



FIRST CALL

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Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



Our world has changed in the past 30 days, and not for the better. I hope that you, your family, and friends are safe and healthy! I know this “stay at home” order has made life difficult and frustrating on so many levels, but this is the best way to halt the spread of COVID-19. I hope you have been checking the NVSBC website. Heather and Earl have worked tirelessly to make sure that all small business-related developments on COVID-19 have been put on the website, so you all know the latest information. We will continue to add information as we see it. This is almost a daily occurrence.

NVSBC members have been playing important roles in helping VA, DHS, and others obtain products and services necessary in our fight against COVID-19. Liberty IT Solutions in Herndon, VA has updated VA’s clinical lexicon to include COVID-19 terminologies and codes to allow VA to gather data and report COVID-19 cases and treatments across VA. Global Procurement Solutions (GPS) of Florida has launched

Operation VA Resupply.” Working with Georgia Pacific and Kimberly Clark, GPS has developed this program to ensure VA facilities have necessary quantities of toilet paper, paper towels and dry wipes. The NVSBC Medical Products Industry Group has been meeting weekly via conference call to coordinate efforts to provide VA and others with desperately needed personal protective equipment. If you have stories on how SDVOSBs are helping in this fight, please share with me.

I hope you are taking advantage of the great library of training sessions for members posted at www.nvsbc.org under “Foundation.” Not only are the series for “Procurement Readiness” expanded weekly, but there is also great info regarding COVID-19.

It was a huge disappointment to miss out on VETS 20 in San Antonio, but safety must come first. **We will know by the end of this month if we can move to a later date.** Stay tuned!

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

COVID-19 Extensions

As we all know, due to the COVID-19 pandemic, many existing deadlines with respect to government-related filings or actions have been extended, to include annual vehicle registrations and business annual reports. Two federal registrations are affected as well:

- Sam.gov – All registrations expiring between March 19 and May 17 have another 60 days.
- VetBiz.– All firms expiring between April 1 and May 31 have been extended 60 days, which is now reflected on their VIP profiles.

CARES Act Compensates Contractors Sidelined by COVID-19

As relayed on the NVSBC website, the [CARES Act](#) was enacted on March 27, 2020, in response to the COVID-19 national emergency. **Section 3610 of the CARES Act allows agencies to reimburse, at the minimum applicable contract billing rates (not to exceed an average of 40 hours per week), any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state, including to protect the life and safety of Government and contractor personnel, during the public health emergency declared for COVID-19 on January 31, 2020, through September 30, 2020.**

This means that if a federal contractor's staff is sidelined due to a contract coming to a standstill (such as if no one is allowed onsite due to shelter in place mandates or

agency teleworking policies), that contractor can still be paid during the coronavirus pandemic.

So far, only the Department of Defense ("DoD") has issued a [class deviation](#) to apply to active contracts. On April 10, the DoD issued this via DFARS 231.205-79 to create a new cost principle to make paid leave incurred as a result of COVID-19 an allowable cost. Here are highlights:

- To be eligible, a contractor's (or subcontractor's) employees must not be able to perform work at a designated worksite for its contract due to closures or other restrictions, and also not be able to telework because job duties cannot be performed remotely.
- To be eligible for reimbursement, the contractor must be "established in writing" as an affected contractor.
- The class deviation resolves an ambiguity in the CARES Act to make it clear that a contractor is eligible for reimbursement regardless of whether the job site is federally-owned or leased.

Dealing with COVID-19 is new to **everyone**. Contracting officers must now figure out how to: 1) identify who is an "affected contractor;" and 2) process a reimbursement procedure. If YOU qualify as an "affected contractor," set the wheels in motion toward this end. Communicate with your CO, and do what you can to make the process easier. Because despite this deviation in place, who knows when folks will get paid?

Paycheck Protection Program Dry Already

Are you waiting in line for relief via the Paycheck Protection Program? Unfortunately, albeit unsurprisingly, the \$349 billion program has run out of money (Note – applications opened as of April 3, meaning this depletion took less than two weeks). Fortunately, the White House and congressional leaders could be nearing an agreement on a new wave of coronavirus relief funding, to include a cash infusion into the Program.

Negotiations have been ongoing to replenish popular programs created as part of a \$2 trillion response package passed last month. As of the weekend of April 15-16, Treasury Secretary Steven Mnuchin told CNN that he was hopeful that a deal could be reached imminently to replenish the tapped-out small-business loan program. The deal would include additional funding for hospitals and testing. **The Senate could approve the measure early this week.**

Since loan applications to the Program opened, the program has been plagued by technical difficulties and delays. This may be attributed to how quickly the Program had to be up and running, not to mention the tens of thousands of applications received at the same time.



Covid-19 Scheme Lands Contractor in Jail

Christopher Parris, a 39-year-old Atlanta, Georgia resident, was arrested in early April and charged in federal court in the District of Columbia with fraud for attempting to sell millions of nonexistent respirator masks to the VA in exchange for large upfront payments, the Justice Department announced.

