

GOVERNMENT NEWS

Senate passes bill to curb fraud in the federal government vetpreneur contracting program.

by Dennis DeMolet and Hardy Stone

THE SMALL BUSINESS Contracting Fraud Prevention Act of 2011 (S. 633) passed the Senate Committee on Small Business and Entrepreneurship with unanimous consent on Sept. 21. The bill mandates that all federal agencies verify service-disabled, veteran-owned small business (SDVOSB) status through the U.S. Department of Veterans Affairs' VetBiz database of certified veteran-owned firms. If S. 633 becomes law, all federal contracting officers would need to verify SDVOSB status before a contract is awarded.

The Senate Committee, chaired by Sen. Mary Landrieu (D-La.), referred the measure on Sept. 22 to the House Small Business Committee, chaired by Rep. Sam Graves (R-Mo.).

Senate 633 was introduced on March 17, 2011, by Sen. Olympia Snowe (R-Maine).

After Senate passage of the bill, Sen. 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 ..."

In the federal marketplace, businesses "self-certify" that they are owned and controlled by a serviced-disabled veteran and are eligible for contracting preference. This legislation would eliminate self-certification and reserve federal set-aside contract opportunities for bona fide SDVOSBs. At this time, only the VA requires verification before a contract is awarded.

The bill also toughens penalties for falsification in the SDVOSB set-aside



Sen. Mary Landrieu (D-La.)



Rep. Sam Graves (R-Mo.)



Sen. Olympia Snowe (R-Maine)

programs by increasing criminal prosecutions, suspensions and debarments.

VetBiz, a publicly available database of veteran-owned businesses, is operated by the VA's Center for Veterans Enterprise (CVE). As mandated on Oct. 13, 2010, by the Veterans' Benefits Act of 2010 (Public Law 111-275), the VA must certify that all veteran-owned and service-disabled, veteran-owned businesses are eligible for VA contracts. Since the certification process began, thousands of businesses in the VetBiz database no longer qualify and have been purged.

S. 633 ANALYSIS

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

THIS LEGISLATION WOULD ELIMINATE SELF-CERTIFICATION AND RESERVE FEDERAL SET-ASIDE CONTRACT OPPORTUNITIES FOR BONA FIDE SDVOSBs.

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at The Department of Homeland Security



The Department of Homeland Security, Office of Small and Disadvantaged Business Utilization, cordially invites all small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, 8(a), and women-owned small business concerns to learn more about contracting opportunities with DHS.

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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 SDVOSBs. Hundreds of bona fide SDVOSBs have gone out of business as a result.

Not all Veteran Service Organiza-

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 SDVOSBs to compete in the federal marketplace.

We need it, but who pays for it?

Without question, S. 633 would

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.

tions 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, VOSBs and SDVOSBs 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

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 SDVOSBs. 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 percent minimum procurements set-aside for SDVOSBs ... and penalizes agencies that don't meet the 3 percent minimum.

Slam dunk, end of story. PL 106-50 is no longer a toothless platitude. It's finally real. But this sounds too good ...

AND ONE MORE THING ...

THE U.S. DEPARTMENT OF VETERANS AFFAIRS (VA) OFFICIALLY IGNORES GAO DECISION TO SET-ASIDE CONTRACTS TO VETREPRENEURS.

In a recent statement, the Department of Veterans Affairs informed the Government Accountability Office (GAO) that the VA will ignore recent recommendations included in a protest decision to set-aside contracts for service-disabled, veteran-owned small businesses.

According to the VA's official statement released Oct. 28, 2011, the GAO recommendation does not change how VA will acquire goods and services in support of its mission. VA expects this issue ultimately will be decided by the courts. Since the June 2007 effective date, VA has consistently interpreted the law as a small business, set-aside program with veteran small businesses having priority over any other class of small business when conducting full and open competition contracts.

VA again specifically explained that "this rule does not apply to Federal Supply Schedule task or delivery orders" when promulgating the final rule (74 Federal Register 64619 (Dec. 8, 2009), implementing the portions of the Veterans Benefits, Healthcare, and Information Technology Act of 2006 (Public Law 106-491) providing opportunities for SDVOSBs and VOSBs to increase their contracting and subcontracting with VA.

Visit www.navoba.com/varefusal to learn more.



U.S. Department of Veterans Affairs Secretary Eric Shinseki

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