



Fraud Prevention Act Moves to House

S. 633 Requires Agencies to Verify SDVOSB Status

(Washington, DC -- SDVOSB News Services, September 22, 2011) — The “Small Business Contracting Fraud Prevention Act of 2011” (S. 633) was passed by the Senate Committee on Small Business and Entrepreneurship with unanimous consent on September 21. The bill mandates that all federal agencies verify SDVOSB status through the Veterans Administration’s VetBiz database of certified SDVOSB. All federal Contracting Officers would verify SDVOSB status of businesses that bid on government contracts *before* contracts are awarded.

The Senate Committee, chaired by Senator Mary Landrieu (D-LA), referred the measure on September 22 to the House Small Business Committee, chaired by Representative Sam Graves (R-MO). Senate 633 was introduced on March 17, 2011 by Senator Olympia Snowe (R-ME).

After Senate passage of the bill, Senator Snowe commented in a press release: “This legislation is a critical step toward ensuring all our nation’s [SDVOSB] compete fairly in the Federal marketplace. . .”

Currently, businesses ‘self-certify’ that they are owned and controlled by SDVOSB and eligible for contracting preference. This legislation would eliminate self-certification, reserve federal set-aside contract opportunities for bona fide SDVOSB and reduce the pool of companies bidding on these contracts. At this time, only the Veterans Administration requires verification of SDVOSB before a contract is awarded.

“Self-certification — the ‘honor system’ — has always been a tough pill for me to swallow,” said Ralph Baxter, a certified disabled veteran small business owner from Frederick, Maryland. “Anyone can claim to be a disabled veteran and get away with it. The federal government is getting closer to the contracting preferences that were mandated [by PL 106-50] for disabled veterans.”

The bill also toughens penalties for falsification in the SDVOSB set-aside programs by increasing criminal prosecutions, suspensions and debarments.

On the Hill	2	Hearings in the House Small Business Committee have not been scheduled.
Featured Interview	3	Not all SDVOSB or Veteran Service Organizations are pleased with S. 633,
Editorial	4	many of which are politically well-connected. The language of the bill leaves

much in question, such as the capability for the Veteran’s Administration to adequately develop a sustainable certification system. (S. 633, cont. page 5)

GAO Decision Places SDVOSB Over Federal Supply Schedule, page 3

VA Guidance: Ignore GAO Recommendation, page 16

ON THE HILL



Legislative Update

S. 1154: Honoring Promises to Service-Disabled Veterans Act of 2011

Requires transparency for Executive departments in meeting the Government-wide goals for contracting with small business concerns owned and controlled by SDVOSB.

Introduced: June 7, 2011 by Senator Max Baucus (D-MT)

Co-sponsors: Senator David Vitter (R-LA)

Referred: Senate Committee on Small Business and Entrepreneurship

S. 1184: To amend title 38, United States Code

To revise the enforcement penalties for SDVOSB misrepresentation

Introduced: June 13, 2011 by Senator Maria Cantwell (D-WA)

Co-sponsors: None

Referred: Senate Committee on Veterans Affairs

Companion Bill: HR 1657

Introduced: April 15, 2011 by Mr. Marlin Stutzman (R-IN)

Co-sponsors: None

Activity: May 23, 2011: passed in the House of Representatives by roll call vote

Referred: House Veterans Affairs Committee

HR 240: To amend title 38, United States Code

Requires (current law authorizes) a Department of Veterans Affairs (VA) contracting officer to award contracts to small businesses **owned and controlled by veterans using other than competitive procedures** for contracts above the simplified acquisition threshold.

Introduced: Jan 7, 2011 by Mr. Robert Filner (D-CA)

Co-sponsors: André Carson [D-IN7], Jim Gerlach [R-PA6]

Referred: House Veterans Affairs Committee, hearings held by Subcommittee on Economic Opportunity

Related Bills: S. 1110, Small Business Fairness Act of 2011

Amends the Small Business Act to permit agencies to count certain contracts toward contracting goals.

Introduced: May 25, 2011 by Senator Mike Enzi, (R-WY)

Co-sponsors: Senator Robert Casey (D-PA)

Referred: Senate Committee on Small Business and Entrepreneurship

"The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive how veterans of earlier wars were treated by their nation."

George Washington

GAO Decision Rules in Favor of SDVOSB Over Federal Supply Schedule

(October 11, 2011 SDVOSB News Services, Washington, DC) — The Government Accountability Office today ruled in favor of Aldevra, a service disabled veteran owned small business (SDVOSB), in a protest involving the use of non-mandatory Federal Supply Schedules instead of SDVOSB in awarding a contract.

From the report: "The provisions of both the VA Act and the VAAR are unequivocal; the VA "shall" award contracts on the basis of competition restricted to SDVOSBs where there is a reasonable expectation that two or more SDVOSBs will submit offers and award can be made at a fair and reasonable price. Thus, contrary to the agency's position, the VA Act requires, without limitation, that the agency conduct its acquisitions using SDVOSB set asides where the necessary conditions are present.

