



FIRST CALL

www.nvsbc.org

Update from NVSBC

A message from NVSBC Executive Director, Scott Jensen



Greetings!

February has come and gone and each day I talk to someone else who has received a COVID vaccination—evidence that we are moving closer and closer to a “more normal” condition. Businesswise, as will the rest of life, still faces challenges ahead. With resiliency and support from one another, we can get through this! That is what a coalition is all about.

The Biden administration has moved quickly with many initiatives involving small business. We are keeping an eye on the ball and will summarize that in this addition. Also, we are adding a new section with a procurement readiness and preparation flavor that promises to bring added value to our readers.

February found us heavily engaged in building out our comprehensive policy and legislative agenda. We have engaged a world class advocacy firm in D.C., Van Scoyoc and Associates, to support our efforts to ensure that YOU have strong representation and influence on the decisions made at the top levels of our government.

You will have a consistent and even louder voice on major topics like CVE certification moving to SBA, keeping parity of SDVOSB set-asides with other categories, and ensuring VETS First adherence at VA.

This month, we are introducing a new standalone mid-month NVSBC report that focuses solely on the progress of our overall strategy and advocacy agenda. The first edition, targeted for March 15th, will outline the major tenants of our agenda. We want you to be aware of all that is happening on your behalf and need your involvement if we are to be successful. Be on the lookout for this new monthly offering. You will find it interesting and informative.

This coalition positively affects your opportunities in federal contracting in so many ways—from advocacy to training to networking. I am optimistic for 2021 and all it has to offer NVSBC and our members.

Thank you for joining us in this journey!

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



NVSBC Executive Director, Scott Jensen

Sam.gov Expiration: Don't Poke The Beast

A recent GAO decision illustrates that while failing to update your Sam.gov registration might not be a reason you'll lose a contract, it's best not to poke the beast.

In *Master Pavement Line Corporation*, B-419111 (Dec. 2020), the Department of Transportation had rejected the lowest-priced bidder's quotation because it had allowed its Sam.gov registration to expire. Upon protest, the GAO confirmed that maintaining a Sam.gov registration is a matter of "responsibility," not "responsiveness." Although the solicitation specifically required the certifications to be correct at the time of bidding, failure to provide these in an IFB setting does not render a proposal nonresponsive as the DOT had contended. Citing to a list of cases, GAO found an agency cannot convert a matter of eligibility or responsibility into one of responsiveness.

In this instance, the IFB came with a

with a submission checklist including the following statement: "THE FOLLOWING THREE ITEMS IF NOT SUBMITTED WITH THE BID; MUST BE COMPLETED ELECTRONICALLY PRIOR TO CONTRACT AWARD." One of these items was SAM registration. The IFB also referenced FAR 52.204-7, which requires bidders to be registered in SAM at the time of offer. This requirement continues until time of award, during performance, and through final payment. The GAO found, however, that this clause had a **mandatory cure provision** (as opposed to procurements conducted under FAR Part 13), and therefore the agency should have provided the offeror the opportunity to correct its bid prior to rejecting it.

This one is a win, but consider the journey. Competing in federal procurements is difficult enough without complicating the situation. Keep your registrations current!

Are You Up to Date on Service Contract Reporting?

For those of you who hold or held a service contract with a base effective date between 10/01/2013 and 9/30/2020, make sure you've completed your mandatory service contract reporting in Sam.gov. If such contract meets minimum dollar thresholds (over \$150K for cost-reimbursement, time-and-materials, and labor-hour service contracts, or over \$2.5 million for fixed price contracts), you'll need to provide your total amount invoiced and prime contractor hours expended.

You'll find the Service Contract Reporting sub-tab under the "View Details" tab for your entity. If it's not there, you might be experiencing a glitch, so submit a help desk ticket with the Federal Service Desk by visiting www.fsd.gov or calling 866-606-8220.

Access the Sam.gov Quick Start Guide for Service Contract Reporting [here](#).

