



# FIRST CALL

[www.nvsbc.org](http://www.nvsbc.org)

## Update from NVSBC

*A message from NVSBC Executive Director, Scott Denniston:*



Here's hoping you all have enjoyed a refreshing and relaxing summer. As I write this, the House has passed another budget extension to fund the Government for several weeks. Eventually Congress will understand this is no way to run a Government and how it affects federal contractors, especially small businesses.

Your NVSBC Board is excited about the number of returns of our NVSBC survey. THANK YOU to all who responded. **To those who have not, please respond by September 25<sup>th</sup>** Your responses will be helpful to the Board when we meet to discuss plans and programs for 2019/2020. In that regard, mark your calendars for VETS 20 in San Antonio, Texas, May 26-29, 2020. This celebrates the 10<sup>th</sup> anniversary of the NVSBC!

Recently Department of Defense (DoD) announced the "Cybersecurity Maturity Model Certification (CMMC). The program will become a requirement for ALL contractors doing business with DoD and will be onerous for SDVOSB/VOSBs. The CMMC program becomes effective in 2020, details pending. The latest information we have on CMMC will be posted on

[www.nvsbc.org](http://www.nvsbc.org) under "News". If you currently do work or intend to do work for DoD, please review the material. Your future may depend on it!

Thirty-four members of Congress have signed a letter to the Secretary of Veterans Affairs requesting him to prioritize ABILITY ONE organizations over SDVOSBs for VA contracts. This directly violates the VETS First law at VA, and also legal decisions (the U.S. Supreme Court in *Kingdomware* and the *PDS Consultants* case). This is a direct assault on VETS First and must be fought. For all members who are in a state or district whose member signed the letter, please reach out and express your opposition.

Frankly, the response has been dismal. Ability One on the other hand has hired a former Congressman to lobby for them. **If Congress doesn't hear from veteran small business owners on this issue Congress will think this is no big deal. THIS IS A BIG DEAL!!!!!!** If There are very strong forces working against veteran small businesses. We need to stand up and be heard!!

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

## What Can the SBA's All Small Mentor Protégé Program Offer You?

In 2016, the Small Business Administration (SBA) established the All Small Mentor-Protégé program (the "Program") to extend SBA-approved mentor-protégé relationships to all small businesses. The program seeks to develop protégé firms through mentor-provided business development assistance. Under this program, businesses that share a mentor-protégé relationship can form a joint venture to compete for small business contracts. **However, to receive certain benefits, the SBA must approve the mentor-protégé agreement before the offer date. Also, the joint venture agreement must meet the requirements of 13 C.F.R. 125.18. If you don't update your joint venture agreement to account for a particular solicitation, upon protest you WILL lose your award!**

Entities wishing to participate in the Program are required to follow the following steps:

- Make sure Sam.gov registrations for both entities are up to date.
- Both businesses must take the SBA's online 30-minute All Small Tutorial (Retain your completion certificate. The tutorial can be accessed here: <https://www.sba.gov/course/all-small-mentor-protége-program/>.
- Prepare a business plan for the joint venture. Access the SBA's webpage on resources for creating a business plan here: <https://www.sba.gov/business-guide/plan-your-business/write-your-business-plan>.

- Prepare and execute a mentor-protégé agreement.
- Apply online at: <https://certify.sba.gov>.

The term of a mentor-protége relationship is **three years**, but it can be renewed for another **three years**. After the SBA approves the relationship, the SBA will review the mentor-protégé relationship **annually** to determine whether to approve its continuation for another year.

Is the Program right for you? Consider taking a look at the SBA's webpage here to determine if you might be able to leverage your relationship with a mentor (or protégé) in competing for federal contracts.

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## SBA Debarment Program In Need of Repairs, Says OIG

Procedures for the debarment of federal contractors are set forth at FAR 9.4, to include those factors considered when determining whether to debar a contractor. The idea is that if a contractor lacks integrity, it shouldn't be permitted to perform federal contracts paid with taxpayer dollars.

While debarment is an important and effective tool for protecting the integrity of the federal procurement system, there is also the matter of implementation. In September, the SBA's Office of Inspector General released a report analyzing whether the SBA had sufficient controls in place to prevent suspended or debarred entities from receiving federal contracts through SBA's preference contracting programs and small business loans. It found that it did not. In particular, due to delayed action in processing referrals for debarment, \$80.3 million in contract awards were issued to entities who demonstrated causes for debarment. In addition, 15 referrals for suspension and debarment had been pending review without action for nearly two years! During that time, federal agencies were able to (and did) make awards to these entities.

While the OIG made six recommendations to improve the oversight and management of the SBA's suspension and debarment program, the SBA only completely agreed with two. Read the SBA OIG's complete (and colorful) report here.



## KINGDOMWARE CASE FLASHES: What's New?

Here's a GAO protest that raises a few points: one, relying on bad advice from the government only hurts *you!* Also, if the way an agency is conducting a procurement seems questionable, you have to raise the issue *before* bids are due. If not, you lose your window to protest. *Alphapointe*, B-417834 (Sept. 4, 2019).

Back in October 2018, the VA issued a Sources Sought Notice for work that had typically been performed by an AbilityOne contractor, describing it as an SDVOSB set-aside. Behind the scenes, the AbilityOne contractor was reassured by the VA that it would continue to buy through the AbilityOne program. (That same month, the Court of Appeals for the Federal circuit affirmed that the Rule of Two has priority over the AbilityOne program). Unknown to the contractor, however, the VA had issued a notice for the successor contract on FedBizOpps, setting it aside for SDVOSBs!

Because the contractor did not see the notice until after award to an SDVOSB and *then* protested, the GAO dismissed its protest as untimely. A harsh result, especially considering the time-line of events.

