



FIRST CALL

www.nvsbc.org

VETS 16 IS HERE!

A message from NVSBC Executive Director, Scott Denniston



Welcome to Norfolk! I think you will agree it's not a bad place to be in June. The NVSBC Board and Aetherquest Solutions staff have worked for the past six months to bring you another outstanding "VETS" experience. A big THANK YOU to all our sponsors, exhibitors, and attendees this year. A special thanks to our keynote speakers, Maj. Gen. Charles Frank Bolden, Jr. and Colonel Lee Ellis.

This month has been a busy one for us as we continue to work to start an NVSBC chapter in Huntsville. We also had a great kick-off meeting in Tampa attended by 35 VOSBs and SDVOSBs interested in starting a Tampa area NVSBC chapter. If you are interested in discussing an NVSBC chapter in your area, please stop myself or any NVSBC Board member during VETS 16. We'll also be at our booth during the exhibit hall hours: 2:00 PM to 7:00 PM on Tuesday and 8:00 AM to 10:00 AM on Wednesday.

Timothy Farrell, President of Veterans4You, Inc., notes that since becoming a member of the NVSBC, his corporation has benefited by: finding financial partners who understand federal contracting, meeting other veteran businesses that have provided invaluable knowledge and insight, receiving free legal counsel, and gaining access to senior directors in the federal market. We'd love to pass on these benefits to other business owners like Timothy!

In this edition of *First Call*, be sure to see the article on the NVSBC Coaching Program, as well as the article by D.C. chapter Co-Chair Scott Semple on the recent presentation by Greg Giddens about improvements in contracting at VA.

I look forward to talking with all of you this week at VETS 16!

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

Check Out Our Website!

For info on the VETS 16 conference in Norfolk, VA (June 20th through 23rd), including the agenda and exhibitor information, visit:
<http://www.veterantrainingsymposium.com>

Bid Protest Blunders

When filing a bid or size protest, it's important to be aware of procedural requirements. If you don't, you'll lose even the chance to be heard, as is illustrated by these recent bid protest decisions:

In *Size Appeal of Latvian Connection, LLC*, a disappointed bidder attempted to file a size protest directly with the SBA's Office of Hearings and Appeals. (SBA No. SIZ 5734). Size protests (also status protests) must first be filed with the contracting officer who issued the Solicitation (who will then forward the protest to the relevant body, such as the local SBA office). Accordingly, the SBA OHA promptly dismissed the protest, noting that it is an appellate forum that hears appeals of size determinations rendered by SBA Area Offices. There was no determination to appeal.

Not only was the protestor's protest dismissed, but it also certainly missed the deadline for filing a size protest with its SBA Area Office. Size protests

must be filed within five business days of learning of the award. The lesson here? **Size protests must be filed with the contracting officer, or you'll miss your chance to make your argument.**

Also, in *URS Federal Services, Inc.*, a protestor alleged that the awardee's supposedly small subcontractors were affiliated with other entities. (B-412580). In declining to hear the argument, the GAO noted that this determination is reserved for the SBA. **Size issues must be raised with the SBA, not the GAO, or the GAO will dismiss them for lack of jurisdiction.**

Further, in *Crowley Technical Management, Inc.*, the GAO dismissed a part of a protest that alleged that a part of a solicitation was ambiguous. (B-412690.2). Because the GAO determined that the ambiguity was "patent" (obvious on its face) versus "latent" (subject to

more than one reasonable interpretation), the GAO found that the argument of ambiguity was untimely. A patent ambiguity must be protested prior to the bid due date. **If you suspect a solicitation provision is ambiguous and adequate clarifications have not been provided, this issue must be protested before offers are due.** (B-412690.2).

Last, in *VMD Systems, Inc.*, a protest was dismissed as untimely where the protestor was excluded from the competitive range, opted for a post-award debriefing, and then protested after this debriefing was provided. (B-412729). The protest was untimely because the timeliness exception for debriefing does not apply when a contractor chooses to delay its debriefing until after award. The lesson? **When excluded from the competitive range, always request a pre-award debriefing to see if protest grounds exist.**

GAO to Contractor: You Can't Fudge on Font

As we all know, as contractors we are required to adhere to the requirements of a solicitation, including not just substantively addressing all requirements of the work involved, but also adhering to the technical requirements such as format and means of submission, font, and page limitations. **A recent GAO protest reaffirmed a very simple point - follow the instructions!** Getting called out has consequences.



