



FIRST CALL

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Update from NVSBC

A message from NVSBC Executive Director, Scott Jensen



This past month highlighted to me the value and importance of coalition. John Donne’s 400-year-old poetic statement, “No Man is an Island,” was never truer than it is in these days! Veteran-owned small businesses are no exception! There are too many challenges, too many opportunities, and too few days in a week to try and do it on your own.

At NVSBC, we recognize this need to come together. This is the reason this organization was founded ten years ago. We need each other to ensure that interests, opportunities, and challenges have a collective voice when addressing veteran business priorities in the federal marketplace.

In the last month, I have seen members come together to address federal contracting shortfalls and inconsistencies, provide input to new and changing policies, ask for and receive help from other members in pursuing opportunities, and learn more about topics of which they were unsure.

In the last month, NVSBC was invited to the table by federal leaders and legislative representatives to provide insights and recommendations across several very important

topics. Why were we invited? The power of the collective group! Because we represent a large coalition of members with a broad understanding of the federal marketplace—both challenges and opportunities. They know and understand the value of our membership and respect the impact a group of veteran business owners can have on policy and legislation.

In the last month, I witnessed people acting. I witnessed veteran businesspeople getting involved, offering help, and responding to needs—and asking for help and admitting when they did not have all the answers. That is what being a coalition is all about: action, involvement, initiative, commitment to others, thinking beyond self, and respecting the greater good of the group.

Indeed, no person is an island! Thank you for your commitment to your fellow veteran business owners and for your desire to make things better for yourselves and others in the future by participating in this coalition. Stay active! Get active! Don’t be an island! Contribute in whatever way you can to not only help yourself but everyone else committed to this coalition.

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



NVSBC Executive Director, Scott Jensen

False Claims Case: There Ain't Nothing For Free

As small business contractors trying to do business with the federal government know, provisions that apply uniquely to us can trap the unwary. Stories of False Claims Act allegations scare us, as do the penalties built into laws and occasionally raised by contracting officials.

While we should proceed with the utmost of diligence, it is important to know that in general, you won't go to jail or pay stiff penalties if you act in good faith and try your best to understand your responsibilities. Still, a recent press release issued by the U.S. Department of Justice illustrates how a small business can get into trouble by not researching or abiding by its responsibilities in taking advantage of a socioeconomic category.

In 2014, after a contractor, R&W, was no longer eligible to participate in the 8(a) BD program, it entered into a joint venture agreement with an 8(a) BD program participant. As a joint venture

named Patriot, the team successfully secured an award set aside solely for Program participants on the Multiple Award Construction Contract ("MACC") at Scott Air Force Base, Illinois.

The U.S. contended that R&W falsely represented it would abide by the Program requirements and the Patriot joint venture agreement to obtain the SBA's approval. Immediately after Patriot received an 8(a) award on the MACC, R&W began managing the joint venture and using its own employees to complete nearly all of the work Patriot performed. Over the next two years, R&W caused Patriot to receive numerous MACC task orders set aside for 8(a) Program participants when Patriot was under R&W's control, in violation of SBA requirements.

Ultimately, R&W agreed to pay the U.S. \$400,000 "to resolve allegations

that it violated the False Claims Act by fraudulently obtaining construction contracts reserved for disadvantaged small businesses."

Interestingly, the press release issued by the DOJ makes no mention of any penalty assessed to the firm upon which eligibility was based. Rather, R&W, as the purported "puppet master" of the enterprise, was required to pay the penalty. Regardless, the investigation surely represented a significant burden to it as a small business, as well as damaged its relationship with the federal government. As such, it is important that, before jumping into an arrangement that sounds good to be true, we do our homework to see if it is.

