



United States Government Accountability Office  
Washington, DC 20548

March 19, 2009

The Honorable Daniel K. Akaka  
Chairman  
The Honorable Richard Burr  
Ranking Member  
Committee on Veterans' Affairs  
United States Senate

The Honorable Stephanie Herseth Sandlin  
Chairwoman  
The Honorable John Boozman  
Ranking Member  
Subcommittee on Economic Opportunity  
Committee on Veterans' Affairs  
House of Representatives

Subject: *Department of Veterans Affairs Contracting with Veteran-Owned Small Businesses*

The federal government's long-standing policy has been to use its buying power—the billions of dollars it spends through contracting each year—to maximize procurement opportunities for small businesses, including those owned by service-disabled veterans. Under the Veterans Benefits, Health Care, and Information Technology Act of 2006, the Department of Veterans Affairs (VA) is to give first and second priority to small businesses owned by service-disabled and other veterans, respectively, when it uses small business preferences to award its contracts, which totaled more than \$14 billion in fiscal year 2008.<sup>1</sup> The act also requires VA to establish contracting goals for service-disabled veteran-owned small businesses (SDVOSB) and other veteran-owned small businesses (VOSB) and gives VA unique authorities to use contracting preferences for SDVOSBs and VOSBs to help it reach those goals.

The act requires us to conduct a 3-year study on VA's efforts to meet its SDVOSB and VOSB contracting goals and to brief Congress annually, by January 31, 2008, 2009, and 2010. Accordingly, we briefed your staffs on January 31, 2008, on steps that VA had taken to implement its new contracting authorities and verify the ownership of firms in VA's mandated database of SDVOSBs and VOSBs, as well as potential challenges that VA could face in meeting its contracting goals. The purpose of this report is to make publicly available the contents of the briefing held on January 30, 2009. Enclosure I contains a copy of the briefing slides that we used to brief your staffs on (1) the extent to which VA

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<sup>1</sup>Pub. L. No. 109-461 § 502 (Dec. 22, 2006), 38 U.S.C. § 8127.

met its prime contracting goals for SDVOSBs and other VOSBs in fiscal years 2007 and 2008 and what, if any challenges, VA faced in meeting those goals; (2) VA's progress implementing procedures to confirm the ownership, control, and service disability status of firms in its mandated database of SDVOSBs and other VOSBs; and (3) how VA is meeting the requirement for a review mechanism for subcontracts with SDVOSBs and other VOSBs, and what process VA follows to ensure that large business prime contractors provide appropriate subcontracting opportunities.

## **Background**

Federal agencies' contracting with private businesses is, in most cases, subject to goals for various types of small businesses, including SDVOSBs.<sup>2</sup> The Small Business Act, as amended, sets a governmentwide goal for small business participation of not less than 23 percent of the total value of all prime contract awards—contracts that are awarded directly by an agency—for each fiscal year.<sup>3</sup> The Small Business Act also sets annual prime contracting goals for participation by four other types of small businesses: small disadvantaged businesses (5 percent); women-owned or service-disabled, veteran-owned, (5 and 3 percent, respectively); and businesses located in historically underutilized business zones (HUBZones, 3 percent). Although there is no governmentwide prime contracting goal for participation by all VOSBs, VA had voluntarily set an internal goal for many years before the enactment of the Veterans Benefits, Health Care, and Information Technology Act.

The Veterans Benefits, Health Care, and Information Technology Act provides VA authorities to make noncompetitive (sole-source) awards and to restrict competition for (set aside) awards to SDVOSBs and VOSBs. VA's authorities differ from those available to other federal agencies. Specifically, the Veterans Benefits Act of 2003 authorized agencies to set contracts aside and make sole-source awards of up to \$3 million (\$5 million for manufacturing) for SDVOSBs (but not other VOSBs).<sup>4</sup> However, an agency can make a sole-source award to an SDVOSB only if the contracting officer expects just one SDVOSB to submit a reasonable offer. By contrast, VA's authorities under the Veterans Benefits, Health Care, and Information Technology Act apply to SDVOSBs and other VOSBs. Also, whereas use of the set-aside authority is voluntary for other agencies, VA is required to set aside contracts for SDVOSBs or other VOSBs (unless a sole-source award is used) if the contracting officer expects two or more such firms to submit offers and the award can be made at a fair and reasonable price that offers the best value to the

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<sup>2</sup>The Small Business Act, as amended, defines a small business generally as one that is "independently owned and operated and that is not dominant in its field of operation." In addition, a business must meet the size standards published by the Small Business Administration (SBA) to be considered small; these standards may use criteria such as a business' annual revenue or its number of employees to determine size. Pub. L. No. 85-536, as amended, 15 U.S.C. § 632(a).

<sup>3</sup>15 U.S.C. § 644(g). Because agencies' activities lend themselves to differing contracting opportunities, SBA negotiates goals in annual procurement with federal agencies to achieve the governmentwide goals.

