

# **Testimony of Vietnam Veterans of America**



**Presented by**

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**Before the**

**House Committee on Oversight  
& Government Reform**

**REGARDING**

**Service Disabled Veteran Owned Small Business  
& Federal Procurement**

**February 7, 2012**

Mr. Chairman, thank you for the opportunity to present views here today. I appear on behalf of Vietnam Veterans of America (VVA), where I am on the National staff. I also appear as a representative of the Veterans Entrepreneurship Task Force (VET-Force.org), which is an alliance of a number of veterans' service organizations and military service organizations, as well as individual veteran owned or service disabled veteran owned businesses.

The VET-Force came together in early 1999 to work in cooperation with and in support of then Member of Congress Jim Talent of Missouri, the late Bob Stump of Arizona, Former Member of Congress (MC) Lane Evans, and Senators Bond and Kerry on the bill that became Public Law 106-50 in August of that year.

Everything that has happened in the world of veteran small business (particularly in regard to Federal procurement) since August 17, 1999 has essentially been to try and get the requirements of PL 106-50 properly implemented, with some degree of effective accountability on the part of those who have ignored or in some cases just plain refused to adhere to the law. Since that time VET-Force has been involved with a number of additional statutes, two Executive Orders, and seemingly countless entreaties to both appointed and career officials in the Executive Branch during the last three successive Administrations.

The efforts to focus attention on the 3% minimum of all Federal contracts that are directed to service disabled owned businesses, and the 3% of all subcontracts that is supposed to go to service disabled owned businesses range from assisting in oversight hearings, to working with Members of the House of Representatives and the Senate to devise a legislative "fix" that will be "the key" to securing full and proper implementation of the original law (both the "black letter law" and the House Committee Report, which then became the conference report when the Senate acceded to it), to meeting with officials of virtually every Department and agency in the Federal government at some point over the past decade plus.

VET-Force was even the driving force behind Executive Order 13-360, which laid out a structure, and accountability mechanisms, that would work, if it were adhered to by each Federal agency and department. What has been lacking for most of these dozen years has been sufficient attention by The White House, and the political will to hold people accountable for achieving *AT LEAST* the minimum called for in the statutes.

Sometimes it has seemed to some of us “old guys” who served in Vietnam that we will be likely to run out of time before we get this law fully implemented for those who will come after us. Nevertheless, we have persevered month in and month out to push for wider implementation, more transparency, and more accountability from those decision-makers who can make positive changes, if only they have the political will and/or other incentives to do so. It is the least we can do to ensure that these 21<sup>st</sup> century veterans have opportunities not afforded to our generation, but which can be afforded to this generation without adding to the either the deficit or the taxpayers’ burden.

With the assistance and leadership of this committee, it can be made clear to all Federal entities what their responsibilities are toward veteran entrepreneurs, and what repercussions will ensue if they do not choose their course of action wisely. The attention span (which in the case of some Federal entities has been akin to a five year old with ADD) can be brought into sharp focus by you and your distinguished colleagues, Mr. Chairman.

About 85% of procurement at the VA is done by the Veterans Health Administration (VHA). In 2006 we were “stuck” at roughly 1.8% of VA contracts going to Service Disabled Veteran Owned Small Businesses (SDVOSBs). We went to the Honorable Gordon Mansfield, then the Deputy Secretary of the U.S. Department of Veterans Affairs (VA) and the Chief Operating Officer (COO) of the VA. We asked him to put achieving the 3% prime contracts minimum, and the 3% subcontract minimum to SDVOSB as a major element in the evaluation criteria for each of the 21 VISN Network Directors.

We explained to Mr. Mansfield that we had had met consistently with the VISN Directors as a group and individually for more than five years, and progress was just not occurring in most of the VA Medical Centers around the nation. (All of the 152 VA Medical Centers, and all other VA medical services delivery points, fall under the operational control of one of these twenty one Directors.)

