



FIRST CALL

OCTOBER 2021

WWW.NVSBC.ORG



From the Executive Director



Greetings!

I am sure all of you are tracking the whirlwind of activity in our nations capital as congress comes to grips with funding bills, debt ceilings, and many issues. This is a critical time for those in the federal procurement space. We are keeping a close eye on

several issues of importance.

The most pressing has to do with the National Defense Authorization Act (NDAA) that just came out of the House and is now with the Senate. There were two amendments of interest in the House version of the NDAA. The first calls for changes to category management requirements that would provide relief for small businesses. The second would increase the small business set aside percentages across all socio-economic categories. We view the category management amendment as a positive step in providing greater opportunity for SDVOSB opportunities. However, we are not satisfied with the proposed increases in set aside percentages. As written, the SDVOSB category receives a very small increase to 4% while other categories see more significant increases.

While these amendments only apply to the house version of the NDAA and do not currently have corresponding language in the Senate version, we view it as vital that we engage with the Senate to ensure any final language protects the interests of veteran small business.

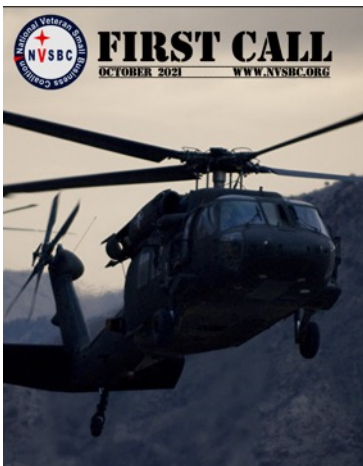
NVSBC representatives are actively meeting with several Senate Small Business, Armed Services, and VA committee members to urge them to ensure veteran businesses are respected with comparable percentage increases in any language that would come out in a final NDAA bill. We are also encouraging them to support the modifications to the category management requirements that favor veteran small business opportunity. We will provide an update on progress in our mid-month policy update.

VETS'21 is fast approaching! We have seen an influx of registrants over the last two weeks and have several federal procurement leaders who have agreed to speak and address the pressing issues of the day. VETS'21 happens to fall during National Veteran Small Business Week and there will be no better time and opportunity to meet with each other, our large prime partners, and federal leaders to prepare for 2022. We are confident that we will have a very productive, safe, and worthwhile time in Orlando. Don't miss this great opportunity to reconnect and launch your business into 2022!

As we start the last quarter of 2021, I wish you all the very best in your business endeavors and look forward to working with you now and into 2022!

A handwritten signature in black ink, appearing to read 'Scott Jensen'.

Scott Jensen
Colonel, U.S. Marine Corps (Ret.)
Executive Director



October Cover

The Sikorsky UH-60 Black Hawk makes a landing in the mountains of Afghanistan. October 3rd marks the 25th anniversary of the Battle of Mogadishu in Somalia, a military operation forever memorialized in Mark Bowden's book "Black Hawk Down" and the Ridley Scott-directed movie it inspired..

INSIDE

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Around the NVSBC

Farewell Heather Lee!



This week we said farewell to our longest serving staff member, Heather Lee. Heather has stepped off on a new adventure. There has been no one more dedicated or committed to NVSBC and the veteran community. Heather has been with us from the beginning, and we will miss her energy, enthusiasm, and support!

Heather, we all thank you for all you have done for our members, the organization, and community. We will miss you and wish you the best of luck on the next steps in your journey!