<sup>4</sup>Pub. L. No. 108-183 § 308 (Dec. 16, 2003), 15 U.S.C. § 657f.

United States. VA may make sole-source awards of up to \$5 million, with no restriction on the number of SDVOSBs or other VOSBs expected to submit offers.<sup>5</sup>

## Summary

VA exceeded its prime contracting goals for SDVOSBs and VOSBs in fiscal years 2007 and 2008, reflecting leadership commitment and broad-based agency efforts. Specifically, in fiscal year 2007, VA awarded 7.1 percent (\$832 million) of its prime contract dollars to SDVOSBs and 10.4 percent (\$1.22 billion) to all VOSBs (including SDVOSBs), exceeding its goals of 3 percent and 7 percent, respectively. In fiscal year 2008, VA awarded 11.8 percent (\$1.66 billion) to SDVOSBs and 14.9 percent (\$2.10 billion) to all VOSBs, exceeding its increased goals of 7 percent and 10 percent, respectively. Leadership efforts that contributed to VA's success in meeting these goals included the efforts of VA's Office of Small and Disadvantaged Business Utilization (OSDBU) to ensure awareness of and commitment to meeting the goals and headquarters initiatives to monitor and recognize strong performance by contracting offices. Nearly all of VA's major contracting offices met the agencywide goals, and they made extensive use of the set-aside and sole-source authorities and applied the contracting priority for SDVOSBs and VOSBs established by the Veterans Benefits, Health Care, and Information Technology Act. In light of VA's dynamic contracting environment—particularly with respect to recent and anticipated turnover in its leadership and contracting staff—sustaining or increasing its levels of SDVOSB and VOSB contracting may be challenging and will require vigilance as VA manages competing small business goals and continues to institutionalize its new contracting priorities and authorities. For example, as VA finalizes its rulemaking process implementing provisions of the act, ongoing effort will be important to ensure that all contracting staff (especially new staff and those involved in monitoring compliance) have a full understanding of the contracting authorities and priorities.<sup>6</sup>

VA verified ownership of a limited number of SDVOSBs and VOSBs in its database and was working to address other requirements, including assessing who actually controls veteran-owned firms receiving certain VA contracts. The act requires VA to maintain a database of SDVOSBs and VOSBs, verify that registered firms are owned and controlled by veterans or service-disabled veterans, and use its set-aside and sole-source award authorities only for these verified firms.<sup>7</sup> VA already maintained an online database, VetBiz Vendor Information Pages, in which nearly 16,500 firms have self-certified as SDVOSBs or VOSBs. VA began accepting verification applications from firms registered in the database after publishing guidelines for its verification program in an interim final

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<sup>5</sup>38 U.S.C. § 8127(d).

<sup>6</sup>VA published a proposed rule that includes changes to the VA Acquisition Regulation to implement portions of the act, including the set-aside and sole-source authorities. *73 Fed. Reg.* 49141 (Aug. 20, 2008).

<sup>7</sup>To receive a federal contract, a firm must register in Central Contractor Registration, a governmentwide database. Small businesses in that database can certify in a supplemental database maintained by SBA that they are veteran-owned or service-disabled veteran-owned. Only contracts awarded to these self-certified SDVOSBs and VOSBs count toward agencies' prime contracting goals.

rule in May 2008.<sup>8</sup> As of December 23, 2008, VA had verified that veterans or service-disabled veterans owned 484 firms, denied the verification applications of 15 firms, and was processing another 419 applications. To date, VA's verification process has focused on cross-referencing information submitted by owners with VA data to confirm majority ownership by veterans or service-disabled veterans. In spring 2009, VA expects to pilot procedures for more detailed reviews of selected firms to verify day-to-day control by a service-disabled or other veteran. According to VA officials, VA will begin requiring its contracting officers to use the set-aside and sole-source award authorities only with verified SDVOSBs and VOSBs when the agency finalizes rulemaking related to implementation of these authorities, which they anticipate in May 2009 at the earliest. Until then, existing VA policy states that firms only have to be registered in VA's database to receive set-aside or sole-source awards. We intend to assess VA's implementation of its verification process in our future work.

VA plans to implement a mechanism to ensure that only subcontracts with legitimate SDVOSBs and other VOSBs count toward the goals that large business contractors establish in their subcontracting plans.<sup>9</sup> VA currently focuses its oversight of subcontracting on contractors with these plans, mainly by reviewing their electronic reports of subcontracting activity. The Veterans Benefits, Health Care, and Information Technology Act requires that, to the extent that VA counts subcontracts with SDVOSBs and VOSBs toward its contracting goals, it must confirm that such subcontracts were awarded to legitimate SDVOSBs and VOSBs. VA currently counts only prime contracts, not subcontracts, toward its agencywide SDVOSB and VOSB contracting goals. Nonetheless, VA's proposed rule would require OSDDBU to confirm that when large business prime contractors with subcontracting plans report subcontracts with SDVOSBs and VOSBs, those firms have been verified. Implementing this review mechanism will require VA to begin collecting data on the firms that receive subcontracts because large business prime contractors currently are not required to report such information. VA expects to have received approval from the Office of Management and Budget to collect such data by the time the proposed rule is finalized. Although any firm with a federal contract of \$100,000 or more generally must provide subcontracting opportunities to small businesses, VA—like other federal agencies—concentrates on large businesses with larger contracts that require subcontracting plans, mainly by reviewing the contractors' periodic electronic reports of their actual subcontracting performance against their goals. VA awarded 128 contracts that required subcontracting plans in fiscal years 2007 and 2008. In future work, we intend to explore further VA's oversight of contracting officers' decisions to require a subcontracting plan, as well as its oversight of the plans when they are required.