Meanwhile, in *Veterans Shredding, LLC*, the GAO confirmed that the VA's preference for VOSBs has its limits. B-417399 (2019). For the Rule of Two to apply, the VA must have the reasonable expectation that it can make the award "at a fair and reasonable price that offers the best value to the U.S." There, the VA had tried to restrict competition to SDVOSBs, but the lowest-priced proposal received was 83% higher than the independent government cost estimate. As such, it canceled the solicitation and re-issued it as a small business set aside. Under the *Kingdomware* rules, the VA can do that. It is not required to set aside work for SDVOSBs or VOSBs if it is not likely to make the award at a fair and reasonable price.

### Upcoming NVSBC Events

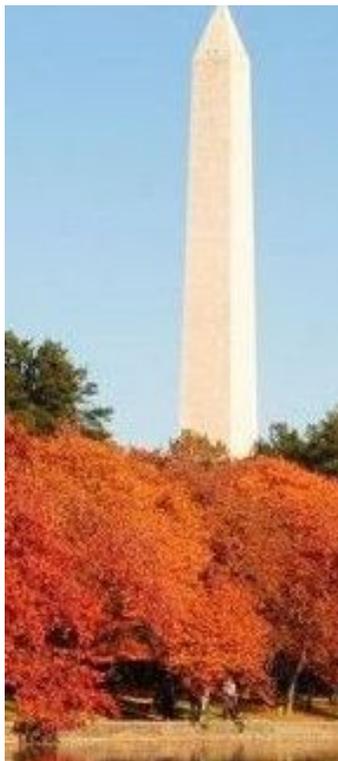
- Sept 24 - VA Virtual Industry Day
- Oct 9 - DC Metro Chapter Dinner
- Oct 15 - Mid-Atlantic Chapter Luncheon
- Oct 28-30 - VIB in San Diego, CA
- Nov 6-9 - Business Beyond the Battlefield in Arlington, TX
- Nov 7 - South Florida Chapter Dinner
- Nov 12 - DC Metro Chapter Dinner **\*\*note this is a Tuesday\*\***
- Nov 19 - Mid-Atlantic Chapter Luncheon
- Nov 20-22 - SAME Small Business Conference
- Dec 3 - New England Venture Summit
- May 26-29, 2020 – VETS 20! (San Antonio, TX)

## D.C. Chapter Update

The D.C. Metro Chapter of NVSBC held its first monthly dinner meeting of the 2019-2020 season on September 11. A moment of silence was observed in remembrance of those who perished and who served to protect our country on this date 18 years ago. Our guest speakers for our dinner meeting were Brad Reaves, Esq., ReavesColey PLLC, and Laura A. Semple, Esq., Asst. General Counsel, AECOM. Brad & Laura provided an outstanding review of "**GOVCON Hot Issues that Keep Lawyers' Phones Ringing (and How to Avoid Legal Fees!)**". Among the key topics presented were:

- Are you still Small? Size Changes & Small Business Runway Extension Act
- Prime vs. Sub disputes, claims, REA's, and Pricing Issues
- Enhanced Debriefing Rights and Bid Protest Strategic Planning
- Prime and Sub Cybersecurity Compliance

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 24,673 matches, which have resulted in 3,694 introductions resulting in net new business for govmates.com members. For event notices, check NVSBC.org.



## SBA Can't Run Away from Runway Extension Act!

In a *First Call* issue a few months ago, we told you about the Small Business Runway Act and its effects on size determinations. Most notably, it changed the measuring stick for determining size from three years to five years.

The idea of the bill was that Congress didn't want to punish firms that had suddenly grown very quickly. By including earlier years, on average the firm would likely not exceed its size standard when those years were averaged. The House Committee on Small Business report specifically stated that its purpose was to "help advanced-small contractors successfully navigate the middle market as they reach the upper limits of their small business size standard."

Following the bill's passage in December 2018, the SBA openly stated that it would not implement the Runway Extension Act. Noting that there was no effective date to the Runway Extension Act, it had concluded that it was "not presently effective and is therefore not applicable to present contracts, offers, or bids until implemented through the standard rulemaking process."

Now, however, via a bill introduced by the House Committee on Small Business (H.R. 2345, "Clarifying the Small Business Runway Act," the SBA has been instructed to implement the Act before the end of 2019. The House Committee has also noted that SBA's inaction is "creating confusion and challenges for small businesses competing for federal contracts." In other words, when determining eligibility for a small business set-aside under a relevant NAICS

code, or whether to lodge a size protest against an awardee, it is difficult to determine whether the relevant SBA area office would calculate size by looking to the last five, or three, years. Depending on contracts recently secured, this difference can be dispositive. There's also the point that if contractors do not have clear guidance on this issue, this creates additional work for all parties involved in federal government small business contracting.

As of the date of this issue (September 23), the bill has passed the House of Representatives and been referred to the Senate. Because it requires SBA to implement a transition plan to assist businesses and other federal agencies navigate compliance concerns, this will most likely give a six-month window after the rule is implemented to continue to use the three-year period. **As such, expect the three-year rule to apply well into 2020; however, the change to five years is coming!** Be aware of how this affects your size, and how this might affect the size of your competitors.

### Are You a Professional Firm Dealing with the CVE?

If so, one of the issues you may have encountered is showing why it is okay for a non-veteran to hold one of the professional licenses used by the firm. You may want to check out a recent decision from the SBA OHA, *Veterans 1st Architecture, LLC*, SBA No. CVE 122-A (2019). This case overturned a denial of a re-verification on the basis that a non-veteran had an architectural license, holding that based on business operations and the fact that architecture was merely one component of the firm's business, the veteran was able to maintain "control."

## 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).