The criminal complaint charges Parris with wire fraud. It alleges that he made and caused to be made a series of fraudulent misrepresentations in an attempt to secure orders from the VA for 125 million face masks and other personal protective equipment (PPE) that would have totaled over \$750 million. For example, the complaint alleges that Parris promised that he could obtain millions of genuine 3M masks from domestic factories when he knew that fulfilling the orders would not be possible. Paris also allegedly made similar false representations to other entities in an effort to

enter into other fraudulent agreements to sell PPE to state governments.

“We will vigorously pursue fraudsters who exploit the COVID-19 pandemic to make money,” said Attorney General William Barr. “As this case demonstrates, even beyond the typical costs associated with unlawful behavior, COVID-19 scams divert government time and resources and risk preventing front-line responders and consumers from obtaining the equipment they need to combat this pandemic. The Department of Justice will not tolerate this conduct, especially when it involves this kind of egregious attempt to target and defraud our nation’s treasures – our veterans.”

The charges come about three months after Parris faced charges in a separate case. In January, Parris was charged by federal prosecutors with fraud, conspiracy, and related charges in what officials described as a Ponzi scheme that defrauded about 1,000 investors of at least \$115 million over 10 years.

We'll Keep You Posted!

As you know, chapter meetings and other NVSBC activities have been postponed during the COVID-19 pandemic. Rest assured that we are working behind the scenes to do what we can to keep rolling and to offer value to our members. We'll let you know of upcoming events and activities as soon as possible, and in the interim, check out the NVSBC website for webinars, news, and information.



A Fantastic Bid Protest Cheat Sheet

As many of you likely know, from year after year the number one reason for sustaining a GAO protest is that the Agency engaged in an unreasonable evaluation. (To be fair, this is also the most common protest ground). A recent sustained decision offers an excellent cheat sheet for deciding whether or not a fight against an agency on these grounds is worth it.

In *MetroStar Systems, Inc.*, MetroStar had protested that the DOJ had unreasonably evaluated proposals for the provision of IT services. B-416377.5 (April 2020). It argued that the DOJ had provided credit to two awardees that did not actually (per the solicitation criteria) comply with a mandatory certification requirement. It also contended that the DOJ had assigned unwarranted strengths to the awardees' proposals, and also failed to credit MetroStar's proposal equally for similar features. MetroStar also claimed that the DOJ had unreasonably assigned weaknesses to MetroStar's proposal.

In general, MetroStar's protest grounds cover the most common grounds seen in "unreasonable evaluation" bid protests. By providing a comprehensive overview of the standards that apply, and what an agency can and can't do, this is a great decision to keep in your back pocket in the event you feel an agency unreasonably evaluated your proposal to deny you an award or exclude you from the competitive range. Access it [here](#).



Apples to Apples: A Valuable Contract Type Lesson

If you've held or hold an indefinite-delivery indefinite quantity ("IDIQ") contract, you may have learned the lesson that when it comes to orders, it's okay for the government to do the bare minimum. A recent Civilian Board of Contract Appeals ("CBCA") illustrates the principle that even if government officials may have led a contractor to believe the agency would order more than that minimum, they can't (usually) be held to that promise.



Office Space, 1999

In *Future Forest, LLC* (CBCA No. 5863), the U.S. Department of Agriculture, Forest Service (Forest Service) agreed to pay a contractor to treat and remove small diameter trees and biomass in Arizona. Future Forest posited that the comments of the Forest Service employees created a "reasonable expectation" that the agency would provide Future Forest with 150,000 acres, and that the Forest Service violated the implied duty of good faith and fair dealing when it failed to fulfill Future Forest's "reasonable expectation." Future Forest further alleged that actions of the Forest Service interfered with that duty when 150,000 acres were not released.

The CBCA found that Future

Forest did not survive summary judgment because the premise underlying its theory of relief was unsustainable. There was no legal "reasonable expectation" to receive 150,000 acres under the IDIQ contract, as the IDIQ contract did not create such an expectation. It set forth a minimum quantity, and the Agency had met its obligations by ordering at least that quantity.

The CBCA also noted that what may have anticipated or hoped for at the time of contract signing or during post-award discussions represented inadmissible "parole" evidence (i.e., evidence outside the contract itself and intended to modify its actual terms). The CBCA found that the written language of the contract with the guaranteed minimum dictated the parameters of reasonable expectations. Future Forest had "**attempt[e]d to transform the ID/IQ contract into something it is not, such as a definite quantity or requirements contract.**" With a definite quantity contract, the government is contracting for a set (i.e., *definite*) quantity of specific supplies or services for a fixed period; and with a requirements contract, a contractor is retained to meet all the specific needs of an agency.

This case is helpful by its distinguishing among an IDIQ, definite quantity, and requirements contract, as their differences can matter as you bid and perform a contract. The definitions of all three are contained at FAR Subpart 16.5, which can be accessed [here](#).

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.