISES, INC.

Mr. HUDSON. Good afternoon, Chairman Brown, Chairman Akin, other distinguished members of the subcommittees, dedicated members of the respective staff, my colleagues both in and out of the government today.

I am a service-disabled Vietnam veteran. My wife Fran, also a service-disabled veteran, and I work together in a corporation which publishes the Veterans' Business Newswire, an e-newsletter disseminated to more than 25,000 service-disabled and other veterans in small business.

We also publish a directory for small business owners, called "Purchasing Contacts in Major US Corporations." And we own a video and audio conferencing company, whose customers include federal agencies.

I have worked in the field of veterans' affairs and disability rights since my discharge from the Army in 1970. My testimony today is based largely on my own experience, but also on the experience of our readers, and their emails to us and their phone calls. Also, we have published a brochure immediately after the passage of public law 108-183. Joseph Forney, myself, and my wife made that a downloadable Microsoft Publisher and .pdf file. And we have had more than 500 downloads since February, when that was made available to service-disabled veterans in small business. And so we have gotten feedback from them, as well.

And I can tell you that we have also had efforts over the last three years to market to federal agencies and prime contractors, and that is the basis of my testimony today.

We have attended conferences in Colorado, New Mexico, Washington, D.C., other states, at the urging of small business officials. We have traveled to other states to meet with federal buyers. As a result of those efforts, we have had sales of $10,000 in the last, with federal agencies.

We have corresponded and spoken with literally 1500 veterans, and most of them non-service-connected, but I would say approximately three or four hundred service-disabled veterans in the last several years. We personally know just a few who describe themselves as being successful in the federal arena.

I would urge the Committees to study the issue of how many new service-disabled veterans are contracting with federal agencies. The Federal Procurement Data Center can pull that information from their data.

For example, the Veterans' Administration in fiscal year 2002 was contracting with, on average, three to four new service-disabled veterans per month. Those are companies that did not have previous contracts with that agency, or any other federal agency, prior to those months. That gives you a better picture of how public law 106-50 has been implemented.

This fiscal year, fiscal year 2003, service-disabled veterans should have earned a gross revenue of $7.5 billion. Instead, they brought in $549 million, two-tenths of 1 percent of the procurement budget, instead of the 3-percent goal that was set. And that total is actually $5 million less than the $554 million that was targeted, or that was actually earned two years earlier, in fiscal year 2001.

This is especially hurtful to our nation's service-disabled veterans in small business, to know that more than half of all federal agencies, more than half of the 60 federal agencies spent zero percent of their budgets with service-disabled veterans. That includes the Office of the White House, the Executive Office of the President, the Small Business Administration, the Department of Labor; agencies that you would expect to lead, not bring up the rear in procurement spending. SBA, for three years straight, has spent zero dollars with service-disabled veterans.

It was, as you recall, Angela Styles, the top federal procurement official, that came to this Committee last year and said that the federal government was doing an abysmal job in procurement spending for service-disabled and other veterans. And that helped to spur the Committee to take the action with respect to public law 108-183. And we appreciate that effort very much. This gives new hope to service-disabled veterans.

But I have to say that we would be mistaken if we thought that thousands of service-disabled veterans have not dropped out of the system. In talking to them, we have learned that many veterans just are not going to come back one more time.

Over the last 20, 30 years since the Vietnam War ended, the treatment that they received by the SBA and other resource partners of the government has been poor, and they are just not going to come back and try one more time. And these zeroes that have been piling up in the federal agencies over the last five years, you

cannot knock on those doors over and over again and not, in some cases, drop out. So we have lost many service-disabled veterans from the system. That is just a reality.

We were encouraged with the brochure download, so we know some are still in the fight. And the outreach efforts of the government have brought in new service-disabled veterans. So we have to respond to their needs, and I know the Committees are willing to do that and are making their effort.

The focus of your Committee today is to talk about outreach efforts, and whether they are making a difference since the passage of this new law. I wish I could say it has been more positive. Joseph and I have been out knocking on doors, and you will learn from Joseph his response. But I can tell you that my own has not been positive.

I will tell you that—is the time almost expired? I am sorry.

Mr. BROWN. You are 1:18 over already, so—and I am just waiting on Joseph, so go ahead.

Mr. HUDSON. I am waiting on him, too. Let me just wrap up by saying that though the outreach efforts have not been positive, I believe that one of the actions that the Committees may take that would be beneficial would be to accept the fact that we are not going to see much positive action by the federal agencies until they have a program in place that will give more of a case-managed approach to service-disabled veterans. Especially veterans with more severe disabilities. They need more follow-along, they need more intensive service. And the idea of handing them a brochure referring them to an SBA or a small business development center is not going to be sufficient. They need follow-along perhaps for years.

The 8(a) program for some businesses has been successful, but they do not need to be referred to the 8(a) program, God forbid. But they do need that kind of intensive, sustained effort.

[Mr. Hudson's statement may be found in the appendix.]

Mr. BROWN. Thank you, Mr. Hudson. And now we have got the wrap-up member of the panel, Mr. Joseph Forney, President of VetSource, Inc. Welcome.

STATEMENT OF JOSEPH K. FORNEY, VETSOURCE, INC.

Mr. FORNEY. Mr. Chairman, Members of the Committee who have stayed, I appreciate the opportunity to testify in front of you. I was hoping that Chairman Akin would stay. I am from his home state of Missouri. And what we say in Missouri, show me.

Mr. BROWN. Well, you know, he cannot be in two places at one time. And I guess he is on the Armed Services Committee, and the mark-up over there has taken priority. But all of this will be recorded, and he will have access to those minutes.

Mr. FORNEY. I just wanted to hear him say "show me." Because that is what I am telling you is I ain't seen much yet. And my eyes are wide open, sir. We have been out in the field, as Jim mentioned, trying to sell our goods and services. And to hear over and over again that this is just a goal.

I have a signed letter from Department of Agriculture where they stated, from their Office of Procurement Policy, that it is discretionary, and not mandatory. And so therefore, they are not going to participate.

I was a little bit leery sitting behind the young lady from SBA after the way that Ms. Velazquez took to her. But as Jim mentioned, their participation is zero.

Department of Defense was up here. The Army is at .02, two one-hundredths of 1 percent. At this rate—I am sorry, and I do not want to confuse you with facts and figures and fancy ciphering—.04. At this rate it would take them 300 years to get to the 3-percent goal.

Now, I do not know about me, but I do not think Mr. Lopez is going to make it.

The reasons that they claim, there are not enough of us, we are not capable, is ludicrous. I sell air conditioning filters along with the food items that I sell to states, prisons, school districts back in California. I sell them to utility companies; namely, Semper Utility, which is San Diego Gas and Electric and Southern California Gas. I have proven myself in the public sector.

Just for a little drill, I checked the GSA schedule. Their best price for the standard air conditioning filter was $1.73. I would have trouble sleeping at night if I sold them to you for a dollar. That is just one example of how we can provide goods and services.

We have all been trained. We have the experience, the time, the knowledge within the private sector. Yet when I tried to sell these same air conditioning filters to the VA, I could not even get a call back.

I have been to two different VISNs, VISN 22, my local one, VISN 19 up in Denver. And I have been there numerous times. All I wanted them to do was find out how they buy air conditioning filters. I could not even get a response. I had to go to the VA mothership over here and get the Head of Acquisitions, Mr. Derr, and he is going to check into it. But not everyone is going to have the capability to come to Washington to go to VA headquarters to find out how they buy air conditioning filters. Because what if it is something more complicated, like pencils?

I am glad to see the Ranking Member come back. I love that, with the SBA, because while you were gone, we pointed out that their participation was zero. So at this rate, it would take never?

I will submit my testimony. If I can answer any questions, I would be glad to.

[Mr. Forney's statement may be found in the appendix.]

Mr. BROWN. Thank you very much, Mr. Forney.

This has been a real eye-opener. We pass regulations and laws; we do not know how they are being perceived or implemented through the process. This was real eye-opening for me.

I have some questions; I will submit them for a written response. But do we have any questions from the panel? Mr. Udall?

Mr. UDALL. Thank you, Mr. Chairman.

Mr. Lopez, in your testimony you talk about the integration of service-disabled veteran-owned businesses and the SBA's efforts. And also about the SBA's inclusion of SDVBs in the agencies' publications and outreach materials. And yet you also express a concern about "the lack of effort and outreach in 2003."

What kind of outreach have you been expecting to see?

Mr. LOPEZ. I make that distinction because they have a policy of using all of their old materials first in respect to government efficiency.

If you read their old materials, including some that were recently printed, you will find out they do not even mention service-disabled veterans. It is only their new literature that is just coming out now, after the effort of these Committees, that they begin to talk about service-disabled veterans.

What I expect, I expect activity on the part of the staff. I expect seminars in training their personnel, so the personnel knows what a veteran is. I expect them to be very cognizant of the fact that you have a peculiar type of population here. You do not have the normal population. They have limited energy. They have a great deal of cerebral capacity. But you have to be able to get to them, not wait for them to come to Washington, D.C., or any of the other regional offices.

Mr. UDALL. Go ahead, please.

Mr. WEIDMAN. If I may, please, Mr. Udall. There was a question today about how many veteran entrepreneurs there are.

In the first session of the 105th Congress, the Congress mandated that there be a study done of how many people are there. That was 1997.

That report was finished—it was delayed because of OMB delays, and because of SBA—but it was finally completed and accepted in 1999, just before Veterans' Day. No, excuse me, 1998.

It has still not been officially delivered to the Congress.

I know that Chairman Smith and Ranking Member Lane Evans wrote to Mr. Pereto over a year ago, about a year and a half ago. It still has not been received.

May I suggest, if at all possible, with the Chairman, that that be included somehow in this record? Or at least some kind of reference to a website when it is posted.

But I think the key thing is this. What you seem to be suggesting, sir, is that the SBA is heavily weighted towards doing this outreach for veterans. No other agency, as long as SBA has zero, zero contracts with service-disabled veterans, is likely to pay them a whit of attention.

Similarly, how many service-disabled veteran business owners do you think are going to trust an agency that, even by accident, ought to have a few contracts with service-disabled veterans, but which has none, sir?

Mr. UDALL. Thank you. And thank you, Mr. Lopez, for your expectations. At least for me, I believe we should be pushing on this front.

Professor Schooner, in your testimony you speak of the need for a study or survey to gain a better understanding of the SDVB market and its capabilities. Can you talk a little bit more about what impact proceeding without knowledge of the market can have?

Mr. SCHOONER. Well, if you do not mind, let me—

Mr. UDALL. And go ahead, if you want to elaborate a little bit.

Mr. SCHOONER. Let me speak to the importance of a study. At a minimum, whether you begin with the process that was already done and get that completed and updated, until we know how many potential businesspeople there are, and much more impor-

tantly, in what industries they pursue government business or want government business, we are shooting in the dark. It is the most inefficient way in the world to proceed by shotgunning out in the world.

Let us find out where the strengths are, and target those businesses directly. It is exactly what you have heard the others say. Information here is power. And without information, what we are doing is we are putting a burden on everyone that is not going to get you a return on investment.

The best precedential example I can give you on this was after Aderand, when we went through the promulgation of the rules for the revised SDV program, the Department of Commerce, in conjunction with the Justice Department, and later the Council on Economic Advisors, spent years working with the SMOBY and the SWOBY data, trying to get this data. It is very, very difficult to find out which industries are important. And we may or may not come back to comp demo. But it is tremendously important to know where you are going, and where you are going to get return on investment.

Mr. UDALL. Thank you. Thank you. And Mr. Forney, given your recognition as a veterans' advocate, have you been approached by a federal agency to assist agencies in identifying qualified veteran-owned companies? And I can submit that one for the record.

Mr. BROWN. Mr. Udall, if you would. I would just like to make an announcement, as we just got an email that we might have votes within the next 10 minutes.

And so, just to give the other members of the panel a chance to—

Mr. UDALL. Okay. I will submit that one for the record, and let the other members of the panel question.

Mr. BROWN. Thank you very much.

Ms. HERSETH. If Mr. Udall is going to submit that in written form, I would like that same question, if you would provide an answer there. Because my concern—not a concern, but a hope—is that you, as a veterans' advocate, other organizations that serve as advocates for veterans, are involved. You are being asked by federal agencies. Because it is sort of information both ways that we are lacking. It is information of the qualified businesses having the information of what the program is, but it is also a lack of information for the agencies of the implementation of the program.

Mr. FORNEY. Exactly. And in Los Angeles we have the LA Area Service-Disabled Veteran Business Network that we started, just as an ad hoc group. We try to outreach through public service announcements for veterans who are either in business or starting a business.

I know Mr. Weidman and myself have gone over to Walter Reid. And one of the most important questions these young men and women returning home wounded and forever changed is, will I still be able to go to school? And what if school is not the best approach for their rehabilitation? What if it is entrepreneurship, because they are unemployable? This is something that we try to outreach as much as possible.

To get to both questions, there is a state program, as Mr. Lopez mentioned, in California. There is over 1,000 identified state-cer-

tified service-disabled veteran-owned firms. And the state estimates that there is over 10,000.

But with such hollow promises, why should we bring them out? A lot of people are reluctant to participate.

Ms. HERSETH. The only other thing I want to add, just so that it is a comment reflect in the record, based on the study, Mr. Weidman, that you said was authorized, we think was completed but has not yet been delivered. And then—go ahead.

Mr. WEIDMAN. We have a copy, and I have it on cd/rom, Madame. And I will have it to your office before tomorrow morning.

Ms. HERSETH. Okay. The only comment I want to add, though, is that I do think it needs to be updated. Because in South Dakota we have a significant number of National Guard reservists that are currently serving, that are going to be coming back, that are concerned, because they are small business owners, about the effect that that has had on their small business during a deployment of 12 to 18 months. And I think that we should see that, but also recognize the need for an update of that study.

Mr. WEIDMAN. The Task Force on Veterans' Entrepreneurship is engaged in preparing now a report to the nation that will be delivered this coming October.

The principal investigator is the same gentleman, Dr. Paul R. Comacho from the William Joyner Center for War, the study of war and its social consequences, at the University of Massachusetts at Boston. The steering committee is chaired by Major General Chuck Henry, and co-chaired by Wayne Gatewood, who is a successful business entrepreneur, and a small businessperson veterans' advocate of the year last year for the District of Columbia.

We will be glad to brief you, and we would welcome any academic input from George Washington Law or anyone else, as we prepare this report and essentially update that material, ma'am.

Mr. BROWN. That is the vote, but we still have got a few minutes.

Ms. Velazquez, did you have any questions?

Ms. VELAZQUEZ. Thank you, Mr. Chairman. First I would like for the record to reflect the fact that in the House-passed version of the bill that established this program, Democrats from the Small Business Committee insisted on such a study.

But I would like to ask Professor Schooner, you questioned the credibility of this 3-percent goal. What do you think a reasonable goal should be?

Mr. SCHOONER. In any situation like this, the most reasonable goal is what the empirical evidence suggests is feasible. But we also have precedent for better ways of approaching this.

For example, the Hub Zone program was a classic example, where you ended up with a very similar goal, but at least you staggered the goal.

All I am saying is, if you are already in a situation where you know you need the information, do not set the goal until you have the information. If the information suggests that you could have a 5- or 10-percent goal, so be it. But do not set the goal arbitrarily. I think that is a pretty simple point.

Ms. VELAZQUEZ. Professor, you appeared to indicate that there are structural problems with the underlying statute. The House-passed version of the bill that established this program initially

had a number of provisions pushed by the Small Business Committee Democrats. These provisions were intended to process the program, and to ensure the safety and soundness of the program.

The House-passed version included, first, a certification program administered by the SBA. The final bill did not include that. A study to identify how many service-disabled veterans own businesses; and of those, what is the primary industry of the businesses. The final underlying statute does not contain this.

And third, an order of precedence, so that contracting officers can identify clearly what the priorities of Congress are. The final statute does not have this.

All three of these provisions were kept out of the final product. My question to you is, what is your view of the underlying statute missing these?

Mr. SCHOONER. Well, I think we are all in agreement that the study would be a good thing, and we have already spoken about that.

I cannot argue strongly enough for a certification in a program like this. We saw in the SDV program, we saw in the Hub Zone program, how important it is to inject credibility into the system. And I am assuming that the gentleman sitting at the table with me fully recognizes the worst thing that can happen in a program like this is if individuals fraudulently represent themselves and get these contracts. So they should have no concern whatsoever with an open and credible certification system.

