



FIRST CALL

www.nvsbc.org

Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



Even the beach gets cold!

Although most of us have been blessed with a mild winter, some of us are looking forward to an early Spring. I'm starting to understand why folks like warmer climates as they get older!!

The fight against H.R. 4920 continues. A sincere THANK YOU to those who have reached out to your Congressional delegations to fight against putting Ability One ahead of SDVOSBs at VA! We have slowed progress in the Senate but have by no means killed the bill. It is disappointing that in testimony before a joint session of House and Senate Committees on Veterans Affairs, on February 26, 2020, Thomas Zampieri, President of Blinded Veterans Association, testified in support of

HR4920. This shows the extent of misinformation that is circulating on the Hill.

After and long and sometimes painful journey, I am happy to report that we are now well-positioned to start full-fledged NVSBC chapters. Working in conjunction with our attorneys, we have developed a roadmap to move forward to not only establish chapters around the country, but also to provide guidance and support from the national level. Our goal has always been to have a professional and smooth-running organization. If any of you are interested in forming an NVSBC chapter in your area or have questions, please reach out to me at scott.denniston@nvsbc.org.

CONTENTS



Update from NVSBC 1



VA Takes Vets to the Mat in Kingdomware Fight

Protest Costs: Write Them Off 2



SBA Releases Changes to WOSB Program 3

D.C. Chapter Update



Rule Changes to Keep An Eye On 4

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

Mar 13 – Applications Due for Free Ride to VETS-20 and One-Year NVSBC Membership!

Do you know someone who could benefit from a VETS-20 Scholarship? If granted, they receive: travel, lodging and per diem to VETS-20 in San Antonio, TX, as well as a year-long membership to NVSBC! The applicant's business must have been established within three years. The application includes a short essay and a referral letter from an NVSBC member or professional reference letter. For more info, visit: <https://www.nvsbc.org/vets2020-annual-nvsbc-scholarship-program/>.

A Kingdomware Case With a Twist

On January 31, the GAO sustained another protest on the basis of the VA violating the Rule of Two mandate as confirmed in the *Kingdomware* decision. This isn't, however, your garden variety *Kingdomware* case. *Academy Medical, LLC* (B-418223, B-418223.2). **The takeaway is simple: the VA cannot use outdated market research to determine that the Rule of Two is not satisfied to trigger its mandate to set aside an opportunity for veteran firms.**

This protest's history began in September of 2019, when the VA issued a solicitation on an unrestricted basis, seeking proposals to provide the distribution and supply management of all required medical, surgical, dental, and laboratory supplies to VAMCs and OGAs in 20 Veteran's Integrated Service Networks (VISNS). This followed the VA issuing another RFP for similar requirements, where it was to use a tiered evaluation

approach. After numerous protests were received in response to this other RFP, the VA cancelled it. It then, however, used the proposals it had received prior to the cancellation as part of its "market research" in determining that the subsequent RFP (the one subject to this protest) could not be set aside for SDVOSBs under the Rule of Two.

Notably, the new RFP removed language applying the Service Contract Labor Standards (SCLS) to the solicitation, despite the fact that offerors had previously requested its removal. This imposed less onerous requirements which would have increased the likelihood of the VA receiving more offers from veteran firms.

In sustaining the protest, the GAO agreed that the VA had used outdated information in deciding not to set aside the acquisition. The requirements were not the same,

considering the deletion of the SCLS, "which likely had a material effect on the competitive field." Prospective offerors for the first solicitation had even informed the VA that they were unwilling to compete unless it was removed.

In addition to presenting unusual facts in a *Kingdomware* bid protest, this protest illustrates the veteran community's continued troubles with holding the VA to its mandate to award to veteran firms. The fact that this protest went all the way to a decision (versus the VA taking corrective action, in which case none of us would have heard of this case), means that the VA was willing to fight. And when the VA is willing to fight, that get expensive for veteran contenders.

Protest Costs: Write Them Off

A recent GAO bid protest illustrates the principle that when it comes to lodging a bid protest, a contractor should assume it will eat the costs. This is even if the protest is prompted by clearly erroneous agency action and an agency takes its sweet time in actually *taking* corrective action after it informs the GAO it will.

In *INTELiTEAMS, Inc. – Costs*, the GAO denied a protestor's request for costs in filing a bid protest, finding that because the agency had taken corrective action before its agency report was due, the agency had not "unduly delayed taking corrective action in the face of a clearly meritorious protest." B-418123.2 (Feb. 25). The GAO cited prior case law holding that so long as the agency makes that cutoff date, a protestor is not entitled to its fees. (The protestor took issue with the time taken by the agency in actually *implementing* the cited corrective action, but the GAO appeared to look only at the date the agency informed the GAO that it would reevaluate proposals).

This decision is a great primer for whether you should bother trying to recover your costs at the GAO, in the event the agency takes corrective action. The rule of thumb is so long as an agency communicates this decision prior to the due date for its agency report, which is a legal defense of its position and documents relevant to the protest (due date set by the GAO), the GAO will not award costs. Chalk it up as an expense of doing business with the federal government, and include the cost on your business tax return.