DUNS DONE AS OF APRIL 2022

According to [an announcement](#) posted by the U.S. General Services Administration, by April of 2022 the federal government will stop using the DUNS number to uniquely identify entities registered in the System for Award Management ("SAM"). At that point, entities doing business with the federal government will use a Unique Entity Identifier ("UEI") created in SAM.gov, eliminating the two-step registration process for federal contractors and no longer requiring contractors to go to a third-party website to obtain their identifier. Consequently, nor will federal contractors be required to ensure that the registrations in both databases are identical, or to interface with both accounts in order to make a change. When the transition comes, little action should be required on your behalf, as your registration will automatically be assigned a new UEI which will be displayed in Sam.gov.

Keep an eye on this development, but don't be surprised to see an extension to this effective date—the April 2022 date is a revision on an original date of December 2020.



SDVOSB Protest Lesson: Does Your Electronic “Control” Suffice?

A recent SDVOSB protest decided at the SBA OHA illustrates that even if a firm is “verified” by the CVE, it is not invulnerable to being protested by a disappointed competitor. Even worse, it can lose its status. SBA No. CVE-179-P.

In *Blue Cord Dev Group, LLC*, a disappointed bidder protested Purple Hearts Heroes, LLC (“PHH”) under a VA Request for Lease Proposals, contending that PHH would be unusually reliant upon a subcontractor to perform the contract and that PHH is not “controlled” by service-disabled veterans. While SBA OHA found that the rule on unusual reliance (also known as the “ostensible subcontractor” rule) did not apply to procurements for leasehold interests, upon consideration of the protestor’s second allegation regarding a lack of control, it sustained the protest. There, the service-disabled veteran was running a “major real estate concern” without the managerial experience necessary to do so. Also, the firm was completely dependent upon employees from its subcontractor to perform important managerial duties, and also received funding from a subcontractor entity. As such, a “business relationship exist[ed] with a non-service-disabled veteran . . . entit[y] which cause[d] such

dependence that the applicant or concern [could not] exercise independent business judgment without great economic risk.”

The most interesting component is where the SBA OHA *may* have gotten it wrong. In finding that the veteran did not control the firm because he was not located within a “reasonable commute,” the SBA OHA noted that “the regulation specifically excludes the service-disabled veteran’s ability to communicate electronically as a rebuttal,” citing to a prior SBA OHA decision. Perhaps it was a slip in wording, as the SBA OHA did not go into details, but the regulation actually provides that “service-disabled veteran’s ability to answer emails, communicate by telephone, or to communicate at a distance by other technological means, *while delegating the responsibility of managing the concern to others* is not by itself a reasonable rebuttal.” In other words, you can use electronic means to manage your concern; however, you can’t merely use them to stay in touch while *others* run your firm.

As such, in this electronic/Covid age where many of us work remotely, make sure you’re clear about how you use technology to manage your business. You need to be the one calling the shots, and the CVE needs to determine that in their review.

April Webinars and Events

Tuesday, April 6: **Gain Access to Capital at Favorable Terms**

Speaker: Kirk W. McLaren, CEO, Foresight CFO

Tuesday, April 13: **Methods for Communicating Your Past Performance to Accelerate Government Sales**

Speaker: Joshua Frank, Managing Partner, RSM Federal

Tuesday, April 20: **Engagement Series Part 2 – Five Federal Lead Sources You Need To Know***

Speaker: Judy Bradt, CEO, Summit Insight

Thursday, April 23: **NVSBC/U.S. Dept of ED’s Veteran Small Business Series Part 2 - Spotlight on Federal Student Aid (FSA)**
<https://attendee.gotowebinar.com/register/8953912937201690123>

April 13-16: **Air Force District of Washington (AF Industry Day (Virtual))**
https://beta.sam.gov/opp/ado3boe92ab546049cda75dcae55f7b5/view?keywords=%22AFDW%20Events%22&sort=-relevance&index=&is_active=true&page=1

April 19-30: **GovCon summit (Virtual)** <https://solvability.com/govconsummit/>

Federal COVID Relief Provides (Another) Band-Aid to Small Firms

On March, 30 President Joe Biden signed the PPP Extension Act of 2021 into law, extending the Paycheck Protection Program an additional two months to May 31, 2021, and then providing an additional 30-day period for the SBA to process applications that are still pending. (The COVID-19 relief bill that Biden signed into law earlier this month included another \$7.25 billion for the program, but it did not extend the timeline for getting the loans).