As for the order of precedence, I think it is pretty clear, based on the questions you asked earlier, that we have now created in the regulations a conflict between the 8(a) program, the Hub Zone program, and the others. And this type of confusion serves no one. It will not help veterans, but it impacts the entire procurement process. And I think an order of precedence would be a step in the right direction.

Ms. VELAZQUEZ. Thank you, Professor. Mr. Lopez, in your comments on the interim rule implementing PL 108-183, you suggest that contracting officers should be allowed to use service-disabled veteran-owned businesses for requirements that are currently being performed by 8(a) companies. Why do you believe that contracts that are currently performed should be taken away from 8(a)?

Mr. LOPEZ. Do I say that, or is it in our task force report? I did not make any such comment.

Ms. VELAZQUEZ. In the task force, yes.

Mr. LOPEZ. Ah, okay. Then you have to direct that to the task force in writing. I did not make that comment.

Ms. VELAZQUEZ. But do you agree with that assessment?

Mr. LOPEZ. I beg your pardon?

Ms. VELAZQUEZ. Do you agree with that?

Mr. LOPEZ. No. I do not even address that. I do not think that is an issue.

But if I may, with permission, Congresswoman, I would like to address something that Mr. Schooner has said, and I take a great deal of objection to.

And that is that academic inertia is not an option. This is a unique population. The intent of Congress is to assist service-dis-

abled veterans, not lighten the workload of government officials, nor create information for government archives.

We have already cheated the world's greatest population, the World War II veterans. They are not participants in this program because they were never given assistance. We will not go through that again for our Vietnam veterans, our Bosnia veterans, our Gulf veterans, or our Iraq veterans.

Ms. VELAZQUEZ. I do not think that that is what the professor—

Mr. LOPEZ. That is the intent and direction of these recommendations. And that is to further delay. And we will not have further delay.

Ms. VELAZQUEZ. I do not know what you are talking about, but let me tell you this.

We will do everything possible to help disabled veterans.

Mr. LOPEZ. Madame—

Ms. VELAZQUEZ. Excuse me, sir, I am talking here. We will do everything that we can.

But the pie is too small. We cannot rob Peter to pay Paul. And what we need to do is to expand the program and the resources so that we could allow disabled veterans to participate, but it cannot be at the expense of the 8(a) program.

Mr. LOPEZ. May I respond to that?

Ms. VELAZQUEZ. No, you do not have to respond. I am not asking you a question, I am making a statement.

Thank you very much.

Mr. LOPEZ. May I make a statement? Mr. Chairman, may I make a statement?

Mr. BROWN. You have got 30 seconds.

Mr. LOPEZ. I agree with you. I agree with you. But first of all, your first premise is wrong; there is no size to the pie. That is an imaginary creation of dominant corporations restricting the size of the contracts available to those disadvantaged populations. There is no size to the pie.

Let me add, if I may, Mr. Chairman.

Mr. BROWN. Okay.

Mr. LOPEZ. Our comrades are dying at the rate of 1100 a day. We do not have time for these machinations, academic machinations. The world is passing us by. We have a closing window of opportunity, not an opening window of opportunity. We must move quickly, or we will be passed.

Mr. BROWN. Let me see. I do not think there is any misunderstanding in this panel that we want to be absolutely sure that we address the problem that will allow more input, more involvement in the procurement process.

We do not want to get tied up with the mire of all the red tape. We want to try to solve that. That is the purpose of this hearing.

And I appreciate you all coming, but we must go vote. Thank you very much.

[Whereupon, at 3:52 p.m., the Subcommittee meeting was adjourned.]

Statement of Allegra McCullough
Associate Deputy Administrator
Government Contracting and Business Development
U.S. Small Business Administration

Federal Efforts to Contract with Service-Disabled Veteran-owned Small Businesses

Before the House Small Business Subcommittee on Workforce, Empowerment and Government Programs and the House Veterans Benefits Subcommittee

July 15, 2004

Good afternoon Mr. Chairmen, Ranking Members Udall and Rodriguez, and other distinguished members of the committees. My name is Allegra McCullough, Associate Deputy Administrator for Government Contracting and Business Development at the U.S. Small Business Administration (SBA). Thank you for inviting me to appear before you today to speak about our efforts to reach out to Service-Disabled Veteran-Owned Small Businesses and achieve the 3% statutory Federal procurement goal.

Mr. Chairmen, as you are aware, the Veterans Entrepreneurship and Small Business Development Act of 1999 (P.L. 106-50, signed into law on August 17, 1999) created a Government-wide goal that 3% of the total value of all Federal prime and subcontract dollars be awarded to Service-Disabled Veteran-Owned Small Business Concerns (SDVOSBs). Unfortunately, the Federal Government has consistently fallen well short of the 3% statutory goal.

Based on reported government data, in FY 2001, the Federal government awarded over $554 million in prime contracts to SDVOSBs, or 0.25% of all prime contracting dollars. In FY 2002, this number fell to $298.9 million, or 0.13%. In FY 2003, the number rose to over $510 million, or approximately 0.2%.

In FY 2003, only 3 agencies met or exceeded the 3% goal: the National Endowment for the Arts (25.27%); the Consumer Products Safety Commission (4.35%) and the Railroad Retirement Board (3.44%). Of the large agencies, the Department of Housing and Urban Development has

been the most successful in making progress towards the 3% goal, with 1.37% of prime contract dollars being awarded to SDVOSBs. On June 10, 2004, SBA's Office of Advocacy issued a report indicating achievements in this area were low, but also indicating that actual agency accomplishments may be underreported.

Congress and the President provided Federal procurement officials with a valuable tool, the Veterans Benefits Act of 2003 (P.L. 108-183). The Act was signed by the President on December 18, 2003 that authorized both a procurement set-aside for SDVOSBs and sole source contracting authority where only one SDVOSB is identified that can meet the Government's requirements. On May 5, 2004, the SBA and the Federal Acquisition Regulatory (FAR) Council concurrently published interim final rules implementing the procurement provisions of the Veterans Benefits Act of 2003, while still providing the public with a 60 day comment period. Both SBA and the FAR Council worked hard to expedite these regulations.

The new regulations permit contracting officers to either restrict competition on contracts or issue sole source contracts to SDVOSBs within specified dollar thresholds in accordance with statutory requirements. Our regulation also establishes procedures for protesting the status of an SDVOSB.

There are some common misconceptions out there that hinder the Government's ability to reach the statutory 3% goal. Since these procurements are based on a premise other than socio-economic status, educating the Federal and private sector contracting communities is very important. Also, some SBCs are reluctant to identify themselves as Service-Disabled just to gain the status/designation as an SDV. This hinders our outreach efforts since we are unable to identify our clients. So, educating SDVOSBs to recognize the value added in securing or self identifying as service disabled is very important.

SBA's efforts at reaching SDVOSBs

SBA has not achieved its annual procurement goal for SDVOSBs since the inception of the requirement. However, as a result of the recently enacted legislation and published regulations,

SBA is designing an integrated effort that includes specific steps to be taken among our various program areas to utilize the set-aside and sole source authorities for the purpose of meeting the 3% goal. As a part of SBA's annual acquisition planning process, the Agency will include all socio-economic goaling, including SDVOSBs, in our source selection strategies. SBA's Office of Administration will also work closely with our Office of Veteran Business Development to identify potential SDVOSBs to meet SBA's contracting needs. Where feasible, contracting opportunities will be posted on our homepage as well as highlighted in our VETGAZETT electronic newsletter, which reaches thousands of SDVOSBs and Veteran Owned Businesses. The SDVOSB procurement goals will be communicated to all program areas and each area will be encouraged to consider these Agency goals when developing its procurement strategies for each planned acquisition.

SBA's outreach efforts over the last three years, combined with the efforts of others, have contributed to the increase in veteran participation between 40% and 100% in most Federal agency programs. We have, and will continue to, coordinate these efforts internally and with other Federal agencies.

SBA will work with the Department of Defense, Department of Labor, Veterans Administration and the General Service Administration, and others to conduct outreach, training and other policy/program initiatives specifically for SDVOSBs and Veteran Owned Businesses.

This effort will include educating Federal procurement officers of the new program, as well as educating service disabled veteran entrepreneurs on SDV status, size standards, marketing to Federal officials, information requirements in the event of a procurement challenge, and tools for partnering with other SDVOSBs, other veteran-owned businesses and other agency procurement program participants. Registration in the Central Contractor Registration (CCR) and the use of the dynamic Small Business Search engine contained in CCR as a source of market research along with other Federal databases will be highlighted. Further, non-SDVOSB prime contractors should also be made aware of subcontracting opportunities and responsibilities for SDVOSB and Veteran Owned Businesses.

Recommendations

To fully accomplish the objectives of this legislation, SDVOSBs must be prepared to conduct business in a manner consistent with current federal procurement trends.

Today, a large portion of the annual Federal procurement dollars are spent through contracting actions under the GSA Federal Supply Schedule. While not the only way to provide SDVs with more contracting dollars, the ability of SDVOSBs to be placed on and market their companies on the GSA Federal Supply Schedule will be a critical portion of their success in the Federal market. Through SBA procurement assistance programs, its business development counseling and training programs, and in partnership with other Federal agencies like the ones here today, SBA will continue to identify and work with SDVOSBs to ensure that they have the necessary tools in place to enhance participation on GSA schedules.

Additionally, SDVOSBs must be educated on Federal procurement trends, including using Federal purchase cards to make purchases under $2,500 with out competitive quotes. These purchases amounted to approximately $16 billion in purchases last fiscal year.

Mr. Chairmen, the SBA would be happy to work with the Committee and other Federal agencies in any efforts to promote programs and contracting opportunities for SDVOSBs. This concludes my testimony and I would be happy to answer any questions you may have.

Testimony of Frank Ramos, Director

Office of Small and Disadvantaged Business

Office of the Secretary of Defense

United States Department of Defense

Before

The United States House of Representatives

Joint Committee on

Veterans Affairs

And

Small Business

July 15, 2004

Good afternoon, Chairman Smith and Congressman Lane of the Veterans Committee. Good afternoon, Chairman Manzullo and Congresswoman Velasquez. My name is Frank Ramos. I am the Director of the Office of Small and Disadvantaged Business Utilization in the Office of the Secretary of Defense. I thank you for this propitious opportunity to tell you about Department of Defense accomplishments this past year and I thank you for your interest in small businesses owned and controlled by service-disabled veterans.

I am very proud of our Department of Defense (DoD) small business accomplishments. During Fiscal Year 2003, DoD awarded more dollars to America's small business prime contractors and subcontractors than at any time in DoD's history. Small businesses received contract awards totaling $74 billion, which includes $42 billion in prime contracts and $32 billion in subcontracts. This represents an impressive $15 billion increase in total awards to small business -- 25% above the level achieved in Fiscal Year 2002.

It is a rare privilege to present testimony to a Joint Committee, especially on service-disabled veterans -- a subject that is particularly vital and important to the country at this time. I appreciate that individual Members of each committee have taken time from their busy schedules to be here today as we seek to provide more expansive small business opportunities to our fighting men and women who have become disabled in the defense of our nation.

I have been invited here to discuss the plans the Department of Defense has for effectively implementing Public Law 108-183 -- which I view as new procurement tools -- that will help us in our striving to achieve the goal of awarding 3% of all federal government contracts to small businesses owned and controlled by service-disabled veterans. In response to your tasking, I will briefly review the reasons we think Congress provided the tools. I will talk about what the tools permit us to do, and I will touch on the pre-implementation work DoD has accomplished in cooperation with other government organizations. The bulk of my testimony, though, will discuss the more interesting and important work DoD has been doing to make best use of the new tools provided in Public Law 108-183.

The Reason for the New Tools

The 3% goal became law with the passage of Public Law 106-50 in 1999. The existence of the goal allowed us to begin collecting data on contracts awarded to small businesses owned and controlled by service-disabled veterans. The existence of the goal did not, however, result in our being able to meet the goal. This was true because we did not have the authority to give any preference to service-disabled veteran-owned firms when we awarded contracts.

The statistics for 2002 and 2003 were characterized as "troubling" and "unacceptable" by Angela Styles, then the Administrator of the Office of Federal Procurement Policy in her testimony before the House of Representatives

Committee on Veterans' Affairs on February 5, 2003. Ms. Styles was testifying about the overall federal government's performance, but the DoD share of that performance was no better. In 2002, the total value of contracts DoD awarded to small businesses owned and controlled by service-disabled veterans was $204 million or 0.1%; in 2003, the numbers were $342 million or 0.2%. I have attached to my testimony several charts detailing those years. No matter how the figures are analyzed, it is clear that, with the existing tools, it might have been a very long time before the federal government was able to meet the congressionally mandated goal.

The Characteristics of the New Tools

The Veterans Benefit Act of 2003 (Public Law 108-183) provides us with two new tools to help us meet our service-disabled veteran-owned small business goal. The first is a new authority to restrict competition to small business owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that two or more of these businesses will submit bids, and if the award can be made at a fair market price. The second tool permits contracting officers to award sole-source contracts to such businesses where there is not a reasonable expectation that two or more small businesses owned and controlled by service-disabled veterans would bid. The authority to award sole source is restricted to contracts where the anticipated price (including options) does not

exceed $5 million for manufacturing contracts, or $3 million for other contracts. As is the case with the restricted competition authority, the contract award price must be fair and reasonable.

We at the Department of Defense are very grateful for this new authority. We and Veterans Affairs, perhaps more than any other Departments, experience first hand the personal suffering from service-connected disabilities. As I will discuss in a few minutes when I address implementation, we are rushing at record speed to provide the outreach and training to make the best use of these tools.

Pre-implementation work

Shortly after the passage of Public Law 108-183, a team of representatives from the Office of Federal Procurement Policy (OFPP), the Small Business Administration (SBA), and civilian and defense agencies collaborated to simultaneously change the SBA regulations and the Federal Acquisition Regulations (FAR) to reflect the new legislation. DoD was an integral part of this team. Both new regulations were published on May 5, 2004, as interim rules, which means that they were effective on publication, but subject to further modification in response to public comments. The public comment period closed on July 6, 2004, and the same federal team is in the process of reviewing and analyzing the comments. The comments on the FAR rule from the 17 respondents are available at www.arnet.gov/far/ under Public Comments.

The pre-implementation work demonstrates the enthusiasm all the Federal organizations have for this new rule. The period from passage of the legislation to publication of the rules for public comment was unusually short; the coordination necessary to publish both rules on the same date bespeaks a high degree of attention to the rules and cooperation between the organizations. You can expect to see the interim rules become final rules relatively quickly. The plans DoD and sister organizations have made to implement the rules further testify to the support we all feel toward these new tools.

DoD's Implementation Plan

TRAINING. My office, in cooperation with the Defense Acquisition University (DAU) and with assistance of SBA, has developed a small business training course, CON 260. The course is required training for DoD small business specialists and is an optional (but encouraged) class for all other DoD acquisition professionals. The course will be piloted on August 23-27, 2004. The course will train small business specialists and contracting officers about the new FAR regulations concerning veteran-owned businesses. The General Services Administration's Federal Institute (FAI) is working with DoD's DAU to explore adopting CON 260 across the government.

Approximately 45 days after the pilot course is perfected, DAU will establish an electronic continuous learning module specifically addressing small

businesses owned and controlled by service-disabled veterans. This electronic course will be available to anyone who has access to the Internet, including small businesses owned and controlled by service-disabled veterans. We want the information to be available to the public. We think that the service-disabled small business owners can help us train by calling attention to this official DoD contracting officer training when they encounter a contracting officer who is not familiar with the new set-asides and sole source procedures.

A third facet of training we have planned with DAU is the establishment of a small business Community of Practice (CoP). The CoP will provide an electronic location where acquisition professionals can go to learn and share information regarding issues related to service-disabled veteran-owned small businesses and their contracting with the DoD, as well as other small business issues.

OUTREACH. In 2003 I designated service-disabled veterans as being of special interest to my office and the DoD. Among other things, I showcased war heroes – including Harvey "Barney" Barnum, Al Zapanta, Rodolfo Hernandez and Everett Alvarez – at every event I could. I worked with the White House liaison office, the Army Vice Chief of Staff, and other DoD officials, to find service disabled veterans and associate them with my office. I went to local military hospitals to visit service men and women injured in Afghanistan and Iraq to discuss their future needs. My entire staff and I made numerous speeches about

the need to improve our service-disabled small business contracting numbers. Although our numbers doubled, they were still not acceptable.