Aldevra, of Portage, MI, filed two protests against the VA on June 30. The company specializes in kitchen hardware products.

"It's about time!" exclaimed Rodney Marshall, Aldevra President & CEO, "The VA has gotten by with not complying with the law to put veteran businesses first for far too long. I am honored to have represented my fellow veterans in seeking justice. This decision will open opportunities for thousands of veteran small businesses and save the VA money. It's a win-win and Marines are all about winning. Semper fi!"

Lynn H. Gibson, Chief Counsel for GAO wrote: "We see nothing in the VA Act or the VAAR that provides the agency with discretion to conduct a procurement under FSS procedures without first determining whether the acquisition should be set aside for SDVOSBs. ***The provisions of both the VA Act and the VAAR are unequivocal; the VA "shall" award contracts on the basis of competition restricted to SDVOSBs*** where there is a reasonable expectation that two or more SDVOSBs will submit offers and award can be made at a fair and reasonable price."

The first protest was over "a tilting skillet/braising pan and one countertop electric griddle," the second over "two griddles and one food slicer."

The ruling set a precedent for the VA, SDVOSB and VOSB: SDVOSB comes first in the pecking order for consideration of contracts if there are two or more companies that can do the work. VOSB second in line.

(GAO Decision, cont. page 6)

Editorial

As a very young child, most kids are frequently asked, “What do you want to be when you grow up?” At the age of eight, my response was, “An engineer for the government.” You can imagine the confusion this caused, frequently prompting the follow-up question, “Why is that?” Oddly enough, my interest in math spurred the response, “I am going to make a difference in the way tax dollars are spent.”

Although I initially dreamed of turning my engineering skills into those of a NASA astronaut, as fate would have it, I was destined to be in hospital facilities management. I gravitated toward the VA, perhaps following in my family’s footsteps, as my grandfather was the first Merchant Marine to receive a burial in his local Federal Cemetery, my uncle is buried in the Pu’owaina Crater “Punchbowl” in Honolulu, HI, and my father and youngest brother are Veterans.

My service to the United States was not in the form of military duty. This November 16, 2011, would have been my 11th anniversary as an engineer for the United States Department of Veterans Affairs (VA). In February 2011, I received a commendation for outstanding performance. In fact, for each of my ten years of work as a VA engineer, I received outstanding ratings on my performance appraisals. I am truly proud of my service and dedication to the VA. Unfortunately, on August 12, 2011, my VA career suffered a tragic turn of events.

I started working at the Greater Los Angeles Healthcare System (GLAHCS) Hospital as a project construction manager in January of 2008. It was not long afterward that I began witnessing what seemed to be favoritism toward several contractors not listed on the VETBIZ web site of eligible Service-Disabled Veteran contractors. In December 2009, I reported to the VA Office of Inspector General (OIG) that a project had been taken away from a Service-Disabled Veteran and awarded to a company that was not a Service-Disabled Veteran-Owned small business (SDVOSB).

In March 2011, I discovered that several companies that were not SDVOSB were being awarded contracts, even though the Federal Government required these contracts be given to a SDVOSB. Furthermore, the awarded non-Veteran companies were not listed on the VETBIZ website. I was told they were indeed on the list and that I should look them up using their DUNS number, yet I could not find them in this manner either. One of the Contracting Officers replied to me that he also could not find these companies. They were not listed! I continued to witness that these non-Veteran companies were still receiving contracts set aside for SDVOSBs.

I reported this to the OIG and my supervisor, and filed for Whistleblower’s protection. However, instead of verifying the allegations I made that potential fraud was happening at the VA, my supervisors terminated my Contracting Officer Technical Representative (COTR) duties on March 30, 2011, immediately following my report. No one told me why my duties were revoked. Even after this reporting, VA employees continued to defend the contractors I had reported. I was harassed and moved to an office away from my coworkers.

Two weeks after the initial report, I was informed on April 6, 2011, that, “We’re trying to figure out if you should be fired.” I was given a letter that same day from another VA contracting office, that recommended my COTR duties be revoked, instead of thanking me for bringing up all the wrongdoings I was observing and/or suspecting were occurring at the VA.



Kenneth Rippetoe

Editorial, continued page 6

Could it be Any Clearer?

Hank Wilfong

No, it could not be any clearer. Rodney & Maggie Marshall, Aldevra struck the blow that we SDVOBs have been waiting for. They protested and won a GAO decision that could not be any clearer. In the “Matter of Aldevra” Item B-405271; B-405524, GAO’s “Recommendation” is listed below:

“We recommend that the agency cancel solicitation RQ-1170 and re-solicit its requirements using a SDVOSB set-aside. We recommend that the agency conduct a reasonable market research regarding its requirements under solicitation 179-0306, and, that it cancel solicitation 179-0306 and re-solicit its requirements using a SDVOSB set-aside if it determines that there are two or more SDVOSB concerns capable of performing the requirements.

