

ENSURING VETERAN ENTERPRISE PARTICIPATION IN
STRATEGIC SOURCING ACT

JULY 24, 2017.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. ROE of Tennessee, from the Committee on Veterans’ Affairs,
submitted the following

R E P O R T

[To accompany H.R. 2781]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 2781) to direct the Secretary of Veterans Affairs to certify the sufficient participation of small business concerns owned and controlled by veterans and small business concerns owned by veterans with service-connected disabilities in contracts under the Federal Strategic Sourcing Initiative, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Ensuring Veteran Enterprise Participation in Strategic Sourcing Act”.

SEC. 2. SECRETARY OF VETERANS AFFAIRS CERTIFICATION OF SUFFICIENT PARTICIPATION OF SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY VETERANS AND SMALL BUSINESS CONCERNS OWNED BY VETERANS WITH SERVICE-CONNECTED DISABILITIES IN CONTRACTS UNDER THE FEDERAL STRATEGIC SOURCING INITIATIVE.

(a) **CERTIFICATION REQUIRED.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate certification in writing that with respect to each contract (except for domestic delivery services) awarded under the Federal Strategic Sourcing Initiative (managed by the Office of Federal Procurement Policy) a sufficient number of small business concerns owned and controlled by veterans and a sufficient number of small business concerns owned and controlled by veterans with service-connected disabilities are represented within each category.

(b) **INSUFFICIENT REPRESENTATION.**—If the Secretary determines that the representation by small business concerns owned and controlled by veterans or small business concerns owned and controlled by veterans with service-connected disabilities within a category of the contracts awarded under such Federal Strategic Sourcing Initiative is not a sufficient number, the Secretary shall—

(1) consult with the Administrator of the General Services Administration to increase the number of such concerns awarded contracts under such category; or

(2) require the Department of Veterans Affairs to stop awarding orders under that category of the Initiative, effective on the date of such determination.

(c) **DEFINITIONS.**—In this section:

(1) The terms “small business concern owned and controlled by veterans” and “small business concern owned and controlled by veterans with service-connected disabilities” have the meaning given such terms in section 8127(k) of title 38, United States Code.

(2) The term “category” means—

(A) a type of supply or service for which a suite of contracts has been established under the Federal Strategic Sourcing Initiative; or

(B) any further subdivision or grouping within such a suite of contracts.

(3) The term “sufficient number”, with respect to a type of business concern, means not fewer than two and enough to maximize the percentage of orders entered into by the Secretary with such business concerns, as determined by the Secretary.

PURPOSE AND SUMMARY

H.R. 2781, the “Ensuring Veteran Enterprise Participation in Strategic Sourcing Act,” was introduced by Representative Neal Dunn of Florida on June 6, 2017. H.R. 2781, as amended, would direct the Secretary of the Department of Veterans Affairs (VA) to certify whether the number of Veteran- and Service Disabled Veteran-Owned Small Businesses represented on each category of contract within the Federal Strategic Sourcing Initiative is sufficient. If insufficient in any category, VA shall consult with the General Services Administration (GSA) to increase the number of contracts held by Veteran- and Service Disabled Veteran-Owned Small Businesses holding the contracts, or stop purchasing in the insufficient category.

BACKGROUND AND NEED FOR LEGISLATION

The Federal Strategic Sourcing Initiative (FSSI) is a suite of contracts awarded by GSA for use by all federal agencies to purchase

common supplies and services, including building maintenance, mobile phone services, janitorial products, office supplies, domestic delivery, and maintenance and repair. The term “Federal Strategic Sourcing Initiative” does not include or pertain to any other contracts, awarded by GSA or any other agency, for the purpose of strategic sourcing. There are many contracts for the purpose of strategic sourcing, referred to variously as Federal Supply Schedule contracts, Government-wide Acquisition Contracts, Multiple-award Contracts, or other terms; the legislation has no bearing on these contracts.

The FSSI contracts for most of the six types of items listed above are awarded to between 10 and 20 companies, consisting of large businesses and various types of small businesses, including Veteran Owned Small Businesses (VOSBs) and Service Disabled Veteran Owned Small Businesses (SDVOSBs). The categories of contracts are further subdivided into groupings, variously called tracks or contract line items. Each grouping consists of fewer contracts. No contractor receives any business by merely holding an FSSI contract. An agency must decide to place an order against the FSSI contract, and agencies typically do this by selecting the appropriate contract category or subdivision grouping and requesting pricing from each company represented within it. Agencies then award an order to the company quoting the lowest price. In some subdivision groupings, no VOSBs or SDVOSBs hold contracts, meaning no VOSBs or SDVOSBs are eligible to receive any orders. Agencies wishing to avoid doing business with VOSBs or SDVOSBs, including VA, may deliberately select groupings where they are not represented. This is relatively easy to do, because many of the same items can be obtained in multiple groupings.

The Veterans Benefits, Health Care, and Information Technology Act of 2006 (38 U.S.C. 8127) gave VOSBs and SDVOSBs particular preference in VA contracting, called the Rule of Two. VA must set aside contracts for competition among them, with SDVOSBs having first preference and VOSBs having second preference, when it expects that two or more such businesses will submit an offer, and the contract can be awarded at a fair and reasonable price. The Supreme Court ruled in *Kingdomware Technologies, Inc. v. United States* on June 16, 2016 that the Rule of Two applies to all VA contracting, including in particular contracts awarded and administered by other agencies but used by VA, such as the FSSI contracts.