Toward the end of the year I decided that I needed someone to make the service-disabled veteran owned program his or her primary mission. After over six months of effort to obtain him, I now have a Special Assistant, Mr. Charles Cervantes, whose primary responsibility is to promote and coordinate the DoD service-disabled veteran-owned small business program. This represents a considerable proportion of my human assets and demonstrates how seriously I am taking the guidance to increase DoD contracting with the disabled veterans.

This year I have also designated contracting with service-disabled veterans as an area of special interest to my office. My staff and I continue to speak on the subject regularly. For example, I recently was part of a service-disabled veteran-owned small business workshop at the DoD procurement conference. My staff and I work with veterans' groups and service-disabled veterans groups and with the Veterans' Corporation. Additionally, I have continued to try to match groups that might be able to provide opportunities to small businesses, with small businesses owned and controlled by service-disabled veterans. I have been working with the Pan Asian Conference in California, for example, to match their need to work with businesses that are able to obtain security clearances with small businesses owned by veterans and service-disabled veterans.

I am seeing indications that my emphasis on service disabled-veterans is gaining momentum. Throughout the entire Department, acquisition professionals are actively seeking ways to work more effectively with veteran-owned and service-disabled veteran-owned small business concerns. On June 22nd and 23rd Mr. Frank J. Anderson, the President of the Defense Acquisition University attended the Federal Acquisition Conference and Exposition in Dayton, Ohio. One of the vendors Mr. Anderson met at the conference was Mr. Joseph L. Mayo, Vice President of Metalex Manufacturing, a veteran-owned small business. As a result of that dialogue, Mr. Mayo is organizing a meeting with veteran-owned and service-disabled veteran-owned small businesses owners in the Dayton area to discuss how they and the DoD acquisition community can better do business together.

Mr. Anderson and I will attend the meeting to discuss how training and education can be improved to help facilitate a better relationship between the Department and those small business owners.

Senior members of the small business communities in the military services and in the other defense agencies are providing leadership in devising strategies for better outreach and better training. The Defense Logistics Agency used its Fall 2003, Quarterly Video Teleconference to brainstorm ways to meet the goal. One

result was an agency-wide conference which drew more than 70 service-disabled veteran-owned small businesses. Another result was a closer alliance with the Procurement Technical Assistance Center at George Mason University on service-disabled veteran-owned small business matters. The DLA effort is discussed at https://today.dla.mil/headlines/dla/200406/article11607.htm.

The Air Force sent out a short training package to 5,100 acquisition professionals in early May when the interim FAR and SBA rules were published. More recently, they published on their web site a 2004 Small Business Pocket Guide that contains information on service-disabled veteran-owned small business set-asides. It can be viewed on their web site at https://oaprod.hq.af.mil/saf/aqc/affars/attachments/PDF%20Guide%20Booklets.pdf. The Air Force has also provided training at http://www.safaq.hq.af.mil/contracting/affars/5319/training/sdvosb-procurement-program.ppt and at <http:www.safaq.hq.af.mil/contracting/affars/5319/informational/sdvosb-info-paper.doc>.

Continuing Challenges

We are very interested in doing business with service-disabled veteran-owned small businesses; we are not sure that there are enough service-disabled small business owners interested in doing business with us. On July 9, 2004 there

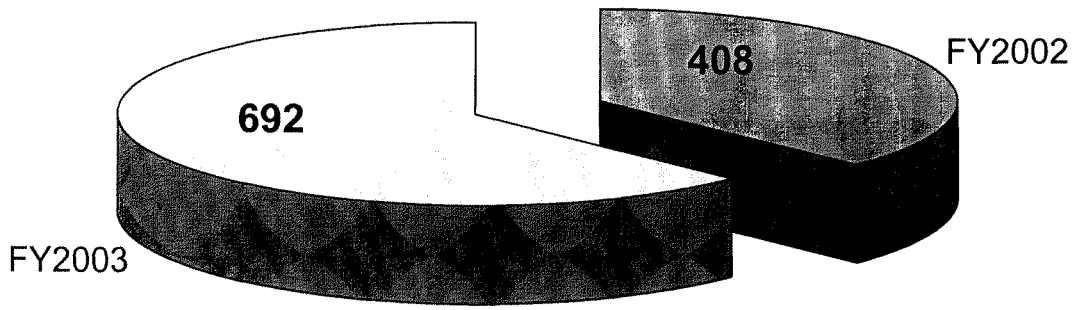
were only 5,006 active registrants in the Central Contractor Registration (CCR) that identified themselves as small businesses owned and controlled by service-disabled veterans. Registration in CCR is free, and is a prerequisite for doing business with the federal government. On the same day, there were 324,590 active business registrants, 179,619 of which identified themselves as small businesses. These numbers do not bode well for being able to meet our goal. We intend to further study this problem so that we can find ways to overcome the barriers we do not yet understand.

The Department of Defense and the Office of Small and Disadvantaged Business Utilization will continue to cooperate with its sister agencies -- particularly the Veterans Affairs, the Small Business Administration, and the Department of Labor -- in this effort and with Congress, including these two committees. We thank you for the opportunity to participate fully in our efforts to reward our veterans. We will continue to champion providing business opportunities for the men and women who have served in the armed forces.

I'll be pleased to answer any questions you might have.

Service-Disabled Veteran-Owned Small Businesses Contracting with DoD FY 2002-2003

Discrete Number of Contractors



69.6% Increase from FY 2002 to FY 2003

STATEMENT OF SCOTT F. DENNISTON
DIRECTOR, OFFICE OF SMALL BUSINESS
AND CENTER FOR VETERANS ENTERPRISE
DEPARTMENT OF VETERANS AFFAIRS
BEFORE THE COMMITTEE ON SMALL
BUSINESS AND COMMITTEE ON VETERANS AFFAIRS

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to testify on behalf of Secretary Anthony J. Principi on the activities of VA to implement the veteran and service-disabled veteran-owned small business programs as envisioned by Public Law 106-50 and 108-183.

The mission of the Department of Veterans Affairs is a personal one. A mission of caring for him who shall have borne the battle, and for his widow and his orphan. Since passage of the Veterans Entrepreneurship and Small Business Development Act of 1999, our mission of care has expanded to include support for the veteran who is exploring business ownership, expanding a business or moving into the Federal marketplace.

Toward this goal, the Office of Small Business Programs provides guidance and training to our acquisition professionals, a cadre among the largest of any Federal Government agency. We also assist contracting teams in identifying competent businesses at prime or subcontract levels to perform VA's diverse and complex requirements. In addition, we educate small businesses on successful contracting with VA. I am proud of what we have accomplished thus far in serving this special population and I look forward to meeting the challenges ahead.

In 2001, OSDBU created the Center for Veterans Enterprise (CVE). CVE's principal mission is to promote business ownership and expansion for veterans and service-connected disabled veterans. The Center, which started with four employees, now has 11 employees in 3 functional units – Communications; Business Development and Business Expansion.

The mission of the Communications Unit is to ensure awareness of the Federal Veterans Entrepreneurship Program and the assistance offered by our resource partners – the Association of Small Business Development Centers, the Association of Procurement and Technical Assistance Centers, the Veterans Corporation, the Veterans Business Outreach Centers, the Small Business Administration's Veterans Business Development Officers, the Service Corps of Retired Executives, and the International Franchise Association. A principal tool of the Communications unit is the Center's web portal, vetbiz.gov. The web portal was recognized in the 2004 Edition of the 100 Best Resources for Small Business.

The mission of CVE's Business Development Unit is to efficiently connect the veteran with the community-based support and to assess the responsiveness and

effectiveness of local services. This unit was established in July 2003. A newly developed tool of the Business Development Unit is the VetBiz Assistance Program Pages, where providers of business assistance services may post their program information for veterans to easily locate them. The new database will be publicly unveiled on August 17, 2004, the fifth anniversary of the founding Veterans Entrepreneurship legislation.

The mission of CVE's Business Expansion Unit is to directly assist the veteran who is seeking Federal marketplace opportunities and to minimize access barriers to the maximum extent practical. A principal tool of the Business Expansion Unit is the VetBiz Vendor Information Pages. In April, the Administrator of the U.S. Small Business Administration and the Acting Administrator of the Office of Federal Procurement Policy jointly issued a memorandum to all Federal agencies, encouraging the use of the VetBiz VIP database. This database accepts information from external sources where veteran-owned businesses may be located, including the Central Contractor Registry and the State of California's DVBE database. For a business to be posted on this Internet offering, the company must answer questions regarding small business size status and affirm that the company is at least 51% owned and controlled by veterans or service-disabled veterans.

In the past twelve months, more than 59,000 calls and faxes from veterans were handled by the Center. The web portal established to provide 24/7 access to veterans in distance time zones has had more than 700,000 hits in the first six months of this year. VA's CVE has joined forces with Federal agencies and prime contractors to create a corps of Government and Corporate Advocates for Veterans Enterprise, volunteers who stand ready and able to answer questions from entrepreneurial veterans about how to access requirements of their organizations.

I am proud to report that our Department has been actively sought out by Federal agencies and corporations to partner in their outreach programs. VA has co-sponsored outreach programs with the U.S. Air Force, Defense Logistics Agency, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Transportation, U.S. Small Business Administration, General Services Administration, the Veterans Corporation, General Dynamics and SAIC. Additionally, we have ongoing relationships with the DoD Regional Small Business Councils, Procurement Technical Assistance Centers and Small Business Development Centers for community-based outreach programs. The CVE has also been invited to address employees of many other Federal agencies as part of their acquisition professionals continuing education programs.

Last Spring, Secretary Principi issued a comprehensive report of recommendations to improve performance with veteran-owned small businesses. This report contains many important changes, perhaps the most startling and truly sweeping is the requirement to include performance with veterans and service-disabled veterans in executives' performance plans. This report, coupled with the new set-aside authority for service-disabled veterans, should result in significantly improved achievements with

both veterans and service-disabled veterans in business. The report is posted on the vetbiz.gov web portal for use by any organization that may benefit from it.

Shortly after President Bush signed the Veterans Benefits Act of 2003 into law on December 16, 2003, we began receiving enthusiastic calls from service-disabled veteran entrepreneurs who had been closely monitoring this legislation. These callers wanted to know how long before the legislation would be implemented within VA and other Federal departments and agencies. They urged immediate implementation.

Secretary Principi, in consultation with the VA General Counsel, determined that implementing regulations were not necessary to implement the service disabled veteran owned small business (SDVOSB) set-aside and sole source award provisions under the Veterans Benefits Act of 2003. The Secretary directed implementation in VA as early as possible.

On February 24, 2004, VA's Office of Acquisition and Materiel Management issued Information Letter (IL) Number 04-4-4, implementing the Set-Aside Provisions of Public Law 108-183 for Service-Disabled Veteran-Owned Small Business Concerns. The IL advised that pending changes to the Federal Acquisition Regulations, VA contracting officers could begin to immediately execute contract actions with SDVOSBs. Included in the IL was guidance concerning the competition requirements for SDVOSB set-asides and the dollar limitations for sole source awards to SDVOSBs.

Thanks to the tremendous efforts and collaboration of the Small Business Administration and the Federal Acquisition Regulation (FAR) Council, both the SBA regulations and the Federal Acquisition Regulations were revised effective May 5, 2004 to implement Public Law 108-183. As a result, VA's IL was rescinded. When SDVOSBs have inquired about the provisions of this important authority, VA's Office of Small and Disadvantaged Business Utilization has encouraged these firms to carefully review the interim rules and to provide their comments and recommendations to the appropriate officials before the public comment period closed on July 6, 2004.

VA's Office of Small and Disadvantaged Business Utilization and Office of Acquisition and Material Management have worked very closely to ensure VA personnel are aware of our responsibilities to veteran and service-disabled veteran-owned small businesses. In September 2003, an Information Letter (IL) was issued providing specific steps to contracting officers and purchase card holders as to identifying and engaging veteran and service-disabled veteran-owned businesses. Recently, on June 4, 2004, another IL was issued providing instructions as to how evaluation factors supporting veteran-owned and service-disabled veteran-owned small businesses can be used in negotiated procurements.

VA's Office of Small and Disadvantaged Business Utilization has conducted training on SDVOSB set-aside and sole source awards at each Acquisition Training Forum and Acquisition Leadership Training Forum sponsored by VA's Office of Acquisition and Materiel Management held around the country. In addition, telephone

and video training conferences have also been conducted with acquisition professionals at sites that were unable to participate in the various forums.

In closing, we believe we have set in place the building blocks necessary to take advantage of the tools provided by Congress to truly provide an opportunity for veterans and service-disabled veterans to fully participate in the economic system they have fought to defend.

Thank you for your time. I will be happy to respond to your questions.

TESTIMONY OF NINA ROSE HATFIELD, DEPUTY ASSISTANT SECRETARY FOR BUSINESS MANAGEMENT AND WILDLAND FIRE, U.S. DEPARTMENT OF THE INTERIOR, BEFORE THE HOUSE SMALL BUSINESS COMMITTEE, SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS AND THE HOUSE VETERANS AFFAIRS COMMITTEE, SUBCOMMITTEE ON BENEFITS.

July 15, 2004

Chairmen, and Members of both Committees, I appreciate the opportunity to testify on behalf of the Department of the Interior (Interior) in support of strategies that will increase small business procurement opportunities with Service Disabled Veteran (SDV)-owned businesses.

Interior has a long and intimate connection with our Nation's veterans. Our organization grew from the Department of War in 1849. It has handled a range of veteran related issues from military pension offices for the Navy and War Department to the precious mission as the primary caretaker of 14 national cemeteries under the National Park Service, the final resting place of many of our Nation's soldiers.

Fifty percent of the $4 billion spent by our bureaus and offices in fiscal year 2003 were awarded to small businesses. May of this year, Interior also received the Small Business Administration Award for Excellence in Procurement Goals, as well as, a Gold Star Award for procurement leadership in fiscal year 2003. We are proud of these recognitions but recognize the need for continued progress with the SDV owned businesses.

Our small business theme is "Know Your Neighbor" because we have offices located in most state with the responsibility where out veterans reside and are business owners. Interior's largest contracting areas are in information technology and construction. Interior purchases equipment and services in almost every business category. For many small businesses, understanding how to obtain a Federal contract remains a daunting task. For SDV owned businesses, Public Law 108-183 will open more doors. Through our nine buying organizations ranging from the US Geological Survey, Bureaus of Indian Affairs, Reclamation, Land Management, and the US Fish & Wildlife Service and National Park Service, we are committed to increasing contract opportunities for SDV.

Within Interior, positive much steps have occurred in the past two years but more remains to be accomplished for SDV owned businesses. Prior to the recent passage of the Veterans Benefits Act, Interior increased SDV procurements from FY 02 through 03 from $7 million to $18 million. Interior ranked in the upper third of all federal agencies in SDV contracting accomplishments for FY03 with .29% going to prime contract awards. We are confident that we can meet our share of the 3% government wide goal by fiscal year 2005 with the additional benefits of the set asides and sole-source authorities provided in Public Law 108-183.

The Interior Office of Small and Disadvantaged Business Utilization adopted a model to reach the 3% SDV goal by FY05 which is based upon partnerships, advocacy, and targeted information for our former men and women who have served us well. At every forum or chamber of commerce opportunity, Interior's small business leaders continue to address our commitment to increase SDV opportunities. With over 14 national small business associations, as our business partners, we will look at new ways they can work with us to involve SDV business owners as mentors and team player to produce positive results. As a pilot program, we are also looking for innovative ways to reach our SDV business owners through partnering with Minority Serving Institutions' business schools across the nation and our territories.

Today in Denver, Colorado, the Bureau of Land Management is hosting for the Federal regional offices a procurement fair for service disabled veterans with other key partners as the General Services Administration and the Small Business Administration. This event with our participation in other key outreach programs in Albuquerque, New Mexico and in Washington, DC is part of a larger Federal commitment to open opportunities.

I too personally believe that those who made the ultimate sacrifice in serving this country should give full benefit of small business contracting opportunities with the Federal Government across the board. This concludes my testimony, and I will be happy to answer any questions.

Testimony of Joseph K. Forney
July 15, 2004

My name is Joseph Forney. I own VetSource Inc., a Service Disabled Veteran Owned Small Business (SDVOSB) in California. I have been in business 12 years.

I would like to thank Chairman Akin, Chairman Brown and the other members of the committees for holding this hearing today.

I will submit my written testimony for the record, and then share with the members my experiences and concerns with the Sole-Source and Restricted Competition components contained in the Veterans Benefit Act of 2003.

The Subcommittees' invitation to testify included a request to, "detail your experiences in the federal procurement process as a service-disabled veteran-owned small business, and your general thoughts on the changes made in P.L. 108-183. Additionally, you indicated that, "any positive comments regarding particular federal agencies outreach in this regard would be appreciated."