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<sup>8</sup>73 *Fed. Reg.* 29024 (May 19, 2008).

<sup>9</sup>Large businesses with federal contracts of \$550,000 or more (\$1 million for construction) generally must have subcontracting plans that include goals for subcontracting with SDVOSBs, VOSBs, and other types of small businesses. Federal Acquisition Regulation Part 19.702.

## Agency Comments

We provided a draft of this report to VA and SBA for comment. Additionally, we provided a copy of the draft briefing slides to VA and pertinent statements to SBA for comment prior to the January 30, 2009, briefing. VA and SBA provided technical comments on the draft report and the slides, which we incorporated as appropriate.

## Scope and Methodology

To address our objectives, we analyzed data from the Federal Procurement Data System-Next Generation (FPDS-NG); reviewed relevant statutes, regulations, policies, and guidance related to VA's small business goals and programs; conducted field visits and structured interviews with contracting officials from 9 of the 21 Veterans Integrated Service Networks (VISNs), VA's regional health care networks; and interviewed officials from other major VA contracting offices and headquarters, SBA, and nine veteran service organizations. On the basis of our review of FPDS-NG system documentation, interviews with VA officials, and electronic testing, we concluded that the data were sufficiently reliable for our purposes. We selected the 9 VISNs to ensure a mix of SDVOSB, VOSB, and total contracting levels, organizational structures, and geographic locations.

We conducted this performance audit in Washington, D.C.; Chicago, Illinois; Milwaukee, Wisconsin; and the Dallas, Texas, area from March 2008 to January 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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We are sending copies of this report to interested congressional committees, the Secretary of Veterans Affairs, and the Acting Administrator of the Small Business Administration. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>. If you or your staffs have any questions about this report, please contact me at (202) 512-8678 or [shearw@gao.gov](mailto:shearw@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Major contributors to this report were Harry Medina, Assistant Director; Marianne Anderson; Julianne Dieterich; Julia Kennon; Marc Molino; Barbara Roesmann; and Paul Thompson.



William B. Shear  
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Enclosure



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**Veterans Affairs Exceeded Contracting Goals  
for Small Businesses Owned by Veterans,  
Started Verifying Veteran Ownership,  
and Plans to Review Data on  
Subcontracts with Such Firms**

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**Briefing to the House and Senate  
Committees on Veterans' Affairs  
January 30, 2009**

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## Overview

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- This is the second of three briefings on the Department of Veterans Affairs' (VA) contracting with service-disabled veteran-owned small businesses (SDVOSBs) and other veteran-owned small businesses (VOSBs). The briefings and a final report due in 2010 were mandated by Public Law (P.L.) 109-461, which took effect on June 20, 2007. VA refers to its implementation of this law as the Veterans First program.
  - P.L. 109-461 gives VA unique contracting authorities for SDVOSBs and VOSBs and gives these firms first and second priority, respectively, when VA makes acquisitions pursuant to a contracting preference.
  - The briefing will cover the following topics:
    - Objectives
    - Scope and Methodology
    - Summary of Findings
    - Discussion of Objectives
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## **Objectives**

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- To what extent did VA meet its prime contracting goals for SDVOSBs and other VOSBs in fiscal years 2007 and 2008 and what, if any, challenges did VA face in meeting these goals?
  - What progress has VA made in implementing procedures to confirm the ownership, control, and, if applicable, service-disability status of firms in its mandated database of SDVOSBs and other VOSBs?
  - How is VA meeting the requirement for a review mechanism for subcontracts with SDVOSBs and other VOSBs, and what process does VA follow to ensure that large business prime contractors provide appropriate subcontracting opportunities?
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## Scope and Methodology

- Scope
  - VA policymaking efforts and contracting office practices to implement P.L. 109-461.
  - Emphasis on the regional healthcare networks of the Veterans Health Administration (VHA), which accounted for the majority of VA's purchases.
- Methodology<sup>1</sup>
  - Analysis of VA procurement data in Federal Procurement Data System-Next Generation (FPDS-NG), which we deemed to be reliable for our purposes.
  - Review of statutes, regulations, policies, and guidance related to VA's small business goals and programs.
  - Field visits and structured interviews with nine of VHA's 21 regional Veterans Integrated Service Networks (VISN) and interviews with other major VA contracting offices and VA headquarters and Small Business Administration (SBA) officials and selected veteran service organizations.
    - We selected VISNs to ensure a mix of SDVOSB and VOSB contracting levels, sizes, organizational structures, and regions. The nine sites represented a majority of the networks' total, SDVOSB, and VOSB contract dollars in fiscal year (FY) 2007.