Most of these individuals were not particularly pleased by this requirement, especially as they would not receive a cash bonus if they failed to meet the 3% minimum in their procurement activities. I can report to you that the percentage of procurement from SDVOSBs went from the above mentioned 1.8% to more than 4% in about six months. Because this is still an element in those evaluations and such criteria has been added to the standards and elements of evaluating other senior personnel at VA under Secretary of Veterans Affairs Eric Shinseki, and VA continues to far exceed the minimums for SDVOSBs and for the added minimum for veteran owned small business (VOSB). The VA is to be commended for this effort and achieving the results they have so far.

Although the VA has not done nearly as well as they have publically proclaimed, they have done well, and in some ways have charted a reasonable course for other agencies.

It is our understanding that the Department of Defense (DOD), which has more than 60% of the procurement business done by the Federal government, is moving to ensure that the same by installing a similar requirement in the standards & elements for all decision-makers' evaluations at DOD per se, and for all of the services. We are hopeful that Secretary Napolitano will follow suit by installing this requirement both with the Coast Guard, falls under the Department of Homeland Security (DHS), and with the rest of DHS in all of their myriad activities and responsibilities.

The effort to fill Federal vacancies with veterans' preference eligible individuals in the past two years is commendable, but we must do more to assist the private sector. Bluntly, if veterans get into small business we tend

to hire other veterans and disabled veterans, and/or their spouse. So ensuring that every Federal entity does at least the MINIMUM procurement (the 3% and 3% should be treated as a “floor” and not a “ceiling”).

### **Quality Assurance for the SDVOSB Program**

As we move toward full implementation of the law, it is important that program integrity is preserved, and that the “phonies” get identified, and severely dealt with where appropriate. VET-Force led the charge in asking for assistance to screen out “rent –a-Vet” operations and other variations of essentially scam artists. I believe we are still strongly in favor of a quality assurance mechanism that works.

Unfortunately, what we currently have at VA is a very sad and dismal excuse for a quality control mechanism. The so-called (and re-named) Center for Verification & Evaluation (CVE) is arbitrary, capricious, appears to practice vendettas against the most vocal veteran business leaders, and is generally poorly run thus far. They do not report any statistics that would indicate quality measures, but then use the excuse of “we don’t listen to anecdotes” and isolated instances.

When they have turned down legitimate business after legitimate business for specious reasons, these are no longer isolated cases. The fact that there is no formal appeal and/or redress mechanism repositis far too much power in a single person who is the initial arbiter, then the appeal judge, and then the final word. This “process” is so bad as to make the mess at the Compensation & Pension service, and that huge backlog of cases, seem good by comparison.

As this is not the primary reason for this hearing, this is all I will note about this matter at the moment. However, we do respectfully request that you and your esteemed colleagues look into this issue of bureaucracy run amok in the coming months. Both all of us at VVA, and at VET-Force, stand ready to assist you in any way we can.

There are some actions that we do believe would make it easier for both SDVOSBs to get contracts, and for contract officers and other decision makers to “reach” SDVOSBs in the crush of trying to satisfy many “customers” that clamor for their attention in this process. We have noted some modest proposals that would materially help to achieve more complete implementation of the law. These proposals are distillations of many discussions with contract officers, program decision makers, veterans, and representatives of virtually all who have a stake in this process.

### **I. Authorization to Make Direct Awards to SDVOSBs**

Contracting officers don’t have the authority to issue direct awards to a SDVOSB of their choosing, under the Simplified Acquisition Threshold as is allowed under the Small Business Act for the 8a program. At present, contracting officers must always refer to the Rule of Two as introduced under PL 108-183 and contained in Part 19 FAR, and the Code of Federal Regulations (CFR) 13 CFR, Part 125. The Rule of Two states if a contracting officer knows of two or more SDVOBs that can do the work, then the requirement must be competed. But the law also states that if the contracting officer only knows of one SDVOB that can meet the requirement, a sole source award CAN BE Made. Yet without the authority to make direct awards to SDVOSBs, contracting officers are reluctant to even use the Sole Source authority permitted under the law.