My most positive testimony would be that this Congress and especially your committees are demonstrating their dedication and commitment to help in the rehabilitation of our country's Service Disabled Veterans. They are doing so by ensuring that federal agencies have the tools and use these tools to bring new Service Disabled Veteran-Owned Small Businesses into the federal procurement arena.

Experiences with federal procurement opportunities I will share today are largely personal, and will center on the Department of Veterans Affairs.

Among the products my company sells are air-conditioning filters. I chose this particular commodity as my lead product to the VA because of its simplicity and its uniform usage throughout federal buildings.

Another attractive feature of this commodity that immediately struck me is that there is no standardization or centralized procurement for filters within the VA. It seems to be an ideal product to identify, standardize, and obtain a contract for through either Sole-Source or Restricted Competition authority, the two components found in P.L. 108-183.

I currently hold contracts for my filters with the country's largest utility company, Sempra Energy Company, which includes San Diego Gas and Electric and Southern California Gas Co.

I have made a concerted effort to prove myself and my product to the private sector. And one would think that it would be a natural fit within the VA.

To date I have not seen one solicitation, nor have I been able to obtain a contract with Department of Veterans Affairs. In fact, though I have sought assistance from the VA Office of Small and Disadvantaged Business Utilization for several years, I have never been successful in obtaining a contract with the VA.

I have marketed my firm to the VA, specifically VISN 22, which is my home district and the VISN within which I'm seen as an outpatient in Southern California.

One of my employees made a call concerning air filters to the maintenance supervisor at the VA Medical Center in Loma Linda, California.

He was informed that there were no opportunities to provide air conditioning filters as they were happy with their current supplier. When my employee asked him if he was familiar with the new law, he was informed, "we're not here just to serve veterans." Upon hearing this news I was stunned.

With my years of advocating here in Washington, I was able to get an audience with Mr. Tom Ryan, senior adviser to the Deputy Secretary of the U.S. Department of Veterans Affairs.

Mr. Ryan met with me and another Service Disabled Veteran business owner from California, who also had been to the same VA hospital in Loma Linda, except that he was informed with respect to the new VA policy concerning sole source and restricted competition contracts for Service Disabled Veterans that, "we get that stuff from Washington all the time, we don't pay any attention to that."

My fellow SDV business owner and I related our experiences to Mr. Ryan. Mr. Ryan was shocked to hear that we were met with such recalcitrance.

Mr. Ryan, I, and my associate went downstairs and met with Mr. David Derr, deputy assistant secretary for acquisition and material management. We informed him of our experiences and he asked us to contact Mr. Richard Trevino, director of VISN 22, and to keep him apprised of our dealings with Mr. Trevino.

On June 21, 2004, a group of five Service-Disabled Veteran business owners attended a meeting with Mr. Trevino and three of his staff members.

When Mr. Trevino was informed of our treatment at the hands of his employees at Loma Linda Medical Center, Mr. Trevino stated that the purchases that are being made by his maintenance people at the hospital within his VISN were beyond his control and that there was a cultural bias. I then asked Mr. Trevino, "what do you think it would take to break this cultural bias, AN ACT OF CONGRESS?"

We then requested a following meeting with his chief maintenance people at his facility with us in attendance. It was my intention that we would have a follow-up meeting before this hearing, which would allow me to come to you folks with a success story. As of yet that meeting has not taken place.

Sempra Energy was recently awarded a contract by VISN 22 to reduce the energy consumption at the VA Medical Center located in La Jolla, California, just outside of San Diego. This contract is valued at an estimated $8 million. The purpose of the contract is to find cost savings through energy-efficiency. One of the reasons I have an

ongoing contract with Sempra Energy for my air-conditioning filters is their superior craftsmanship and cost-saving qualities.

Ronald Ferrer, associate director of VISN 22, informed me that he was the contracting officer for this contract. I asked him if Sempra was awarded this contract even if there was ZERO (0) procurement participation with Service Disabled Veteran businesses. I asked Mr. Ferrer if he would please provide me with a copy of form numbers 294 and 295. As you know, these forms indicate the extent of procurement participation by SDVOSB's, if any. To date I have not received these forms, nor have I heard back from Mr. Ferrer.

His lack of correspondence may reflect the VA's failure to require its prime contractors to comply with to the 3 percent subcontracting goal mandated by P.L. 106-50. According to the Federal Procurement Data Center Summary Subcontract Report for FY 2002, the VA's prime contractors achieved a mere .02% procurement spending with SDVOSBs in that year.

I have also attempted to sell air conditioning filters to VISN 19. I've traveled to Denver numerous times to speak with many various VA officials and other employees. After contacting a maintenance worker at the Denver VA Medical Center who is tasked with the acquisition and periodic changing of the filters, he informed me that they, "don't bid air-conditioning filters" and that "the same company has been providing them for over 10 years."

I then found my way to Danny Freeman, a VISN 19 contracting officer headquartered in Glendale, Colorado. I related the information I received from the maintenance worker at the Denver VAMC. Mr. Freeman stated, "you may have something here." He then promised me that he would check with the six medical centers within his VISN, ascertain how filters are being purchased, and get back to me with his findings. I have not received any further communication from Mr. Freeman, though the date of that meeting was June 10, nearly 35 days ago.

Finally, the 2004 GSA Global Supply Catalog displays a standard air conditioning filter and lists the best price at $1.73. I would have

trouble sleeping at night if I sold this product to the government for more than $1.00.

Another group of SDVOSBs from California that provides equipment to state and federal agencies during our all too frequent forest fires contacted the U.S. Department of Agriculture. As you know, this agency oversees the Forest Service. A letter was sent in December, 2003, to Mr. David Shea, chief of that agency's procurement policy division, looking for new opportunities as a result of the Veterans Benefit Act of 2003. On the very day the interim rules were published in the Federal Register, Mr. Shea wrote a letter attributing his agency's failure to meet the 3% goal "to the lack of known SDVOSB firms."

Another paragraph in Shea's letter is highly descriptive of the general response many SDVOSBs have reported hearing from federal contract officials since enactment of P.L. 108-183: "I point out that the use of these authorities is discretionary, not mandatory."

In fiscal year 2002, three years after enactment of P.L. 106-50, the U.S. Army spent just .04% of its procurement budget with SDVOSBs. With this service branch's procurement spending growing at an average of little more than ten hundredths of a percent a year, Service Disabled Veterans would wait 300 years to see the 3% mandated goal achieved! Yet, thirty- seven federal agencies spent nothing in the same year.

To end my statement on a positive note, however, I'd like to call attention to the dedicated efforts of Major James Blanco, assistant to the Director, Office of Small and Disadvantaged Business Utilization and the entire Army OSDBU unit.

In order to ensure that SDVOBs benefit from P.L. 108-183 during their lifetime, the Major and I are working on a plan to help support returning wounded servicemembers from Iraq and Afghanistan. It is our mission to identify those wounded veterans and pair them up with established SDVOSBs to obtain federal contracting opportunities.

We have dubbed this the *Battle Buddy Program*. The Major and I believe, as your committees and the entire Congress of the United

States of America believe, that THE REHABILITATION OF OUR SERVICE DISABLED VETERANS IS MANDATORY, NOT DISCRETIONARY!

Thank you for your support of this most worthy endeavor.

Joseph K. Forney SDV-USN

TESTIMONY OF JAMES C. HUDSON
before
THE HOUSE SMALL BUSINESS SUBCOMMITTEE ON WORKFORCE, EMPOWERMENT, AND GOVERNMENT PROGRAMS OF THE COMMITTEE ON SMALL BUSINESS
and
THE SUBCOMMITTEE ON BENEFITS OF THE COMMITTEE ON VETERANS AFFAIRS OF THE UNITED STATES HOUSE OF REPRESENTATIVES
July 15, 2004

Good afternoon Chairman Akin, Chairman Brown, other distinguished members of the Subcommittees, dedicated members of your respective staffs, and my colleagues both in and out of government here today.

I am a service disabled Vietnam veteran. My wife, Fran, also a service disabled veteran, and I work together in a corporation which publishes the Veterans Business Newswire, an e-Newsletter disseminated to more than 25,000 service disabled and other veterans in small business. We also publish a directory for small business owners called Purchasing Contacts in Major U.S. Corporations. And we own a video and audio conferencing company whose customers include federal agencies. I have worked in the field of veterans affairs and disability rights since my discharge from the Army in 1970.

My testimony is largely based on my own experience, as well as that of our Newswire readers, conveyed to us via hundreds of e-mail messages and phone calls, as well as users of a free brochure Joseph Forney, my wife and I created to promote awareness of P.L. 108-183 among disabled veterans and government buyers. More than 500 PDF and Microsoft Publisher versions of the brochure have been downloaded from our QuickBizTools.com website since February. This is an encouraging sign. It suggests that there a significant number of service disabled veteran-owned companies are still pursuing federal opportunities. But, I am concerned about the response these veterans are receiving from federal officials these veterans are receiving.

Our company, and disabled veteran-owned companies in which Fran and I have owned stock, have attempted to sell products to federal agencies by preparing carefully researched proposals, and by contacting countless program officers, scores of contracting officers, more than 850 prime contractors, and more than 30,000 purchase card holders (each has received multiple offers of name brand audio and videoconferencing products commonly used in government offices at bargain prices). To reach purchase cardholders we used e-mail addresses available at Internet FOIA sites of government agencies.

We have also attended many federal small business conferences in Colorado, New Mexico and Washington, DC. At the urging of OSDBU officials we have traveled to other states to meet with federal buyers. Despite our efforts over three years, our federal sales have totaled less than $10,000.

We have corresponded and spoken with hundreds of service disabled and other veterans, but personally know few who describe themselves as successful in the federal procurement arena.

Perhaps there are federal agencies here today who would argue this point. I recommend that you request that the FPDC provide company names of new service disabled veteran-owned firms brought into the federal procurement arena subsequent to enactment of P.L. 106-50. In fiscal year 2002, for example, the number of new SDVOSBs awarded a contract per month on average by the VA, could be counted on one hand, with fingers to spare.

Service disabled veterans' companies would have earned well over 7.5 billion dollars in gross procurement revenue had the federal government attained the 3 percent goal Congress intended it to in fiscal year 2003. Instead, though the federal government spent more than $260 billion dollars for procurement that year, it spent an embarrassingly small fraction of the 3 percent goal, just $549 million, or two tenths of a percent of the procurement budget, with their companies. And that total is $5 million less than the $554 million spent with disabled veterans small business concerns in fiscal year 2001.

Knowing that their government, even as it undertook wars in Afghanistan, in Iraq, and a broader worldwide war against terrorism, fell so profoundly short of its goal, and that a majority of 60 federal agencies literally spent nothing with disabled veteran business owners in fiscal years 2001, 2002 and again in 2003, is especially hurtful to our nation's service disabled veterans and their family members. Nor is this outcome supportive of our efforts to uplift troop morale and promote confidence in those considering military service.

It was the House Committee on Veterans Affairs' concern with the "abysmal job" that former Federal Procurement Policy Director Angela Styles testified in the Spring of 2003 that the federal government was doing for disabled veterans that helped spur the Committee to action on legislation creating sole source and restricted competition contracting opportunities for this population. And your focus today is to learn what progress disabled veterans are experiencing, especially in the area of outreach concerning P.L. 108-183.

We know that federal agencies have had an obligation to perform outreach to this population before.

For example, for many years, federal agencies have had an obligation to seek service disabled veterans using the SBA PRO-Net database to encourage them to compete with other firms for small business set-aside and other contract opportunities. But in a study commissioned by Congress in 1997 and conducted in 2000 by the University of Massachusetts, service disabled veteran-owned firms profiled in PRO-Net reported federal agencies and prime contractors rarely if ever contacted their companies regarding contract opportunities. And PRO-Net administrators admitted they had no mechanism for determining the extent to which companies listed in the database were notified of such

contract opportunities, the fundamental purpose of the database. PRO-Net is now incorporated into the CCR database. But there is still no effort to determine the extent to which the Dynamic Small Business Search function of CCR as it is now called is used.

Some federal agencies and prime contractors claim the number of readily identifiable, qualified service disabled veteran-owned companies available for contracting is limited. But that number has actually grown since fiscal year 2001. Those who doubt this can examine PRO-Net registration data, Central Contractor Registration figures, the Veterans Corporation database, and the VA's new VIP database. Moreover, a recent SBA-funded study has identified databases containing thousands of additional service disabled veteran-owned companies, many of which have an interest in federal procurement opportunities.

We must make no mistake, however. Thousands of service disabled veteran business owners have abandoned the federal procurement system over the past decade. PRO-Net data support this conclusion. And a 2000 focus group study of Service Disabled Veterans in Small Business revealed that many service disabled veterans hold extremely negative attitudes toward the federal procurement system as well as the federal business assistance system because of their experiences with that system from the 1970s through the 1990s.

The disabled veteran focus group participants further predicted the utter failure of the 3 percent goal program unless a sole source and/or restricted competition contracting program was created and *strong enforcement* measures were undertaken. A one sentence SBA summary of the findings of that study submitted to Congress more than two years after it was completed redacted those predictions as well as any other criticisms of the federal business assistance system and recommendations for reform the University of Massachusetts study contained. The 26-city focus group study relied on the voluntary participation of 189 service disabled veterans in small business or who were planning to start a business, and more than 1,000 hours of their uncompensated effort. Had Congress had that information in 2000, perhaps it could have acted sooner to create a statute like P.L. 108-183. And perhaps we would have fewer disaffected service disabled veteran business owners.

Disabled veterans drop out of the federal procurement system after hearing empty promises from government officials like SBA Administrator Hector Barreto, who met with the Taskforce for Veterans Entrepreneurship in 2003. At that time he claimed he and his agency would not be satisfied until the SBA not only met, but exceeded the 3 percent goal. But at the end of fiscal year 2003, the FPDC reported the SBA for the third straight year had spent nothing with service disabled veterans companies. When Barreto came to Denver this Spring to have lunch with a few hundred small business owners, he bragged about his agencies accomplishments and plans for women and Hispanics, but said nothing about service disabled and other veterans, though 9 American soldiers and died that day in Iraq. A month earlier, the SBA's public information office had issued a news release bragging that the government had achieved a "significant jump" in procurement spending for service disabled veterans from 2002 to 2003. Slickly, the release omitted any reference to the goal for this group, the plunge that occurred from 2001 to 2002, the

fact that the top federal procurement official had characterized a lower spending total as an "abysmal failure," and the SBA's own spending record with disabled veteran-owned businesses of three straight years at zero dollars. Veterans aren't the kind of people who find this behavior as bordering on dishonestly. They call it what it is. And it taints every program with which the SBA operates, funds and associates.

Severely disabled veterans need a unique approach. They need an intensive, case managed approach, with highly successful business professionals as part of their Chapter 31 case management team. They do not need the typical cavalier referral to unevaluated SCORE, SBDC, SBA, VA or Veterans Corporation staff members who despite good intentions, may or may very well not have the skills and actual successful business background to provide meaningful assistance to the severely disabled veteran rehabilitation client.

This is the rather formidable backdrop. Have I seen any significant change since P.L. 108-183 was enacted in November and the rules were promulgated this Spring.

I would like to say significant change has begun. There has been anecdotal evidence, principally from companies owned by veterans in the beltway area, of contracts being discussed and sometimes consummated.

Information about P.L. 108-183, especially policy letters and regulations, are reaching contracting officials. But most disabled veterans have reported the typically reasons, rationalizations, and excuses when a decision to purchase is declined.

Companies in the CCR and VIP databases are not reporting much success.

It's important to note that in FY 2002 just over 200 HUBZone sole source contracts (exclusive of 8(a) HUBZone firms) were consummated federalwide (an average of little more than 3 per agency) according to one FPDC report. And the HUBZone program was enacted in 1997. The HUBZone restricted competition program performed somewhat better.

During the same year, nearly 30,000 sole source contracts were awarded to 8(a) companies.

Though most service disabled veterans reject being folded into the 8(a) program (and the SBA has routinely rejected even severely disabled veterans and nonveterans alike who have applied for entry in the 8(a) program when they do not meet other presumptive criteria), to ensure the success of P.L. 108-183, Congress should seriously consider legislation creating a program specially designed to provide an individualized, case managed approach to assisting service disabled veteran-owned firms seeking to break into the federal procurement arena. This would be business development in the true meaning of the word.

This program would follow the firm along for several years, provide specialized rehabilitation services (though not necessarily be tied to Chapter 31 delimiting date requirements), and require a 30 service-connected disability rating.