<sup>1</sup> We conducted our work in Washington, D.C., Chicago, Milwaukee, and the Dallas area from March 2008 to January 2009 in accordance with generally accepted government auditing standards.



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## Summary of Findings

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- VA exceeded its prime contracting goals for SDVOSBs and VOSBs in FY07 and FY08, reflecting leadership commitment and broad-based agency efforts. Sustaining or increasing its levels of contracting with these firms may be challenging and require vigilance due to a dynamic contracting environment and as VA manages competing small business goals and institutionalizes its new contracting priorities and authorities.
  - VA verified ownership of some SDVOSBs and other VOSBs in its database, as required by P.L. 109-461. Officials are working to address other requirements, including assessing who actually controls veteran-owned firms.
  - VA plans to implement a mechanism to ensure that only subcontracts with legitimate SDVOSBs and other VOSBs count toward the goals that large business contractors establish in their subcontracting plans. Although many contractors must provide subcontracting opportunities to small businesses, VA—like other agencies—focuses its oversight on large businesses with subcontracting plans, mainly by reviewing electronic reports.
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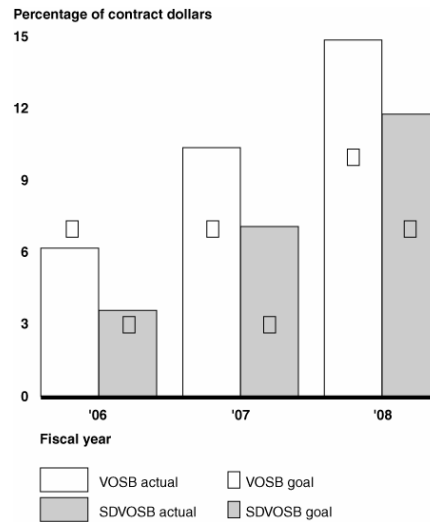
**Enclosure I: Briefing on Department of Veterans Affairs Contracting with Veteran-owned Small Businesses**

Contracting Goals and Challenges



**VA Exceeded Its SDVOSB and VOSB Prime Contracting Goals in FY07 and FY08**

- In FY08, VA awarded 14.9 percent of its contract dollars to all VOSBs, including 11.8 percent to SDVOSBs, compared with 10.4 percent to VOSBs, including 7.1 percent to SDVOSBs, in FY07.<sup>1</sup>
- In dollar terms, the amount VA awarded to all VOSBs increased from \$1.22 billion in FY07 to \$2.10 billion in FY08, including \$832 million awarded to SDVOSBs in FY07 and \$1.66 billion in FY08.



Source: Official SBA small business goaling reports (FY06 and FY07) and GAO analysis of VA-funded actions in FPDS-NG as of January 12, 2009 (FY08).

<sup>1</sup> Our analysis of FY08 data reflects data input as of January 2009. Because agencies enter and revise data in FPDS-NG on an ongoing basis, the results reported here may differ from SBA's official FY08 report on federal agencies' achievement of small business goals, which will be released later in FY09.

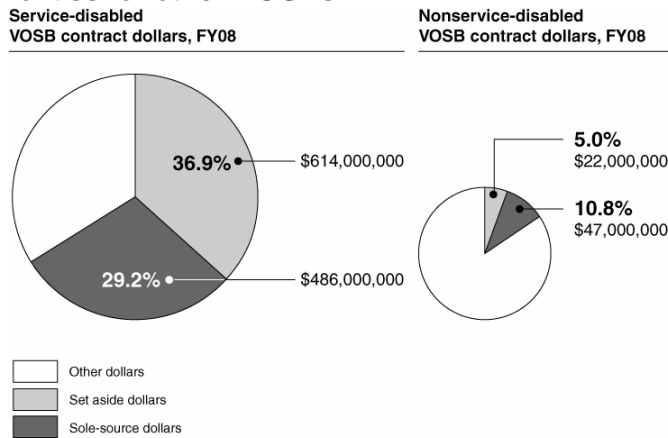
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Contracting Goals and Challenges



**VA Exceeded Its SDVOSB and VOSB Prime Contracting Goals in FY07 and FY08 (cont.)**

- In meeting its goals, VA used SDVOSB or VOSB sole-source or set-asides to award the majority of SDVOSB dollars in FY08, but more rarely used these authorities for other VOSBs.



Source: GAO analysis of VA-funded actions in FPDS-NG as of January 9, 2009.