We also recommend that the agency reimburse the protester pursuing the protests. Aldevra’s certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protests are sustained.”

And, the precedent of VETS First has been established at VA.

Let the contracting begin...



(S. 633, from page 1)

VetBiz, a publicly-available database of veteran owned businesses, is operated by the VA’s Center for Veterans Enterprise (CVE). As mandated by the Small Business Verification Act, the VA must certify all veterans and service disabled veterans in the VetBiz database and eliminate those that do not meet certification requirements.

Concerns arise with some SDVOSB that CVE is not prepared for S. 633. In the opinion of many in the SDVOSB community, CVE is meeting the verification mandate satisfactorily. Many SDVOSB companies previously certified as bona fide have been stripped by CVE’s process.

Given the responsibilities of the verification process that were mandated by the Small Business Verification Act, CVE has not seen an increase in funding to meet the task.

S. 633 REQUIRES that all federal agencies verify SDVOSB status before releasing a contract to an SDVOSB, which could overwhelm CVE, making the current process even more burdensome for SDVOSB.

S. 633 takes the verification requirement to a new level, mandating that all federal agencies verify SDVOSB status before awarding contracts. Some contend that CVE would be overwhelmed with the responsibility of government-wide verification and is not prepared for S. 633. Others argue that CVE is responding satisfactorily to its internal verification mandate and is capable of a government-wide verification. S. 633 includes language to allow the VA one year to certify it has the “capacity and resources” to carry out the mandate set-forth in the legislation. The requirements DO NOT take effect until the Secretary of Veterans Affairs certifies the VA has the resources to carry out the additional responsibility.

No argument can be made to maintain the ‘self-certify’ SDVOSB contract set-aside policy within federal agencies. Thousands of fraudulent companies have self-certified SDVOSB status for corporate gain. Tens if not hundreds of billions in taxpayer dollars have been awarded to companies falsely claiming to be SDVOSB. Hundreds of bona fide SDVOSB

(S. 633 Analysis cont. pg 12)

Editorial, from page 4

On May 19, 2011, I was issued a Proposed Removal letter, and on May 26, 2011, I was issued a letter barring me from the facility. This was prompted by several VA employees, witnesses to the same observations that I had made, supporting the non-SDVOSB by informing them that I was reporting on them. One of the contractor's employees wrote to VA management that he had heard through VA employees that I had been looking for evidence against the company.



Ironically, the message was written using the parent company's email address and signed as the company that was not listed on the VETBIZ website. This evidence was used against me for dismissal, which I turned around and reported to the OIG.

All of the harassment and letters were retaliatory and aimed at restraining my right to report what I had observed and believed were violations in direct infringement, by the Administration, of 5 USC §2302(b)(8). Instead of removing the threat of dismissal, the facility made the decision, issued to me on August 11, 2011, that August 12, 2011, was my last day.

Since my dismissal, I have started a non-profit organization, *One with the Water*.™ (www.onewiththewater.org), in which I am teaching Veterans and Service-Disabled Veterans, and children with special needs, such as Autism Spectrum and Asperger's Syndrome, how to swim.

After the March 21st filing of Whistleblower's protection, I still have not received notice that it has been granted. I was dismissed while on sick leave granted to me under the Family Medical Leave Act, due to the harassment and anxiety they were causing me. The Merit Systems Protection Board has six months to make its decision of my appeal of the dismissal. In the meantime, I continue to fight for the change necessary to allow Service-Disabled Veterans the fair competition they deserve

and the sole-source contracts Congress intended for them to be awarded. The Congressional Hearing of July 28, 2011, indicated that change would be forthcoming. The VETBIZ deletion of 70% of their database the week of Sept. 20th, 2011, was a step in the right direction, but we still have more to do. And how do the Service-Disabled Veterans recoup the approximately \$13 billion that went to those 18,800 companies now deleted from the database?

Stand up! Fight with the freedom the Veterans have provided us!~~VLM



(GAO Decision, from page 3)

And GAO's final word:

"We recommend that the agency cancel solicitation RQ-1170 and re-solicit its requirements using a SDVOB set-aside. We recommend that the agency conduct reasonable market research regarding its requirements under solicitation 179-0306, and that it cancel solicitation 179-0306 and re-solicit its requirements using a SDVOB set-aside if it determines that there are two or more SDVOB concerns capable of performing the requirements. We also recommend that the agency reimburse the protestor the costs of filing and pursuing the protests.

Aldevra's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. Id,%21.8 (f)(1).The protests are sustained."

**SEE PAGE 15 for
official VA statement
and latest develop-
ments**





*(Special to
VetLikeMe)*

National Veterans Owned Business Conference New Orleans, LA, September 22, 2011

The Department of Veterans Affairs, in partnership with the Veteran Federal Interagency Council, hosted the National Veterans Small Business Conference in New Orleans, LA August 15-18, 2011. This was the largest Veterans' business event in the country, with over 4,300 participants. This year's conference was ground-breaking in that it offered unprecedented opportunities for Veteran business owners to connect directly with procurement decision makers.