The Small Business Administration reports that it has approved nearly 7.9 million loans totaling about \$704 billion. The loans are structured so that they can be fully forgiven if the recipient attempts to maintain similar levels of employment and uses at least 60 percent of the loan to cover payroll costs. The remaining 40 percent can be spent of rent, utility costs and other operational expenses.

In addition to this relief, and simultaneously with processing tax returns, the IRS is now sending out the third round of stimulus payments passed in the \$1.9 trillion American signed into law in early March. The IRS announced on March 17 that it has already dispersed 90 million of the nearly 160 million payments in the first batch that started processing in early March.

Despite the Band-aids applied by the federal government to stay the bleeding, they can only hold for so long. Hopefully the administration of vaccines will usher in a return to normalcy so our small businesses can begin the process of true recovery.



America's Seed Fund: The Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Programs

Often described as America's Seed Fund, the SBIR/STTR programs are highly competitive programs administered by the SBA's Office of Investment & Innovation. These programs support scientific excellence and technological innovation by providing qualifying small businesses with access to non-dilutive capital to develop commercially viable innovations that meet the government's emerging needs. The programs' goals are to:

- Stimulate technological innovation.
- Meet federal research and development needs.
- Foster and encourage participation in innovation and entrepreneurship by women and socially or economically disadvantaged persons.
- Increase private-sector commercialization of innovations derived from federal research and development funding.

In addition, the STTR program aims to:

- Foster technology transfer through cooperative R&D between small businesses and research institutions.

In the last five years, the programs have become increasingly popular due to increased emphasis by the Department of Defense ("DoD") through specialized organizations like the Army Applications Laboratory, NavalX, and AFWERX. The DoD, however, is not the only game in town. Currently 11 different federal agencies participate in the SBIR/STTR programs. This is because agencies with more than \$100 million per year in their extramural research budget are required to use 3.2% of those funds for the programs. In 2019, the overall SBIR/STTR spending was approximately \$3.28 billion for the SBIR program and \$453 million for the STTR program, with the two biggest contributing agencies being the DoD (\$1.8 billion) and the Department of Health and Human Services ("DHHS") (\$1.15 billion).

The SBIR/STTR programs typically consist of three phases.

Phase I. The objective of Phase I is to establish the technical merit, feasibility, and commercial potential of the proposed R&D efforts and to determine the quality of performance of the small business awardee prior to providing further support in Phase II. SBIR/STTR Phase I awards are generally \$50,000 – \$250,000 for 6 months (SBIR) or 1 year (STTR).

Phase II. The objective of Phase II is to continue the R&D efforts initiated in Phase I. Funding is based on the results achieved in Phase I and the scientific and technical merit and commercial potential of the proposed project. Typically, only Phase I awardees are eligible for a Phase II award. Phase II awards are generally \$750,000 for 2 years.

Phase III. The objective of Phase III is for the small business to pursue commercialization goals resulting from the Phase I/II R&D activities. The SBIR/STTR programs do not fund Phase III. Rather, agencies use their operating budgets to fund requirements that were developed through the program. Further, agencies can source a Phase III award to a Phase I/II recipient allowing them to avoid the competition requirements that often plague other types of acquisitions.

The SBIR/STTR programs are an incredible opportunity for small businesses to secure non-dilutive capital, diversify their business portfolio, and retain the rights in any intellectual property developed through the programs. A win-win-win scenario. If you have questions about the SBIR/STTR programs, please reach out to us at alan@wardberry.com or tim@wardberry.com.

*This article was contributed by Alan Apple of Ward & Berry, PLLC, a consulting and legal services firm committed to excellence and ingenuity in advising and advocating for its clients, many of them small contractors competing in federal space, from startup to maturity.

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.