## **VA Exceeded Its SDVOSB and VOSB Prime Contracting Goals in FY07 and FY08 (cont.)**

- In FY07 and FY08, nearly all of VA's contracting activities (those associated with VISNs and other major units within VA) met the agency-wide SDVOSB and VOSB goals.
  - Contracting activities with relatively more construction and repair or maintenance requirements tended to contract more with SDVOSBs and VOSBs.
  - Because VA purchases nearly all of its pharmaceuticals through a national contract with one large business, VA's seven regional Consolidated Mail-out Pharmacies had the lowest levels of SDVOSB and VOSB contracting (less than 1 percent in FY08).

## Enclosure I: Briefing on Department of Veterans Affairs Contracting with Veteran-owned Small Businesses

### Contracting Goals and Challenges



## VA's Success Meeting the Goals Reflected Leadership Commitment and Broad-based Efforts

- Examples of Leadership Commitment
  - VA substantially increased its SDVOSB and VOSB goals in FY08, and contracting staff throughout the agency described Office of Small and Disadvantaged Business Utilization (OSDBU) efforts to ensure awareness of and commitment to meeting the goals.
  - OSDBU generated monthly agency-wide progress reports, and key leaders met regularly with the Deputy Secretary to review progress against all small business goals.
  - VA requires the individual job performance plans of staff involved in contracting to include the attainment of SDVOSB and VOSB goals. In practice, many contracting office managers said that the plans refer to meeting all small business goals.
  - An agency-wide awards program sponsored by the Secretary recognizes contracting offices for leadership in meeting small business goals, including for SDVOSBs and VOSBs.
  - In its mid-year progress report on VA's FY08 small business programs, SBA recognized VA for outstanding achievement.
    - Of the 24 agencies that SBA assessed, VA was one of four that met its SDVOSB goal in FY07 (there is no government-wide VOSB goal).

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**VA's Success Meeting the Goals Reflected Leadership Commitment and Broad-based Efforts (cont.)**

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- Examples of Broad-based Efforts
    - While we heard some external concerns that VA might not be implementing Public Law 109-461 because it had not completed rulemaking, we found that contracting offices were acting on the authorities and priorities of the Veterans First program.
    - VA issued interim guidance in June 2007 and published a proposed rule in August 2008, which VA officials expect to be finalized by May 2009 at the earliest.
      - Officials in VA's Office of Acquisition and Logistics said that, when the rule is finalized, they plan to revise other existing guidance related to SDVOSB and VOSB contracting as needed.
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## **VA's Success Meeting the Goals Reflected Leadership Commitment and Broad-based Efforts (cont.)**

- Examples of Broad-based Efforts (cont.)
  - All but one of the 21 VISNs met both goals in FY08. Seven awarded at least 20 percent of their contract dollars to VOSBs in FY08.
  - Among the nine VISNs we contacted, contracting managers generally had similar approaches to oversight of acquisition planning and expectations for how staff should apply the Veterans First priorities and contracting authorities.
    - Differences in the VISNs' size, organizational structure, and oversight practices did not explain variations in their VOSB contracting levels, which ranged from 13 to 29 percent in FY08.
  - Composition of the acquisitions may have been a more important factor in explaining the VISNs' performance.
    - Among all VISNs, those that spent less than the average share of their dollars on construction generally had below-average levels of SDVOSB and VOSB contracting in FY08. Conversely, the VISNs with above-average levels of construction spending generally had above-average levels of SDVOSB and VOSB contracting.



## **Sustaining or Further Increasing VA's SDVOSB and VOSB Contracting Will Require Vigilance**

- Overall, VA exceeded its contracting goals in FY07 and FY08—even after it set substantially higher goals in FY08. Because VA has a dynamic contracting environment, sustaining or achieving further growth in its levels of SDVOSB and VOSB contracting may be challenging and will require continued vigilance.
  - Some of VA's leadership will change with the new administration, and the federal contracting workforce traditionally has high turnover.
  - VA's Veterans First regulation will require staff to comply with unique provisions that depart from the federal government's already-complex priority system for small businesses.
- In this context, and based on information provided by VA officials, factors that will call for sustained attention include
  - managing competing goals and priorities among small business contracting programs, and
  - institutionalizing the new Veterans First contracting priorities and authorities.

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## **Sustaining or Further Increasing VA's SDVOSB and VOSB Contracting Will Require Vigilance (cont.)**

