



FIRST CALL

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Reflections on *Kingdomware* Guidance

A message from NVSBC Executive Director, Scott Denniston



Since VA has put out its guidance to contracting officers regarding VETS First and the “Rule of Two,” it seems like everyone has an opinion.

As I said on Federal News Radio, we are cautiously optimistic but hearing of examples of opportunities where it does not appear that the spirit and intent of the VETS First Program is met. NVSBC will continue to monitor VA actions and bring to VA leadership examples where in our opinion the spirit and intent of VETS First is not being carried out.

The VA does hundreds of thousands of procurement actions a year and it is impossible for us to monitor without your help. Please review VA Procurement Policy Memorandum 2016-05 which is the guidance to VA contracting officers. This will allow you to make educated decisions as to VA contracting officer decisions. VA’s own policy says the adequate market research is the key to

implementation of the “Rule of Two.” When you find examples of VA contracting officers not following the policy memorandum email me at scott.denniston@nvsbc.org. VA leadership needs our eyes and ears to be successful quickly.

One of the real benefits of your NVSBC membership is our ability to introduce you to agencies, large prime contractors and others looking to do business with SDVOSBs and VOSBs. We do this in partnership with GovMates. We can't provide you with appropriate matches if you don't put your company capability information in GovMates. We want EVERY NVSBC member to take advantage of GovMates and our ability to introduce you to potential new markets. Go to www.govmates.com and register your company!!

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

Veteran Employment Situation Report

If you’re interested in learning about the employment rates of veterans and those industries/locations where jobs are most likely to be found, visit VetJobs’ Veteran Employment Situation Report (based on DOL findings) at: <http://vetjobs.com/veteran-employment-situation-report-july-2016/>.

SBA Launches New Certification Website for WOSBs



To improve the application processes for small businesses that want to do business with the federal government, the Small Business Administration has launched certify.sba.gov, a new website that helps women-owned small businesses more easily manage eligibility and certification documents for the WOSB Federal Contract Program.

The WOSB Federal Contract Program was implemented in 2011 with the goal of expanding the number of industries where WOSB are able to compete for business with the federal government. WOSBs looking to self-certify once did so via the WOSB Repository in the General Logic System. In the new portal at certify.sba.gov, WOSB business owners will be able to manage their documents, complete application forms online, and receive notices of upcoming deadlines.

The new website will allow several forms to be filled out electronically, reducing the burden of printing, scanning and uploading. It will eventually serve additional SBA contracting programs, including the 8(a) Business Development Program, HUBZone Program and others, SBA said in its announcement. As additional certifications are moved into the new system, documents uploaded for one program may be reused for another.

“This new website first focuses on closing market gaps for women entrepreneurs in the federal marketplace,” said SBA Administrator Maria Contreras-Sweet. It complements other SBA websites including LINC, an online matching service for small business loans, and the Start Up in a Day initiative that makes the permitting and licensing process for entrepreneurs easier.

VA Business Conference On For Nov. 1-3 In Minneapolis

The 2016 National Veterans Small Business Engagement (NVSBE) is scheduled for November 1-3, in Minneapolis, MN. An advance ticket for a veteran-owned small business is \$450 (\$525 for a small business).

NVSBE directly connects VOSBs with procurement decision makers (PDMs) from the VA, other federal agencies, state government, as well as large firms with small business needs—and provides training opportunities to improve the capabilities of small businesses to successfully compete for procurement contracts.

On the NVSBE website, the VA cites six major incentives for attending the conference: one, to get direct access to hundreds of PDMs; two, to learn about 2017-2018 procurement opportunities; three, to gain access to more business opportunities; four, to connect with government and commercial buyers; five, to make new connections; and six, to be included in the VA Business Intelligence Tool 1.0.

November 1-3 may feel like a long time away, but it will be here before you know it! It's not too early to start planning. To learn more, visit the website for the conference at <https://nvsbe16.mybusinessmatches.com>.



Tell Us If the VA is Not Following *Kingdomware*!

As we know, in late June, the U.S. Supreme Court sided with veterans in holding that in some cases, the VA is required to set aside certain pieces of work for veteran-owned small businesses (VOSBs).

Almost immediately, the VA issued an Acquisition Policy Flash, which reiterates the Supreme Court's major holdings: namely, that the Rule of Two applies to orders placed under the GSA Schedule, and applies even when the VA is meeting its SDVOSB and VOSB contracting goals. (As a refresher, the "Rule of Two" is that the work has to be set aside for veteran companies when there is a "reasonable expectation" that at least two such businesses will bid on the contract and "the award can be made at a fair and reasonable price that offers best value to the United States."). The Policy Flash states that the VA "will implement the Supreme Court's ruling in every context where the law applies." It also instructs contracting officers to conduct robust market research to ensure compliance with the Rule of Two.

