



FIRST CALL

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Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



As I write this, we are just five weeks away from VETS 19 at the Marriott Rivercenter, San Antonio, TX! I for one am looking forward to seeing all our NVSBC members, prospective members, exhibitors, and sponsors. We couldn't do this without our sponsors, so THANK YOU!

Last month I talked about the "Section 809 Panel" recommendations to streamline the DoD acquisition process. One of the panel's recommendations is to eliminate all set-asides at DoD. **I'm happy to say we have secured one of the panel commissioners to speak at VETS 19 to discuss the panel and its recommendations.** This alone is worth the price of admission!

Also, I am pleased to announce that in conjunction with the Street Shares Foundation, we are holding a

"pitch competition" where SDVOSBs and VOSBs can compete for the best pitch. Through a selection process the best will be selected and present their pitches at VETS 19. The audience will choose the winner and the top three receive prize money! If interested, go to www.StreetShares.com/Foundation to submit. If you are not already registered for VETS 19, do so today at www.veterantrainingsymposium.com.

I need your help! In spite of *Kingdomware* and VA policy after that Supreme Court decision, VA is increasing its use of other government agency contract vehicles to avoid Vets First and the Rule of Two. If you are experiencing these issues, please contact me at scott.denniston@nvsbc.org.

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

See you in June! Due to VETS19, there will be no *First Call* in May.

Proposal Woes: Know Your Past

When submitting a proposal in response to a Solicitation, be like Santa: check your list once, then check it twice. In other words, very, very carefully read the Solicitation's evaluation factors to make sure that you've addressed every single item. If not, and you miss something, if you're found technically unacceptable or non-responsive, you're going to find yourself waging an uphill battle in a protest.

One item important to understand is past performance, which is often particularly important in best value procurements. **Know this: whatever the Solicitation says the agency will or can consider for past performance, you should assume that is what the agency will consider and prepare accordingly.** For example, if you have a negative CPAR and the Solicitation states that the agency may consider information outside of your submittal, the agency won't be considered

unreasonable if it pulls a less-than-stellar relevant CPAR and uses it to downgrade you.

A recent GAO case illustrates another point: make sure past performance information is relevant to the solicitation (generally, that it be similar in type, scope, and complexity to the work required). In *Technica, LLC*, B-417177 (Mar. 2019), a protestor had submitted three past performance examples, but only one involved work similar to the requirement. The GAO held that the agency had reasonably assigned the protestor a "satisfactory" versus "significant" confidence rating.

Accordingly, when choosing past performance examples, make sure they show you can do the work: an agency looking for a stellar grounds maintenance contractor won't be impressed with references from driving services contracts.

Do You Know How to Fight a Bad CPAR?

When a contractor receives a bad rating in the Contractor Performance Assessment Report System (CPAR), this can cause them to lose a future contract, particularly if the assessing official summarizes their performance by stating that they "would not recommend them for similar requirements." Ouch.

A contractor has the chance to respond to an interim CPAR issued, which may result in the revision of the CPAR, but did you know that you can also ask your CO to revise a CPAR by using the disputes route? (i.e., request a final decision pursuant to FAR Part 33). It's true – if you have a nasty CPAR out there, consider making a request for a final decision to your CO and preparing to fight it out at the ASBCA or CBCA. If a bad review is costing you jobs, it might be worth the trouble.

The VetBiz System: Working Through the Kinks



As everyone knows, applying for verification in the VA's Vendor Information Pages has recently presented additional challenges. These are both substantive and technical, and they may affect you (even if they didn't when you were last verified):

- If you have outside employment, the CVE has been requiring letters from outside employers verifying flexibility afforded to enable you to meet your "full time employment" requirement. This is a particular challenge because many companies won't provide such a letter by policy.
- If you have trouble loading a document and receive the error that you are uploading an incorrect file type, change the document title to remove anything other than letters and numbers to see if that fixes the issue.
- Start early! Currently, verification processing times are taking upward of 75 calendar days.
- Operating agreements and bylaws must now contain "further assurance" or "further effect" clauses, meaning that members/owners will take actions necessary to give effect to the documents' provisions.

VETERAN NEWS OF NOTE

SOUTH FLORIDA

On May 2, the South Florida Chapter will host its First Year Anniversary Dinner at Marriott Fort Lauderdale, featuring Mr. Anthony Bell (Small Business Advisor at the Department of Homeland Security, Washington, D.C.) as the Keynote Speaker. The discussion will cover procurement objectives for TSA, Customs and Border, FEMA and the Coast Guard in South Florida. A Boot Camp presentation will precede the dinner to provide attendees more bang for their buck.

During the dinner, the Chapter will also acknowledge and re-announce its new officers:

- President – Roger Reyes
- VP – Paul Conner
- Secretary – Lulu Farrell
- Treasurer – Alex Joseph.

Get your tickets here.

Supreme Court to Decide VA Disability Claims Case

In 1982, Vietnam veteran James Kisor filed a claim for disability benefits with the VA, asserting that he suffered from PTSD. This claim was denied in 1983. In 2006, Kisor sought review of his previously-denied claim under 38 U.S.C. 3.156(a), which allows a petitioner to “reopen” a denial by submitting “new and material evidence.” Kisor submitted evidence not available in 1982, including his service record. The VA granted benefits, but it applied a start date of 2006, not 1982, Kisor maintains this in error.

