



VA's 'VetsFirst' Policy Under Attack

Violations of Law Questioned

(Washington, DC -- SDVOSB News Services, November 30, 2011) — The U.S. House Veterans Affairs Committee Subcommittee on Oversight and Investigations (Bill Johnson, (R-OH) Chair), heard testimony from several government officials regarding Service Disabled Veteran Owned Small Business (SDVOSB) and procurement priority at a joint hearing today. Lawmakers were troubled by the VA's implementation of Public Law 109-461 and its adherence to the 2006 federal statute.

The Hearing was streaming live on the internet (<http://tinyurl.com/7nzzhaj>) as Mr. Tom Leney and VA counsel Mr. John Thompson responded to questions about the VetsFirst policy. Thompson appeared flummoxed as he attempted to defend the VA's interpretation of PL 109-461 and SDVOSB priority in procurements (<http://tinyurl.com/7nzzhaj> at 56:25).

“Could you please tell me, tell this Committee how the VA considers itself exempt from the mandates set out in Public Law 109-461?...The government cannot be sued for not meeting goals. The federal government can be sued for not adhering to the law. Why is there such reluctance by the VA to follow the law as interpreted by the GAO?,” Chairman Johnson asked the VA counsel. “I disagree, GAO disagrees...is there going to be a review? Because you've been told by the GAO that your interpretation is wrong.”

GAO issued recommendations to the VA on its VetsFirst procurement policies in late October of this year after Aldevra, an SDVOSB, appealed a VA decision to ignore their protest on a solicitation. Aldevra appealed to GAO, which sustained the protest, citing PL 109-461. Jan Frye, VA Deputy Associate Director for Logistics and Procurement Policy, issued instructions to VA Contracting Officers to ignore the GAO's recommendations and continue agency procurement as it has in the past.

Also testifying at the hearing: Ralph O. White, Managing Associate General Counsel for Procurement Law, Office of General Counsel, U.S. Government Accountability Office, who laid out PL 106-50 in plain terms and indicated that it is rare that GAO's recommendations are not followed. Referring to the debate over 109-461 and its directive that VA 'shall' put SDVOSB first for Department procurements, Chairman Johnson asked Mr. White a critical question about GAO's recommendations to VA: (@ 1:33) “What is your interpretation of the word 'shall?'” Mr. White drew laughter from the galleries when he responded: “It certainly isn't 'may.'”

The VA must respond to GAO's recommendations and its rationale for rejecting their recommendations by December 15.

Testifying witnesses included: Thomas J. Leney, Executive Director, Small and Veteran Business Programs, Office of Small and Disadvantaged Business Utilization, U.S. Department of Veterans Affairs; John H. "Jack" Thompson, Deputy General Counsel, Office of General Counsel, U.S. Department of Veterans Affairs; Gregory D. Kutz, Forensic Audits and Investigative Service, U.S. Government Accountability Office; Ralph O. White, Managing Associate General Counsel for Procurement Law, Office of General Counsel, U.S. Government Accountability Office.