VA alone brought more than 200 program and procurement managers to meet with small businesses. The event also offered far greater opportunities for small businesses to receive necessary training that built their capacity to add value to federal agencies. The number of training sessions increased five-fold from previous years. Another outcome of the conference was the launch of VetGovPartner.com.

This new matchmaking portal and social networking site is designed to facilitate matchmaking, partnering and networking among service-disabled Veteran-owned and Veteran-owned small businesses, large businesses and Government partners.

This site will also feature forecasting of opportunities, sources sought notifications and conference information.

It is anticipated that in FY 2012 it will be linked directly to VIP for ease of access.

The success of the conference was due in large measure to the support from VA's senior leaders. The extensive presence of VA senior leaders including Secretary Shinseki, Deputy Secretary Gould, including Chief of Staff Gingrich, all three Under Secretaries, as well as the Chief Information Officer and the Chief Acquisition Officer helped to promote the strong showing of government managers at the event.

Both the Department of Homeland Security (DHS) and the Department of Defense (DoD) showed support to the event as Deputy Secretary Lute from DHS and Principal Deputy Under Secretary of Defense for Acquisition, Technology and Logistics Kendall spoke. The National Veterans Conference also promoted jobs for Veterans and provided both employment opportunities and benefits information to Veterans at a VA Open House.

In order to achieve the highest return on investment, we also coordinated eight White House Business Council roundtables, each focused on National Veterans Conference participants from a particular state. In addition to participation by VA Executive Leadership, Deputy Secretary Lute, DHS, hosted a roundtable.~~

VetLikeMe

(submitted by VA Public Affairs)

Featured Interview

Mr. Sam Graves (R-MO)

Chairman, House Small Business Committee

We interviewed Mr. Graves from Washington on October 12, 2011

VetLikeMe: Thank you, Mr. Graves for your time. What do you believe is the role that small business can play in society today given the state of the economy?

Chairman Graves: Small businesses are the cornerstone of the American economy. The answer to our country's long-term unemployment problem lies in the growth of these small businesses. They are our job creators, and it is imperative that we create an economic climate that allows them to thrive.

VLM: The government-wide contract set-aside policies for service-disabled veteran owned businesses (SDVOSB). Should the minimum procurement levels of federal agencies remain at 3% of total agency procurements expenditures? If not, please explain why not.

Chairman Graves: I fully support the government-wide goal of awarding 3% of all prime contract dollars to service-disabled veteran owned businesses (SDVOSB). In FY 2010, the Obama Administration claims that it awarded 2.50% of all prime contract dollars - or \$10.793B - to SDVOSB, but they came to those number only after excluding over \$100 billion in prime contracts from the goal base. They claim those contracts aren't suitable for award to small businesses. However, if you follow the explicit instructions of the Small Business Act and include all prime contract dollars, you'll find that the Administration awarded \$11.162 billion to SDVOSB, which is 2.08% of prime contract dollars. That means that of the \$100 billion the Administration considers unsuitable to award to small businesses, SDVOSB won nearly \$500 million in

contracts. It also means that SDVOSB should have won another \$4.94 billion in prime contracts. I want to focus on making sure that SDVOSB have the opportunity to compete for the additional \$4.94 billion.

Likewise, I support the goal of awarding SDVOSB at least 3% of all subcontracted dollars from federal prime contracts. In FY 2010, only 1.7% of subcontracts were awarded to SDVOSB. The government needs to hold large prime contractors accountable, and ensure that SDVOSB get at least 3% of these dollars.

VLM: Why should that minimum threshold be maintained by all federal agencies?

Chairman Graves: Each federal agency buys different goods and services to support their different missions. Maintaining the 3% prime and subcontracting goals at every agency ensures that there are diverse contracting opportunities available to all types and specialties of SDVOSBs.

VLM: Should federal agencies be penalized for not meeting this 3% minimum of total procurement dollars?

Chairman Graves: During the last Congress, I supported legislation that would hold agencies accountable for not meeting the 3% goal or any of the small business goals. I intend to introduce similar legislation in this Congress that would state that any agency that fails to meet all of its goals could not give bonuses to any of its Senior Executives.



(Graves, cont. page 10)



Frauds

Bogus Kansas City SDVOSB company busted for bilking millions of taxpayer dollars. Silver Star Construction, of Blue Springs, MO was indicted earlier this year for SDVOSB falsification.

Video of news report:

<http://www.fox4kc.com/news/wdaf-construction-company-owner-charged-with-lying-about-military-record-to-get-contracts-20110616,0,3447104.story>

The nationwide coverage of Silver Star reached the U.S. Senate. Claire McCaskill (D-MO), Chair of the Armed Service Committee's Subcommittee on Readiness and Management Support investigates contracting abuses.