Best Value Procurements: The Customer Is Always Right

A recent case decided by the GAO illustrates that when it comes to best-value tradeoff determinations, an agency has broad discretion so long as it follows solicitation evaluation criteria. This is even if the agency elects almost double the price . . . so long as it properly determines and documents this is worth it.



In *Deloitte Consulting, LLP*, B-419336.2 et. al (2021), the DHS issued a Request for Quotations seeking the establishment of a Blanket Purchase Agreement under which the awardee would provide program analysis and strategic support services. The RFQ was issued to holders of the GSA's Professional Services Schedule with particular Special Line Item Numbers, as well as certain other GSA Schedule holders, and contemplated the award of a single BPA against which orders would be issued. After a two-phase evaluation process resulting in the award, the protestor alleged that the agency had acted unreasonably in the second phase by awarding the contract to Grant Thornton despite a 91% price premium.

With respect to the best value tradeoff decision, the GAO held: "the record shows that [the agency] provided a well-reasoned basis for a tradeoff that identified discriminators between the quotations and justified paying Grant Thornton's higher price." In evaluating the two most important non-price factors, Grant Thornton had received a "High Confidence" rating, and the agency had adequately documented how it had conducted its best value tradeoff. As such, the lesson is simple: if you lose a best value procurement, it can be hard to know whether you have sustainable protest grounds until you receive the agency's report and know exactly how the agency reached its award decision. And if the agency can properly explain how it came to its decision, the GAO is not likely to sustain your protest.

Mentor-Protégé Agreements: Once You're In, You're In

For those of you considering the effort of pursuing a mentor-protégé relationship via the Small Business Administration's All Small Mentor-Protégé Program ("ASMPP"), it may be an incentive to know that approval is effectively the end of the struggle.

In *Size Appeal of Severson Environmental Services, Inc.*, SBA No. SIZ-6087 (2021), a joint venture mentor-protégé team between a large and small business was awarded a contract for environmental remediation services. A disappointed offeror protested the award, arguing in part that the SBA should not have approved the mentor-protégé agreement because the NAICS code under which the protégé had elected to receive support was chosen to "circumvent SBA regulations." The relevant SBA Area Office had held that it did not have the authority to review the approved mentor-protégé agreement, and the SBA OHA similarly found that allegations that a mentor-protégé should not have been

approved "are not valid grounds for a size protest, as SBA regulations prohibit any finding of affiliation or control based on a [MPA]."

In general, a benefit to a mentor-protégé relationship is that once it's been approved, it's beyond review other than upon the annual report due to the SBA's ASMPP (and a competitor can always report concerns to that office). Meet your reporting requirements, and post-approval issues appear few and far between.

Know, however, that when you joint venture on an SDVOSB set-aside while in a mentor-protégé relationship, you must ensure that your proposal meets the requirements under 13 C.F.R. § 125.18. That requires meeting performance of work requirements and spelling out each party's responsibilities. As such, your mentor-protégé relationship might not be questioned, but your ability to meet joint venture requirements can be. These are separate issues.

March Webinar Series

Charlie Mike Series:

March 9: [5 Things You Need to Know for Finding and Winning Low-Hanging Fruit](#)
 March 16: [Influencing CPARS and Using Quality Assurance to Win](#)
 March 23: [Surviving the Valley of the Shadow of Death: NAICS Code Exit Strategies](#).

DFARS Webinar Training Series 2021 by Jennifer Schaus & Associates:

Wednesday, March 10: [DFAR Part 210 – Market Research](#)
 Wednesday, March 24: [DFAR Part 212 – Acquisition of Commercial Items](#)
 Wednesday, March 17: [DFAR Part 211 – Describing Agency Needs](#)
 Wednesday, March 31: [DFAR Part 213 – Simplified Acquisition Procedures](#)

LPTA to Go MIA (At Least PT)

Most federal contractors will be glad to know that the decline of the lowest-price technically-acceptable ("LPTA") mode of source selection is continuing. A recent final rule from the FAR Council, effective February 16, 2021, implements additional restrictions on the use of LPTA for non-DoD contracts (the rule for DoD procurements went into effect in October 2019). The FAR Council's commentary made clear that the rule does not "prohibit the use of the LPTA source selection process" but rather identifies "circumstances that must exist for an acquisition to use the LPTA source selection process and certain types of requirements that will regularly benefit from the use of tradeoff source selection procedures."

