



# FIRST CALL

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## Update from NVSBC

*A message from NVSBC Executive Director, Scott Denniston*



April is an exciting month for the NVSBC. We are finalizing the agenda for VETS 16, which will prove to be our best event ever. We look forward to seeing every member at the annual NVSBC members' meeting on June 20th at 3:00 PM at the Waterside Marriott (the conference location).

On April 13, the NVSBC welcomed the first of what we expect will be several new chapters, as we expand into 2016. Heidi Gerding, NVSBC President, signed the Chapter Charter for the NVSBC Washington, D.C. area chapter. A hearty congratulations to Co-Chairs Scott Semple and J.D. Sullivan for all of their hard work to make the chapter a reality. We are excited about the services of training, networking, and match-making we can bring to area members. We are now focusing on Florida and Huntsville, Alabama for chapter formation in 2016. We will announce more information at the annual members' meeting.

Also, on April 13th, the NVSBC entered into an agreement for GOVMATES to serve as the official match-making platform for the NVSBC nation-wide. GOVMATES allows the matching of capabilities of NVSBC members with the needs of federal agencies and prime contractors. Its principals, Stephanie Alexander and Katie Bilek, have a long history of providing match-making events in the D.C. area. If you want to participate, please register your capability information at [www.govmates.com](http://www.govmates.com). We can't help you if you don't register.

Last, Tom Leney, Director of the OSDDBU at the VA is looking for companies who will need to be reverified within the next 90 days to volunteer to be part of a new verification trial. We all complain about the verification process. Now it's our opportunity to help the VA improve the process. If you are interested, email Tom at [tom.leney@va.gov](mailto:tom.leney@va.gov). Please include "verification trial" in your subject line so he knows your email's purpose!

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*NVSBC's purpose is to transition veterans into business owners servicing the federal government.*

*Pictured above our Update:*

On April 13, 2016, the NVSBC welcomed its first new chapter. From left to right are: Scott Denniston, NVSBC Executive Director; Heidi Gerding, NVSBC President; J.D. Sullivan, NVSBC D.C. Chapter Co-Chair; and Scott Semple, NVSBC D.C. Chapter Co-Chair.

## A Bid Protest Lesson: When Teaming, Watch For Red Flags

In a recent size appeal decision, the SBA Office of Hearings and Appeals held that a small prime contractor was unusually reliant on its large subcontractor where “four key factors” indicated that the small prime contractor was bringing little to the table but its small business status. These four key factors are important to keep in mind for purposes of ensuring that your small company is not found “affiliated” with its large subcontractor.

In this appeal, *Size Appeal of Modus Operandi, Inc.*, Modus had proposed to use BAE Systems and Technology Solutions as its subcontractor on an Air Force solicitation for research, studies, engineering, and related services. SBA No. SIZ-5716 (2016). After Modus was awarded the contract, a competitor filed a size protest with the SBA. In sustaining the protest, the SBA noted that Modus offered a BAE employee as its program manager. In the past performance portion of the proposal, Modus identified two prior contracts for BAE- one of which was the incumbent SSEAMS contract and was the most relevant experience to the solicitation.

In upholding the SBA’s determination finding Modus to be affiliated with BAE under the ostensible subcontractor affiliation rule, the SBA noted a series of size appeal decisions that have identified “four key factors” that contribute to findings of unusual reliance. OHA explained:

*First*, the proposed subcontractor was the incumbent contractor, and was not itself eligible for the procurement. *Second*, the prime contractor planned to hire the large majority of its workforce from the subcontractor. *Third*, the prime contractor’s proposed management previously served with the subcontractor on the incumbent contract. And *fourth*, the prime contractor lacked relevant experience, and was obliged to rely on its more experienced subcontractor to manage the contract.

Let this be a lesson if you are teaming up with a big contractor in hopes of snagging a set-aside contract, watch out for these four red flags.



## Don’t Get Burned: If You Win a Set-Aside, Check Your Mail

The lesson here is clear, but it’s worth repeating: if you win a set-aside contract, keep your eyes peeled for correspondence from the Small Business Administration. If it is notice of a size protest and a request for information, failure to respond may strip you of your hard-earned contract.

In a recent size appeal decision, the SBA Office of Hearings and Appeals held that the SBA had properly issued an adverse size determination against a contractor after receiving no reply to an information request stemming from a size protest. *Oxyheal Medical Systems, Inc.*, SBA No. SIZ-5707 (2016).

The employee listed as the firm’s point of contact on SAM.gov received both an email and hard copy of the size protest. Via email, she was advised that per the SBA’s “adverse inference” rule, the SBA may issue an adverse size determination if a protested company does not respond to a size protest. Because the employee filled several roles and was spread thin, Oxyheal did not respond in time. Unfortunately for Oxyheal, the SBA Area Office issued an adverse size determination that was upheld by the SBA OHA. The rationale? Being busy is no excuse for failing to respond to a size protest.



## Contractor Pays \$5 Million to Settle SDVOSB Fraud Claims

According to a Department of Justice ("DOJ") press release issued on March 14, 2016, Syracuse-based Hayner Hoyt Corporation has agreed to pay \$5 million, plus interest, to resolve allegations that several of its officers and employees, as well as affiliates LeMoyné Interiors and Doyner Inc., engaged in conduct designed to exploit contract opportunities reserved for service-disabled veterans.