SBA Releases Changes to WOSB Program

The SBA's website now includes updated information regarding proposed changes to the SBA's Women Owned Small Business Program Certification Process. This will remove the option for firms to self-certify and replace the process with a more robust certification process operated directly by the SBA. The SBA projects that regulations enacting this statutory requirement will be published on June 30, and will be effective 30 days later.

So, what does this mean?

For current third-party certified WOSBs and EDWOSBs, SBA will require re-certification "three years after the date of their most recent re-certification by a third-party certified firm." Re-certification may be completed through the SBA's new certification process or again through a third-party certifier.

For WOSBs and EDWOSBs with

active WOSB or EDWOSB set-aside contracts, SBA clarifies that "[a] firm that was eligible as a WOSB or EDWOSB at the time of offer for the contract is considered a WOSB or EDWOSB throughout the life of the contract."

Finally, for WOSBs and EDWOSBs who are currently self-certified with *no* active WOSB or EDWOSB set-aside contracts, the requirements are a little more complex. The requirements are different depending on whether a firm has been protested and had its eligibility examined. If this hasn't happened to you within the last two years, you'll have to go through the new certification process. If it has, meaning the SBA has examined and confirmed your eligibility, you must re-certify within 30 days of your certification anniversary and then undergo a full document review at the end of Year Three. New applicants start from scratch by certifying through the SBA directly.

Access the proposed rule here, and the SBA's new resources here.

Upcoming NVSBC Events

- Mar 11-12 - GovCon 2020
 - Mar 19 - Naval Research Lab SDVOSB Industry Day
 - Mar 23-24 Venture Summit West
 - Mar 31 - Board of Director Nomination packets due
 - Apr 1 - Gordon Mansfield Nomination packets due
 - Apr 14-16 GSA FAST Conference
 - May 5-7 - US DOE Forum and Expo
 - May 26-29 - VETS20
- Registration open now!**

Want more details? Reach out to Heather Lee at heather.lee@nvsbc.org.

D.C. Chapter Update

The D.C. Metro Chapter of NVSBC held its monthly dinner meeting on the 12th. This featured a content-rich segments including a Boot Camp Program entitled, "Big Company Concepts for Small Business Growth," presented by Mark Abel of Castelmar Consulting and George Langbein of BGM Group.

The February dinner event featured a first-ever full evening Match Making event titled "**Matchmaking Done Right!**" Organized and facilitated by the founders of govmates.com, Katie Bilek and Stephanie Alexander arranged for 12 large prime contractors to anchor tables of eight for discussions of specific contracting opportunities with their firm. Firms represented included LMI, ManTech, NIST, IBM, Variq, Versar, CACI, CapGemini, WBB and other large primes that are actively looking for qualified SDVOSB partner firms.

The response to this sold-out event by our attendees was a rousing '**BEST EVENT EVER**', and so we are responding by instituting this full evening Match Making format as our new twice a year event. The next event will be held in October 2020. More news to follow soon.

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 (4:00 PM to 5:30 PM), as well as match-making opportunities via its platform of govmates.com. For event notices, check NVSBC.org.



Rule Changes to Keep An Eye On

As a veteran firm participating in the federal marketplace, it's important to keep an eye on legislative and regulatory changes that might affect business options or your bottom line. Here are a few:

HR 1615 (Verification Alignment and Service-disabled Business Adjustment Act) – Passed House and referred to Senate in 11/19. This bill would transfer SDVOSB and VOSB certification to the SBA and require certification governmentwide. Current SBA self-certified firms would retain self-certification for one year.

HR 5146 (Unlocking Opportunities for Small Business Act of 2019) – Passed House and referred to Senate in 1/20. This would require federal government contracting officers to consider past performance obtained as a joint venturer or subcontractor when evaluating small businesses seeking to compete on federal prime contracts.

S.2852 (Accelerated Payments for Small Businesses Act of 2019) – Introduced in the Senate in 11/19. This would establish accelerated payments applicable to contracts with small business concerns.

Proposed Rule (Consolidation of Mentor Protégé Programs and Other Government Contracting Amendments) – Comments were due on February 7, 2020. This would combine the 8(a) and ASMPP programs to provide identical benefits. It may also make changes to current provisions, such as by limiting mentors to revenues less than \$100 million, not allowing mentors to submit competing offers, and changing the annual review requirements.

Final Rule (Calculation of Average Annual Receipts) – This implements the Small Business Runway Extension Act of 2018 by calculating annual receipts using an average of the prior five years versus three. This includes a two-year transition period (through January 6, 2022) that allows firms to choose between a three-year average and a five-year average.

Final Rule (Determining Compliance With Limitation on Subcontracting (LOS) Rules) – This adds a new paragraph to limitation on subcontracting compliance regulations to clarify that a CO can, at his discretion, require firms to provide proof of compliance with LOS rules.

Final Rule (Subcontracting to a Small Business Under a Socioeconomic Set-Aside) – This addresses that there might be ostensible subcontracting on a socioeconomic set-aside with a *small* business not qualified for the set-aside. (The ostensible subcontractor rule treats a prime contractor and its subcontractor as joint venturers, and therefore affiliates, for size determination purposes when the subcontractor “performs primary and vital requirements of a contract,” or the prime contractor is “unusually reliant” upon the subcontractor). The SBA will not find over-reliance where the prime can meet the LOS requirements.

We'll keep you up to date! Stay tuned for further developments.

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.