



# FIRST CALL

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## Update from NVSBC

*A message from NVSBC Executive Director, Scott Denniston*



As I write this, the Coronavirus is playing havoc with our way of life and doing business with the federal government. We have no idea how long this will last but think we need to plan for restrictions on personal interactions for many weeks. Flexibility and common sense need to rule to limit the spread. As small business owners, I know we will all keep focus on our families, employees and each other!

The NVSBC Board is extremely disappointed that because of conditions beyond our control, **we are canceling VETS 20 in San Antonio in May.** This is doubly disappointing, as we were looking forward to a terrific event as well as celebrating the 10-year anniversary of the NVSBC. We are planning to have an awards luncheon sometime in the next few months to recognize our “Champions of Veterans Enterprise” recipients, as well as the Gordon Mansfield award recipient for 2020. More information will follow.

I am happy to report some

good news on the legislative front. As you know, for several months we have been fighting in the Senate against H.R. 4920 which passed the House in December 2019. This bill would have put “Ability One” organizations in front of the “VETS First” program and put SDVOSBs out of business. Prior to passage in the Senate, language was added very similar to what the NVSBC had proposed to the House. This provided SDVOSBs the ability to compete for the same work they are now doing! Also, in the last month we learned that H.R. 561 was being considered in the House. This bill as written would have effectively barred resellers/distributors from selling to VA. Most disappointing is that the most egregious language was proposed by VA. Working with House staffers, NVSBC was able to get the VA-proposed language removed prior to passage in the House. Make no mistake, VETS First continues to be under attack! Your NVSBC membership makes a huge difference in the fight.

## CONTENTS



Update from NVSBC 1



Coronavirus Bill Could Ail Small Firms

VA Official Jailed for Bribery Scheme 2



Be Responsible With Protest Grounds

VetBiz Reverification Tips for the Un-Simple



New Size Calculations: Know the Rules! 4

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

### Meet Beta.Sam.gov

For those of you actively seeking federal opportunities, familiarize yourself with beta.sam.gov, which is now “the official U.S. government website for people who make, receive, and manage federal awards.” FPDS.gov reports has been added to this site, as well as FedBizOpps and wage determinations at WDOL.gov.

While Sam.gov is keeping its own site, you’ll need to create a new beta.SAM.gov user account. But don’t worry – all your entity data will migrate to the new site.

## Coronavirus Bill Could Ail Small Firms

In the early hours of March 14, 2020, the House passed HR 6201, the Families First Coronavirus Response Act (the “Act”), which seeks to assist employees impacted by the virus and has significant impacts for employers of fewer than 500 employees. The key provisions of the Act affecting employers include: (1) the Emergency Family and Medical Leave Expansion Act; (2) the Emergency Paid Sick Leave Act; and (3) Tax Credits for Paid Sick and Paid Family and Medical Leave. While a necessary measure to protect families across our nation, the economic burden created by the Act (despite a tax credit afforded) will be a blow to small businesses, particularly federal contractors who have less work (and therefore revenue) due to government shutdowns and limitations imposed by telework policies.

With respect to the **FMLA Expansion Act**, the Act amends the Family and Medical Leave Act of 1993 to provide up to 12 weeks of job protected leave,

*10 of which are paid*, to employees impacted by the coronavirus, such as those who go into quarantine, care for a family member in quarantine, or have a child whose school is closed. These amendments apply to all employers with fewer than 500 employees. While the Act provides the Department of Labor with the authority to exempt small businesses with fewer than 50 employees from the coronavirus leave requirements when the imposition of such requirements “would jeopardize the viability of the business,” it is unclear how a business would qualify for this exemption.

With respect to the **Emergency Paid Sick Leave Act**, the Act creates a requirement for employers with fewer than 500 employees to provide up to 14 days of paid sick leave at the employee’s regular rate of pay to quarantine or seek treatment related to the coronavirus. (Pay is limited to 2/3 of the

employee’s regular rate when the leave is to care for a family member or child). Presumably, the reason the FMLA Expansion Act permits the first two weeks of leave to be unpaid is because of these sick pay benefits.

The **tax credits for paid sick and paid family and medical leave**, as provided by the Act, are designed to provide some relief via tax credits. The Act provides for a refundable tax credit that is equal to the qualified paid sick or family leave wages paid by an employer for each calendar quarter. The tax credit is allowed against the employer portion of Social Security taxes and is generally equal to amounts paid to employees who are sick or in quarantine. A lesser credit is applied to situations where the employee is caring for a family member or a child whose school is closed.

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## VA Official Jailed for Bribery Scheme

According to court records, Dwane Nevins — a small business specialist at the VA’s Network Contracting Office in Colorado — agreed to take bribes offered by two business owners and an undercover FBI agent (oops) to help them manipulate the process for bidding on federal contracts with the VA. The business owners (who have also been arrested) submitted fraudulent bids from SDVOSBs under contract with their consulting company so that federal contracts would be set aside for only those companies. They then worked to conceal the nature of the bribe payments by either kicking back to Nevins a portion of the payments made to their consulting company, or by asking their clients to pay Nevins for sham training classes related to federal contracting. At one of those sham trainings in Las Vegas, Nevins accepted a \$4,500 cash bribe from the undercover FBI agent.

After complaining about not being paid by the business owners for his participation in the scheme, Nevins used his position at the VA to extort approximately \$10,000 from another undercover FBI agent, telling the agent that “the train don’t go without me. You know what I mean? I’m the engine. I’m the caboose. I’m the engine room.”