The VA interpreted its own regulations that the new documents were not “relevant” to his first request in 1982, despite the VA affirming his PTSD from combat record forms. Two courts affirmed the VA’s decision, affirming that prior case law gave the VA the ability to define the meaning of “relevant” in this regulation, and putting the onus on Kisor to demonstrate it was not a valid interpretation. This is the issue before SCOTUS: whether to overturn case law holding that *Chevron* deference would also apply to interpretations of regulations established by an agency provided that interpretation is not inconsistent with the regulation.

VA Increases Vet Contracting Goals by 5%

On April 8, VA announced an increase to the department’s goals for contracting with SDVOSBs and VOSBs. For fiscal year (FY) 2019, VA seeks to award at least 15% of its total contract dollars to SDVOSBs and at least 17% to VOSBs, representing a 5% increase in both goals.

For FY 2017, the last year for which official data is available, VA awarded \$5.1 billion in contracts to SDVOSBs and \$5.4 billion to VOSBs. These figures represent 19.5% and 20.6%, respectively, of VA’s total procurement of \$26.1 billion. FY 2018 data on federal contracting is still under review by the SBA.

D.C. Chapter Update

The D.C. Metro Chapter of NVSBC held its monthly dinner meeting on 10 April, featuring our very own Scott Denniston as the special guest speaker. Mr. Denniston is a nationally recognized advocate for veteran entrepreneurs and has led the advancement of Veteran business opportunities with Federal agencies for over two decades. Scott provided an insightful review and update of current NVSBC activities, along with a detailed description of the value and importance of NVSBC to your business and our current activities. In his presentation entitled “**How NVSBC Impacts You and Your Business!**” Scott described:

- The history of the NVSBC
- Why We Are Relevant to You and Your Firm
- The role of NVSBC Industry Groups & their impact on Federal Acquisition policy
- Why you need to attend VETS 19
- How Can NVSBC Impact Your Future Business?

The D.C. Chapter meets monthly (2nd Wednesday) from September through June at the Key Bridge Marriot in Arlington, VA. It offers boot camp training prior to each meeting, as well as match-making opportunities via its platform of govmates.com. To date, there have been 21,184 matches, which have resulted in 2,945 introductions resulting in new business for govmates.com members. For event notices, check NVSBC.org.



Case In Point: Lessons for SDVOSB Contractors

VetBiz Denials – It’s Better to Take Them Up with the CVE

This month, the SBA OHA resolved another CVE appeal. This one might be of interest to our members going through the CVE process. In this appeal, Secure2ware, Inc. had been denied inclusion in the VA’s Vendor Information Pages as an SDVOSB. The CVE had declined to verify the corporation because it could not verify that a non-veteran did not control it. This non-veteran, who was also a 10% owner of the corporation, received a fee for the use of his electrical contractor licenses. (It was also unclear whether the veteran was the highest-compensated). CVE Appeal of: *Secure2Ware, Inc.*, CVE-111 (2019).

As noted by SBA OHA, “The appeal consists of a single sentence in which Appellant expresses disagreement with the CVE’s determination, yet Appellant failed to provide any further information as to why the CVE determination was in error.” Thus, the appeal was denied.

When the CVE declines to verify a corporation, it issues a Post-Review Findings notice providing the firm with the opportunity to correct eligibility issues within a five-day window of time. If the firm fails to overcome all issues, it will then receive a Final Post-Review Findings notice, where it must withdraw from the process or receive a denial letter. It appears that Secure2Ware, Inc. may have missed the deadline to reply to the letter, as this decision refers to its application as having been “denied.” Either that, or the firm decided to accept the denial letter and instead take the issue up with SBA OHA.

The lesson here is simple: when

going through the CVE’s verification process, it’s best to provide all documentation required and to utilize all preliminary avenues at the CVE for verification. While we can’t know specifics, if this firm had provided greater specificity in answering the CVE’s questions and fully addressed the PRF notice, it may not have needed to go to SBA OHA. And since it did go to SBA OHA, the clock for the six months to wait to reapply started over upon issuance of the decision.

VetBiz Cancellations – Know Your Rights!

If you are included in the VetBiz database and eligibility issues come to light following this verification, you might be served with a Notice of Proposed Cancellation (NOPC).

Some of these are less onerous than others – for instance, if you forget to provide documents during an audit, that might prompt a NOPC. On the other hand, if the CVE discovers that you have a new business relationship with another company that compromises veteran control, that might present a stickier situation.

In *CVE Appeal of: Tactical Office Solutions, LLC*, CVE-104, the SBA OHA overturned a cancellation of a verified company, finding errors in the processing of this cancellation. These included the CVE’s failure to provide the company with “proper notice” of the specific facts of the proposed cancellation (hampering its ability to respond). It also found one NOPC defective because the decision to cancel was based on issues beyond those in that NOPC.

If you find yourself dealing with a cancellation, this is a good case for you to read up on your rights. You must have notice of why you’re being considered for cancellation, and an adequate opportunity to respond.

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.