Welcome New Members

Airborne Data
Imagining Group, Inc.
Flourtown, PA
*(Medical Manufacturing
Distribution)*

Berry Solutions
Group LLC.
Altoona, PA
(IT)

Caldaia Controls, LLC.
Cape Coral, FL
(Manufacturing)

Controlled Technical
Services LLC.
(Services)

Durden Law, L.P.A., LLC.
Dayton, Ohio
(VA Benefits)

Dead Calm Seas
Marine Services
Poplar Bluff, MO
(Construction)

Eagle Global Scientific, LLC.
San Antonio, TX
(Medical Services)

EMD LLC.
Woodbridge, VA
(Construction A/E)

Hull IT Solutions &
Services, LLC.
Llano, Texas
(IT)

Middleton Construction
Consulting LLC.
Merton, WI
(Construction A/E)

Perlogix
Manassas, VA
(IT, Services)

STS Federal, LLC.
Jonesboro, AK
(IT)

Strategic Medical
Equipment Solutions, LLC.
Palmer Lake, CO
*(Medical Manufacturing
Distribution, Services)*

Syms Strategic
Group, LLC.
Ashburn, VA
(IT, Services)

Tenacity Solutions, LLC.
Reston, VA
(IT)

Trusted Internet
New Boston, NH
(IT)

Willis Sales & Consulting, LLC
East Stroudsburg, PA
(Manufacturing)

25 DAYS!



LET'S ReCONNECT 2021!



November
2 – 5

Orlando,
Florida

REGISTER NOW!

NEW MEMBER PROFILE



Name of Business Owner: SGT Robert Wilson
Military Branch/Years Served: United States Army (1989 to 1996)
Occupation in Military: Electronic Technician
Name of business: Caldaia Controls, LLC.
Type of business: Industrial Boiler Services
Year Established: 2018
Location(s): Cape Coral, Florida
Website: www.caldaiaccontrols.com

Caldaia Controls is veteran owned small business and a leader in service and support of industrial boilers, water/wastewater treatment facilities and manufacturing plants. We offer over 100 years of combined experience between our field technicians and engineers who support more than 60 different facilities across the United States. Our experience includes the service and support of over 100 different types of boilers, the testing and calibration on all types of plant instrumentation as well as the design, support, troubleshooting and upgrading of several PLC based controls systems & human machine interfaces (HMI).

What motivated you to start your own business?

Caldaia Controls was formed to fill an industry void of reliable Boiler Service with a Customer Service-Centric focus. We set out to reliably maintain existing Boilers Systems while providing our Customers with Solutions for upgrading and modernizing the technology required to meet modern day requirements and standards.

What has been your biggest challenge(s) in the Federal marketplace and how did you overcome them?

Boiler Support criteria at the Federal Level has gone through a major overhaul in recent years. Specifically, The Department of Veterans Affairs, our largest Federal Customer, standardized testing criteria and reporting is now a critical requirement for every service provider. Caldaia Controls entered this market in the middle of the implementation phase of these new policies. Working closely with each customer site and developing processes and procedures to support the VA Directives enabled Caldaia Controls to site-by-site help transition and train the VA personnel to operate under these new guidelines.

What advice would you give to other veteran small business owners?

Public Service is a huge responsibility and honor. Our great country affords Veterans an opportunity to have success long after our days of active duty have ended. Take advantage of this benefit and reciprocate by providing quality service and products.

MEMBER PROFILE



Name of Business Owner: Jim O'Farrell

NVSBC Member: 6 years

Military Branch/Years Served: Navy/5 years

Occupation in Military: Supply Corps Officer

Name of business: Advanced Management Strategies Group, Inc (AMSG)

Type of business: SDVOSB

Year Established: 2008

Location(s): Corporate office in Dumfries, VA, offices in Washington, DC and Falls Church, VA and numerous satellite work locations across the country.



Advanced Management Strategies Group, Inc. (AMSG) is an agile, aggressive, results oriented company that delivers best value solutions to our diverse customer base. As a Service Disabled Veteran-Owned Small Business (SDVOSB), AMSG provides Logistics, Program Management, Business Consulting, and Engineering Support services to both Government and Private Industry customers. AMSG has core capabilities built around Product Lifecycle Management (PLM) processes and PLM IT tools with a critical depth in IT Services management.