Well, it looks like Nevins’s train will be stopped for a while – he’ll serve 18 months in a federal prison, followed by three years of supervised release. Choo choo!

Coronavirus Comic Relief



With those hoarding toilet paper, the only kind to be found is confectionary!

## Be Responsible With Protest Grounds

When it comes to protesting a contract award, it can be easy to mistake the ability to protest based on the agency's failure to conduct a cost realism analysis (which can be required per *solicitation requirements*), versus the determination that an awardee is *responsible*. (The latter situation generally arises when the awardee's price seriously undercuts yours, which makes you wonder if they know what they're getting into). A recent case illustrates the difference, which you should keep in mind lest you invest costs in a protest dismissed for lack of jurisdiction:

In *Ohio KePro, Inc.*, B-417836 (2020) the GAO sustained a protest (in part) because the agency failed to perform a cost realism analysis. This was for a cost-plus-fixed-fee contract,

meaning that the contractor would be paid according to cost, plus a fee. Under these types of contracts, and pursuant to the solicitation requirements, the agency was required to determine whether the contractor could realistically do the work for the cost proposed. The agency failed to make this evaluation, which violated both solicitation criteria and FAR requirements.

In contrast, the GAO has consistently held that it lacks jurisdiction over questions as to whether an awardee is responsible, unless responsibility is addressed in the solicitation criteria (and deviated therefrom, as alleged). See *Preventative Health Programs*, B-195846 (1980).

Accordingly, before you go the protest route, identify your situation. Does the issue involve solicitation criteria? If not, you might have a hard road ahead.

### Exposing You (Pun Intended) to Insightful Coronavirus Considerations

Three members of the Harvard faculty's program on crisis leadership released an article entitled *Twenty Things for Organizational Leaders to Know About Covid-19 as of March 13, 2020*. While aware that three-quarters of the emails and information you have received over the last few weeks have touched on the coronavirus, this article contains several novel or particularly insightful notes on the subject. Access the article [here](#).

Also, the CDC COVID-19 website remains the authoritative source for facts about how to protect yourself, your employees, and their families from the virus, and how to recognize symptoms. Access the site [here](#).

## CVE Reverification Tips for The Un-Simple

Coronavirus Comic Relief



This means that someone out there has all the canned beets!

“Simple” refers to those lucky enough to qualify for simplified reverification. There, one need only answer a business questionnaire, upload a resume, one year of taxes, and the 877 for each owner, and receive an approval letter days later.

This process only applies, however, if you have **absolutely no changes** to your business. This is determined via the questionnaire: if you report any changes whatsoever, even simple changes such as the desire to add a NAICS code or having switched office locations in the same town, one must undergo the “full” reverification process.

Never fear. Re-verification is easier than the initial verification, so long as one hasn't slipped up and instituted changes in business operations or structure to pose eligibility issues. When filling out your application, make a list of all documents that have changed or need to be updated – licenses, amendments to corporate documents, etc. For those documents that have not changed, **utilize the text box option to clearly state that you are not uploading bylaws, Articles of Organization, a lease, etc, because the one last reviewed by the CVE is the current version**. It will save you effort, and review time on behalf of the CVE. And look forward to a relatively short turnaround – processing times have lately been around a calendar month.

## New Size Calculations: Know the Rules!

You know a new size standard calculation is now in effect, but do you know how it applies to pending procurements?

The Runway Extension Act (the “Act”), signed into law on December 17, 2018, now applies a **five-year period** for calculating small business size versus three years. On December 5, 2019, the SBA published a final rule to implement the Act. As part of this, because some small businesses could be disadvantaged by utilizing a 5-year average, the SBA stated that it would adopt a **two-year transition period** during which “a firm may choose between calculating receipts using a 3-year average or a 5-year average.” The new rule became effective January 6, 2020.

On September 30, 2019, Diversified Protection Corporation (“DVP”) was awarded a small business set-aside contract. (Proposals had been due on June 20, 2019). When an unsuccessful offeror protested the size of DVP, DVP acknowledged that it was in fact other than small when utilizing the three-year calculation, but that it qualified under the size standard based on the five-year method. According to DVF, this should have been applied because the Act had been signed into law as of the date of its offer (which is the date for calculating size). The SBA Area Office rejected this argument, finding that until the SBA amended its regulations to adopt the Runway Extension Act, the SBA Area

Office was required to continue to apply a three-year averaging period. SBA No. SIZ-6042.

Citing prior case law that analyzed a similar issue, the SBA OHA rejected DVF’s arguments that the Act itself implemented the new size calculation. To take effect, the SBA did in fact need to adopt regulations. When it did, since it established a January 6, 2020 effective date and clearly noted that the three-year period applies to any offer submitted prior to that date, DVF was out of luck.

To recap, if an awardee for a contract solicited in 2019 is now small under the five-year election rule, this doesn’t save them. The Runway Extension Act applies as of January 6, 2020, so any small business set-aside offer submitted prior to that time is subject to the three-year calculation.

### Up to \$145 Billion Worth of Contracts Up for Grabs in Near Future

According to Barry Nelson, NVSBC member and owner of Proximity Electronic Commerce Systems, up to \$145 billion contract dollars are invested in contracts that are expiring (and therefore up for bid). For more information on contract trends and a copy of the spreadsheet prepared with this data, Mr. Nelson can be reached at [barryn@proximity-ec.com](mailto:barryn@proximity-ec.com).

## 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).