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- **Managing Competing Goals and Priorities**
    - According to some contracting officers and managers, balancing SDVOSB and VOSB priorities with expectations to meet the other statutorily required small business goals is challenging.
      - Some officials noted that the more successful contracting officers are in identifying SDVOSBs and VOSBs and applying the priority to them, the more difficult it would be for VA to continue to meet the other small business goals.
    - VA's proposed rule to implement Veterans First included a provision to allow VA, in consultation with SBA, to lower its other small business goals—an approach that would affirm the primacy of Veterans First.
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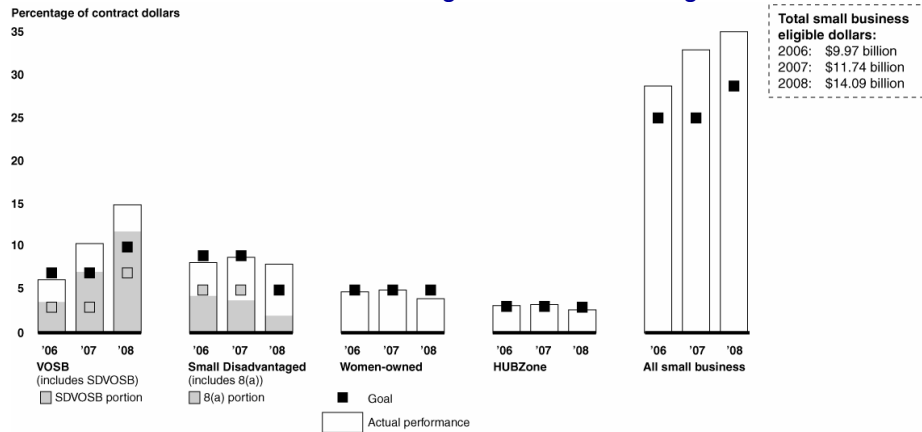
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Contracting Goals and Challenges



**Sustaining or Further Increasing VA's SDVOSB and VOSB Contracting Will Require Vigilance (cont.)**

- Managing Competing Goals and Priorities (cont.)
  - VA's SDVOSB, VOSB, and total small business contracting grew in FY07 and FY 08 as other small business categories were unchanged or declined.



Source: SBA small business goaling reports (FY06 and FY07) and GAO analysis of VA-funded actions in FPDS-NG as of January 12, 2009 (FY08).

Notes: HUBZone refers to participants in SBA's Historically Underutilized Business Zone program. Small Disadvantaged Businesses include participants in SBA's 8(a) program. Beginning in FY08, VA did not set a separate 8(a) goal.

## **Sustaining or Further Increasing VA's SDVOSB and VOSB Contracting Will Require Vigilance (cont.)**

- Institutionalizing Veterans First
  - VA uses pre-solicitation reviews of proposed contracting strategies (such as an SDVOSB set-aside) for new acquisitions to monitor compliance with the Veterans First priorities and contracting authorities. On the whole, this system of review appears to be working well.
  - OSDBU generally performs the review of VA's largest acquisitions—\$100,000 or more for the central office and \$500,000 or more for field-based offices.
    - Although OSDBU cannot halt an acquisition if it disagrees with the proposed strategy, OSDBU officials said that the limited authority has not been a problem because contracting offices generally are cooperative in considering its recommendations.
    - Many contracting officials noted OSDBU's active involvement in this review process and the emphasis that it places on the priority for SDVOSBs and VOSBs.

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## **Sustaining or Further Increasing VA's SDVOSB and VOSB Contracting Will Require Vigilance (cont.)**

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- Institutionalizing Veterans First (cont.)
    - For smaller acquisitions that do not require OSDDBU review, an official from the contracting activity performs the review.
      - While we did not find evidence of widespread problems in how officials approached their reviews at the VISNs we contacted, we did find isolated examples of inconsistencies. For example, at two VISNs, officials responsible for the reviews could not correctly explain the sole-source authority for SDVOSBs and VOSBs.
      - Although they generally understood the priority for veterans and were familiar with VA's interim guidance on Veterans First, many of the contracting offices we contacted had many new staff or vacancies, which suggests that ongoing effort will be important to ensure that all staff have a full understanding of the program and the new regulations.
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## Enclosure I: Briefing on Department of Veterans Affairs Contracting with Veteran-owned Small Businesses

### Contracting Goals and Challenges



### **VA's Use of Its National Contract Programs and Other Mandatory Contracting Sources Has Not Impeded Its Ability to Meet SDVOSB and VOSB Goals**

- National Contracts (Prime Vendor and Standardization)
  - VA's prime vendor programs require medical facilities to order most pharmaceuticals, many medical and surgical items, and subsistence (food and related supplies for inpatients) through prime vendors, which distribute products nationwide or throughout one or more VISNs.
  - VA's use of the prime vendor programs has not prevented the agency from meeting its prime contracting goals for SDVOSBs or VOSBs, and has not prevented individual VISNs from meeting the agency-wide goals.
    - In FY08, VISN purchases from prime vendors totaled \$1.2 billion and represented 14 percent of the VISNs' total contract dollars, according to our analysis of FPDS-NG.
  - VA generally obtains volume discounts on many pharmaceutical, medical, and surgical items by establishing national standardization contracts and other types of agreements with the manufacturers or distributors that supply the prime vendors.<sup>1</sup>
    - Some of these contracts are with SDVOSBs and VOSBs, but items supplied by such firms through prime vendors (none of which are SDVOSBs or VOSBs) do not count toward VA's prime contracting goals.