LPTA "shall only be used" in certain circumstances. These circumstances include:

1. Where there are minimum requirements with clear "performance objectives, measures, and standards."
2. Where exceeding the minimum would provide no or limited value to an agency.
3. Where an agency will use minimum "subjective judgment" to compare proposals.
4. Reviewing all proposals would not help the agency identify "characteristics that could provide value."
5. The lowest price will reveal "the total cost, including operation and support."
6. The agency must document its justification for using LPTA.

In addition, contracting officers are to avoid using LPTA for certain types of acquisitions "to the maximum extent practicable," such as for IT technology services, knowledge-based training or logistics services in contingency operations, and in the acquisition of personal protective equipment.

Access the rule [here](#). And remember, if a CO shouldn't be using LPT, that a *pre-bid* protest issue!



NVSBC
Charity Golf
Tournament
 Monday, August 23, 2021

SAVE THE DATE!

Taking place at the Army
 Navy Country Club in
 Arlington, VA

Upcoming Ward and Berry PLLC Articles and Rapid Acquisition

*Over the next 8 weeks, Ward and Berry, PLLC will be writing a series of articles intended to help start-up businesses interested in pursuing opportunities in technology. Topics will include: the Small Business Innovation Research (SBIR) program and Small Business Technology Transfer (STTR) program; Other Transaction Agreements (OTAs); Contract Compliance; Intellectual Property/Data Rights; and Import and Export Controls. To start the series, this article will demystify “rapid acquisitions.”

People in the government contracting community have a differing understanding of rapid acquisition. Some senior leaders and acquisition professionals will associate rapid acquisition with various Major Defense Acquisition System Programs and related initiatives, or certain Department of Defense (DoD) instructions designed to streamline acquisitions. These instructions are part of an ongoing attempt by the DoD to break up a monolithic Defense Acquisition System process and make it more flexible to meet DoD’s emerging needs. However, a large majority of people think rapid acquisition is merely about getting goods and services to a Soldier, Sailor, Airman, or Marine faster. Both are right and ultimately end with a service or end item in the “hands” of the user faster. The question a start-up business should probably ask is, “what does this mean to me?”

Ms. Ellen Lord, Undersecretary of Defense for Acquisition and Sustainment recently spoke at Stanford University on the role of start-ups in acquiring and deploying technology. She said, “it goes without saying, but I will sort of foot stomp it, that most of our innovation comes from small businesses.” Certainly, the DoD is

targeting small business innovation through the proliferation of the SBIR/STTR programs and the use of its recently codified Other Transaction strategic advantage in national defense. In 2019, the DoD was by far the biggest spender in the SBIR/STTR programs where it spent \$1.8 billion. OTAs, which require the involvement of a non-traditional defense contractor, have seen an increase from about \$1 billion spent in 2015 to \$7.8 billion spent in 2019. DoD components leverage such programs and authorities to find innovation to help maintain a strategic advantage in national defense.

How does a start-up or non-traditional defense contractor take advantage of these opportunities? According to Ms. Lord, one path is involvement in industry associations like the NVBSC. Because her time is limited and communication is important, she increases collaboration between industry and start-ups by leveraging these associations. Having regular, and now virtual, interactions with these groups allows her and the DoD to understand challenges that association members are having and how they may modify acquisition systems to make them more efficient to use, understand, and navigate.

Another path is to participate in pitch events, industry days, and market outreach initiatives hosted by various DoD activities like Army Applications Laboratory, NavalX, or AFWERX. These service-related innovation seekers publicize issues and offer opportunities to propose solutions, sometimes even offering open topics for start-ups to bring their innovation for evaluation.

Next week we will focus on the SBIR/STTR programs. Questions about rapid acquisition and GovCon issues can be forwarded to alan@wardberry.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 by veteran advocate and attorney, Sarah Reida. 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 Jensen with your comments at: scott.jensen@nvsbc.org.