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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

June 19, 2015

VIA ELECTRONIC TRANSMISSION

The Honorable Robert A. McDonald
Secretary
U.S. Department of Veteran Affairs
810 Vermont Ave. NW
Washington, D.C. 20420

Dear Secretary McDonald:

On May 14, the *Washington Post* reported that the Department of Veteran Affairs (VA) spends at least \$6 billion per year in violation of federal contracting rules.¹ Mr. Frye, the agency's senior official for procurement, described a culture of "lawlessness and chaos" at the VA: "I can state without reservation that VA has and continues to waste millions of dollars by paying excessive prices for goods and services due to breaches of Federal laws."²

By way of example, Mr. Frye noted a widespread abuse of roughly 2,000 purchase cards that were used to obtain billions of dollars' worth of medical supplies without contracts. According to the *Washington Post*, "\$1.2 billion in prosthetics were bought using purchase cards without contracts during an 18-month period" that ended in 2014.³ Some purchase cards had a \$25,000 limit and Mr. Frye learned that a VA employee was able to purchase \$50 million dollars' worth of equipment without proper authority simply because each purchase was \$24,999 – one dollar below the threshold.⁴

¹ Lisa Rein and Emily Wax-Thibodeaux. *VA Improperly Spent \$6 Billion Annually, Senior Official Says*. Washington Post (May 14, 2015), Accessible at http://www.washingtonpost.com/politics/va-improperly-spent-6-billion-on-care-for-veterans-senior-agency-leader-says/2015/05/13/ab8f131c-f5be-11e4-b2f3-af5479e6bbdd_story.html?hpid=z1; See also, Lisa Rein, "9 big takeaways from memo accusing VA of making a 'mockery' of spending rules," Washington Post (May 14, 2015). Accessible at <http://www.washingtonpost.com/blogs/federal-eye/wp/2015/05/14/9-big-takeaways-from-memo-accusing-va-of-making-a-mockery-of-spending-rules/>.

² *Id.*

³ *Id.*

⁴ *Id.*

Given the off the shelf nature of the transactions, the public is in the dark as to how the money is spent. Importantly, Mr. Frye alleges that purchases without terms or contracts may result in government forfeiting all legal protections afforded by a contract.⁵ This, in turn, could result in purchased products not meeting safety standards which negatively impacts veteran safety and care.

In addition, it is alleged that the VA neither engaged in competitive bidding nor signed contracts with “outside hospital and health-care providers that offer medical care for veterans that the agency cannot provide, such as specialized tests or surgeries.”⁶ As a result, the VA has paid roughly \$5 billion for services that would most likely have cost less if purchased via competitive bidding and/or proper contracting. According to Mr. Frye, he contacted the Office of General Counsel regarding this issue and it confirmed the VA was violating federal law by spending money in the absence of contracts.⁷

Mr. Frye says he raised his concerns with other senior officials at the VA, but was consistently ignored.⁸ He also alleged that senior agency officials have deceived various members of Congress when questioned about their spending practices.⁹ Prior to your confirmation, you pledged to me that you would clean up the VA. Unfortunately, time and again, news reports highlight instances that illustrate a continuing culture of chaos at the VA that fails our veterans.

Please answer the following questions:

1. In regard to outside hospital and health-care providers that offer medical care for veterans that the agency cannot provide, such as specialized tests or surgeries, why did the VA not seek competitive bidding and proper contracts before purchasing those services?
2. Are you currently investigating Mr. Frye’s claims that the VA spends \$6 billion per year in violation of federal contracting rules? If so, when did the investigation begin and how many employees are assigned to the investigation? If not, please explain.
3. What actions has the VA taken, or is currently taking, to remedy these alleged violations of the federal acquisition regulations?

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

4. What are you going to do to ensure that VA employees comply with federal contracting laws, engage in proper bidding, and enter into formal contracts for products and services?
5. For those employees who have broken federal contracting laws, improperly spent taxpayer money, and otherwise acted unethically, what type of disciplinary action will you take against them? If you have already taken disciplinary action against those employees, please explain what steps have been taken.
6. Mr. Frye noted that “[t]here are five career SES members subordinate to the CFO who are aware of [the discrepancy between authorized spending on medical care and supplies and unauthorized spending] but have done nothing to mitigate them. In fact, when I recently brought these issues to their attention they were demonstrably unhappy I broached the subject.” Have you identified and spoken with the SES personnel? If so, what did you conclude? If not, will you?
7. Mr. Frye noted that, “No persons were held accountable for these violations of law. The matters were simply swept under the rug, and senior VA leadership directed my office to approve an ‘institutional ratification’ for thousands of unauthorized commitments worth hundreds of millions of dollars.” What steps will you take, or have already taken, to identify leadership failure and institute a fix?

Please number your responses according to their corresponding questions. Thank you in advance for your cooperation with this request. Please respond no later than July 6, 2015. If you have questions, please contact Josh Flynn-Brown of my Committee staff at (202) 224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary