



FIRST CALL

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Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



Hope you are all enjoying the summer of 2017. Around the D.C. area, we've had a lot of rain so we are still cutting the grass - a mixed blessing. For most of us, vacations are over as it's proposal time in the Federal contracting world. Seems this year, more than ever, the agencies waited until the last quarter to release the notices. The Government doesn't seem to understand the burdens that imposes on all businesses, and especially small businesses. In the long run, the government doesn't get the quality of proposal and later performance they want when all RFPs, RFIs, etc. drop in the last two months.

If you read last month's *First Call*, you know the NVSBC opposed HR 2781: "Ensuring Veteran Participation in Strategic Sourcing Act." This act would require more than one SDVOSB/VOSB to be on a contract vehicle for the VA to use the vehicle.

This bill is the first effort to give the VA a way out of VETS First. On July 24th the House passed HR 2781 and referred it to the Senate. My personal opinion is that if this passes, we will see more bills introduced to give the VA an "out" to VETS First. As I said in Norfolk in June, if this happens we have no one to blame but ourselves. This should be our "Call to Arms" to get active. How many of you have joined our "Communications Campaign" to tell Congress to enforce VETS First? How many of you have had meetings with your delegation while they were home for summer recess? How many of you have written letters to your members? We have provided sample letters, White Papers, talking points and questions to ask.

IT'S UP TO YOU!!!!!!!!!!!!!!

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

SBA Launches Improved HUBZone Map

The SBA recently launched a new HUBZone map on its website, which designates areas as eligible HUBZone locations and indicates whether an address falls within a HUBZone. This new map makes it easier to find addresses, as well as more accurately reflects HUBZone status.

If you are a HUBZone or contemplating seeking HUBZone status, access the map and other SBA resources here.

GAO REPORT FLAGS ISSUES WITH SET-ASIDE PROGRAMS

Earlier this summer, the GAO issued a report that provides an overview of the SBA's progress in improving several socioeconomic preference programs: 1) 8(a); 2) HUBZone and; 3) WOSB. While the SBA has fixed a number of previously-identified flaws, other problems remain. In a nutshell, here's what they are:

As it relates to the **8(a) program**, a 2016 OIG report that found that the SBA failed to properly document eligibility of firms admitted to the program. The SBA is still in the process of implementing a standard procedure for documenting decisions where eligibility concerns of lower-level reviewers were overturned in ultimately granting certification.

As it relates to the **HUBZone program**, the OIG found that issues relating to backlog remain. Further, the SBA has not yet implemented recommendations designed to prevent

fraud during the re-certification process by requesting supporting documentation instead of relying on site visits.

Regarding the **WOSB program**, the GAO notes that two years following the NDAA's elimination of the self-certification process, the SBA still has not implemented a rules to effect this. Further, the GAO maintains that its recommendations related to strengthening oversight of third-party certifiers and enhancing examinations of WOSB firms must be implemented to help ensure that only eligible businesses participate in the WOSB program.

For further reading, access the GAO report [here](#).



Fee Proposed to Deter Frivolous DoD Protests



This summer, the U.S. Senate proposed a provision in the 2018 National Defense Authorization Act that, if adopted, would require larger firms that fall flat on bid protests against the DoD to pay the government costs of processing the protest. This reimbursement requirement would only apply to contractors with revenues in excess of \$100 million during the previous year, and won't apply if the contractor withdraws its protest before the GAO issues a decision, or if the contractor doesn't lose on every bid protest ground.

The introduction of this provision brings to mind the proposed rule that was published in the Federal Register in April of 2016. Remember that one? That proposed that all contractors be required to pay a fee of \$350 upon filing a protest with the GAO. Not surprisingly, there has been no follow up to that proposed rule, so it appears it may be dead in the water.

Surely both of these rules are aimed at deterring frivolous bid protests. Given that filing a bid protest on either the agency at GAO level is free, and also does not require the retention of an attorney, there are few checks to prevent a contractor from abusing the system. At the same time, there is a strong public interest in permitting good faith protests to protect the integrity of the procurement process. It's a matter of striking the balance between these priorities, and it will be interesting to see if a rule that does that will eventually emerge.

Three-Year VetBiz Verification Solidified

On July 12, 2017, the SBA published a Final Rule in the Federal Register to make it official - from now on, every business verified or re-verified by the VA's Center for Verification and Evaluation (CVE) need only go through the process every three years, not two.

While many veteran business owners may jump for joy at this development, this represents an attempt to put a Band-Aid on a bullet hole, as the CVE's wait times and issues with application processing have increased dramatically over the last few months. In fact, while the CVE used to aim for a 60-day processing time, new guidance on its website says that 90 days is more like it.