Task Force for Veterans' Entrepreneurship
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"EXCELLENCE IN ACTION; GOVERNMENT SUPPORT OF DISABLED VETERAN OWNED AND OPERATED BUSINESSES"

Statement
of
John K. Lopez, SDV, Co-Chairman
Task Force *for* Veterans Entrepreneurship

AND

Richard F. Weidman, Chairman
Task Force *for* Veterans Entrepreneurship

To

A Joint Oversight Hearing
of the
Subcommittee on Workforce, Empowerment, and Government Programs
of the
Committee on Small Business

and the

Subcommittee on Benefits
of the
House Committee on Veterans Affairs

July 15 2004
311, Cannon House Office Building

Task Force for Veterans' Entrepreneurship

House Small Business/
House Veterans Affairs
Subcommittee on Benefits
July 15, 2004

Mr. Chairmen, on behalf of the more than 300 participants in the Task Force for Veterans Entrepreneurship (TFVE), including most of the major veterans service organizations, we thank you for this opportunity to share some observations and views with you and your distinguished colleagues. May we first say thank you to you and all of your predecessors for continuing the much needed work of rigorous congressional oversight of the programs and tools that are supposed to be in place to assist veterans, particularly service disabled veteran business owners (SDVOB), to have at least a level playing field in selling their goods and services to the United States Government. It is worth noting that it was the combined oversight efforts of these two distinguished subcommittees in 1997 which began the process that ultimately led to the enactment of the "Veterans Entrepreneurship & Small Business Act of 1999" or as it more often known, Public Law 106-50. Subsequent to the enactment of Public Law 106-50, it became clear that recalcitrant bureaucracies required more specific tools and direct instruction in order to carry out the clear intent of the 1999 law with regard to ensuring that at least 3% of all prime contracts and 3% of all subcontracts go to service disabled owned businesses. In response to this clear need, you responded by leading the way to enact the provisions of Public Law 108-183 that allow for sole sourcing of contracts to SDVOB and for contracting officers creating competition for certain contracts that would be limited to SDVOB. Again, on behalf of all the participants in the Task Force for Veterans Entrepreneurship (TFVE) we both thank and salute you for your bold leadership and hard work to assist veteran business owners, particularly service disabled veteran business owners, to earn their piece of the American dream of owning and operating a successful small business.

Unfortunately, in the six (6) years since the enactment of P.L. 106-50 and the six (6) months since enactment of P.L. 108-183, the impact of the legislation has been virtually negligible thus far. For this reason, the fact that you are holding this oversight hearing today is all the more vital to service disabled veteran business owners.

When the Federal Acquisition Regulatory Council (FAR Council) first reviewed section 502 of P.L. 106-50, in year 2000, they misinterpreted the legislation and declared that there was no separate service disabled veteran owned business procurement goal of 3% for federal government agencies and

prime contractors. It required a furious and pointed response from House and Senate Committees to reverse the FAR's flawed interpretation so that the intent of the U.S. Congress would be realized by federal agencies. Additionally, the Task Force had voted to proceed with seeking injunctive relief, and the brief was prepared for us to seek injunctive relief from the Federal Courts.

Subsequently, agency acquisition and contracting officials have demonstrated an increased interest in the legislative direction to assist service disabled veterans to maintain their rehabilitation thru self-employment as federal prime or subcontractors. As recently as this week we met with the top officials of the General Services Administration. Additionally, the strong commitment of Secretary of Veterans Affairs, the Honorable Anthony J. Principi to veteran owned businesses, and especially service disabled veteran owned businesses, is well known and much appreciated by all of us.

The second yearly release of data pertinent to agency small business procurements, the "SUMMARY OF ACTIONS AND DOLLARS REPORTED ON SF279 AND SF281 BY AGENCY" (report), issued by the FEDERAL PROCUREMENT DATA SYSTEM, continues to report the barest of minimal progress toward reaching the minimum of 3% of all contracts and 3% of all subcontracts in each and every agency as the statutorily mandated minimum goal for disabled veteran business owner participation. A telephone sample by one of the Task Force participants, Association of Service Disabled Veterans (ASDV), regarding the method of calculation of that report reveals no increased assurance of accuracy of dollars, actions or appropriate categorization in those reports. Inevitably, the erroneous information misleads the U.S. Congress and subverts the intent of P.L. 106-50 and P.L. 108-183.

TFVE is also grateful to the Chief Counsel of Advocacy for Small Business, the Honorable Thomas Sullivan, for his strong advocacy for veterans, and for all of the work that he has caused to happen to correct some of the data, and point the way for cleaning up the Federal data procurement reporting system by the General Services Administration (GSA) forcing its contractor to take the necessary quality assurance measures. The recent report issued by the Office of Advocacy, "Characteristics of Federal Government Procurement Spending With

Veteran-Owned Businesses FY2000 – FY 2003" is an important document that we request be entered into the official record of this hearing, Mr. Chairmen.

The U.S. Small Business Administration, charged by legislation with the role of advocacy, has increased the integration of SDVOB into some of the special assistance efforts of that agency. Outreach materials, standard publications and routine announcements now mention support and assistance for SDVEs. This is particularly true at USDVA and some of the organizations that exist under the vast Department of Defense umbrella. However, we have only scratched the surface in regard to fulfilling what we believe is the clear congressional intent of these two important laws.

The lack of concerted and coordinated significant effort and meaningful outreach in 2003 had implied to the procurement community that there was no commitment by the Federal Government to assist service-disabled veterans seeking to maintain their rehabilitation by self-employment as owners and operators of small businesses.

As a "STAKEHOLDER" in the outcome, one of the Task Force for Veterans Entrepreneurship (TFVE) participants, ASDV has financed and expanded a previous SDV Certified interactive database containing 20,000 SDVE that has been in a certification process started in 1989. (See Attachment B). The Center for Veterans Enterprise (CVE), at the express direction of Secretary of Veterans Affairs Principi has created a database that is becoming an increasingly valuable tool, as well.

However, that perceived lack of commitment has been repeatedly voiced to SDVOB many times by off the record comments of procurement officials, such as: "SDVOB ASSISTANCE IS JUST A GOAL – IF THE CONGRESS HAD BEEN SERIOUS ABOUT HELPING SDVE, THEY WOULD HAVE LEGISLATED MANDATORY REQUIREMENTS, NOT UNACCOUNTABLE GOALS." We have a copy of a letter where the Department of Agriculture letter, signed by David J. Shea, Chief of the Procurement Policy Division for all of the multi-Billion dollar Department of Agriculture nationwide, says: "I point out that the use of these authorities" (for sole source and competitive reserves limited to SDVOB)"is discretionary, not

mandatory." While all of us who participate in the Task Force for Veterans Entrepreneurship (TFVE) firmly believes that the Congress is serious about SDVEs, the perception advanced by procurement officials contrasts sharply with the legislative intent of P.L. 106-50 and P.L. 108-183.

The commitment of the private sector prime contractors (PRIMES) is even more abysmal. SDVOB requests to participate as subcontractors (SUBS) have been met with negative responses and disinterest. At present there is no coherent or comprehensive way to track and monitor the number or dollar amounts of any subcontracts going to SDVOB. As a result, it appears that little is being done in this regard.

As a routine response to SDVOB requests for procurement participation, PRIMES initially profess ignorance and protest that procurement officials never mention SDVE participation. This is followed by subsequent protestations that they are exempted from participation by variously invoked parsing of regulatory language, special procurement official dispensation or that they are performing contracts that are not subject to regulation.

As an example; multi-billion dollar contracts by PRIMES of the U.S. Department of Veterans Affairs (USDVA) have PRIMES asserting that USDVA exempts them from offering subcontract opportunities because of their position in a sequence of layered procurement actions. The U.S. Department of Defense allows PRIMES to write their own plans for subcontracting, which plans do not require participation by SDVE.

There are NO clear villains in the failure to assist the SDVE of our nation; rather there is a need for more specific direction from the U.S. Congress, even at the risk of cries of "Congressional Micromanagement" by the Federal Bureaucracy.

It is imperative that your committees take the initiative in establishing the legislative actions that will permit our nation's disabled in service and prisoner of war veterans to participate more fully in the economic system they sacrificed to preserve.

Task Force for Veterans' Entrepreneurship

House Small Business/
House Veterans Affairs
Subcommittee on Benefits
July 15, 2004

It is respectfully requested THAT THOSE PROVISIONS BE AMENDED AND EXPANDED TO PROVIDE AUTHORIZED, DIRECTED, SPECIFIC AND MANDATORY PARTICIPATION BY SERVICE DISABLED AND PRISONER OF WAR VETERANS IN ALL FEDERAL PROCUREMENTS" whether thru inclusion in the various set aside provisions of the Small Business Act of 1953 as amended, or in newly included Sections of that Act. (See Attachment A)

ONLY THE ACTIVE APPLICATION OF THESE TWO COMMITTEE'S AUTHORITY WILL ENSURE THAT ENTREPRENEURSHIP IS AN AVAILABLE REHABILITATION ALTERNATIVE FOR THOSE THAT SACRIFICED FOR THE SECURITY AND PROSPERITY OF OUR NATION.

Mr. Chairmen, may we again say thank you for your strong leadership on behalf of veteran business owners, and thank you for the opportunity to share some views and thought reflective of the TFVE participants' thinking on these important issues here today. We would be pleased to answer any questions you or you distinguished colleagues may have.

INDEX TO ATTACHMENTS

A. Comments of "Task Force for Veterans' Entrepreneurship" ASDV supports

B. Description of "ACDB" database of vetted, certified service disabled veteran owned businesses – initiated at California in 1989

C. PCOR continuous evaluation of Prime Contractor response to SDVE request for procurement participation

"ATTACHMENT A"

TASK FORCE FOR VETERANS' ENTREPRENEURSHIP
JULY 6, 2004

ASDV CONCURRENCE WITH EXCEPTIONS AND ADDITIONS

On behalf of the National Task Force for Veterans' Entrepreneurship (TFVE) consisting of Veteran Service Organizations, Service Disabled Veteran Owned Small Businesses and Veteran Owned Small Businesses, we are writing to comment on the Interim Final Rules regarding Contracting Opportunities for Service Disabled Veteran Owned Small Business (SDVOSB).

The TFVE was created prior to Public Law 106-50 and played a support role in its development and passing. This holds true also for Public Law 108-183. Therefore, the analysis and recommendation of Public Law 108-183 comes with an accurate historical recollection.

Overall, the provisions contained in the Interim Final Rules have responded appropriately to concerns expressed by SDVOB. In particular, the TFVE appreciates the attempt by the Small Business Administration (SBA) to commence SDVOSB contracting opportunity by issuing the regulations as Interim Final status, thus allowing SDVOB to compete for federal procurement right away.

Although the TFVE appreciates the speed of the release of the rules unfortunately we discovered a few provisions within the drafted regulations that were not originally intended by Public Law 108-183. After numerous meetings with TFVE members, it is our opinion that the regulations as drafted *per Interim Rules* are not meeting the intent of the law by spirit or by means. We can all agree that the sacrifices by veterans in preserving our Nation and the Constitution deserves nothing less than unequivocal commitment by government representatives to accurately provide the procurement rights for veterans, as intended by law.

The TFVE will comment in greater detail on several provisions below that are of particular concern.

"May" vs. "Shall"

FAR 19-1305 HUB Zone set aside procedures read "the contracting officer **SHALL** set aside all acquisition exceeding the simplified acquisition threshold for competition restricted to HUB Zone small business when the requirements of paragraph 19.1305(b) of this section are satisfied. TFVE believes that the law was created to allow SDVOSB to compete in free enterprise with equal footing similar to the other special programs. As you are aware throughout his term, President Bush has promoted his beliefs in the free enterprise system that

promotes liberty. He further noted that the "government's role is not one of handouts or entitlements, instead, government's role is to ensure that the playing field is level for all involved." Yet our ability to provide the government with the products they need is being threatened by the very people we serve. The TFVE request that the final rules eliminate the word "may" and replace it with "shall."

Parity/Self Market

A common misconception is that all 8(a) and HUB Zone set aside goals must be completely satisfied before contracts are set-aside for SDVOB. We have also heard that many contracting officers are fearful that a sole source to a SDVOSB would draw complaints from special interest groups.

Section 308 of the Veterans Benefits Act of 2003, Procurement Program for Small Business Concerns Owned and Controlled by Service-Disabled Veterans (P. L. 108-183) states:

> "The Small Business Act (15 U.S.C. 631 et seq.) is amended by redesignating section 36 <<NOTE: 15 USC 631 note.>> as section 37 and by inserting after section 35 the following new section:
>
> ``SEC. 36. <<NOTE: 15 USC 657f.>> PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.
>
> ``(a) Sole Source Contracts.--In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if--
>
> ``(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;
>
> ``(2) the anticipated award price of the contract (including options) will not exceed--
>
> ``(A) $5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or
>
> ``(B) $3,000,000, in the case of any other contract opportunity; and
>
> ``(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.
>
> ``(b) Restricted Competition.--In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price."

However, FAR Case 2004-002 changed the wording to state:

"The law provides for set-aside and sole source procurement authority for service-disabled veteran-owned small business (SDVOSB) concerns. This interim rule is published in conjunction with the interim rule proposed by the Small Business Administration."

FAR Part 19 is modified by the interim rule. That modification states:

19.1405 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer may set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to service-disabled veteran-owned small business concerns when the requirements of paragraph (b) of this section can be satisfied. The contracting officer shall consider service-disabled veteran-owned small business set-asides before considering service-disabled veteran-owned small business sole source awards (see 19.1406).

(b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that--

(1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and

(2) Award will be made at a fair market price.

(c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see Subpart 19.5)."

Congress did not use the words "set-aside." They did provide for "Restricted Competition" if the contracting officer has a **reasonable expectation** that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price." Congress did not require that a *set-aside* must first be achieved.

FAR Case 2004-002 requires a SDVOSB set-aside before a sole-source can be awarded. The reason why congress used "Restricted Competition" is because of a belief that service-disable veteran-owned concerns must be at the *same level* of competition as 8(a) concerns. An 8(a)

concern can market federal agencies and, if the 8(a) convinces the federal customer and contracting officer that they can perform the service or obtain the product required, the contracting officer can award a non-competitive (sole source) award without announcing the requirement or using a set-aside for the requirement. In order for a contracting officer to award a contract over $100,000 from a SDVOB, the contracting officer is required to announce the requirement as a SDVOB set-aside. Ten days or more is required for the purchase. If a SDVOB has marketed to the extent that the agency wants to purchase from **that SDVOB** they must announce a set-aside when the contracting officer knows there will not be another SDVOB capable of meeting the same requirements. This is the advantage of the 8(a) non-competitive sole-source. The new FAR puts the 8(a) at a different level.

It may be the FAR Council's opinion or belief that sole source procurements should be difficult to obtain, but that was not the intent of Public Law 108-183. Public Law 108-183 wording supports the belief that the contracting officers' "*reasonable expectation*" is sufficient.

FAR Part 19.1404 Exclusions go far beyond Public Law 108-183. Public Law 108-183 states:

> ``(c) Relationship to Other Contracting Preferences.--A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.)."

FAR Part 19.1404 Exclusions, states:

> **"This subpart does not apply to--**
> (a) Requirements that can be satisfied through award to--
>
> (1) Federal Prison Industries, Inc. (see Subpart 8.6);
>
> (2) Javits-Wagner-O'Day Act participating non-profit agencies for the blind or severely disabled (see Subpart 8.7);
>
> (b) Orders under indefinite delivery contracts (see Subpart 16.5);
>
> (c) Orders against Federal Supply Schedules (see Subpart 8.4);
>
> (d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program; or
>
> (e) Requirements for commissary or exchange resale items."

The interim rule should not include the additional exclusions in subparagraphs (b), (c), (d) and (e) of FAR Part 19.1404.

Self-Certification

The Small Business Administration (SBA) has established certification processes for the Small Disadvantage Businesses and 8(a) small business programs. Public Laws 106-50 and 108-183 permit self-certification for SDVOB's. However, there have already been business concerns claiming to be SDVOB qualified but are not. The TFVE is concerned that without an entity certifying a SDVOSB, the doors will be open for fraud and abuse.

The Department of Veterans Affairs (DVA) is the only authorized to grant service-connected disability status to veterans. Thus it would be quite natural for these agencies to issue a letter indicating a veterans' disability status. The DVA currently has a similar program where it issues a letter to a veteran certifying Civil Service Preference in seeking government employment.

Additionally, there is a small business requirement that to be qualified as a small business, the certified owner must be "at least 51% owner of the business" and "active in the day to day management of the business."

Absence an official certifying process, we are afraid that the system that is currently in place where a contract awardees' claim of SDVOSB can be challenged, invites misrepresentation, is time consuming and an unnecessary burden.

Sub Contracting SDVOSB Goals

As government contracts become larger, many SDVOB find that working as a subcontractor is their only chance of getting a piece of the federal pie. Unfortunately, many prime contractors have not been following through with their plans for subcontracting to SDVOB, and the federal government is doing little about it.

While SBA's reviews of contractor-reported data look at a range of important factors, such as management support and controls and actual performance, SBA's approach does not ensure that the highest risk contractors are adequately covered or that the officials responsible for monitoring contractor performance are aware of the results of reviews. Moreover, assessing the validity of SDVOSB subcontracting data government wide is difficult because SBA does not readily summarize the results of their reviews in terms that would allow government wide assessments and enforcement of contractor performance or lack thereof.

Therefore the TFVE makes the following recommendations to improve compliance with SDVOSB subcontracting plans:

- Base SBA contractor reviews on compliance risks, such as size of the contract, date of the last review, and previous ratings. This will ensure that the larger or previous violators are aware that their plans will be closely monitored.

- Send the results of the reviews to contracting officers, especially when the ratings are marginal. With a plan of enforcement, this will ensure that the government official responsible for the contract is kept abreast of compliance.

- To promote government wide oversight, the SBA should produce an annual list of prime contractors who meet their small business plans by category. The primes who fail to meet their plans for two consecutive years should be barred from federal contracting until a suitable corrective action plan is received and approved. Or, if this is not feasible, enforce FAR 52.219-16 – "Liquidated Damages -- Subcontracting Plan."

- Those prime contractors who consistently meet their subcontracting plans should be rewarded by receiving priority in future contracts. FAR 52.219-10 -- Incentive Subcontracting Program should be vigorously used where applicable.

Thank you for your consideration of these issues. Should you have any questions or require additional information, please contact Eddie Gleason at 301/585-4000 ext. 147

Rick Weidman — Chairman

John Lopez — Co Chairman

"ATTACHMENT B"

ASDV Certified Database (ACDB)

The Association for Service Disabled Veterans (ASDV) is the non-profit organization that pioneered the concept of establishing "ENTREPRENEURSHIP" as a valid goal in the rehabilitation of disabled in service and prisoner of war military veterans (SDV). In 1982, ASDV sponsored "pioneering" legislation that requires that 3% of the total procurement of State of California Government Agencies, and their prime contractors, be directed to service disabled veteran enterprises (SDVE).

That legislated policy was subsequently endorsed by a state constitutional referendum and approved by the State of California Supreme Court.

ASDV subsequently initiated and sponsored similar federal legislation.

Public Law 106-50 legislated a federal goal that 3% of all federal agency procurement, and that of their prime contractors, be directed to SDVE. This legislation also established supporting authority and institutions to enable the implementation of the P.L. 106-50 legislation. ASDV also co-sponsored P.L. 108-183 Section 3, unanimously passed by the U.S. Congress and enacted by the President of the United States, 20 December 2003. P.L. 108-183 establishes SDVE "SOLE SOURCE" and "RESTRICTED COMPETITION" for federal procurements.

ASDV now proposes to assist both the private and public organizations to define their obligations and to implement a successful and conforming SDVE program.

ASDV has developed a database of "CERTIFIED" service disabled veteran "owned" and "operated" businesses that builds on the previous base established for California in 1990. That base has grown in size and scope and includes certified applicant SDV from throughout the nation. It is the only database of CERTIFIED SDVE in existence. Existing federal SDVE databases are SELF CERTIFIED by simple "BOX CHECKING".

To avoid federal felony misrepresentation and other disruptions resulting from **PROCUREMENT AWARD CHALLENGES**, it is important to design legitimate processes.

ASDV provides a "simplified certified database (CDB) procedure whereby;

1. Procurement Sources (PS) query the CDB by entering the NAICS code of the product or service sought and submit;
2. CDB query results display the number of corresponding candidates in CDB;
3. Procurement Source (PS) then enters select data usually required in the pertinent solicitation format or synopsis form and submits;
4. The data will be immediately transmitted to all SDVE in CDB with the pertinent NAICS Code that has been supplied by the SDVE;

5. Subsequent response is between the SDVE and the PS.

This system permits the SDVE to be specifically alerted to the opportunities and for the PS to meet its outreach requirements.
To obtain your PS access code to the CDB, please email ACDB@asdv.org.
Provide:

- Name of authorized procurement official
- Organization
- Address
- State and Zip
- Telephone contact
- Email contact

Thank you for your cooperation.

Source: http://www.asdv.org/BUSRES/ACDB/index.cfm

ASDV Certified Database (ACDB) Search

Step 1:

To search availability of SDV Businesses by NAICS code, type in code and press Submit:

NAICS Code 1: 0

NAICS Code 2: 0

NAICS Code 3: 0

NAICS Code 4: 0

Reset Submit Query

Source: http://www.asdv.org/BUSRES/ACDB/NAICSSearchForm.cfm

"ATTACHMENT C"

PCOR Introduction
PATRIOTS VS PROFITEERS

The PCOR: Index was devised as a mechanism for tabulating and evaluating the performance response of the leading corporations and organizations operating in the United States of America, to the needs and aspirations of those persons who have sacrificed their well being to ensure a safe and hospitable national business and economic environment for the nations business community.

Although some segments of the U.S. Industry and Commerce have respond with enthusiasm, the general reaction to the concept of assisting service disabled and prisoner of war veterans to pursue and achieve in entrepreneurial activities has been **muted**.

As a means of quantifying and qualifying this private sector "attitude" ASDV has developed indices that will be gathered and consolidated for presentation to the U.S. Congress and the U.S. public as the basis for action initiatives.

PCOR has added a new Composite Index based on the information available that classifies organizations as **PROFITEERS** when evaluation shows that tax revenues have been directed to their benefit, without a corresponding indication of responsibility to those persons that sacrificed their well being for the organization's prosperity.

This is tabulated as a "D" or "F" effort. Among the primary sources of evaluative data are

1. Federal Procurement Data System
2. DoD Directorate for Information Operations and Reports
3. Defense Contract Management Agency

Criteria Used in Evaluation

CRITERIA USED IN EVALUATION

Company/ Organization	True Diversity	Supplier Participation	Continuous Awards	Education and Training	Internal Promotions	Program Evaluation

Company/ Organization	Event Participation	Yearly $ Loans in 000's (K)	Comprehensive Participation	Participant Alliances	Strategic Redesign	Aggressive Outreach

An evaluation of the performance of selected organizations in providing opportunities for the rehabilitation of disabled in military service and prisoner of war veterans (SDV). The score 12 reflects the highest number of individual and positive programs. The letter rank indicates the combined evaluation of performance:

"A" is Excellent
"B" Is Superior
"C" is Average
"D" is Poor
"F" is Failed Effort.

Fourth Quarter Ending September 30, 2000

Source: http://www.asdv.org/ BUSRES/PCOR/index.cfm?AutoNumID=30

John K. Lopez

Mr. Lopez has extensive experience in business, health services management and economic development; in the application of advanced health care systems, instrumentation and biotechnology, and is an acknowledged pioneer in entrepreneurial development, telecommunications for health care delivery and the application of advanced technology to professional medical and health care systems.

He has been Director of the Business Development Center of Santa Clara County, California, a federal, state and county economic development program that initially (1975) addressed the economic potential of the area now designated as "Silicon Valley" – the largest and fastest growing high technology area in the U.S., encompassing over one million persons and 6,000 high technology organizations.

He has served as a consultant to the State of California, Department of Public Health and the University of California, Los Angeles, where he contributed to the development of 42 professional allied health curriculums and served as an instructor in the Clinical Instructor Training Program, conducting the program in thirty-seven countries throughout the world.

Mr. Lopez has also served as Consultant for Program Development and Evaluation for the Office of Governor Ronald Reagan of California, the Assembly of the State of California, to the Superintendent of Banks of the State of California, the Entrepreneurial Curriculum Development Program of the Stanford University Graduate School of Business and the Small Business Institute of DeAnza college, California. Mr. Lopez was a Regent of the National Institutes of Health-National Library of Medicine by appointment of the President of the United States.

Mr. Lopez is a Disabled in Military Service Veteran (Korea) Member of the United States Marine Corps. His career has been frequently interrupted by physical relapse due to military service injuries. He has accumulated 18 long-term hospitalizations with 21 emergency admissions and 11 home confinements of six (6) months or more.

He has developed several socio-economic smaller business programs for major corporations and presently initiates Disabled Veteran entrepreneurial programs in conjunction with "Memorandums of Understanding" with the U.S. Small Business Administration and the Bank of America. Mr. Lopez is Chairman of the U.S. Congress Advisory Group on the Study of the Needs of Service Disabled Veteran Entrepreneurs, and Co-Chairman of the National Task Force on Veterans Entrepreneurial Development.

He has been Chairman since 1985 of the Association for Service Disabled Veterans (ASDV), a national non-profit organization of Disabled in Military Service and Prisoner of War Veteran Owned Businesses. The Association has sponsored eight (8) business development legislative acts in the California Legislature and ten (10) in the U.S. Congress. All of these initiatives are now public laws including P.L. 108-183 "Sole Source and Restricted Competition Procurement for Service Disabled Veterans" and P.L. 106-50 "The Veterans Entrepreneurship and Small Business Development Act". Mr. Lopez is Chairman of SDV Group, Inc. (SDVG) and Service Disabled Veterans Business Association (SDVB).

RICHARD WEIDMAN

Richard F. "Rick" Weidman serves as Director of Government Relations on the National Staff of Vietnam Veterans of America. As such, he is the primary spokesperson for VVA in Washington. He served as a 1-A-O Army Medical Corpsman during the Vietnam war, including service with Company C, 23rd Med, AMERICAL Division, located in I Corps of Vietnam in 1969.

Mr. Weidman was part of the staff of VVA from 1979 to 1987, serving variously as Membership Service Director, Agency Liaison, and Director of Government Relations. He left VVA to serve in the Administration of Governor Mario M. Cuomo (NY) as statewide director of veterans employment & training (State Veterans Programs Administrator) for the New York State Department of Labor.

He has served as Consultant on Legislative Affairs to the National Coalition for Homeless Veterans (NCHV), and served at various times on the VA Readadjustment Advisory Committee, the Secretary of Labor's Advisory Committee on Veterans Employment & Training, the President's Committee on Employment of Persons with Disabilities - Subcommittee on Disabled Veterans, Advisory Committee on veterans' entrepreneurship at the Small Business Administration, and numerous other advocacy posts in veteran affairs.

Mr. Weidman was an instructor and administrator at Johnson State College (Vermont) in the 1970s, where he was also active in community and veterans affairs. He attended Colgate University (B.A., (1967), and did graduate study at the University of Vermont.

He is married and has four children.

It is my pleasure to provide written testimony on behalf of the U.S. Department of Agriculture (USDA) and our efforts to comply with Section 308 of P.L. 108-183, The Veterans Benefits Act of 2003, signed by President Bush on December 16, 2003. This act provides statutory authority for agencies to make it easier to meet the government-wide annual three percent procurement goal for service disabled veteran-owned small business (SDVOSBs) by allowing contracts to be restricted and set-aside for these firms.

First, I would like to say USDA is committed to achieving and surpassing the designated goal of three percent for SDVOSBs through the efforts of our Office of Small and Disadvantaged Business Utilization (OSDBU) working in concert with USDA agencies nation-wide.

Immediately after the signing of P.L. 108-183 we developed and began implementing improved strategies and initiatives to assist the Department in increasing its SDVOSB contract awards. One of our first acts was to assign a Program Manager within the OSDBU to aggressively promote the new SDVOSB provisions and focus on improving the Department's results for these businesses.

A Secretary's Memorandum has been drafted for my signature, which is now in the final clearance process. Through this memorandum, I am sending a message to all USDA contracting and program personnel that I fully support P.L. 108-183 and I expect to see positive results as soon as possible.

USDA has and will continue to participate in major conferences that target SDVOSBs. Members of the OSDBU staff serve as panelists, speakers and exhibitors as a means for these businesses to obtain information for successfully securing procurement opportunities at USDA. Some recent events USDA participated in are:

The Department of Health and Human Services Conference held in Washington, D.C. in April 2004, where over 200 SDVOSBs were in attendance; and

The General Services Administration and Veterans Affairs Conference held in Washington, D.C. in May 2004, where over 500 SDVOSBs were in attendance

OSDBU sponsors a monthly First Tuesday Meeting for trade associations. These monthly briefings bring together association representatives, small businesses and special government small business officials to discuss and exchange information impacting small businesses. The February meeting focused on the new SDVOSB provisions.

We have scheduled a Vendor Outreach Session reserved solely for SDVOSBs on July 14, 2004. The purpose of this session is to provide SDVOSBs the opportunity to meet with and market their capabilities to USDA contracting officials. At these sessions, USDA is introduced to new businesses that our procurement offices may use to increase their small business resource base. We will learn more about the resources available in the SDVOSB community, and provide the SDVOSBs an opportunity to learn about USDA and the variety of products and services we purchase.

Each of our twelve major procuring agencies are required to submit annual outreach plans that address any underutilized procurement areas and recommendations for correcting any shortfalls during the previous fiscal year. USDA agencies will be monitored closely to ensure that SDVOSBs receive contracting opportunities. To demonstrate my resolve for every department agency to aggressively pursue and obtain contracting opportunities for SDVOSBs, the committee should consider the department's largest agency, the Forest Service.

The Forest Service manages 192 million acres of national forests and grasslands across the country, in addition to running the world's largest forestry research organization in the world and providing technical and financial assistance to state and private forestry agencies. The agency's approximately 600 procurement professionals, including Contract Specialists, in the Washington Office Headquarters, nine Regional Offices, five Research Stations and numerous Forest Supervisor's and District Offices manage the procurement of a wide variety of services and supplies, such as the construction and maintenance of facilities and roads, wildfire fighting and support activities, computer equipment and environmental assessments. In FY 2003 the Forest Service reported total procurements (excluding purchase card) in the amount of $976,184,350, with $5,746,300 (0.59%) in awards to service-disabled veteran-owned small business (SDVOSB).

The Forest Service has taken steps to alert and educate its procurement community of the new law and strongly encourage them to utilize the new procurement authority. To assist in that effort, SDVOSB information available on the USDA Procurement website, and the internet links to the Contractor Central Registration (CCR) and the VetBiz Registry have been provided. The topic has also been discussed on a conference call with Regional Acquisition Management Directors. Due to the dissemination of information in regards to the legislation, the concurrent changes in the Federal Acquisition Regulation and the Small Business Administration Regulation; and availability of web resources to find SDVOSBs, we anticipate a significant increase in the awards to SDVOSBs. The results, so far, have been encouraging. In FY 2004, thru July 7, 2004, the percentage of procurement awards to SDVOSBs has risen to 0.83% ($1,486,715 out of a total $180,277,690).

In order to address the Department's need to improve its utilization of SDVOSBs, OSDBU has been reaching out to veteran organizations, the Department of Veterans Affairs, the United States Small Business Administration and other federal agencies, to identify more SDVOSBs so that we may engage them in contracting activities.

During our recent small business awards program (June 2004), we presented two awards to SDVOSBs. This was the first time that SDVOSBs were part of the awards program but it will not be the last.

Also, our OSDBU office meets regularly with SDVOSBSs and has been instrumental in identifying contracting opportunities for these firms. We are indebted to service disabled veterans for their sacrifices on behalf of our country and we will continue to aggressively pursue and obtain contracting opportunities for SDVOSBs.

Statement for the Record
of

Theresa Speake, Director
Office of Small & Disadvantaged Business Utilization, U.S. Department of Energy

before the
Subcommittee on Workforce, Empowerment and Government Programs
Committee on Small Business
and
Subcommittee on Benefits
Committee on Veterans' Affairs
US. House of Representatives

July 15, 2004 Hearing
Excellence in Action: Government Support of Disabled Veteran Owned Businesses

Thank you for allowing the Department to provide written testimony on new agency initiatives to implement the discretionary set-aside and restricted authorities provided by Public Law 108-183 in contracting with service-disabled veteran (SDV) owned small business.