<sup>1</sup> In prior work, GAO found that VA realized substantial cost savings through the prime vendor and standardization programs and recommended that VA take steps to increase use of its national contracts. See GAO, *Contract Management: Further Efforts Needed to Sustain VA's Progress in Purchasing Medical Products and Services*, GAO-04-718 (Washington, D.C.; Jun. 22, 2004). 17

## Enclosure I: Briefing on Department of Veterans Affairs Contracting with Veteran-owned Small Businesses

### Contracting Goals and Challenges



### **VA's Use of Its National Contract Programs and Other Mandatory Contracting Sources Has Not Impeded Its Ability to Meet SDVOSB and VOSB Goals (cont.)**

- Other Mandatory Sources of Supply
  - VA's existing guidance and proposed rule retain the federally mandated use of Federal Supply Schedule (FSS) contracts, but this would not preclude VA from sustaining or increasing awards to SDVOSBs and VOSBs, many of which have FSS contracts.
    - FSS orders cannot be set aside, but VA encourages staff to search for and give preference to SDVOSBs and VOSBs when seeking FSS bids.
    - Some veteran advocates have argued that VA should allow FSS orders to be set aside for SDVOSBs and VOSBs under the authorities of P.L. 109-461. The General Services Administration's position is that VA does not have the authority to allow set asides on FSS orders.
  - VA's existing guidance retains the federally mandated use of Ability One agencies (nonprofits that employ blind and disabled persons), Federal Prison Industries, and the Government Printing Office (GPO). However, the proposed rule would allow contracting officers to give priority to SDVOSBs and VOSBs over Federal Prison Industries and GPO.
    - If VA had directed to VOSBs the \$23 million awarded in FY08 to Federal Prison Industries and GPO, its VOSB contracting would have increased minimally, from 14.9 to 15.0 percent of its contract dollars. (Ability One agencies received another \$66 million.)

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## **VA Verified Ownership of a Limited Number of SDVOSBs and VOSBs**

- P.L. 109-461 requires VA to maintain a database of SDVOSBs and VOSBs and verify that registered firms are owned and controlled by veterans or service-disabled veterans.
- As of December 23, 2008, VA had verified that veterans or service-disabled veterans owned 484 firms registered in its VetBiz Vendor Information Pages (VIP) database.
  - Firms in the database will be verified only at their request; 419 requests, among the nearly 16,500 registered firms, were pending.
  - VA had denied the verification applications of 15 firms.
- Currently, the verification process focuses mainly on cross-referencing information submitted by owners with VA data to confirm majority ownership by veterans or service-disabled veterans. VA also checks other online databases to confirm that the firm is licensed and eligible for federal contracts.



## **VA Is Working to Address Other Requirements in the Verification Process**

- When a firm requests verification, its owners attest that a service-disabled or other veteran controls it. Currently VA does not take steps to verify day-to-day control unless there are discrepancies with online databases.
  - VA developed risk-based categories to target firms for detailed remote reviews or on-site examinations, which would include steps to verify control. Officials are developing procedures for such examinations and anticipate piloting them in the spring of 2009.
    - For example, VA considers certain joint ventures to be at high risk of misrepresentation, because the SDVOSB or VOSB party to the venture may not control it. But, identifying joint ventures and assessing their validity are challenging because of data limitations and complex joint venture requirements.
  - In developing its verification procedures, VA is considering how to avoid weaknesses that we previously identified in SBA's efforts to verify the eligibility of HUBZone firms.<sup>1</sup>
    - We reported that SBA could provide limited assurance that the information was accurate due to its limited efforts to verify self-reported information through site visits or other extensive reviews.

<sup>1</sup> GAO, *Small Business Administration: Additional Actions Are Needed to Certify and Monitor HUBZone Businesses and Assess Program Results*, GAO-08-643 (Washington, D.C.: Jun. 17, 2008).

## **VA Is Working to Address Other Requirements in the Verification Process (cont.)**

- P.L. 109-461 requires VA to use its set-aside and sole-source award authorities only for verified SDVOSBs and VOSBs.
  - VA published a proposed rule in August 2008 that includes such provisions. Until the rule is finalized, VA guidance states that firms only have to be registered in the VIP database to receive set-aside or sole-source awards.
  - VA officials said that they expected to be able to process the currently pending applications for verification before the rule is finalized.
- VA's verification process is not an appropriate mechanism to address concerns—often cited by VA contracting and Office of Inspector General officials—that some SDVOSBs or VOSBs will not comply with limitations on how much work they can subcontract to other firms.<sup>1</sup>
  - VA's verification process is designed to consider ownership and control of the firm, which is consistent with P.L. 109-461's requirement, and does not focus on compliance with contract requirements.

<sup>1</sup> Federal regulations applicable to all agencies require firms receiving small business set-asides or 8(a) awards to perform a minimum percentage of the work, but do not require them to report on their subcontracting activity.