The settlement resolves allegations that the defendants orchestrated a scheme designed to take advantage of the SDVOSB Program to secure government contracts for a now-defunct company, 229 Constructors, LLC. According to the press release, senior officers of Hayner Hoyt Corporation created

the corporation, and then exerted control as it bid on and performed the contracts. It also offered considerable resources. Meanwhile, its veteran president, Mr. Ralph Bennett, was not involved in making important business decisions for the company. He did not even receive emails meant for him in his capacity as president - they were automatically forwarded to another individual.

The government's investigation was triggered by a whistleblower lawsuit filed under the *qui tam* provisions of the False Claims Act, which allows private persons, known as "relators," to file civil actions on behalf of the United States and share in any recovery. The relator in this case will receive \$875,000 of the settlement proceeds.

### Florida Chapter Approved!

We are delighted to confirm the Board's approval to form a Florida chapter of the NVSBC! No dues will be charged (at this time) beyond normal NVSBC membership, as we begin the process of building a strong team to lead the chapter. Justin Stuckart and Tim Farrell are asking members of the NVSBC to send your contacts of people and businesses that may be interested in joining our chapter here in Florida. A special thanks goes to Scott Denniston, the Board, our staff, Scott Semple and J.D. Sullivan of the D.C. Chapter for their help and guidance. We look forward to this next chapter (pun intended)!

-Tim Farrell  
NVSBC National Board  
tim.farrell@nvsbc.org

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## NVSBC D.C. Chapter Update



The D.C. Chapter monthly dinner meeting on April 13th featured an outstanding presentation by Mr. Tom Leney, Director of the VA's Office of Office of Small & Disadvantaged Business Utilization ("OSDBU"). Tom's presentation, entitled "*MyVA Verification Transformation and Program Updates*" provided a detailed description of many significant changes being implemented to enhance and modernize OSDBU programs, including the CVE. Additionally, Tom provided the VA OSDBU's acquisition forecast, including nine upcoming programs along with the budgets for each acquisition. Our audience of over 115 members and soon-to-be-members gained invaluable insights from Tom's presentation. If you would like a copy of Tom's presentation, please email Scott Semple at [scott.semple@nvsbc.org](mailto:scott.semple@nvsbc.org).

Katie Bilek and Stephanie Alexander, Vice Presidents of the D.C. Metro Chapter Match Making program, reviewed the latest matches made with large primes and the schedule for upcoming MM activities including events with Boeing, GDIT, Harris, Raytheon, L3 and Northrop Grumman. The D.C. Metro MM program delivers real business opportunities for our members.

Newly-elected D.C. Chapter Board of Directors Member, was introduced. Judy provided an update of upcoming Boot Camp and other training programs at our next dinner meeting.

The D.C. NVSBC Chapter meets monthly on the 2nd Wednesday of each month from September through June at the Key Bridge Marriott in Arlington, VA. If you would like your email added to monthly emails and invitations, please send an email to Aimee Lanik at [aimee.lanik@nvsbc.org](mailto:aimee.lanik@nvsbc.org).

## Updates About Three Programs VOSBs Care About

As small businesses competing in the federal arena, we want to be sure we maximize every opportunity available to us. Here are updates on three programs that may affect you:

*First*, the SBA has (somewhat inexplicably) as of March 24th launched a new WOSB portal to help women-owned small businesses better manage the WOSB self-certification process. This is baffling because the Small Business Act now provides for only one way to qualify for a WOSB set-aside contract: formal certification. On its website, the SBA offers no legal justification for why self-certification is permitted. Our advice to our NVSBC members seeking WOSB set-aside contracts is to err on the side of caution and to seek formal certification.

*Second*, the SBA announced that it expects to issue a final rule on its proposed universal mentor-protégé program in June or July of 2016, and begin implementation in the fall. This program will be open to all small businesses, and allow SBA-approved mentor-protégé joint ventures to qualify as “small” for any federal government prime contract or subcontract. This is a benefit currently available only to 8(a) companies. Rest assured that the NVSBC will share the final rule once it is published in the Federal Register!

*Third*, in March of 2016, the Government Accountability Office (“GAO”) released a report to uncover the findings of an investigation into the VA’s Center for Verification and Evaluation’s verification process. The GAO reviewed the VA’s verification procedures and strategic plan, reviewed a generalizable random sample of 96 verification applications, and interviewed various individuals involved with the process.

In general, the GAO found that while the VA has improved its (relatively new) process by decreasing wait times, implementing detailed written work instructions, and reducing its backlog on site visits, it has ways to go. It doesn’t have a detailed operational plan to guide and integrate with the VA’s strategic objectives. This makes long-term improvements difficult.

Access the report here.



## FIRST CALL

The NVSBC is pleased to offer “First Call” to its members. In our active duty careers, “first call” was the notice to get up and get moving to usher in a new day. We will provide you with all the important information you need to get up and moving to success in the federal marketplace. This publication is prepared with the help of veteran advocate and attorney, Sarah Schauerte. Access her company website and blog at: <http://www.legalmeetspractical.com>.



### Ideas?

If you have ideas for future content for First Call, or how to maximize the benefit NVSBC offers to its members, we always welcome input. Please contact Scott Dennison with your comments at: [scott.denniston@nvsbc.org](mailto:scott.denniston@nvsbc.org).