Interestingly, in this May bid protest, the protestor won on a ground it hadn't raised in its initial filing. During the course of a protest based on improper evaluation, the protestor's attorney got hold of the awardee's proposal and noticed something the source selection team obviously had not: the awardee had compressed the spacing of its technical proposal to less than single-spacing in order to comply with the solicitation's page limit requirements.

As the GAO noted: "[a]s a general matter, firms competing for government contracts must prepare their submissions in a manner consistent with the format limitations established by the agency's solicitation, including any applicable page limits." Consideration of submissions that exceed established page limitations "is improper in that it provides an unfair competitive advantage to a competitor that fails to adhere to the stated requirements." *DKW Comm., Inc.*, B-412652.3 (2016).

Another interesting aspect of this decision? Had a disappointed bidder not acted, no one would have known that the awardee had fudged on the proposal requirements!

Introducing the NVSBC Counseling Program

The NVSBC is pleased to announce a Counseling Program. This program affords an opportunity for “Advisors” to share their wealth of knowledge with “Seekers.” We offer a sign-up form, a pre-requisite to participation, and a Guideline for Advisor and Seeker to get acclimated with the program. Expectations are flexible and driven by each team’s desires and needs. The NVSBC Advisor Guideline is designed to:

Provide guidance for members and activities of the NVSBC, and other interested parties; and

Set forth basic guidelines for all persons to understand their roles and responsibilities in Mentoring.

APPLICABILITY - This Program is open to the National organization, all chapters and interest groups of the NVSBC, and all other persons who volunteer to be participants in this program.

OVERVIEW - The concept of a training system under which a senior or more experienced person acts as counsel or guide (Advisor) to a less experienced

seeking advice (Seeker) has been employed for centuries as a way of capitalizing on the wisdom and insights of successful role models or experienced individuals, who are committed to supporting the development and success of less experienced members of the group, organization or profession.

For the NVSBC, although the concept of “paying it forward” is a collateral mission for the NVSBC, it is a core value. It is the principal means by which the organization and its members share, encourage and inculcate the professional values and attributes associated with being a successful veteran business owner and contributor to society.

GETTING STARTED – Simply contact any Board Member of the NVSBC and express your interest in either serving as an Advisor or receiving counseling. We will serve to assist with initial coordination by helping get the teams set. The program documentation is on the website at www.NVSBC.org.

D.C. Chapter Update

The D.C. Chapter monthly dinner meeting on June 8th featured an outstanding presentation by Mr. Greg Giddens, Principal Executive Director, Office of Acquisition, Logistics, and Construction at the Department of Veterans Affairs (VA). In his role as chief acquisition officer for the VA, Greg guides and directs all acquisitions for the nation’s second-largest federal agency budget.

In his presentation, Greg shared the challenges of navigating the VA’s enormous acquisition and contracting teams toward greater operational efficiencies by introducing new policies including the recently announced 10 point “VA Acquisition Principles (VAIQ 7638597)” and “Encouraging Industry Engagement (VAIQ 7634725).” Greg commented that while the journey to improve VA acquisition practices and gain budget reductions through efficiencies is never-ending, he is constantly encouraged by the commitment of the VA acquisitions team to embrace change on behalf of our veteran community. If you would like a copy of the above-cited VA acquisition policy statement please email Scott Semple at scott.semple@nvsbc.org.

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 Aimee Lanik at aimee.lanik@nvsbc.org.

BIG CHANGES FOR SMALL BUSINESSES (THE SBA FINAL RULE)

On Tuesday, May 31, the Small Business Administration (“SBA”) published a final rule in the Federal Register, amending several of its regulations to implement provisions of the National Defense Authorization Act of 2013, as well as to make changes to its regulations affecting small businesses. NVSBC members should take a look at the rule to see if/how it affects them; and in the meantime, check out some of the highlights:

Limitations on Subcontracting. The new provision will allow prime contractors to take credit for work performed by “similarly situated subcontractors” (i.e., if you win an SDVOSB set-aside, you can meet your work requirements by assigning work to SDVOSB subcontractors). It also will not require primes using similarly-situated entities to issue compliance reports. Further, the similarly-situated entity must only be “small” under the NAICS code assigned to the *subcontract* (though how often does a subcontract have a separate NAICS code?). Prime contractors and their similarly-situated subcontractors are also exempt from affiliation under the ostensible subcontractor rule.