Prior to enactment of the law, the Department of Energy's (DOE) efforts to provide SDV's with an opportunity to participate in Federal contracting consisted largely of: 1) meetings with the Veterans Administration, the SBA and the Association of Service Disabled Veterans to identify potential listings of service-disabled veteran owned small business to be added to the department's small business database, 2) designation of an individual in the Office of Small & Disadvantaged Business Utilization (OSDBU) who is responsible for reaching out to, identifying and working with service-disabled veteran businesses, 3) the development of written instructions (*See "Acquisition Letter" 2004-03*) on various types of acquisition processes to support small business initiatives, 4) publication/distribution of the SDV goals to all departmental elements, and DOE prime contractors, 5) adding the Service Disabled Veterans Association to the OSDBU's small business advisory team, and 6) conduct of specific small business outreach activities such as the recent 5th Annual Small Business Conference in Philadelphia, Penn.

With the enactment of Public Law 108-183, Congress has now provided agencies with specific tools in order to direct increased opportunities to SDVs. Specifically, these authorities permit agencies, under certain circumstances, to direct contract awards to SDVs either through the use of acquisitions limited to SDV participation or the sole source negotiation and award of a contract with an SDV. In April of this year, a memorandum was issued by Hector Barreto, the Administrator of the SBA and Robert Burton, Acting Administrator of the Office of Federal Procurement Policy, Office of Management and Budget (OMB) encouraging federal departments and agencies to focus

contracting efforts on small businesses owned and controlled by service disabled veterans and advising of the new tools that might assist with that endeavor. In June, the SBA held a roundtable discussion to discuss the implementation of PL 108-183, the Veterans Benefit Act of 2003.

The Department has advised its contracting officials and small business representatives of the availability of the new authority consistent with SBA and OMB guidance. Contracting officers and small business representatives will be encouraged to identify available SDV owned small businesses and, where appropriate, apply the new authorities. DOE is currently a participant on the drafting team that is developing the Federal Acquisition Regulations. Additionally, we are amending the internal directive (Acquisition Letter 2004-03) to include a discussion of the discretionary set-aside and sole source procurement authority now available under PL 108-183. Further, a Secretarial directive is being drafted to the Heads of all Departmental Elements at DOE that will direct the use of this new authority to assist the Department in meeting its SDV goals.

SDV owned small business activities and procedures at the Department of Energy should result in achievement of the 3% goal for both prime and subcontract awards.

Thank you.

Department of Energy
Acquisition Regulation

No. 2004-03
Date 05/05/04

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the DOE and NNSA Procurement Executives.

Subject: **Small Business Programs**

References:

FAR 7.107	Additional requirements for acquisitions involving bundling
FAR 19.201	General policy
FAR 19.202-1	Encouraging small business participation in acquisitions
FAR 19.302	Protesting a small business representation
FAR 19.306	Protesting a firm's status as a HUBZone small business concern
FAR 19.307	Solicitation provisions
FAR Subpart 19.5	Set-Asides for Small Business
FAR Subpart 19.7	The Small Business Subcontracting Program
FAR Subpart 19.8	Contracting with the Small Business Administration (The 8(a) Program)
FAR Subpart 19.9	Very Small Business Pilot Program
FAR Subpart 19.10	Small Business Competitiveness Demonstration Program
FAR Subpart 19.11	Price Evaluation Adjustment for Small Disadvantaged Business Concerns
FAR Subpart 19.12	Small Disadvantaged Business Participation Program
FAR Subpart 19.13	Historically Underutilized Business Zone (HUBZone) Program
FAR Subpart 26.1	Indian Incentive Program
FAR 52.219-10	Incentive Subcontracting Program
FAR 52.219-22	Small Disadvantaged Business Status
FAR 52.219-23	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns
FAR 52.219-24	Small Disadvantaged Business Participation Program-Targets
FAR 52.219-25	Small Disadvantaged Business Participation Program-Disadvantaged Status and Reporting
FAR 52.226-1	Utilization of Indian Organizations and Indian-Owned Economic Enterprises
DEAR Subpart 919.5	Set-Asides for Small Business
DEAR Subpart 919.7	Subcontracting with Small Business, Small Disadvantaged Business, and Women-Owned Small Business Concerns
DEAR Subpart 919.8	Contracting with the Small Business Administration (The 8(a) Program)
DEAR Subpart 919.70	The Department of Energy Mentor-Protégé Program
DEAR 970.1504-4-1	Make-or-buy plans
DEAR 970.5215-2	Make-or-buy plan
DOE Acquisition Guide Chapter 38	Task Order Contracting
13 CFR Chapter 1	Small Business Administration
OFPP Letter 99-1	Small Business Procurement Goals

Effective date of the Acquisition Letter (AL)

This AL is effective 10 business days from the date of issuance.

AL Expiration

This AL remains in effect until superseded or canceled. This AL supersedes AL-2000-02 (Small Business Programs, dated April 20, 2000) and AL-2001-05 (Maximizing Opportunities for Small Businesses, dated October 12, 2001), which are rescinded in their entirety.

Points of Contact

Contact Stephen Zvolensky of the Department of Energy (DOE) Office of Procurement and Assistance Policy at (202) 586-5936, or at stephen.zvolensky@hq.doe.gov, or Gary Lyttek, National Nuclear Security Administration (NNSA) Office of Acquisition and Supply Management at (202) 586-8304, or at gary.lyttek@nnsa.doe.gov.

Visit the website at http://professionals.pr.doe.gov for information on Acquisition Letters and other policy issues.

Purpose of the AL

The purpose of this AL is to make available guidance on contracting with small business concerns.

This AL is divided into three parts: Part I applies to the award of prime contracts; Part II applies to the award of subcontracts; and Part III includes other considerations.

Background on Small Business

The Small Business Act contains a government-wide goal for participation by small business concerns of not less than 23 percent of the total value of all prime contract awards for each fiscal year as well as individual goals for women-owned small business concerns (5%), small disadvantaged business concerns (5%), service-disabled veteran-owned small business concerns (3%) and HUBZone small business concerns (3%). The Act further provides that agencies negotiate annual goals with the Small Business Administration (SBA).

In September of 2002, Secretary Spencer Abraham issued his "Policy Statement Supporting Small Businesses in Implementing DOE Missions." In that statement, the Secretary directed all departmental elements to examine and seek to expand their grant and contract opportunities with small businesses and tasked the Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) to prepare a comprehensive small business strategy to ensure that small businesses are provided the maximum practicable opportunity to participate in departmental programs at the prime contract level. Additionally, the policy directed that the plan include a strategy to increase the level and expand the types of subcontracts awarded to small business by the Department's facilities management contractors.

In May of 2003, the OSDBU issued a Small Business Strategic Plan that provides steps the department will take to increase its small business awards. The Plan is posted on the OSDBU website: http://smallbusiness.doe.gov/OSDBU_Strategic_Plan.pdf

An "Advanced Planning Acquisition Team" (APAT) has been established to review acquisition requests over $3 million for their ability to be set aside for small business. The team consists of representatives of the program office requesting the acquisition, the Office of Procurement and Assistance Management, the OSDBU and the SBA Procurement Center Representative (PCR). [Note the APAT requirement does not apply to NNSA.]

Definitions

"8(a) contractor" means a concern, certified by the SBA, to be eligible to participate in the SBA 8(a) program, established by section 8 (a) of the Small Business Act, 15 U.S.C. section 637(a), which authorizes the SBA to enter into all types of contracts with other agencies and award subcontracts for performing these contracts with eligible 8(a) contractors.

"HUBZone" means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, or lands within the external boundaries of an Indian reservation.

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Small business concern" means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see 19.102). Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

"Small disadvantaged business concern" (except for 52.212-3(c)(2) and 52.219-1(b)(2) for general statistical purposes and 52.212-3(c)(7)(ii), 52.219-22(b)(2), and 52.219-23(a) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to the acquisition; and either (1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B; and (i) No material change in disadvantaged ownership and control has occurred since its certification; (ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed $750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and (iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the data base maintained by the Small Business Administration (PRO-Net); or (2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private certifier

to be certified as a small disadvantaged business concern in accordance with 13 CFR part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award.

"Service-disabled veteran-owned small business concern" means a small business concern- (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran. Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

"Veteran-owned small business concern" means a small business concern- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and (2) The management and daily business operations of which are controlled by one or more veterans.

"Women-owned small business concern" means a small business concern- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and (2) Whose management and daily business operations are controlled by one or more women.

Part I. Prime Contracting

A. SMALL BUSINESS CONTRACTING PROCESSES

B. SMALL BUSINESS PROCUREMENT TOOLS

C. SMALL BUSINESS MARKET RESEARCH

D. SMALL BUSINESS ACQUISITION PLANNING

Part II. Subcontracting with Small Business

A. SUBCONTRACTING PLANS

B. SUBCONTRACTING PROCEDURES

Part III. Other Considerations

A. SECURITY CLEARANCES

B. SMALL BUSINESS STATISTICS

C. CENTRAL CONTRACTOR REGISTRATION DATABASE

D. SECRETARY'S SMALL BUSINESS AWARDS

Part I. Prime Contracting

A. SMALL BUSINESS CONTRACTING PROCESSES

Total small business set-asides. Except for those acquisitions set aside for very small business concerns (see Subpart 19.9), each acquisition of supplies or services that has an anticipated dollar value exceeding $2,500 ($15,000 for acquisitions as described in 13.201(g)(1)), but not over $100,000 ($250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the Contracting Officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. This obligation also applies to purchase card transactions. The Contracting Officer shall set aside any acquisition over $100,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices.

Awards to 8(a) Firms. For procurements with an anticipated total value, including options, in excess of $5,000,000 for acquisitions assigned manufacturing North American Industry Classification System (NAICS) codes and $3,000,000 for all other acquisitions, if an 8(a) certified firm can be identified with the expectation that the award would be at a fair market price, an award may be made noncompetitively to an 8(a) firm. If the procurement is valued in excess of $3 million ($5 million for manufacturing) and two or more capable 8(a) firms can be so identified, the procurement shall be set aside for competition among 8(a) firms (see FAR 19.805-1(a)(2)). Contracting activities may make awards under the 8(a) program with DOE/NNSA Contracting Officers signing on behalf of SBA. This delegated signature authority saves time and effort in completing the award between DOE and SBA and the subcontract between SBA and the selected 8(a) firm.

Set-Asides for Very Small Businesses. Under a statutorily directed pilot program, purchases valued between $2,500 and $50,000 must be set aside for very small businesses (those businesses with no more than 15 employees and average annual receipts not exceeding $1 million). This pilot program applies to supplies procured by DOE offices located in, and to services performed in, designated SBA districts identified in FAR 19.902. Within this dollar range, awards still may be made to 8(a) firms that are not very small businesses.

Small Business Competitiveness Demonstration. DOE is signatory to the Small Business Competitive Demonstration program established by the Small Business Competitiveness Demonstration Program Act of 1988. Currently, the program includes the following NAICS codes: Construction (236,237,238), Non-nuclear Ship Repair (336611), Architectural (541310) and Engineering Services (541330) including Mapping and Surveying (541360, 541370), and Refuse and related services (562). Additionally, as part of the Competitiveness Demonstration Program, participating agencies periodically develop their own list of Targeted Industry Categories (TICs). The intent is to expand participation by small businesses in designated industries, through the use of set-asides, increased management attention, and specifically tailored acquisition procedures. Firms in these TICs should be encouraged to use teaming and

joint venture arrangements that enable them to effectively compete for contracts. This list is currently under review and will be distributed by OSDBU's when it is finalized.

Price Evaluation Adjustment for Small Disadvantaged Business Concerns. If a procurement is not otherwise set aside, price preferences may be used to facilitate an award to certified small disadvantaged businesses if the acquisition is for items or services in the authorized NAICS industry subsector or HUBZone small business concerns or to a firm that is both. For small disadvantaged businesses the current 10% price preference is known as a "price evaluation adjustment" (see FAR 19.1101). For HUBZone small business concerns, the 10% price preference is known as a "price evaluation preference" (see FAR 19.1307). If a firm is both a HUBZone small business concern and a small disadvantaged business competing for work in one of the designated NAICS industry subsectors, the two preferences can be combined entitling the firm to a 20% price evaluation preference (see FAR 19.1307(d)).

Set-Asides for HUBZone Small Business Concerns. If there is a reasonable expectation that proposals will be received from two or more small businesses certified by the SBA as Historically Underutilized Business Zone concerns and the award would be made at a fair market price, FAR 19.1305(b) requires that the award be set aside for HUBZone small business concerns.

HUBZone sole source awards. Contracting Officers may award contracts to HUBZone small business concerns on a sole source basis without considering small business set-asides provided the acquisition meets requirements of FAR 19.1306(a).

Awards to Native American Business, Tribal Governments, and Alaskan Native Corporations. According to the SBA regulations (see 13 CFR 124.109); a business owned and controlled by a qualifying Native American tribe may qualify as a small disadvantaged business or, as an 8(a) firm, if accepted into the SBA program. Such firms may also qualify as HUBZone small business concerns (13 CFR 126) and would thus be eligible for HUBZone sole source awards (see FAR 19.1306), HUBZone set-asides (see FAR 19.1305), and the price evaluation preference for HUBZone small business concerns (see FAR 19.1307). SBA's rules for businesses owned and controlled by recognized tribal governments and for Alaskan Native Corporations (ANC) that have been admitted to SBA's 8(a) program (see 13 CFR 124.109) include special provisions that do not apply to other 8(a) concerns. Specifically, the 8(a) competitive thresholds of $5,000,000 for acquisitions assigned manufacturing NAICS codes and $3,000,000 for all other acquisitions that normally apply to 8(a) acquisitions do not apply to awards made to 8(a) businesses owned by tribal governments or ANCs. That is, awards valued in excess of the competitive threshold may be made to such entities on a sole source basis without regard to the estimated cost of the acquisition (see FAR 19.805-1 and 13 CFR 124.506(a)(iii) and (b)).

Awards to service-disabled veteran-owned small business concerns. On December 16, 2003, President Bush signed the Veterans Benefits Act of 2003 (Public Law No. 108-183 at section 308). This new law requires federal agencies and departments to give special consideration to small business concerns owned and controlled by service-disabled veterans during federal contracting and procurement. An interim rule amending the FAR to implement section 308 of the Veterans Benefits Act of 2003 was published in the May 5, 2004 issue of the Federal Register. The interim rule can be found online at:
http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2004/pdf/04-9752.pdf

B. SMALL BUSINESS PROCUREMENT TOOLS

Mentor-Protégé/Teaming

A proven method of increasing the participation of small businesses in the award of prime contracts is the use of teaming arrangements. DOE and SBA have Mentor-Protégé programs that promote teaming. Contracting Officers who seek to increase contract awards to small businesses can use either the DOE or SBA Mentor-Protégé program. However, if award is made under the DOE program, the Department will not receive credit for a prime contract award as an 8(a) or small business award.

DOE's regulations, which provide for a Mentor-Protégé Program, are at DEAR 919.70. The DOE Mentor-Protégé Program is designed to encourage prime contractors to assist small disadvantaged firms certified by the SBA under Section 8(a) of the Small Business Act, other small disadvantaged businesses, women-owned small businesses, Historically Black Colleges and Universities (HBCU), other minority institutions of higher learning, and small business concerns owned and controlled by service disabled veterans in enhancing their capabilities to perform contracts and subcontracts.

DOE's Mentor-Protégé Program seeks to foster long-term business relationships between these small business entities and prime contractors, and to increase the overall number of these small business entities that receive contract and subcontract awards.

SBA's regulations (see 13 CFR 121.103(f)(3)(iii)) provide for a joint venture that may include a large business and an 8(a) firm which qualify as a Mentor and Protégé, respectively, under SBA's Mentor-Protégé Program (see 13 CFR 124.520). Such a joint venture will be recognized as small for the size standard corresponding to the NAICS code assigned to the procurement, and for purposes of 8(a) sole source procurements, as long as the participating Protégé 8(a) firm has not reached the dollar limit set forth at 13 CFR 124.519. Note: DOE Mentor-Protégé Program participants are not recognized as a small business in a joint venture arrangement.

Multiple Award Contracts

Solicitations for multiple award contracts (MACs) should be structured in a manner that will guarantee small business firms an opportunity to compete for prime contracts, which then will allow them to compete for individual orders under the contracts. The following techniques should be applied when using MACs to fill program requirements: (1) Contracting Officers should work closely with program officials and their Small Business Program Manager to identify small business opportunities early in the acquisition planning process; (2) Business strategies such as teaming arrangements should be encouraged in an effort to maximize opportunities for small businesses. Teaming arrangements not only increase business opportunities for small businesses, but also expand the skill mix of the team in some cases; (3) Multiple award contracts should be set-aside exclusively for competition among small businesses, to the greatest extent practicable; (4) If a total set-aside is not practicable, consideration should be given to identifying opportunities for a component of the statement of work to be set-aside for competition among small businesses; and (5) If a total or partial set-aside is not feasible, consideration should be given to reserving and specifying in the solicitation, a certain number of awards for small businesses.

