



FIRST CALL

www.nvsbc.org

Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



HAPPY NEW YEAR TO ALL NVSBC MEMBERS!!!!

Welcome to what is likely to be a very busy 2017 for all of us. A new Administration with new leaders at all Departments and Agencies, continued budget issues, confusion over the implementation of VETS First to adhere to *Kingdomware*, and, of course, VETS 17!!

As we start 2017, I ask each of you to log onto www.nvsbc.org and pay your 2017 dues. Your dues are the only current revenue for NVSBC, and critical as we move forward. If you would like an invoice please email Heather at heather.hayes@nvsbc.org. **As for VETS 17, we hope to have the website for registration up and running by the end of January.**

Last week President elect Donald Trump nominated Dr. David Shulkin, the current Under Secretary for Health at VA, to be the new Secretary for Veterans Affairs. In my opinion, after meeting with members of the Trump transition team, this does not bode well for VETS

First. Dr. Shulkin is part of the current VA leadership who expound the theory that working with SDVOSBs and VOSBs costs the VA money. As VA already has a \$12 billion shortfall in this year's current operating budget I fear the VA will go from "lowest cost technically acceptable" to "lowest cost."

The attacks on VETS First will likely become even louder in 2017. We need to marshal all our forces to insure VETS First continues as intended. NVSBC is committed to VETS FIRST!!!! But, we need your involvement as an NVSBC member as well as getting involved in our "education" activities. Government officials need to be aware of their obligations to veteran-owned businesses under *Kingdomware*, and it is our goal to educate them in a respectful manner. The NVSBC has the ear of the VA because it is professional, respectful, and knowledgeable, and we will continue to conduct ourselves as such in advancing the interests of our members and of veterans generally.

CONTENTS



Update from NVSBC

1



2017 NDAA May Render Some Firms VetBiz Ineligible (Top)

Trump's Pick for VA Secretary (Bottom)

2



DOL Investigation? Be Scared. . . (Top)

D.C. Chapter Update (Bottom)

3



Federal Contractors Indicted

4

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

2017 NDAA May Render Some Firms VetBiz-Ineligible

Does your company's operating agreement have a right of first refusal provision? That's fine now for purposes of being included in the VA's VetBiz registry, but the wheels are in motion to render this impermissible.

Among other changes to federal contracting rules applicable to veteran-owned small businesses, the 2017 NDAA (which President Obama signed into law on December 23) prevents the VA from developing its own regulations to determine whether a company is a veteran-owned business. Basically, to ensure uniformity between the SBA's and the VA's programs, the VA must use regulations developed by the SBA relating to ownership, control, and size status of an SDVOSB or a VOSB.

Currently a notable difference between the SBA's and the VA's rules is the VA's allowance of businesses to include "right of first refusal" provisions in corporate documents without running afoul of the ownership requirements

set forth at 38 CFR 74.3 (the requirement that applies to the VA's set-aside program). This is because 38 CFR 74.3 expands on the definition of "unconditional ownership," allowing a business to utilize "normal commercial practices" without violating the requirement that a veteran unconditionally own his share of the business.

In contrast, the SBA's rules at 13 CFR 125.9 do not contain this additional language, and therefore a "right of first refusal" provision in corporate documents would not pass muster with any agency other than the VA. As such, with the requirement that the VA adopt the SBA's provisions, businesses that were approved for the VetBiz program will suddenly be ineligible.

How will this logistically pan out? There is no way the VA's Center for

Verification and Evaluation will re-examine every firm's corporate documents, searching for the offending provision. Likely, businesses will run out their two-year verification period, and then encounter an issue upon reverification.

For those of you who will be affected by this, don't panic. It might not even happen, and if it does, it could take years. The 2017 NDAA provides that the SBA and VA "shall issue guidance" pertaining to these matters within 180 days of the enactment of the 2017 NDAA. From there, public comment will be accepted and final rules eventually announced. As such, if you have something to say about this, make sure you comment on the rule changes. The NVSBC will track them to make sure you don't miss your opportunity!

President Trump's Pick for VA Secretary

On January 11, President-elect Donald Trump appointed Philadelphia-based physician, David Shulkin, to run the embattled U.S. Department of Veterans Affairs as Secretary.

As the current undersecretary of health for the VA, Shulkin is responsible for the health care of nearly 8.8 million vets. He commands 168 medical centers and 1,600 clinics from Philadelphia to the Philippines, and oversees a \$68.6 billion budget. Prior to this position - which he has held for 18 months - Shulkin worked in the private sector. He spent more than a decade in hospital management in Philadelphia, serving as chief medical officer at the University of Pennsylvania Health System, Medical College of Pennsylvania, and Temple University Hospital. He is not a veteran.

The Senate has not yet set a date for confirmation hearings for Shulkin to be the new Secretary. The NVSBC has submitted questions to the Senate Veterans Affairs Committee, requesting Shulkin to affirm his personal support for "VETS First" and asking his plans for proper implementation in line with *Kingdomware*. Stay tuned!