What motivated you to start your own business? Mike McCormick, a retired Marine Corps Officer, founded the company in 2008 with the motto, "*No Promises, Just Results*" to provide federal government customers with innovative solutions to complex problems – all at an affordable price. On September 28, 2021, Mr. McCormick transitioned the CEO role to Jim O'Farrell, the sole owner. Mr. O'Farrell joined AMSG in 2010 as President and Chief Operating Officer. Since 2010, in addition to leading AMSG as it has grown and served federal customers including the DOD, DOE, DHA, DOT, VA, FTC and others, Mr. O'Farrell has been motivated to serve the military veteran, family member and caregiver communities by supporting transitioning military personnel, assisting wounded warriors and supporting important public service initiatives that connect the 99% of our population that have never served with the 1% who have. Mr. O'Farrell currently serves as Vice Chair of the [Armed Services Arts Partnership](#) and previously served as Chair of the US Small Business Administration's Advisory Committee on Veterans Business Affairs. Mr. O'Farrell has been the Race Director of the Travis Manion Foundation's 9/11 Heroes Run 5K, participated as a guest speaker at TMF Veteran Transition Workshops, and currently organizes an annual TMF Operation Legacy Veterans Day of Service. Mr. O'Farrell has also planned and delivered numerous TMF Character Does Matter Program presentations in the DC Metro area.

What has been your biggest challenge(s) in the Federal marketplace and how did you overcome them?

AMSG's biggest challenge has been to manage its growth to ensure that each of our federal government customers receives the same level of service they have come to expect. The way we have overcome this challenge is by ensuring our company culture is emphasized from the day we make our first contact with a prospective customer, team member, partner or other stakeholder. Our culture is one that puts our employees and customers first.

What advice would you give to other veteran business small owners?

- Realize that often times in the early years of your business, you'll need to partner to penetrate new markets/federal agencies.
- Build exceptional past performance by always focusing on delivery. Often times, I've seen companies focus on "the next contract" instead of delivering what they've won. If you put your CUSTOMER's Mission first, the contracts will follow.



Insurance to help protect your business

Learn more about our
**General Liability and
Business Owners Policy**



SMALL BUSINESS
INSURANCE

[USAA.COM/SMALLBUSINESS](https://usaa.com/smallbusiness)

Membership eligibility and product restrictions apply and are subject to change. Small Business Insurance is underwritten by Garrison Property & Casualty Insurance Company, San Antonio, Texas ("Garrison"), or is underwritten by insurance companies that are not affiliated with USAA ("third-party insurance companies"). Each company is solely responsible for its insurance products. Any product or coverage descriptions are brief and are informational only. Products, availability, coverages, and terms vary by state and exclusions apply. Applications for insurance are subject to underwriting by the applicable insurance company. All coverages are subject to the terms and conditions of your policy. Read your policy for details. Products underwritten by third-party insurance companies are offered through a relationship between the USAA Insurance Agency (the "Agency") and the third-party insurance company. The Agency contracts with third-party insurance companies to offer products and services ("third-party insurance products") on their behalf. Third-party insurance products are not underwritten by USAA or its affiliates. The Agency receives a commission on the sale or renewal of third-party insurance products and may receive other performance-based compensation from them. When you purchase an insurance product from one of these third-party insurance companies, that company is responsible for protecting your data, and its processes and procedures may differ from those of USAA. USAA Insurance Agency means USAA Insurance Agency, Inc., or USAA of Texas Insurance Agency (collectively the "Agency"). CA Lic #0D78305, TX Lic. #7096. 9800 Fredericksburg Road, San Antonio, TX 78288. © 2021 USAA. 280734-0821

Avenue Arises For Protesting Novel Acquisition Methods Such As OTAs

On September 17, 2021, the Court of Federal Claims denied plaintiff Kinemetrics' protest of an Air Force Commercial Solutions Opening ("CSO") procurement to replace obsolete seismometers used to monitor nuclear treaty compliance. What was novel about this case is that it opens up judicial review of so-called "rapid acquisition" methods or "novel acquisition" methods.