The FSSI contracts have emerged as a loophole to the Rule of Two’s proper application since *Kingdomware*. When there are no VOSBs or SDVOSBs holding contracts within a particular FSSI category or subdivision grouping, some contracting officers have searched for VOSBs or SDVOSBs, found none because there are none represented, and proceeded to order from another type of business. This is contrary to the letter and spirit of the Rule of Two. VA’s policy in that situation directs the contracting officer to disregard the FSSI and either use another equivalent, existing contract or create a new contract. Contracting officers do not always follow this policy, and when they do, disregarding the FSSI contracts and replicating them is inefficient. A much better solution is to make VOSB and SDVOSB representation adequate in all aspects of the FSSI contracts, so they can always be used.

HEARINGS

There were no full Committee hearings held on H.R. 2781.

On June 29, 2017, the Subcommittee on Oversight and Investigations conducted a legislative hearing on: H.R. 2006, H.R. 2749, H.R. 2781, and a draft bill to improve the hiring, training, and efficiency of acquisition personnel and organizations of the Department of Veterans Affairs, and for other purposes (now H.R. 3169).

The following witnesses testified:

The Honorable Jack Bergman of Michigan; the Honorable Ann McLane Kuster of New Hampshire; the Honorable Mike Coffman of Colorado; the Honorable Neal Dunn of Florida; the Honorable Jimmy Panetta of California; the Honorable Bruce Poliquin of Maine; Mr. Thomas Burgess, Associate Deputy Assistant Secretary, Office of Logistics and Supply Chain Management, Department of Veterans Affairs; Mr. Thomas Leney, Executive Director, Small and Veteran Business Programs, Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs; Ms. Kaitlin Gray, Assistant Director, National Veterans Employment and Education Division, The American Legion; Mr. Patrick Murray, Associate Director, National Legislative Service, Veterans of Foreign Wars of the United States; and Mr. Wayne Simpson, Member, National Veterans Small Business Coalition.

A statement for the record was submitted by:

The Associated General Contractors of America.

SUBCOMMITTEE CONSIDERATION

On July 12, 2017, the Subcommittee on Oversight and Investigations met in open markup session, a quorum being present, and ordered H.R. 2781 reported favorably to the full Committee. A motion by Representative Ann McLane Kuster of New Hampshire to report H.R. 2781 favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE CONSIDERATION

On July 19, 2017, the full Committee met in open markup session, a quorum being present, and ordered H.R. 2781, as amended, reported favorably to the House of Representatives by voice vote. During consideration of the bill, the following amendment was considered and agreed to by voice vote:

An amendment to H.R. 2781 offered by Representative Neal Dunn of Florida.

A motion by Representative Tim Walz of Minnesota to report H.R. 2781, as amended, favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, no recorded votes were taken on amendments or in connection with ordering H.R. 2781, as amended, reported to the House.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are to require the Secretary of Veterans Affairs to certify adequacy of Veteran- and Service Disabled Veteran-Owned Small Business representation on all categories of the Federal Strategic Sourcing Initiative contracts, and if insufficient, consult with the General Services Administration to increase their representation or cease using the insufficient categories.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

A Congressional Budget Office (CBO) report was not available at the time this report was filed. The Committee believes that there is no new budget authority, entitlement authority, or tax expenditures.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 2781, as amended, does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

A CBO report was not available at the time this report was filed. The Committee believes that there are no effects on direct spending or revenues.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

A CBO report was not available at the time this report was filed. CBO has preliminarily estimated that there are no effects on direct spending or revenues.

FEDERAL MANDATES STATEMENT

A CBO report was not available at the time this report was filed. The Committee believes that there are no Federal mandates.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 2781, as amended,

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Article I, section 8 of the United States Constitution, H.R. 2781, as amended, is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that H.R. 2781, as amended, does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee finds that no provision of H.R. 2781, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, 115th Cong. (2017), H.R. 2781, as amended, contains no directed rule making that would require the Secretary to prescribe regulations.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 cites the short title of H.R. 2781, as amended, to be the “Ensuring Veteran Enterprise Participation in Strategic Sourcing Act.”

Section 2. Secretary of Veterans Affairs certification of sufficient participation of small business concerns owned and controlled by veterans and small business concerns owned by veterans with service-connected disabilities in contracts under the Federal Strategic Sourcing Initiative

Section 2(a) would require the Secretary of Veterans Affairs to certify in writing to the Committees on Veterans’ Affairs of the House and Senate that, with respect to each contract awarded under the Federal Strategic Sourcing Initiative, a sufficient number of Veteran Owned Small Businesses and Service Disabled Veteran Owned Small Businesses are represented within each category, excluding Domestic Delivery Services.

Section 2(b) would require the Secretary to consult with the Administrator of the General Services Administration to increase the number of Veteran Owned Small Businesses and Service Disabled Veteran Owned Small Businesses awarded contracts under a particular category of the Federal Strategic Sourcing Initiative, or require VA to stop awarding orders under that category effective on the date of determination, if the Secretary determines that category of contracts does not have a sufficient number of Veteran Owned Small Businesses and Service Disabled Veteran Owned Small Businesses represented.

Section 2(c) would provide definitions for “small business concern owned and controlled by veterans”, “small business concern owned and controlled by veterans with service-connected disabilities”, and “category” as they pertain to this Section.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED
If enacted, this bill would make no changes in existing law.