Subcontracting



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**VA Plans to Put in Place Mechanisms to Collect and Review Data on Subcontracts with SDVOSBs and VOSBs**

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- P.L. 109-461 requires that, if VA counts subcontracts with SDVOSBs and VOSBs toward its contracting goals, it must confirm that such subcontracts were awarded to legitimate SDVOSBs and VOSBs.
  - VA does not count subcontracts toward its agency-wide contracting goals, but its proposed rule would require large business prime contractors that submit subcontracting plans to include goals for SDVOSBs and VOSBs that are at least commensurate with VA's prime contracting goals.
  - The proposed rule also would require OSDDBU to review subcontracts with SDVOSBs and VOSBs reported under the abovementioned plans.
- Large business prime contractors currently do not report information on the firms that receive subcontracts. VA officials said that they plan to have received Office of Management and Budget approval to begin collecting such data by the time the proposed rule is finalized.

## **VA Oversight of Subcontracting Focuses on Large Businesses with Subcontracting Plans**

- Contractors generally must provide “maximum practicable opportunity” for small business participation in federal contracts of \$100,000 or more.
- In its oversight of this federal requirement, VA—like other agencies—focuses on those large businesses with contracts of \$550,000 or more (\$1 million for construction) that have subcontracting plans.
  - The Federal Acquisition Regulation and VA policy do not set specific expectations for contracting officers to monitor contracts without subcontracting plans, and the regulations provide no mechanism for prime contractors to report on subcontracting activity for such contracts.
  - VA awarded 117 contracts that required subcontracting plans in FY08 and 111 in FY07, according to FPDS-NG.

## **VA Oversight of Subcontracting Focuses on Large Businesses with Subcontracting Plans (cont.)**

- VA relies on the requirements in the Federal Acquisition Regulation to guide staff and does not have additional written policies on oversight of subcontracting plans, according to VA acquisition policy officials. For example:
  - Contracting officers must determine whether a subcontracting plan is required. If so, they must ensure that it has the required elements, such as reasonable goals for subcontracting with SDVOSBs, VOSBs, and other types of small businesses.
  - Contracting officers also are expected to monitor performance against subcontracting plans, primarily through review of electronic reports the prime contractor submits.
    - If a contractor fails to make a good faith effort to comply with the subcontracting plan, the only formal recourse available to federal agencies is to seek damages. VA and SBA officials said that agencies almost never have taken such punitive action.

## Enclosure I: Briefing on Department of Veterans Affairs Contracting with Veteran-owned Small Businesses

Subcontracting



### VA Oversight of Subcontracting Focuses on Large Businesses with Subcontracting Plans (cont.)

- OSDBU or SBA officials often help review subcontracting plans before VA awards a contract, but the contracting officer has primary responsibility for ensuring adoption of an appropriate plan and monitoring prime contractor performance.<sup>1</sup>
  - Officials at two contracting activities with the largest number of subcontracting plans said that they generally expect subcontracting plans to have achievable goals, with growth in subcontracting dollars or percentages over time.
  - In monitoring the plans, one of the contracting activities focuses on its annual reviews of electronic reports, requesting action plans if the prime contractor falls short of goals and using the option to extend contracts as leverage to press for more aggressive subcontracting efforts. The other contracting activity uses the prime contractors' routine financial reports to monitor their subcontracting activity on an ongoing basis.

<sup>1</sup> SBA also reviews agencies' subcontracting oversight and large businesses' subcontracting programs. However, we found that resource constraints limited the ability of staff to fulfill SBA's responsibilities. See GAO, *Small Business Administration: Agency Should Assess Resources Devoted to Contracting and Improve Several Processes in the 8(a) Program*, GAO-09-16 (Washington, D.C.: Nov. 21, 2008). 25

## Enclosure I: Briefing on Department of Veterans Affairs Contracting with Veteran-owned Small Businesses

### Subcontracting



## VA Oversight of Subcontracting Focuses on Large Businesses with Subcontracting Plans (cont.)

- Even if a contract with a large business exceeds the dollar threshold, subcontracting plans are not required when there are no subcontracting opportunities. The few other exceptions to the requirement most often would not apply to VA contracts.
  - In FY07, VA did not require subcontracting plans on 44 contracts that exceeded the dollar threshold because no subcontracting opportunities existed, according to FPDS-NG.
  - Also in FY07, VA did not require subcontracting plans on another 141 contracts that exceeded the dollar threshold, but FPDS-NG did not collect data on the reasons for not requiring a plan.
- GAO and others have identified a number of issues at various agencies concerning oversight of subcontracting requirements.<sup>1</sup>
  - In future work, we intend to explore further VA's oversight of subcontracting plans and of contracting officers' decisions whether to require a subcontracting plan.

<sup>1</sup> See GAO, *Federal Acquisition: Oversight Plan Needed to Help Implement Acquisition Advisory Panel Recommendations*, GAO-08-160 (Washington, D.C.: Dec. 20, 2007), and *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the Congress of the United States* (Washington, D.C.: January 2007).

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