Prior to this case, the bid protest jurisdiction of the Court of Federal Claims as it pertains to novel acquisition methods has been relatively unclear. In Kinemetrics, the government argued Congress specifically exempted the CSO acquisition process from judicial review. The Court, however, disagreed and laid out guidance on its bid protest jurisdiction. Citing the Tucker Act, which establishes the Court of Federal Claims' bid protest jurisdiction, the Court emphasized that it has jurisdiction over bid protests "in connection with a procurement or a proposed procurement". 28 U.S.C. § 1491(b)(1).

The Court determined the agency's rejection letter, which stated plaintiff's proposal was technically acceptable but recommended against "a contract award", had a "direct effect on the award of a contract." In fact, the solicitation resulted in the award of a standard indefinite delivery, indefinite quantity contract for equipment from the agency. The rejection in the evaluation phase disqualified plaintiff from consideration for the follow-on production contract contemplated by the CSO. As such, the Court found the CSO was issued "in connection with a procurement".

While finding bid protest jurisdiction in this case, the Court also made some determinations as to when it would not have jurisdiction. Specifically, the Court found bid protest jurisdiction over rapid and novel acquisition methods was not present if:

- The governmental action "did not begin the process for determining a need for property or services";
- The governmental action "had no effect upon the award or performance of any contract"; or
- The governmental action was "of a developmental nature".

Ultimately, the Court determined that it lacks bid protest jurisdiction where the novel acquisition method is "separate and distinct" from a procurement solicitation.

The distinction of whether these novel acquisition methods are in connection with a procurement will be highly fact specific. For instance, the Court references Space Exploration Technologies, which involved a similar CSO action. In that case, the Court found that it lacked jurisdiction because the plaintiff's rejection in the evaluation phase did not preclude it from a future contemplated procurement for space launch services. As such, the CSO was separate and distinct from the procurement action.

It is important to note, that although the Court found bid protest jurisdiction for this CSO, it was still very deferential to the agency's determinations and ultimately rejected plaintiff's protest. As is usually the case in bid protests, the Court deferred to the agency's expertise in scientific and technical matters and determined that the agency followed its own guidelines for making an award.

The takeaway from this case is this—novel and rapid acquisition methods are quickly becoming agency favorites for procuring commercial technology, especially within the DoD. Contractors need to be aware that rejection in these types of cases might be challengeable before the Court of Federal Claims. If you are in this position, it never hurts to reach out to your legal counsel to see if challenging an agency's award might result in a successful protest.

Tyson Marx is a senior associate with Ward & Berry PLLC based out of Tysons, Virginia. Tyson focuses primarily on government contracting, specifically as it pertains to litigation. Ward & Berry is a Washington, DC and Tysons, Virginia based law firm committed to excellence and ingenuity in advising and advocating for clients in government contracts, civil litigation, investigations, and complicated problems faced by federal contractors of all sizes.



*Sarah Reida Schauerte
Federal Procurement Attorney
Legal Meets Practical
Contributing Writer*

Access her company website and blog at: <http://www.legalmeetspractical.com>.

Are Your Employees Vaccinated? They Need to Be, By December 8

On September 9, President Biden announced his Path Out of the Pandemic: COVID-19 Action Plan. As part of that Plan, the President signed [Executive Order 14042, Ensuring Adequate Covid Safety Protocols for Federal Contractors \(the “Order”\)](#), which directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts include a clause (“the clause”) that the contractor and any subcontractors (at any tier) shall incorporate into lower-tier subcontracts. This clause must specify that the contractor or subcontractor shall, for the duration of the contract, comply with all guidance for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (“Task Force”), provided that the Director of the Office of Management and Budget (“OMB”) approves the Task Force Guidance (the or this “Guidance”) and determines that the Guidance, if adhered to by covered contractors, will promote economy and efficiency in Federal contracting.