For several months now, the VA has blamed *Kingdomware* for its backlog, claiming that the influx in applications from those who want to take advantage of the "Rule of

Two" the VA has shown reluctance to implement is the reason for its backlog. However, the results of a Freedom of Information Act ("FOIA") request show this is not the case. When asked for the number of applications submitted to the CVE for the last five quarters (all four quarters of 2016 and the first quarter of 2017), the VA's response showed that the number of applications has not increased since *Kingdomware*; in fact, for the October to December 2016 quarter, which is the quarter following the June 2016 *Kingdomware* decision, the number of applications decreased.

The real reason for the backlog appears to be the VA's struggle to perfect its verification process. For the last several months, it has been using different stages of application processing (doing away with the initiation-examination-evaluation-determination stages), as well as assigning one examiner as the central point of contact to applicants. Most notably, it has been issuing constantly changing guidance to its examiners, which has resulted in redundant

questions and document requests. Some of this guidance defines terms never addressed before: for example, the CVE is now defining "full-time" to mean at least 15 hours per week of active work. That is true even if the veteran business owner has no outside employment, and even if the applicant firm has no customers or work because it is a new startup.

The takeaway here is this: know you're earning that extra year. Due to CVE issues, it is likely it implemented the three-year rule to drastically reduce the number of applications it would have to process by removing literally every business up for re-verification from its queue. However, make sure you don't expire as you wait in the backlog - start the process early, and be patient. You're at the mercy of the system, and the frustration you feel is a price you pay to do business with the VA.

VetBiz Verification: The Real Success Rate

While the VA's OSBDU's website boasts of a 98.5% approval rate as it relates to applications to the VetBiz registry (the Veterans First Contracting Program), this statistic is fiction because it does not take into account withdrawn or removed applications, the number of which is significant. This number includes applications removed due to inaction on behalf of an applicant, applications withdrawn because an applicant is unwilling or unable to continue with the process (such as failure to secure a mandatory document), and, most importantly, applications where the applicant is informed that they will otherwise receive a denial.

So, what's the **real** success rate?

A FOIA request the VA responded to in June revealed that over the last five quarters, the number of combined removed or withdrawn applications each quarter ranged from approximately 1,000 to nearly 2,000. This compares to the number of *submitted* applications during these quarters, which ranged from the low to mid-2,000s. This means that the success rate for VetBiz applications might be more along the lines of 50%, accounting for all of the businesses that simply give up.

If you'd like a copy of the VA's FOIA response, feel free to contact Sarah Schauerte at scs@legalmeetspractical.com.



House Bill to Reduce LPTA in Procurements

A recent bill before the U.S. House of Representatives seeks to limit the use of the lowest price technically available (“LPTA”) source selection process in procurements. H.R. 3019, which was introduced on June 22, 2017, would create a policy to avoid using LPTA criteria in circumstances that would deny the Government the benefits of cost and technical tradeoffs in the source selection process.

The LPTA process dictates that when conducting a competitive procurement, the agency will select the offeror that offers the lowest price and whose proposal is technically acceptable under the terms of the solicitation. The LPTA method is typically used when the best value is expected to result from the selection of the technically acceptable proposal with the lowest evaluated price.

H.R. 3019 would require a revision to the Federal Acquisition to permit agencies to use LPTA as an evaluation method only when several specific criteria are met. It would also prohibit the use of LPTA in certain types of procurements: information technology services, cybersecurity services, systems engineering and technical assistance services, advanced electronic testing, audit or audit readiness services, or other knowledge-based professional services; (2) personal protective equipment; or (3) knowledge-based training or logistics services in contingency operations or other operations outside the United States, including in Afghanistan or Iraq.

As contractors, LPTA procurements can be frustrating because they mean that if you are

an incumbent doing an exemplary job on a services contract, you would lose the follow-on work if you’re underbid by even a penny. Similarly, if you have a fantastic proposal and someone else has an adequate one, you don’t get the work if that competitor has offered a lower price. The agency might not even see your proposal - it may only read the lowest-priced proposal to ensure it is technically acceptable, and only get to others if there is some reason to boot that proposal from competition.

H.R. 3019 is currently before the House Committee on Oversight and Government Reform. It follows the 2017 National Defense Authorization Act, signed into law on December 23, 2016, which enacted a nearly-identical policy to reduce the use of LPTA in U.S. Department of Defense (“DoD”) procurements. With this bill’s wider sweep and our interest in protecting the time and effort we invest in competing for federal contracts, this is one worth keeping an eye on. NVSBC will keep you posted on developments.

PDS VICTORY APPEALED

As we covered in our June issue of *First Call*, SDVOSB PDS Consultants, Inc. successfully challenged the VA’s failure to apply the Rule of Two in obtaining eyewear for VISN Networks, instead opting to buy such products from Ability One non-profit organizations.

The U.S. Court of Federal Claims ruled that VOSBs take precedence, which represents a major victory for our community. Winston-Salem, the AbilityOne vendor whose manufacturing contracts are affected by the decision and stands to lose hundreds of jobs, has appealed this decision to the U.S. Appeals Court of the Federal Circuit.

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 Denniston with your comments at: scott.denniston@nvsbc.org.