"It was clearly over the top," McCaskill said. After examining the issues, McCaskill wrote a letter to Eric Shinseki, Administrator of VA, signed by Senator Patty Murray, Chair of the Senate Veterans Affairs Committee.

McCaskill continued: "If the (VA) doesn't comply with these requests, we'll request a hearing"... Despite existing authority to debar businesses that have been identified as fraudulent, we have been told that VA continues to do business with some of these firms."



US Government Recovers Resources From Contractor Guilty of SDVOSB Fraud

(Washington, DC—September 22: A Michigan Company was fined \$800,000 for falsely claiming SDVOSB contract preference on NASA contract bids. Lydia Demski, owner of Deerpath, Corp., Scope Services Inc. and American Nuclear Resources Inc. settled the suit filed under the False Claims Act.~~

VetLikeMe

Short Takes

If you are unable to open these web pages by right-clicking on the link, COPY and PASTE the link into your browser address field.

Hire a vet, get a tax credit: As the wars in Iraq and Afghanistan wind down, more than 1 million service members are projected to leave the military between 2011 and 2016.

<http://tinyurl.com/3pzsu23>

<http://tinyurl.com/4xzq2pc>

H. R. 1424 —To improve the Federal Acquisition Institute. Training in procurement for contracting officers. The July 25 Congressional Hearing shot arrows at poorly trained COs in the VA acquisition system. From *Government Executive Magazine*:

<http://tinyurl.com/4xy3ghq>

Unemployment payments to service members fresh out of the military have doubled since 2008, a sign that veterans are returning from war to an increasingly tough job market. Senate Veterans Affairs Committee Chair Patty Murray (D-WA) is pushing legislation that would help troops enter the civilian workforce; DOD would provide exit training.

<http://tinyurl.com/3mdfcgs>

Dr. Winslow Sargeant to be the next Chief Counsel for Advocacy at the U.S. Small Business Administration (SBA) Office of Advocacy.

<http://tinyurl.com/3rs53d8>

Using GI Bill for Startup Companies? From World War II to the wars in Iraq and Afghanistan, the federal government has been paying to send war veterans to college. Why not start a business with it?

<http://tinyurl.com/3hoh3j4>

(Graves, from page 8)

VLM: In October 2009, when you were the Ranking Member of the Committee, the Government Accountability Office released a report on rampant fraud existing in the SDVOSB program.

Has the Committee made any progress toward eliminating fraud stemming from this GAO report?

Chairman Graves: The federal government must do a better job of ensuring that legitimate small businesses and SDVOSB are receiving the prime contracts the Administration takes credit for awarding to small businesses. While I understand that a contract may have been awarded to a small business who has grown since the initial award, or to a firm later purchased by a large business, I also think that the agencies are guilty of sloppy recordkeeping, and some businesses are indeed committing fraud. We should celebrate the success of businesses that grow, and the Department of Justice should prosecute any business fraudulently misrepresenting its size. I hope the proposed rule issued by SBA on October 7, 2011 will make it easier to prosecute fraud.

I will continue to work to fight against fraud and ensure that small firms, and especially SDVOSB, are able to fairly compete for federal contracts.

VLM: Representative Velazquez condemned self-certification as the chief cause of the widespread fraud in all agencies with regard to SDVOSB. Do you think that self-certification is mostly responsible for the injustice? Do you think other aspects of the procurement system combined with self certification led to fraud?

Chairman Graves: Self-certification is a difficult issue. No one wants to see fraudulent businesses taking opportunities away from legitimate SDVOSB. However, I am also conscious of the fact that small businesses already bear the brunt of compliance with regulations, and I want to proceed cautiously before putting another burden on legitimate SDVOSB. My staff has met with representatives of nearly 30 Veterans organizations who have raised concerns that verification by the Department of Veterans Affairs (VA) can be time-consuming, that the Beneficiary Identification Records Locator Subsystem (BIRLS) fails to capture medical retirees and other qualified individuals, and that decisions on ownership and control are not in keeping with the Small Business Act. Before Congress considers charging the VA with verification for all SDVOSB, I want to make sure that the VA has the capacity and systems to efficiently verify status, and that determination of small business status is done in accordance with the Small Business Act.

VLM: It's well documented that veterans hire veterans. Given this, would that be reason enough to penalize federal agencies for NOT meeting the 3% minimum.

Chairman Graves: Congress has repeatedly found that small businesses, including SDVOSB, create jobs, innovate, promote competition, and support a healthy industrial base. Compliance with the Small Business Act should not be discretionary, which is why I previously authored, and will again introduce, legislation to penalize senior executives who fail to meet the small business and SDVOSB goals.

VLM: The dismal unemployment rate of returning veterans has been deliberated in the Senate Veterans Affairs Committee. Increased contracting opportunities for SDVOSB can address this problem. Is there room on your Committee docket to address this issue this year?