On September 24, the Taskforce issued Guidance. This requires Federal contractors and subcontractors with a covered contract to conform to the following workplace safety protocols:

1. COVID-19 vaccination of covered contractor employees (by December 8), except in limited circumstances where an employee is legally entitled to an accommodation;
2. Compliance by individuals, including covered contractor employees and visitors, with the Guidance related to masking and physical distancing while in covered contractor workplaces; and
3. Designation by covered contractors of a person or persons to coordinate COVID-19 workplace safety efforts at covered contractor workplaces.

The Guidance is vague with respect to actual implementation. While it refers to the Order as “set[ting] out a process [for implementation], the language of the Order merely states: “each agency shall implement, to the extent consistent with applicable law, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law. The Task Force shall issue guidance within 7 days of the date of this order on agency implementation on the requirement for all agencies covered by this order.”

It appears that implementation is in the hands of the agencies administering federal contracts, which creates a whole host of issues. Do they have a process for notifying contractors? What do contractors do if their employers are in a union, and they refuse to be vaccinated? What about cost increases to contractors who must comply? What are the monetary penalties and consequences for non-compliance?

This Guidance is brand new, and implementation—and issues—have yet to be seen. Access it [here](#), and direct any questions (or concerns) to your contracting officer or legal counsel.

Protest Lesson: Fix Solicitation Issues Before Offers Are Due!

The rules for joint ventures competing for set-aside contracts are nuanced and confusing. First, you need to make sure that your joint venture agreement includes an addendum for each solicitation which meets the content requirements of 13 C.F.R. § 125.18. If you're protested, and that wasn't in place before the offer due date, you lose your contract. Then, when *performing* your contract, you're subject to the limitations on subcontracting rules and various reporting requirements that don't apply to other contracts. It's tedious, but as they say, it's all part of the privilege of doing business with the federal government.

As a joint venture competing for federal contracts, make sure a solicitation doesn't require you to do more than you legally have to. In [InfoPoint, LLC](#), a joint venture prospective offeror had protested the solicitation requirement that a small business joint venture *offeror* hold a facility clearance as inconsistent with the SBA's recent rule change. B-419856 (August 27, 2021). The SBA joined the argument and noted that the solicitation term was inconsistent with the National Defense Authorization Act (NDAA) for fiscal year 2020, which specifically prohibits requiring a joint venture to have an FCL separate from its members. Accordingly, the Solicitation's requirement that it do so was inconsistent with federal law, and the GAO sustained the protest on this ground.

This protest is more interesting for its practical lessons. For one, had the joint venture offeror raised this issue *after* offers were due, it would have been untimely. Any protest relating to solicitation terms must be raised before the offer due date. As such, when it comes to a solicitation you're bidding on, carefully review its terms to identify anything objectionable, unclear, or contradictory.

Relatedly, raise the issue with the contracting officer as soon as possible. Most times, an agency is amenable to changes for compliance or clarification purposes. In this case, it appears the agency was rather obstinate in keeping this requirement—it fought the issue until the bitter end, and this was despite SBA guidance—but oftentimes solid communication with the contracting officer during the procurement process can render a protest like this one not even necessary.

Protest Lesson: Agency Action (Usually) Won't Stop the Clock!

Even if we want to protect our positive working relationships with contracting officials, be sure you protest a contract award to a competitor by the applicable deadline. A recent size decision illustrates this principle—the incumbent contractor had been awarded a sole source contract shortly after award was made to another contractor, and Small Business Administration Office of Hearings and Appeals held that the *award* had started the clock to protest.