Meeting with and talking with Federal contracting officers, we have found that they are often under pressure to get certain requirements awarded quickly, and although there is a SDVOB that can do the job, they routinely go to 8(a) firms. Under the SBA’s 8a program, contracting officers are allowed to make direct awards even if there are other 8a firms available to do the work. In these cases, the Government does not have to take time to consider restricted competition. Thus, the SDVOB suffers and the government agency loses an opportunity to add to its 3% Goal under the law.

**II. All Agencies Should Be Compelled to Comply with Executive Order 13-360**

First let's go over the Presidential Executive Order, #13-360 that was issued to direct agencies to more effectively implement the 'mandatory' legal requirement to procure 'not less than' 3% of their goods and services from Service-Disabled Veteran Owned Businesses and to do so by reserving more procurements exclusively for SDVOBs.

If agencies would actually adhere to the Executive Order, as stated, they would be much more likely to achieve the minimum 3%. Here's why.

The Order calls for each agency to develop a 'written' Strategic Plan that will provide details and guidance as to how they will proceed to increase contracting opportunities for SDVOBs and make the plans publicly available. The Order was issued in 2004, but when some agencies made their plans public in May 2006, over half of the plans were incomplete and some were poorly developed.

Agencies are not only supposed to make their plans publicly available, but they are also required to report annually to the Administrator of the SBA on how well they did or did not do each year. But only a few agencies have even attempted to submit an annual report partly because the SBA has not followed through on their part and provided proper guidance of where, when, and how to submit the reports.

Each agency should now have designated a Senior-Level Official to be responsible for developing and implementing the agency's strategy. But most agencies never designated anyone, some designated someone but they were not a Senior-Level Official, and then some had one but after they left the agency a new one was never appointed.

Significant elements of the strategy and the agency's achievements were to be incorporated in the performance plans of the Designated Senior-Level Official, the Chief Acquisition Officer, and the agency's OSDBU Director (Office of Small and Disadvantaged Business Utilization). But to date, some officials in some agencies seem to be still thinking about how to

avoid that directive. The VA under the former Dept. Secretary, Gordon Mansfield, issued an internal memo to all department heads to follow the Executive Order. And oh by the way, the VA is one of the few agencies that have exceeded the 3% goal for more than one year.

The “Senior Designated Official” (SDO) needs to be an official that has “line authority.” Ideally, this SDO should be the Deputy Secretary or Deputy Director or whomever is the Chief Operating Officer for the entity. People may not listen to the head of the OSDDBU, but they will certainly respond to the person who is in charge of their annual job evaluation.

Each agency’s Strategic Plan should include specific guidance on the following:

- a. How they will reserve agency contracts exclusively for SDVOBs;
- b. How they will encourage SDVOBs to compete for agency contracts;
- c. How they will encourage the agency’s large prime contractors make subcontract awards to SDVOBs and how they will monitor and evaluate their efforts to do;
- d. How they will train their agency personnel about the laws and policies related to the Veterans Federal Procurement Program; and
- e. How they will disseminate information that will educate SDVOBs to the agency’s contracting process.

Most agencies have simply left these tasks up to their Offices of Small and Disadvantaged Business Utilization. But based on the agency’s budget, some OSDDBU offices have more staff and resources than others. Some send out representatives to small business conferences to distribute information, but many simply rely on their websites and hopes that veterans will contact the small business office.

Training of agency personnel does not appear to be consistent, but many agencies rely on the Defense Acquisition University’s (DAU) online course to provide training on the veterans’ federal procurement program. However, the DAU training merely restates the legislation and does not



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really clarify how to apply the laws. Nor does it address the specific agency policies or directives that also have an influence on how the laws are applied.

And seemingly, very few agencies are doing anything to encourage their large Prime contractors to award more subcontracts to SDVOBs. When you talk to contracting officers or acquisitions personnel, they all say that they are challenged by the enormous task of monitoring the subcontracting plans of the agency's large primes while also having to meet the demands of new requirements. So very few penalties, if any, are being imposed on the large Prime contractors for failing to comply with their subcontracting plans.

