



FIRST CALL

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As the Summer Winds to an End

A message from NVSBC Executive Director, Scott Denniston



Hope you all had a great summer. Seems like nowadays the world of federal contracting never slows down. We have been busy working to make the NVSBC more active and relevant to our members. Look for a notice from Heather announcing a new survey of members. Our goal is to learn more about what you want from us and how we can help you be successful in business. We are a few weeks away from a new and improved website at www.nvsbc.org, which will have a “Members Only” section with special offers and opportunities for members, as well as a platform for more open communications.

Most of the participants at VETS 16 who completed the survey said let’s stay in Norfolk next year. VETS 17 will be June 12-15, 2017, at the Waterside Marriott. If you have ideas for workshops or general ideas to improve VETS, please let us know by emailing me at scott.denniston@nvsbc.org.

As most of you know, we entered into GovMates to use it as our capabilities platform. We

are working hard to hold events with large businesses and federal agencies wanting to do business with VOSBs and SDVOSBs. Please go to www.Govmates.com and enter your capability information. If you are not in GovMates, we can’t match you with the organizations that contact us.

Board Member Tim Farrell is working hard to establish NVSBC chapters around the country. If you have interest in establishing an NVSBC chapter in your local area, please email Tim at tim.farrell@nvsbc.org.

NVSBC has been helping members understand the result of the *Kingdomware* SCOTUS decision. If you have any concerns regarding VA contracting after *Kingdomware*, please email me. We have posted on www.nvsbc.org the policy documents from VA to date. We will obtain the training material VA is using to train all COs and program managers. The VA’s implementation has been uneven depending on the contracting office involved. We will continue to monitor but need your help!!

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

SBA Launches New Website for Small Businesses

In mid-August, the SBA launched certify.sba.gov, a new website to further streamline and improve the application processes for small businesses and entrepreneurs seeking to do business with the federal government. Right now, the site primarily helps WOSBs by providing an online certification process, but it will expand soon to serve the 8(a) BD Program and the HUBZone Program.

BID PROTEST LESSONS: TWO COLORFUL READS



These are two bid protests that offer not only colorful reads, but also important lessons for our members:

In *Latvian Connection, LLC*, the GAO took the unprecedented action of suspending a contractor from lodging bid protests before it for an entire year. B-413442 (Aug. 18, 2016). In dismissing the contractor's protest, the GAO noted the following: 1) thus far this fiscal year, the contractor had filed 150 protests with the GAO; 2) of the 150 protests filed, all except one were dismissed (as opposed to denied on the merits); and 3) protest allegations included claims of criminal activity by agency and GAO officials. The GAO also concluded that the protest was not within its task order jurisdiction, and the contractor was not an interested party. Based on the contractor's litigation pattern, the GAO also dismissed the protest

for abuse of process and imposed the one-year suspension.

The lesson? Limit protests to when they present viable issues and you have a stake in the outcome.

In *URS Federal Services.*, the GAO held that the Navy did not err in assigning a "technically unacceptable" rating to a proposal after an individual identified as "key personnel" resigned. B-413034 et al. (July 25, 2016). The resignation was not the contractor's fault, but the Navy acted reasonably. It could have either re-evaluated the proposal in light of the resignation, or re-opened discussions to correct this deficiency.

The lesson? Protect yourself from this possibility of losing someone you need to win a contract. Give them an incentive to stay and/or disincentive to leave in their employment agreement.

CBCA: SDVOSB PASS-THROUGH FRAUD VOIDS CONTRACT

In a recent Civilian Board of Contract Appeals (CBCA) decision, the CBCA held that an SDVOSB set-aside contract was void and unenforceable because the prime contractor had entered into an illegal "pass-through" arrangement with a non-SDVOSB subcontractor. Because the contract was obtained by misrepresenting the concern's SDVOSB status, it was invalid from its inception and the contractor had no recourse against the government when it was later terminated for default. *Bryan Concrete & Excavation, Inc.*, CBCA 2882 (August 26, 2016).



In this instance, Bryan Concrete & Excavation, Inc. (BCE) was an SDVOSB; however, the problem was that it obtained several federal contracts where it entered into an agreement with a non-SDVOSB subcontractor for the subcontractor to perform all of the work (in exchange for being paid for the direct costs and overhead plus 90% of the anticipated gross profit).

In performing one VA contract, a number of performance issues hampered its progress and the VA ultimately terminated it for default. During the course of the CBCA appeal, the VA learned of the pass-through relationship. It moved for summary relief on the ground that the contract was void from the start and therefore unenforceable. The CBCA found that because BCE had obtained its contract by knowingly making a false statement (misrepresenting SDVOSB status), the VA had met its burden and the entire award was tainted and void.

SDVOSB SUES VA FOR VIOLATING *KINGDOMWARE*

As we know, a few months ago, the U.S. Supreme Court held that the VA is mandated to set aside certain contracts for VOSBs under the "Rule of Two." This mandatory preference applies if the solicitation's CO has a reasonable expectation that two or more VOSBs will submit offers and that the award can be made at a fair and reasonable price that offers the best value to the U.S. (38 U.S.C. § 8127(d)).