In [Size Appeal of Osprey Technology Solutions, Inc. RE: June Dion d/b/a Risen Video Production \(SBA No. SIZ-6102\)](#), the Army issued an award on March 25, 2021. On March 30, 2021, the CO opened discussions with the Appellant (protestor) about a sole-source bridge contract. This ultimately covered both April and May, and the Appellant argued that its award suggested that the Army's evaluation of quotations was not yet complete. It relied on a prior decision, *Size Appeal of Global Dynamics, LLC*, which held that an award notification “will not trigger the deadline for filing a size protest when “the procuring agency subsequently takes actions that are inconsistent with that award notification.” SBA No. SIZ-5979, at 4 (2018).) In the *Global Dynamics* decision, the SBA OHA had cited the agency reopening discussions and obtaining revised proposals as an example of the evaluation process not being complete. Here, the agency's decision was clear, and a sole source bridge contract for the incumbent was not inconsistent with an award being made to another contractor.

The old adage is worth repeating: know your bid protest timelines, and meet them no matter what. Even if you're in talks with a contracting officer to resolve a mistake, let them know that you need to protect your rights and must file a timely protest to ensure that happens. If done properly and professionally, most contracting officers will understand. If it's not clear when the clock runs, file on the earlier deadline. Don't play with a deadline, because if you do, the best-case scenario is going through the unnecessary stress and expense of arguing timeliness under the circumstances. And that's before even getting to the meat of the protest itself.

Legal Briefs by Legal Meets Practical

Wage Hike for Federal Workers Reminds Us to Pay Up Proper

On September 16, the Wage and Hour Division of the U.S. Department of Labor (the Department) issued a notice to announce an increase of the applicable minimum wage rate for workers performing work on or in connection with federal contracts. This applies beginning on January 1, 2022 to all workers covered by Executive Order Executive Order 13658 (Establishing a Minimum Wage for Contractors). As of that date, the minimum wage rate that generally must be paid to workers increases from \$10.10 to \$11.25 per hour, while the required minimum cash wage that must be paid to tipped employees increases to \$4.90 per hour.

As always, both for purposes of compliance and for pricing out service contracts, be aware of wage rates and wage determinations applicable to employee labor categories. While most contractors are already paying their employees above the minimum wage and/or are in compliance with wage determination rates, not doing so can have disastrous consequences. We hear too many stories about contractors being exposed to False Claims Act liability or the other harsh penalties applicable to the labor clauses incorporated into their contracts. Small businesses who make an honest mistake aren't generally the ones the involved in *these* horror stories, but being exposed to an investigation or being accused of a violation is scary enough.

Make sure you're educated as to the requirements that apply to you. Access the wage determinations for all labor categories at Beta.Sam.gov [here](#).

Calendar of Events

The Defense Federal Acquisition Regulation Supplement (DFARS) Webinar Training Series 2021

Hosted by Jennifer Schaus & Associates
Sponsored by National Veteran Small Business Coalition

Every Wednesday from 1 - 2 PM
(Webinars are complimentary)

Wednesday, October 13: [DFAR Part 245 – Government Property](#)

Wednesday, October 6: [DFAR Part 244 – Subcontracting Policies and Procedures](#)

Wednesday, October 20: [DFAR Part 246 – Quality Assurance](#)

Wednesday, October 27: [DFAR Part 247 – Transportation](#)

Visit for <https://www.nvsbc.org/dfars-webinar-training-series-2021/> to view previous webinars in this series.

The Wright Brothers Institute Small Business Hub has partnered with the AFMC/SB, SAF/SB, SpaceWERX, and Space Systems Command Small Business Office to bring you an introduction to the USSF and SpaceWERX. Don't miss this opportunity to learn about the newest branch of the Armed Forces – the United States Space Force (USSF) and SpaceWerx.

Date/Time: Oct 14, 2021 - 1:00pm - 3:00pm (EDT)

Place: In-Person or Virtually, you choose at registration

- In-Person: Wright Brothers Institute - 444, [444 E 2nd St, Dayton, OH 45402](#)
- Virtual: SB Hub will send out Zoom Login information day before event.
- Cost: FREE
- Registration: <https://www.eventbrite.com/e/introduction-to-the-ussf-and-spacewerx-overview-and-opportunities-tickets-180167414587>

VETS 21

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What you need to know to make your business thrive in 2022!

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