### **III. Stop the Misuse of Contract Bundling**

It has been noted in a number of research reports that 'when bundling occurs, small business loses.' It is expected that the number of bundled contracts will increase over the next few years. The effects of bundling are obvious. If an agency has 5 requirements – each could be done separately by a small business. But if those same 5 requirements are bundled together as one – it will probably take a much larger company to perform all 5 together. Thus one large company gains, and 5 small companies lose.

Over the past 15 years, the number of contracting personnel has declined, while the number of contract actions has increased. The federal budget also continues to increase and now we are confronted with the additional burden of contracting out trillions of dollars to repair an economy torn apart by the unscrupulous practices of Wall Street Bankers and Investment Brokers. So it's easy to see why bundling is continuing to be such a widely use practice.

But while we try to repair our economy we should also rebuild its integrity. If small business is the engine that fuels our economy then we must strengthen it rather than to continue to weaken it. If contract bundling is allowed to continue – unregulated – even the Department of Defense with its huge budget, will not be able to even achieve the 23% minimum small business goals.

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Contract Bundling must not be allowed to continue in this unregulated manner.

### **Additional Recommendations to Consider**

In addition to strengthening the SDVOSB program by enforcing Executive Order 13-360, discontinuing the misuse of Contract Bundling, adding authorization for direct awards non-competitively, here are some additional recommendations to consider:

1. Small Business Subcontracting Plans submitted by Large Primes should be monitored more closely. Liquidated damages or the elimination of future contracts should be imposed for those Large Primes that fail to use the small businesses that were included in their subcontracting plans at the time of contract award unless they have a valid reason. Contracting officers should be held accountable for their lack of participating in this process.
2. Provide a Price Evaluation Preference of 10% for SDVOBs in acquisitions conducted using full and open competition.
3. Direct the SBA Procurement Center Representatives (PCRs) and Commercial Marketing Representatives (CMRs) to allocate more time assisting SDVOBs and oversight of agencies failing to achieve the 3%. And have SBA increase the number of PCRs.
4. Have the Office of Federal Procurement Policy issue a statement to clarify that the 23% Government-wide small business goal is only a 'Minimum' and that agencies are allowed to surpass the 23%. And increase the Government-wide small business goal to 28%.
5. Close the loopholes in the GSA schedule (FAR Part 8) wherein large businesses are allowed to take away business intended for small businesses.

Thank you, Mr. Chairman, to you and your distinguished colleagues for your leadership and commitment to veterans by holding this hearing. I would be pleased to answer any questions.

**VIETNAM VETERANS OF AMERICA  
Funding Statement  
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The national organization Vietnam Veterans of America (VVA) is a non-profit veterans' membership organization registered as a 501(c) (19) with the Internal Revenue Service. VVA is also appropriately registered with the Secretary of the Senate and the Clerk of the House of Representatives in compliance with the Lobbying Disclosure Act of 1995.

VVA is not currently in receipt of any federal grant or contract, other than the routine allocation of office space and associated resources in VA Regional Offices for outreach and direct services through its Veterans Benefits Program (Service Representatives). This is also true of the previous two fiscal years.

The Veterans Entrepreneurship Task Force (VET-Force) does not accept grants from any Federal entity. VET-Force does often hold monthly meetings and conference calls at agencies to allow for that agency to explain their structure and possible opportunities for contracting with veteran owned businesses.

For Further Information, Contact:

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## **Richard F. Weidman**

Richard F. “Rick” Weidman is Executive Director for Policy and Government Affairs 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, 23<sup>rd</sup> 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 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 Readjustment 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. He currently serves as Chairman of the Veterans’ Entrepreneurship Task Force VET-Force), which has become the principal collective voice for veteran and disabled veteran small-business owners. In 2002 he was named as one of the most effective small business advocates in Washington by INC. magazine.

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.