Since this ruling, the VOSB community has waited to see how the VA would implement this mandate. Not only that, but it has waited to see if the VA would try to find ways around it. While some businesses have quietly noted some solicitations where the VA has failed to set aside the opportunity for VOSBs or has failed to conduct market research to see if two or more responsible VOSBs would make fair and reasonable offers, no one has publicly challenged the VA. This is likely due to a fear of retaliation.

One VOSB, however, is boldly going where no one else will.

On August 25, PDS Consultants, Inc. (PDS), an SDVOSB headquartered in New Jersey, filed a

complaint with the U.S. Court of Federal Claims (CoFC)(Case No. 16-1063C). PDS seeks review of the VA's continued ordering of certain vision-related products from Winston-Salem Industries for the Blind for certain Veterans Integrated Service Networks, despite not first conducting Rule of Two analysis. PDS also seeks review of the VA Policy Memorandum that authorizes orders from Winston-Salem without first conducting a Rule of Two analysis. Further, it asks for injunctive relief ordering the VA to adhere to the direction in *Angelica Textile Services, Inc. v. United States*, 95 Fed. Cl. 208 (2010)(requiring that Veteran Benefits Act and related VA procedures be given priority over the Javits-Wagner-O'Day Act).

This is an important case for VOSBs because it should confirm the VA's obligation to follow the Rule of Two, as well as the preference for the Veterans Benefits Act over the Javits-Wagner-O'Day Act. It may also provide some much-anticipated guidance on the VA's requirement to conduct market research pursuant to the Rule of Two, as well as further elaborate on the policy memorandum the VA issued this summer to implement *Kingdomware*.

Given the scheduling so far, a decision can be expected by the end of the year. That is, if the parties don't settle. Because it may be in the VA's interest to take corrective action, it will be interesting to see what happens next.

Final Rule Implements Major Changes to 8(a) BD Program

As of August 24, via a final rule the SBA has implemented significant changes to its 8(a) BD program. Among other changes, the rule clarifies the requirements to demonstrate "social disadvantage," including providing two examples demonstrating how the analysis works. Also, the new regulations ease the burden on 8(a) applicants by no longer requiring them to demonstrate industry-specific experience of the individual upon whom the application is based. The new rule states that: "[m]anagement experience need not be related to the same or similar industry as the primary industry classification of the application or Participant."



Furthermore, perhaps motivated by the fact that 8(a) Program participation is down 34% since 2010, the SBA has made the application process a bit easier. Among other changes, applications will now be submitted electronically instead of hard copy, and a narrative statement of each applicant's economic disadvantage is no longer required.

The SBA has also instituted changes to make the 8(a) JV application process less onerous. Two changes include no longer requiring a JV Agreement to: contain an itemized statement of equipment and resources to be provided by each venturer (only when practicable), and describe how the 8(a) participant will meet the percentage of work requirements.

This is not an exhaustive description of changes, so please check out the full final rule here! And when you're looking up these regulations on-line, be sure you're accessing the updated versions.

D.C. CHAPTER UPDATE

The D.C. Metro Chapter kicked off our 2016 – 2017 season of events with our monthly dinner meeting on 14 September featuring an outstanding and timely presentation by Mr. Tom Leney, Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA). Mr. Leney's presentation entitled **"Massive Acquisition Policy Changes at VA: How the 'Rule of 2' Is Being Implemented"** provided the first-ever public comments and details on how the VA is implementing the June Supreme Court (SCOTUS) decision, *Kingdomware Technologies, Inc. v. United States*.

In a unanimous decision, SCOTUS determined that the "Rule of Two" must be applied to all competitive VA contract awards. The Rule of Two "...provides that a contracting officer shall award contracts by restricting competition to veteran-owned small businesses if the officer reasonably expects that at least two such businesses will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States." Our [sold-out event](#) audience of over 180 members and soon-to-be-members gained invaluable insights from Tom's presentation. (If you would like a copy of Tom's presentation please email scott.semple@NVSBC.org).

Katie Bilek and Stephanie Alexander, Vice Presidents of the D.C. Metro Chapter **Match Making** program, provided updates on the latest matches made with large primes and the schedule for upcoming MM activities including events with

Boeing, GDIT, Harris, Raytheon, L3 and Northrop Grumman. The D.C. Metro MM program delivers REAL business opportunities for our members.

D.C. Chapter Board of Directors Member Judy Brant, VP Training & Education, provided a preview of the outstanding programs to be presented during the fall '16 – spring '17 season. Boot Camp programs are offered each month at 4-5PM prior to the dinner meeting.

The D.C. NVSBC Chapter meets monthly on the 2nd Wednesday of each month from September through June at the Key Bridge Marriot in Arlington, VA. If you would like your email added to monthly emails and invitations, please send an email to Scott Semple at scott.semple@nvsbc.org.

Interested in GSA Schedules?

The GSA's Office of Small Business Utilization has created a new resource to educate VOSBs about the necessary steps to do business with the GSA. Visit the Veterans Virtual Coach Discussion Board, a forum for veterans to collaborate and share information about common concerns, such as how to acquire a GSA schedule.

Both GSA staff members and veterans weigh in on questions posted to the site. This offers both a "government" and a "business" perspective.

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.