Chairman Graves: Our Committee is considering future hearings on this issue, and we will continue to hold oversight hearings on issues of fraud in small business contracting, including the SDVOSB program, and we have held hearings on the utilization of small businesses as primes, as subcontractors, and the problems when

(Graves, cont. page 12)

VA Certification Update:

(an email interview with the Center for Veterans Enterprise)

VetLikeMe: What is the number of verified applications (to be listed in the Vet-owned business database) from SDVOBs that have been reviewed, the number denied, and the number now listed in the database?

VA: “As of September 2, 2011, all businesses in the Vendor Information Pages (VIP) database have been verified. As of September 20th, 10,450 applications have been processed in FY 2011. Of those, 1,907 were denied. Under the new process put in place by Public Law (P.L.) 111-275, there are 2,182 verified businesses. Just over 6,000 businesses were verified under the public document examination process that was in place prior to the implementation of P.L. 111-275. VIP currently has 8,223 verified VOSBs/SDVOSBs.

VLM: What is the total number of all Vet-owned businesses that VA has approved for listing?

While we don’t separately track businesses with 100% Veteran ownership, all businesses in VIP have at least 51% Veteran or service-disabled Veteran ownership. The current total is 8,223.

VLM: Is the purging process completed?

VA: Per P.L. 111-275, only verified businesses may appear in the VIP database. VA met that requirement on September 2, 2011. All non-verified businesses that appeared in VIP prior to that date were contacted and informed of the requirement to apply for verification. Many of those that were contacted were subsequently approved, some were denied. Far more were administratively removed. After 60 days and multiple contacts, if a business did not respond by submitting a complete application package, it was administratively removed.



Sponsored by AAA Miami Valley
Cindy Antrican, 937-224-2875

2011 Operation Welcome Home A Celebration Honoring Vietnam-era Veterans Dayton, Ohio, Veterans Day Weekend November 10-13

Multiple events are scheduled to select from in and around the Dayton area, including: Parades, Museum tours, military movies, concerts (REO Speedwagon), amateur boxing matches, food, fellowship and recollections of our service in a war that took the lives of many of our friends. Everything about this three-day event is free, though registration is required. For more information on hotel accommodations and in-depth event information, please visit:

<http://www.vietnamwelcomehome.com/>



(Graves, from page 10)

small firms are used as fronts for large businesses. I also support the work that our House Veterans Affairs Committee has done to provide more incentives for hiring veterans. I support legislation that is on the floor this week, the Veterans Opportunity to Work Act, which will provide access to education and training funds for up to 100,000 unemployed veterans between the ages of 35 and 60 in high-demand occupations. It will also improve the transition assistance program to assist departing service-members in finding civilian employment and establish new reporting requirements so we can evaluate the effectiveness of federal programs that assist veterans in finding employment.

VLM: Do you see S. 633 as a viable Act to end self certification?

Chairman Graves: I am concerned about whether the Department of Veterans Affairs has the resources to efficiently process certification for SDVOSB. It has taken the Department of Veterans Affairs nearly 3 years to verify approximately 8,000 service disabled veteran owned small businesses. This is a significant concern, in my opinion.



VLM: What are some of the problems you see with S. 633?

Chairman Graves: I have a few concerns with S.633 as it stands now, but our Committee is evaluating it further. Some of the concerns are not directly related to the SDVOSB program - for example, S. 633 would apply False Claims Act penalties to firms that incorrectly identify themselves as small, without providing an exemption for good faith errors. The small business affiliation rules are complex and are not intuitive, so I'm hesitant to potentially trigger jail time for companies that make a mistake, although I agree that we need to more vigorously enforce the certification rules. As S. 633 relates to the SDVOSB program, one of my concerns is the fact that it changes the definition of SDVOSB, and thereby excludes surviving spouses and permanent caregivers from the program. It also gives the VA the ability to say who is a SDVOSB. I have no problem with the VA determining who is a service disadvantaged veteran, but only the Small Business Administration should be able to determine who is a small business, otherwise we risk having conflicting decisions from the two agencies.

VLM: Will S. 633 die in the Committee to be reintroduced in another form early next year?

Chairman Graves: We are still evaluating various options to moving and negotiating legislation to address the objectives of this bill. I fully agree that we should reduce fraud in federal procurement and find a more efficient way to process SDVOSB, but it is important that we take our time to craft a solution that doesn't have unintended negative consequences.

VLM: Did you serve in the Armed Forces on Active Duty or in the Reserves?

Chairman Graves: I have not served in the Armed Services, but I hold our active duty and veterans in the highest regard for their years of service to this great nation. Without their commitment to our freedom and protection, we would not be able to enjoy liberty, as well as our free and democratic process. I also salute the families of our service members for their sacrifice. Serving in the military is not only a commitment for our men and women who serve in uniform but also for the spouses and children of those armed services officials.

Thank you, Mr. Graves for your time...