Governmentwide Acquisition Contracts

A Governmentwide Acquisition Contract (GWAC)" is a task-order or delivery-order contract for information technology established by one agency for Governmentwide use. GWACs also are referred to as "multi-agency" or "omnibus" contracts. GWACs often simplify the acquisition process for the authorizing agency as the contracting agency may maintain, and make available to the authorizing agency, their list of pre-screened contractors capable of performing certain types of requirements. The Department of Commerce's GWAC is entitled "COMMerce Information Technology Solutions or "COMMITS" and can be found online at: http://www.commits.doc.gov/ . A searchable directory of GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for use by multiple agencies, can be found online at: http://www.contractdirectory.gov/.

C. SMALL BUSINESS MARKET RESEARCH

Sources Sought Synopsis. In accordance with FAR 5.2, Synopses of Proposed Contract Actions: Sources Sought Synopsis is a notice published in FedBizOpps at http://www.fedbizopps.gov/ to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. Although the notice includes "screening criteria", the criteria are not used to "qualify" potential sources or to exclude potential competitors. The purposes of screening respondents are to allow the government to assess the potential competitive base, to determine whether a "Justification for other than full and open competition" is required, or whether various set-asides are appropriate.

Source Lists. The Program Manager and the Contracting Officer should work together to develop a list of sources to which the solicitation is transmitted. The source list should include those potential offerors who have responded affirmatively to the FedBizOpps announcement and those potential offerors whose past and present experience -- in terms of performance capability, logistic support, financial status, production capacity, etc. -- have demonstrated that they could perform the contract and would be inclined to submit a proposal. If in response to the FedBizOpps notice, a source that is not on the list requests a copy of the solicitation, it will be furnished a copy.

Bidders List. FAR 14.204, Records of invitations for bids and records of bids, requires that each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting Officers shall review and utilize the information available in connection with subsequent acquisitions of the same or similar items. The file for each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

Other Market Research Efforts. FAR 10.002(b)(2) includes additional ways agencies can determine industry's capabilities such as: (1) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements; (2) Reviewing results of recent market research for similar or identical requirements; (3) Publishing formal requests for information in appropriate technical or scientific journals or business publications; (4) Querying the Governmentwide database of contracts and other procurement instruments

intended for use by multiple agencies available at www.contractdirectory.gov and other Government and commercial databases; (5) Participating in interactive, on-line communication among industry, acquisition personnel, and customers; (6) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources; (7) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line; and (8) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

D. SMALL BUSINESS ACQUISITION PLANNING

Advanced Planning Acquisition Team

DOE has established an "Advanced Planning Acquisition Team" (APAT), comprised of the Office of Procurement and Assistance Management, the OSDBU, the Small Business Administration Procurement Center Representative (SBA-PCR) and the element requesting the acquisition. The Contracting Officer will be refer to the OSDBU all proposed acquisitions over $3 million (new or extension requests of existing acquisitions) which have not been proposed for small business set aside. OSDBU will review the analysis and conclusions with respect to the proposed action to determine if it is justified to not set it aside and, when justified, identify strategies to maximize small business participation as subcontractors. These reviews will apply to all procurement requests, including M&O contracts, orders against GSA schedules, and orders against GWACS.

The Contracting Officer shall submit the request for review to the OSDBU allowing 10 business days for the review process. The request for review will include the following: copies of the procurement request and the statement of work; the source list; and a statement of the reason(s) it cannot be set-aside. [Note the APAT requirement does not apply to NNSA.]

Small Business Program Managers

Contracting activity small business program managers, designated by the Head of the Contracting Activity (HCA), should perform the following functions: (1) Participate in the planning of, and make recommendations as to set aside, for acquisitions over $100,000. The review process should address 8(a), HUBZone small business, small disadvantaged business, small business, service-disabled veteran-owned small business, and women-owned small business concerns; (2) Conduct the review before the issuance of the solicitation and complete the DOE Form 4220.2, Section 8(a)/Small Business Set-Aside Review; (3) Maintain copies of all completed DOE Form 4220.2, Section 8(a)/Small Business Set-Aside Review to the Small Business Program Manager for all requirements exceeding $1,000,000 [$100,000 applies to NNSA] ; and (4) Maintain liaison with the small business community.

Contract Bundling

The consolidation of smaller contracts that have been performed, or could have been performed, by small business concerns into a single contract awarded to a large business may have detrimental effects on some small businesses. As a consequence, Congress enacted legislation to regulate the consolidation of contracts. If contract consolidation is otherwise meritorious, such consolidated procurement should be awarded to the maximum extent practicable to small

business as specified in FAR Subpart 19.5. By definition, consolidated contracts awarded to small businesses are not bundled contracts. Likewise, M&O contracts are not bundled contracts. If a consolidated procurement is not set aside for small business, the Contracting Officer should rethink the acquisition strategy.

FAR 2.101 defines contract bundling as, "Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award to a small business concern due to- (i) The diversity, size, or specialized nature of the elements of the performance specified; (ii) The aggregate dollar value of the anticipated award; (iii) The geographical dispersion of the contract performance sites; or (iv) Any combination of the factors described in paragraphs (i), (ii), and (iii) of this definition." "Separate smaller contract" as used in this definition, means a contract that has been performed by one or more small business concerns or that was suitable for award to one or more small business concerns. "Single contract" as used in this definition, includes multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources (see FAR 16.504(c)); and an order placed against an indefinite quantity contract under a Federal Supply Schedule contract; or task-order contract or delivery-order contract awarded by another agency (i.e., Governmentwide acquisition contract or multi-agency contract). This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

Contracting activities are required to coordinate with the SBA Procurement Center Representative (SBA-PCR) on acquisition strategies or plans contemplating awards at or above $5,000,000.

Program offices proposing to bundle a contract must quantify identified benefits and explain how their impact would be measurably substantial. Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract value (including options) of the bundled requirements if the value is $75 million or less; or 5 percent of the estimated contract value (including options), if the value exceeds $75 million.

If the proposed acquisition strategy involves substantial bundling (i.e., any bundling that results in a contract with an average annual value of $5 million or more), the Contracting Officer must include the following in acquisition strategy documentation: (1) the specific measurably substantial benefits or the criticality of bundling to the Department's mission; and (2) plans to preserve and promote small business participation as prime contractors and efforts to include small businesses as subcontractors. Plans to preserve and promote small business participation in a bundled contract might include teaming by small business for the prime contract and may include the following: a factor to evaluate past performance under previous subcontracting plans; and inclusion of the clause at 52.219-10, Incentive Subcontracting Program in the resulting contract.

The APAT has been designated as the Department's focal point for the review of bundled acquisitions, excluding NNSA. DOE program offices intending to proceed with a bundled procurement must submit the acquisition to the Team for review to ensure conformance with the statutory requirements regarding bundling, and to identify ways to maximize the participation of small businesses in the procurement. Should the Team determine that the proposed bundling of a contract is not necessary and there is no agreement between the program office and the Team

about the need to bundle, the matter will be referred to the Deputy Secretary through the HCA and Senior Procurement Executive.

The Deputy Secretary, without power of delegation, may determine that bundling is necessary and justified if: (1) the expected benefits do not meet the thresholds identified in this section, but are critical to mission success; and (2) the acquisition strategy provides for maximum practicable participation by small business concerns.

Part II. Subcontract Awards to Small Business

HCAs must ensure that purchasing systems of contractors for the management and operation of major sites and facilities include small business outreach programs. Contracting Officers shall ensure: (1) that all M&O contractors, except small businesses, with contracts over $500,000 ($1 million if construction) have a small business subcontracting plan in place that has aggressive small business goals and (2) that subcontract reports, Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and (SF) 295, Summary Subcontract Report, are submitted in a timely and accurate fashion reporting the actual small business achievements. Additionally, Contracting Officers, in consultation with Small Business Program Managers, shall meet periodically with directors of contractor purchasing to review the status of the contractor's performance against its small business subcontracting plan.

A. SUBCONTRACTING PLANS

Every subcontracting plan should, at a minimum, support achievement of the agency-wide goals negotiated with the SBA. Subcontracting plans reflecting less than the agency-wide goals must be approved at the HCA level with a copy of the justification forwarded to the OSDBU. [Note this requirement does not apply to NNSA.] The Small Business Program Manager should review all subcontracting plans prior to acceptance. Small Business Program Managers should review, prior to submission through the Subcontracts Reporting System (SRS), and maintain copies of the SF 294 and SF 295.

B. SUBCONTRACTING PROCEDURES:

8(a) Pilot Program

Contractors responsible for the management or operation of sites and facilities are authorized to award subcontracts with a value of $5 million or less for manufacturing NAICS codes and $3 million or less for all other acquisitions on a noncompetitive basis to firms certified as participants by the SBA under its 8(a) program. Contractors may also reserve for competition among 8(a) firms requirements in excess of those thresholds. The contractor shall assure that awards are made at fair market prices and are identified as awards to 8(a) firms and Small Disadvantaged Businesses (SDBs) under the reporting provisions of the Small Business Subcontracting Plan clause. A special effort may be made to identify and make awards to 8(a) firms in HUBZones. If such a program is instituted, the contractor shall assure that awards are made at fair market prices.

HUBZone Set-Aside

Awards to HUBZone 8(a) Firms. For procurements under $3 million ($5 million for manufacturing NAICS codes) where an 8(a) certified firm can be identified and award can be made at a fair market price, an award may be made noncompetitively to a HUBZone 8(a). If the procurement is valued in excess of $3 million ($5 million for manufacturing) and two more HUBZone 8(a) firms can be identified, the procurement may be set aside for competition among HUBZone 8(a) firms.

Contractors responsible for the management and operation of DOE sites and facilities are authorized to use HUBZone set-aside and HUBZone sole source procurement techniques in the award of subcontracts under conditions similar to those applicable to the award of Federal prime contracts.

Women-Owned Small Business Evaluation Preference

Contractors responsible for the management and operation of sites and facilities are authorized to provide for an evaluation criterion that reflects a preference in the award of subcontracts to firms that propose to make significant use of women-owned small business (WOSB) concerns in the performance of the proposed subcontract.

Discretionary Set-Asides

Contractors responsible for the management and operation of sites and facilities are authorized to set aside purchases at any dollar value for award to small businesses and to make purchases valued up to $50,000 [$100,000 for NNSA contractors] on a sole source basis to small businesses. If such programs are instituted, the contractor shall assure that awards are to be made at fair market prices.

DOE Mentor-Protégé Program

Contracting Officers should encourage prime contractors to enter into Mentor-Protégé agreements with small businesses. DOE regulations that provide for a Mentor-Protégé Program can be found at DEAR 919.70. The Department's Mentor-Protégé Program seeks to foster long-term business relationships between small business entities and prime contractors, and to increase the overall number of small business entities that receive contract and subcontract awards.

Mentors recognized under the DOE Mentor-Protégé Program are authorized, subject to the best commercial practices and procedures required by DEAR 970.4402-2(d), to award noncompetitive subcontracts, of any dollar value, to their Protégés. Further, other site and facilities management contractors may award noncompetitive subcontracts to a Protégé of another DOE Mentor contractor if those awards are made at fair market prices. OSDBU maintains a current listing of active Mentor-Protégé agreements.

Part III. Other Considerations

A. SECURITY CLEARANCES

Much of the Department's work is classified and performance of that work requires cleared facilities and staff. For many small businesses, obtaining appropriate clearances may require background checks that often take three months to complete; whereas, large businesses are more likely to have personnel and facilities that already have the necessary security clearances. Contracting Officers should consider the following when processing procurements that involve classified work:

Security personnel should be consulted when preparing draft statements of work that may involve security requirements to assure that the security requirements are not overstated.

Solicitations should be issued and the award made sufficiently in advance to allow for the processing of required security clearances. The absence of existing personnel security clearances should not be the sole basis for denying an award. Offerors should be allowed a reasonable time for the workforce of the successful offeror to be cleared.

Solicitations that require security clearances could provide for the issuance of a notice to proceed when the security requirements have been satisfied.

Solicitations that require security clearances for the successful offeror should include a statement that employees who have been cleared by any Federal agency may meet the security requirements of the contract.

If the personnel security clearance required is level "L" (i.e., secret) it may be that a full background investigation would not be required, presenting no particular obstacle to participation by small businesses. If the clearance required were level "Q" (i.e., top secret, or higher) a background investigation would be required. Security directives provide for expedited background investigation where a level "Q" clearance is required.

Personnel security clearances may be expedited if the time required for standard processing will result in serious delay or interference in an operation or project essential to the Department's mission. In certain circumstances (e.g., urgent need) and under certain conditions (e.g., completion of psychological, drug, and polygraph tests), an interim clearance may be granted while a background investigation is being conducted.

Further information is contained in a pamphlet, *DOE's Security Requirements for Small Business Contractors*. It can be found at the bottom of the following web site:
http://www1.pr.doe.gov/small.html

B. SMALL BUSINESS STATISTICS

Collecting and Reporting Small Business Contracting Information

The systems for collecting and reporting small business award information are the Procurement and Assistance Data System (PADS - *DOE prime contract award data*), and the Subcontract Reporting System (SRS - *prime contractor subcontracting award data*).

The accuracy of the statistics reported in these systems is vital to the credibility of the Department's performance in this area, which is continually monitored by Congress, the SBA, trade organizations, small business advocacy groups, and other entities.

Improving the Accuracy of Small Business Information

HCAs should assure that proper quality control systems are in place to ensure the accurate reporting of small business data.

HCAs should include the accuracy of Federal contract data as a compliance standard for the contracting activities' Federal assessment program.

The Contracting Officer is responsible for taking all reasonable steps to validate an offeror's Small Business representation prior to any Federal prime contract award. [Note: NNSA Contracting Officers shall adhere to the FAR standard of self-certification.]

The Contracting Officer should refer to the SBA and the Office of the Inspector General any certification of small business status that is inaccurate and refer instances of misrepresentation of small business status to the DOE/NNSA Procurement Executive for consideration of suspension/debarment.

The Contracting Officer is responsible for ensuring that M&O contractors (1) establish reasonable controls to ensure small business subcontracting data reports are accurate, including data submissions to electronic data collection systems; (2) maintain current and accurate listings of small business suppliers to the extent such listings are used; (3) obtain certification of size status; (4) conform to the list of exclusions from subcontract reporting in the SBA document, *Goaling Guidelines for the Small Business Preference Programs for Prime and Subcontract Federal Procurement Goals & Achievements*, as provided by OSDBU; and (5) refer to the Contracting Officer instances of small business status misrepresentation.

C. CENTRAL CONTRACTOR REGISTRATION DATABASE

The Federal Government maintains an interactive web site to access the Central Contractor Registration (CCR) program at http://www.ccr.gov/. CCR is a small businesses database of with advanced search capabilities. It allows firms to register their company profile and allows Contracting Officers to search the database with results stratified by numerous qualifiers (e.g., WOSB, SDB, 8(a), HUBZone). The qualifiers can be combined to narrow the search results to very specific categories of small businesses having very specific qualifications. Contractors may also use the search capabilities of CCR.

D. SECRETARY'S SMALL BUSINESS AWARDS

DOE recognizes the outstanding small business achievements of its departmental elements, prime contractors and other organizations. Colleagues and headquarters personnel nominate outstanding individuals to receive the "Secretary's Small Business Awards." The awards program was established in 1978. The following awards are presented annually:

Element Awards:

(1) Award for the element that breaks out the greatest percent of small business awards from an existing facility management contract.

(2) Award for the element with the greatest percentage increase in awards to small business from the prior year.

(3) Award for the element with the highest percentage of diversity in its small business awards.

M&O Awards:

(1) Award for the M&O with the most significant small business teaming arrangements.

(2) Award for the M&O with the greatest percentage increase in awards to small business from the past year.

(3) Award for the M&O with the highest percentage of diversity in its small business awards.

Small Business Program Manager Awards:

(1) Award for the SB program manager who has made the most progress in promoting small business contracting at the HQ level.

(2) Award for the SB program manager who has made the most progress in promoting small business contracting at the field level.

(3) Award for the SB program manager who has made the most progress in promoting small business contracting at the M&O level.

Mentor-Protégé Award:

Award for the most outstanding mentor, protégé or mentor-protégé team.