DOL Investigation? Be Scared. . .

For those of you who break into a cold sweat over the idea of a Department of Labor (DOL) investigation, it's a good thing you take it so seriously. The DOL is known for vigorous prosecution of its regulations, and many violations carry strict liability penalties. A recent case illustrates this point:

On December 28, 2016, the Department of Labor (DOL) filed a complaint with the DOL Office of Administrative Law Judges against Restaurant Associates, LLC, seeking debarment for violating the Service Contract Labor Standards Act (formerly the SCA)

The DOL's investigation began in July when it first alleged that Restaurant Associates violated the SCA by misclassifying hundreds of workers performing under its food services contract in the Dirksen Senate Office Building. In complying with the DOL investigation, the company agreed

to and did pay \$1,008,302 in back wages for 674 cafeteria workers. Despite paying the back wages, the DOL is now seeking to debar the contractor. However, what makes this case particularly interesting (scary) is that the company had no history of previous SCA violations and fully cooperated with the DOL investigation.

In addition to the amount involved, one reason the DOL may be seeking to debar the contractor is because the DOL *found* the issue, rather than the contractor determining that it had improperly classified its workers and taking corrective steps. If it had done so, the DOL may have found "unusual circumstances" (a buzzword in these proceedings) to relieve the contractor from the debarred list.

Heed the lesson here: if you have a Service Contract Labor Standards Act contract, police yourself! Being proactive may save you serious trouble.



D.C. Chapter Update



The D.C. Metro Chapter of NVSBC's January monthly dinner meeting featured an outstanding presentation by Federal acquisition guru Kevin Plexico, VP of Deltek. Kevin's presentation, entitled "Trends and Outlook for Veteran Contracting," provided a detailed review of trends in agency acquisitions and a forecast of veteran contracting opportunities. Kevin also provided an insightful preview of the impact of the Trump administration on federal contracting opportunities. Mr. Plexico provides thought leadership and expert opinion to industry executives and is a recognized expert on the public sector market. If you would like a copy of Kevin's presentation, please email scott.semple@nvsbc.org. Katie Bilek, Vice President of the DC 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. Katie also reminded everyone to join our new Match Making platform – go to govmates.com to learn more.

This month's Boot Camp training program, also presented by Kevin Plexico, featured a detailed review of 23 upcoming acquisitions that are targeted to veteran-owned firms. Boot Camp programs are offered each month at 4-5:30PM prior to the monthly dinner meetings. 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 our event notifications, please email Heather Hayes at heather.hayes@nvsbc.org.

Federal Contractors Indicted

As veteran business owners who defend your right to contracts from the federal government, two recent cases may interest you:

On January 18, the U.S. District Attorney for the Western District of Missouri announced that the former owner of a local construction company and a Kansas City veteran were indicted by a federal grand jury for their roles in a “rent-a-vet” scheme to fraudulently obtain more than \$13.8 million in federal contracts.

According to the indictment, Patriot Company was a pass-through or front company for a Greenwood, MO construction company owned by Wilson during the scheme. Conspirators allegedly used Salavitch’s veteran and service-disabled veteran status in a “rent-a-vet” scheme to bid on at least 20 government contracts and receive approximately \$13.8 million to which Patriot Company was not entitled because those contracts were set-asides for veteran-owned small businesses. As a result of the fraud scheme, legitimate veteran-owned businesses missed out on these opportunities.

According to the indictment, Salavitch, a service-disabled veteran, worked full-time as a federal employee with the DoD and did not work full time for Patriot Company. (Which begs the question: how did his federal employer not discover his “side job?”). According to the indictment, Salavitch nominally served as president; did not actively control the day-to-day management, daily operation or long-term decisions; and had never managed a construction company prior to his involvement with Patriot Company; and he had limited government contracting experience.

Also, on December 28, Advanced C4 Solutions, Inc. agreed to pay \$4.535 million to the United States to settle allegations that it submitted inflated invoices to the government for work performed at Joint Base Andrews.

Advanced C4 Solutions, Inc. (the “Company”), a Florida-based 8(a) company, was awarded a contract in 2010 to supply project management and labor services for an Air Force technology project. The contract required the Company to provide accurate invoices, including for work performed by subcontractors. Labor costs were required to be billed according to the job classifications set forth in the contract and the number of labor hours worked by personnel at each job classification.

The settlement resolves allegations that an employee of the Company knew that its subcontractor had created false invoices that charged for labor hours that were not actually worked, and charged the government at job classification rates for personnel that did not have the requisite credentials to be billed at those rates, and yet submitted those invoices to the government for payment anyway.

In related cases, several employees of the Company and its subcontractor have been indicted on criminal charges arising from this incident.

These cases illustrate the unique nature of federal government contracting: be above board, or risk facing criminal consequences. And even if actions aren’t intentionally misleading or fraudulent, many times that is no excuse. To do business with the government, we’re expected to know the rules.

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 Denniston with your comments at: scott.denniston@nvsbc.org.