For two years, *VLM* has featured unvarnished national news and editorial opinion concerning the SDVOSB community. This publication will always be free.

We've heard from Congress and federal agencies. We hope *VLM* keeps the SDVOSB community informed so that decision makers are pressured to provide increased federal contracting opportunities for those of us injured while serving our country.

We've been promised these opportunities.

Advocacy begins with agitation



(633 Analysis, from page 5)

have gone out of business as a result.

Not all Veteran Service Organizations are pleased with S. 633, however. The language of the bill begs a few questions. Some doubt that CVE can expand its infrastructure to accommodate the verification demands of all government agencies. S. 633 does not change the definition in the Small Business Act that states “the management and daily business operations of which are controlled by one or more service-disabled veterans, or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.”

CVE has responded to its mandate within the VA’s budgetary constraints, but establishing an infrastructure to handle verification *within the VA procurement system alone* has been difficult. CVE’s challenges have many veterans groups, VOSB and SDVOSB concerned that CVE won’t be able to take on a verification system for *all* government procurements.

If S. 633 is signed into law, the legislation takes the necessary steps to ensure time and resources do not become pressing issues for the VA. Without question, there will be growing pains instituting S. 633, but by addressing problems early and amending policy and legislation as needed, problems in the system can be eliminated. This legislation will open the gates for more SDVOSB to compete in the federal marketplace, period.

Who Pays for It?

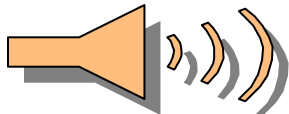
Without question, S. 633 would come at a price...what price and out of whose pocket? S. 633 would mandate all agencies to consult the *VetBiz* database to ensure that companies seeking SDVOSB set-aside contracts are indeed verified SDVOSB. That could get expensive.

Use existing VA resources? Another unfunded mandate? None of the above...the legislation *allows the secretary of the VA to request additional resources to carry out certification responsibilities.*

Since S. 633 would mandate all agencies to verify SDVOSB status, all federal agencies should bear some of the costs. But let’s not be simplistic about an agencies’ share of the verification burden. Develop a formula that fiscally *rewards agencies* based on the 3% minimum procurements set-aside for SDVOSB...and penalizes agencies that don’t meet the 3% minimum.

Slam dunk, end of story. PL 106-50 is no longer a toothless platitude. It’s *finally* real.

Other Voices



VLM receives emails and comments from members of the national SDVOSB community that provide perspective and a sense of political urgency to SDVOSB. Comments, criticism and suggestions are encouraged.

Email: bluepoint1@comcast.net

Identifying information is redacted.

I think that we can extrapolate the decision and say that if your firm lost a competition to a firm that was denied CVE verification, then you probably have grounds for a protest. Whether or not all federal agencies openly accept the CVE as their benchmark for an SDVOSB is somewhat up for grabs since few, if any of them would bother to research and read this decision. However, those that do may simply follow the court's lead and insert a CVE requirement into their RFP."

"Self-certification -- even if you are a bona fide SDVOSB is over for all intents and purposes...Denied by CVE? Patch the problems and reapply...This is the surest way to eliminate fraud in the program. This (GAO) decision, in conjunction with S. 633, is a very good thing for us."

"This is a great victory for SDVOSB's. I have always believed that Joint-Ventures were a slippery slope. Sole ownership and self performing may be a slower harder way to achieve contracts but at the end of the day it works."

"Now we can see how the SBA will define an SDVOSB when it issues Mentor-Protégé and Joint Venture rules in May 2012. SBA will defer to CVE for determining eligibility, thus eliminating, via regulation versus legislation, self-certification."

In response to VA's decision to ignore the GAO guidance: "What is the most productive way to make "noise"? Individually, as a group what is the best course of action? Does a systematic series of protesting awards that violate Veteran First programs? What ideas does anyone have....please weight in."

JOIN LIMA CHARLIE, A POLITICAL ADVOCACY GROUP FOR SDVOSB
WWW.LIMA-CHARLIE.ORG

BluePoint 
 *Productions*

VetLikeMe is published bi-monthly by *BluePoint Productions*

Editor and publisher: Hardy Stone

U.S. Congressman Sam Graves interview facilitated by Mr. DJ Jordan

Copyright *BluePoint Productions*, October 2011

bluepoint1@comcast.net bluepointgov@gmail.com www.bluepointgov.com

Contributing writers: Kenneth Rippetoe, Dennis DeMolet

Please duplicate, Repost, Tweet, Linked In, FaceBook, forward and spread widely. Airborne!



The Veterans Administration's Official Statement On GAO Decision

Statement from Josh Taylor, VA press secretary:

“The Department of Veterans Affairs (VA) conducts its contracting in good faith and in the spirit of the “Veterans First” legislation that gives preference to eligible Veteran-owned small businesses (VOSBs) and service-disabled Veteran-owned small businesses (SDVOSBs). VA takes its contracts with small businesses very seriously and will continue to strongly support eligible Veteran-owned small businesses who seek to do business with the federal government.”