More recently, the VA issued further guidance on the implementation of the *Kingdomware* decision, via a [memorandum](#) that describes the changes to the Veterans Affairs Acquisition Regulation (VAAR). It juxtaposes the old policies contained within the VAAR with the new ones adopted due to the *Kingdomware* holding regarding the Rule of Two.

Notably, the memorandum enumerates the changes to the VAAR (at 810.001-70) as it relates to the market research contracting officers must conduct in determining whether a contract should be set aside for the veteran community. Specifically, it states that in performing market research contracting officers must review the VA's VetBiz Registry, searching by the applicable NAICS code to determine if there are two or more VOSBs or SDVOSBs capable of performing the work required by the solicitation.

This is the qualifier for whether a contract will be reserved for veterans, and if you'll examine it closely, you'll see this is very "soft" language. How is the contracting officer supposed to assess if the VOSBs with the corresponding NAICS codes are "capable" of performing the work? How will he know/determine if they can offer a "fair and reasonable price" that is the "best value" to the Government? How are "fair and reasonable price" and "best value" defined?

Because this is soft language, this raises the issue of whether it provides wiggle room for the VA to avoid following *Kingdomware*. There's also the issue of whether the VA will try to avoid conducting set-asides by deliberately structuring solicitations so no VOSB will have the capability to perform them. **If you see anything like this occurring, please contact Scott Denniston at scott.denniston@nvsbc.org so we can bring this to the VA OSBDU's attention!**

After August 15th, Will The VetBiz Process Improve?

Commencing at 8:00 a.m. on Thursday, August 11th, and ending at 8:00 a.m. on Monday, August 15th, the VetBiz system was shut down.

According to the email blast from the CVE: "The VA Veterans First verification program is undergoing a transformation in response to feedback provided by Veteran-owned Small Businesses. The modifications and enhancements will result in significant changes to our application process to improve the Veteran experience as we establish *My VA Verification*." This entails changing the examination phases of the application process to now require firms to go through a "pre-qualification" stage before undergoing a comprehensive evaluation.

Basically, this means that rather than first uploading all relevant documents, veteran business owners will only provide a few items - most notably, their corporate documents (i.e., their bylaws or their operating agreement). The corporate documents will be examined for eligibility issues; if there are issues with certain clauses, veteran business owners will have the opportunity to revise and resubmit their corporate documents to continue with the process.

While the brief provided on My VA Verification is vague, it also curiously refers to "other eligibility issues" being identified during the pre-qualification stage. If the pre-qualification stage looks into issues with corporate documents **and** "other eligibility issues" (such as dependence on a non-veteran or a lack of control), what is there to do once the business clears that stage? This new bifurcated system may result in more disapprovals being obtained during the beginning of the process, but it may also create additional delays by the inevitable double work completed by the CVE in processing applications.



The SBA's New Universal Mentor-Protégé Program

In a **final rule published in the Federal Register on July 25, 2016**, the SBA provides the framework for what may be one of the most important small business programs of the last decade—one that will allow all small businesses to obtain developmental assistance from larger mentors, and joint venture with those mentors to pursue set-asides.

The SBA's final rule creates a new regulation, 13 C.F.R. 125.9, entitled: "What are the rules governing SBA's small business mentor-protégé program?" The new regulation sets forth the framework of the small business mentor- protégé program. It also sets out the major benefit to being in a mentor-protege relationship: **A protégé and mentor may joint venture as a small business for any government prime contract or subcontract, provided the protégé qualifies as small for the procurement. Such a joint venture may seek any type of small business contract for which the protégé firm qualifies (e.g., a protégé firm that qualifies as a SDVOSB could seek an SDVOSB set-aside as a joint venture with its SBA-approved mentor).**

In plain English, this means that if you are a small business in a good business relationship with a larger business with complementary capabilities, you could team up on set-asides.

As a general matter, "[a]ny concern that demonstrates a commitment and the ability to assist small business concerns may act as a mentor and receive benefits" from the mentor-

To qualify as a protégé, a company must be "small" under its primary NAICS code, or a secondary NAICS code if it can show that it is looking to expand its capabilities in that secondary NAICS code.

In order to participate in the mentor- protégé program, "[t]he mentor and protégé firms must enter into a written agreement setting forth an assessment of the protégé's needs and providing a detailed description and timeline for the delivery of the assistance the mentor commits to provide to address those needs . . ." The mentor- protégé agreement must be for at least one year, but it may not exceed three years (though it can be extended for a second three years, capping the mentor-protégé relationship at six years.

On October 1, 2016, the SBA will begin accepting applications for the new universal small business mentor-protégé program. Applications will only be accepted through the SBA's new certify.sba.gov portal, and it is unclear whether the SBA will choose to cap the number of applicants to the program. Applicants are required to register in the **System for Award Management (SAM)** prior to creating their profile in certify.sba.gov. Applicants (both prospective Protégés and Mentors) will be required to complete an online training module as part of the application process, and to upload a certificate of completion before completing the process.

Interested in applying? For further information, go to the SBA's website for the small business mentor-protégé program 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.