Affiliation. The rule clarifies that one firm will be presumed to be “affiliated” with another for purposes of determining size if the concern in question derived 70% or more of its receipts from another concern over the previous three fiscal years (consistent with case law from the SBA’s Office of Hearings and Appeals). This presumption is rebuttable.

Size Protest Standing. The rule clarifies standing for initiating a size protest or requesting a formal size determination, stating that this includes “any offeror that the contracting officer has not eliminated from consideration for any procurement-related reason, such as non-responsiveness, technical unacceptability, or outside of the competitive range.” The prior language included a double negative, which was confusing even for attorneys.

Annual Receipts. The rule further defines the definition of “annual receipts” (as it is used to determine size). This has confused contractors and been a contentious issue in size protests.

Nonmanufacturer Rule. The rule clarifies the nonmanufacturer rule, further stating that the rental of an item qualifies as a “service” and will be treated as such in the application of the nonmanufacturer rule and the limitation on subcontracting (“LOS”). It also notes that the nonmanufacturer rule and the LOS performance requirements do not apply to set-asides with an estimated value between \$3,500 and \$150,000.

Joint Ventures. The rule broadens the exclusion from affiliation for small business size status to allow a joint venture of two or more business concerns to submit an offer as a small business for a federal procurement, subcontract, or sale so long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract. The SBA noted that this approach better aligns with the new provisions of the NDAA governing the limitations on subcontracting, which allow a small business prime contractor to subcontract to as many similarly-situated subcontractors as desired. This change will create new opportunities for joint ventures - devoid of affiliation risk - under set-aside procurements.

For a detailed account of the originally-proposed rule, the comments received and the SBA’s response/analysis, and the final rule (which goes into effect on June 30, 2016), [visit this page](#). Remember – as a small business contractor, it’s your obligation to stay informed on rule updates!

ANOTHER SDVOSB FRAUD CASE

A federal grand jury has indicted a Joplin business owner for SDVOSB set-aside fraud. 47-year-old Raul Gonzales of Neosho owned Intelligent Investments, which received a \$3 million contract to remove tornado debris. The company got the contract as an SDVOSB. Prosecutors say Gonzales negotiated with an out-of-state business to do the work and then split the leftover profits (i.e., operated a pass-through).

Raul R. Gonzales, 47, of Neosho, Mo., was charged in a 10-count indictment returned by a federal grand jury in Springfield, Mo., on Tuesday, June 7, 2016.

Under the terms of a contract managed by the U.S. Army Corps of Engineers to remove tornado debris from public rights-of-way and residential property in the wake of the 2011 tornado, the prime contractor was required to be a service disabled veteran-owned small business. The contract also specified that at least 50 percent of the work must be done by employees residing in Jasper and Newton counties.

Gonzales owned and operated Intelligent Investments, Inc., in Joplin, which was registered with the Department of Veterans Affairs as a service disabled veteran-owned small business. Intelligent Investments was awarded a contract in June 2011 and received payments of approximately \$3 million.

According to the federal indictment, a company outside the state of Missouri – identified in the indictment as Company A – recruited Intelligent Investments

to bid on and obtain the contract as the primary contractor, because Company A did not qualify. The indictment alleges that Gonzales and Company A agreed that he would perform little, if any, work on the contract. Instead, Company A would perform virtually all the work on the contract using its own resources and subcontractors, which were not local. Gonzales and Company A allegedly agreed to split the net profits received from claims under the contract, with Company A to receive substantially more than half of the net profits.

The indictment charges Gonzales with one count of conspiracy to defraud the United States, three counts of making a false claim, three counts of disaster fraud, and three counts of making and using a false document.

The charges contained in this indictment are simply accusations, and not evidence of guilt. Evidence supporting the charges must be presented to a federal trial jury. However, think of the stress and trouble this small business faces - all because it was recruited by “Company A” (which, by the way, is probably in far less trouble because it would not have been the one submitting false statements to the government under the contract).

Maybe Intelligent Investments was inexperienced in the ins and outs of SDVOSB set-asides. The lesson for us all - if we’re asked to do something that seems fishy or too good to be true, ask your fellow NVSBC members if it’s above board. In this case, this was *not* an “intelligent investment.”

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.