Background

On October 11, 2011, the U.S. Government Accountability Office (GAO) issued a decision upholding a bid protest by an SDVOSB on two solicitations for the purchase of food-preparation equipment. VA has 65 days in which to respond to GAO's recommendations, which are currently under review.

VA leads the federal government in contracting with SDVOSBs. In fiscal year (FY) 2010, VA awarded \$3.5 billion to VOSBs, of which \$3.1 billion went to SDVOSBs, out of a contracting base of \$15.4 billion. These awards represent 23% to VOSBs and 20% to SDVOSBs, and greatly exceed VA's goals of 12% and 10%, respectively. This performance also exceeds the government-wide SDVOSB goal of 3%. When VA buyers make purchases through the FSS program, awards to SDVOSBs and VOSBs also count toward these goals—not just awards made through formal set-asides. In FY2010, approximately 12% of VA's total VOSB/SDVOSB spend included firms holding FSS contracts.

VA, in conjunction with the General Services Administration (GSA), encourages VOSBs and SDVOSBs to consider participating in the FSS Program. The FSS Program is the primary vehicle the Federal Government uses in making purchases for commercially available products and services: medically related products and services at VA, and other products and services through GSA.

Both agencies' FSS Programs are multiple award contracting programs that are open for potential new contractors on a continuing basis. The VA and GSA FSS web portals which can assist potential contractors in determining if this program is right for them can be found at <http://www.fss.va.gov/> <<http://www.fss.va.gov/>> and <http://www.gsa.gov/portal/category/100611> <<http://www.gsa.gov/portal/category/100611>> respectively.

VetLikeMe learned on October 19 through multiple sources that Mr. Jan Frye, VA Deputy Assistant Secretary, Office of Acquisition and Logistics issued a memorandum (printed in full next page) on October 17 advising Veteran's Administration contracting officers to ignore this GAO decision.

Though this late-breaking news is disheartening, gears are grinding to find out why the VA is responding to veterans with a beatdown. Show me greater irony...

“October 17, 2011

TO: All VA Acquisition and Procurement Officials/Personnel

SUBJ: Recent Government Accountability Office Decision Involving the Use of the Federal Supply Schedule Program vs. VA’s Veterans First Contracting Program

1. On January 7, 2010, VA implemented those portions of the Veterans Benefits, Health Care, and Information Technology Act of 2006, Sections 502 and 503 of Public Law 109-461 (the Act) providing opportunities for Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) and Veteran-Owned Small Businesses (VOSBs) to increase their federal contracting and subcontracting (74 Federal Register 64619 (December 8, 2009)). Under this final rule, commonly referred to in VA as the “Veterans First Contracting Program,” a VA contracting officer may restrict competition to contracting with SDVOSBs or VOSBs under certain conditions. Likewise, sole source contracts with SDVOSBs or VOSBs are permissible under certain conditions. This final rule implemented these special acquisition methods as a change to the VA Acquisition Regulation (VAAR). Therein, in response to public comments and to a comment from the General Services Administration as to the applicability of the VA’s new SDVOSB/VOSB set-aside program to acquisitions conducted pursuant to the Federal Supply Schedule, VA responded that the law and VA’s implementing regulations do not apply to FSS procurements.

2. Nevertheless, the Government Accountability Office (GAO) issued a bid protest decision October 11, 2011, in the case of Aldevra, a SDVOSB, case number B-405271 and B-405524, which recommends VA take corrective action on two acquisitions conducted pursuant to FAR Subpart 8.4, Federal Supply Schedule. The corrective action would require VA to conduct market research to determine if two or more SDVOSBs could perform the work, and, if so, setting-aside the acquisition for SDVOSBs on the open market based on GAO’s interpretation of the VAAR, before VA could use the Federal Supply Schedules Program. VA is of the opinion GAO’s interpretation is flawed and legally incorrect.

3. The United States Supreme Court ruled in 1986 the Comptroller General is an officer of the Legislative Branch (see *Bowsher v. Synar*, 478 U.S. 714, 727-32), holding the Comptroller General is subject to the control of Congress and therefore may not exercise non-legislative power. Because GAO is part of the Legislative Branch, Executive Branch agencies are not bound by GAO’s legal advice.

4. Therefore, VA determined this GAO recommendation, Aldevra, B-405271 and B-405524, dated October 11, 2011, shall not be followed. We expect this issue ultimately will be decided by the courts. Therefore, VA acquisition and procurement professionals are to continue using the Federal Supply Schedules Program, when necessary and appropriate. The GAO recommendation does not change how VA will acquire goods and services in support of its mission.

5. Please do not reply to this e-mail message. Questions regarding this matter should be directed to your respective District Counsel or head of contracting activity. Thank you.

Jan R. Frye
Deputy Assistant Secretary for
Acquisition and Logistics"

VetLikeMe