



FIRST CALL

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Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



This is our last First Call before VETS 17. I look forward to seeing you all at VETS 17, making new friends, and renewing old friendships. The agenda is pretty well set with a couple of surprises yet to come.

The opening reception on the cruise around Norfolk *sold out*. Congratulations to those who purchased tickets early! We are planning two “NVSBC members only” events: one a sit down with Greg Giddens, Senior Acquisition Official at VA, and a special “Town Hall” with Tom Leney, VA Director of OSDDBU where you will have an opportunity to have all your issues/questions addressed on VETS First and verification.

Also, as you know, we are beginning to develop chapters around the country—currently, our chapters are active in D.C., Tampa, and Huntsville. On Thursday morning we will have a special session for those of you who want to help start NVSBC chapters in your area. We will always help you, but there are specific steps that can only be taken locally

I am happy to report that our “Communications Campaign” is picking up steam. THANK YOU to all who have contributed to date. ***We now need veteran business owners to step up and act as spokespersons for our effort.*** The media wants to hear from actual business owners to learn of the local and personal impact you experience as a result of VA not complying with VETS First.

We have also decided to include GSA in the campaign due to their mishandling of the VETS 2 GWAC. Once we have enough volunteer spokespersons, we will be provided talking points as well as media training. We have hired a very accomplished communications campaign manager to assist us in the effort. If you are interested in being a spokesperson or have any questions please contact me at scott.denniston@nvsbc.org.

See you all in Norfolk!

CONTENTS



Update from NVSBC

1



DoD Issues That Can Educate You! (Top)

New SBA Size Standards Coming Soon (Bottom)

2



Taxpayers Pay Up When Agency Tries to Direct Award (Top)

D.C. Chapter Update (Bottom)

3



Side Deals Not Allowed in SDVOSB Contracting

4

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

Did You Know?

U.S. Department of Veterans Affairs Secretary David Shulkin announced that he has established the Office of Accountability and Whistleblower Protection in the Department, which is designed to discipline VA employees who violate public trust, identify wrongdoing, and to protect whistleblowers. The new Executive Director of this new office, Mr. Peter O'Rourke, is tasked with these important priorities. Click here for more details.

OIG REPORT CRITICIZES DoD FOR IMPROPER PAYMENTS

The DoD in 2016 failed to fully comply with statutory requirements intended to help reduce improper payments, falling short on both assessment *and* reporting requirements, a watchdog said in a report made public this month.

The Improper Payments Elimination and Recovery Act (“IPERA”), a 2010 bill that amended the 2002 Improper Payments Information Act, is intended to help federal agencies reduce improper payments, which includes both over- and underpayments. Read it here to learn what they’re supposed to do.

Of the six requirements for compliance with the IPERA, the DOD only met **one** of them in fiscal year 2016 by reporting overall improper payment rates of under 10 percent, the DoD Office of Inspector General (“OIG”) said in its May 8 report.

In FY2016, the DOD identified 10 programs with improper payments, with none exceeding the 10 percent improper payment threshold, and most having

improper payment rates of less than 1 percent. But, according to the OIG, the DoD it failed to fully comply with any of the other IPERA requirements.

“As a result of DOD’s noncompliance ... [it] must submit a report to Congress describing the actions the DOD will take to become compliant with IPERA,” the OIG said.

Under IPERA, agencies must conduct program-specific risk assessments, publish improper payment estimates for their programs and a broader annual financial statement, implement corrective action plans for dealing with improper payments, and meet improper payment reduction targets, as well as meet an overall target of 10 percent or less for improper payments under each program identified to have improper payments.

27% of DoD Mentor-Protégé Agreements Are Deficient, GAO Says

In a new report, the GAO says that 27% of active DoD mentor-protégé agreements are missing basic (and necessary) information, like the protégé’s primary NAICS code and even the parties’ signatures.

For those of you interested in government mentor-protégé programs, the report, titled “Small Business Contracting: DoD Should Take Actions to Ensure That Its Pilot Mentor-Protégé Program Enhances the Capabilities of Protégé Firms,” provides an excellent background on the history of the DoD program and the legal relationship between it and SBA’s new All Small Mentor-Protégé (There isn’t one!). The report then explains the many required elements of a DoD mentor-protégé agreement, such as an assessment of the protégé’s needs, a description of the specific assistance the mentor will provide to the protégé, and so on. All in all, it’s a good overview for those who want to know what the mentor-protégé relationship entails generally.

NEW SBA SIZE STANDARDS COMING SOON

For those of you who have a PDF of the SBA’s NAICS size standards saved to your desktop, it will be time to update it soon.

As you know, federal solicitations are issued under NAICS codes, which are assigned based on the work required by the resultant contract. For SDVOSB set-aside contracts, offerors must be “small” under the size applicable to the assigned NAICS code.

A proposed SBA rule change published Tuesday, April 18, would incorporate the 2017 NAICS code revision into the SBA’s size standards table. If the proposed rule is made final, it will replace SBA’s current size standards table, which SBA has relied on for making size determinations since 2012 (These are updated every five years). The revised size standards table will add 21 new NAICS industries. The revised NAICS code table also will feature larger standards for six industries, smaller standards for two industries, and will switch one size standard from revenue-based to employee-based.

The SBA is asking for comments on the proposed rule before June 19 and seeks to adopt the rule on October 1, 2017. Access it here to see if your industry is affected.



Who's coming on our Norfolk boat ride at VETS 17? Don't fall in the water!

TAXPAYERS PAY UP WHEN AGENCY TRIES TO DIRECT AWARD

The Department of Health and Human Services's ("HHS") conduct in evaluating proposals for a contract—and its behavior in defending itself in four subsequent bid protests—was an “egregious example of intransigence and deception,” according to the Court of Federal Claims. The result? Taxpayers will pay for the award of attorney’s fees to the protestor, as it met its statutory obligation to show that the agency’s position was not “substantially justified.”

As the Court put it: “When, as here. . . the agency’s conduct necessitates that an offeror file four protests in in over two years, in two fora, winning two of them and prompting one corrective action, and when the agency’s defense of its conduct is highly irregular (misrepresentations and illusory promises), the circumstances of the case are anything but ordinary. We find that a special factor justifies award at a higher rate in this case.”

The court initially sustained the protest in July of 2016. Then, it observed that: “[o]nce the initial decision to award to. . . had been made, [the SSA made it clear] that any other result was unwelcome and not seriously considered.” Instead, “[The SSA] viewed their task as bolstering the initial decision, not reevaluation.”

This case is interesting because it’s an example of where protest dollars were well-spent. Although the HHS had sought to “pad the record” to support its selection of a favored bidder, the protestor doggedly forced the HHS to its statutory obligations by protesting in each instance. Ultimately, the case ended up at the U.S. Court of Federal Claims, which, as many of you know, is a costly forum with greater formalities than the GAO. In this case, it worked out, but such a route is often cost-prohibitive for many small business contractors where the outcome is uncertain.

For some light reading, access the case [here](#).



D.C. Chapter Update

The D.C. Metro Chapter of NVSBC held its monthly dinner meeting on May 10th, which featured a moving presentation by Mr. Jan Scruggs, Esq., a decorated veteran of the Vietnam War and founder of the Vietnam Veterans Memorial Foundation. Mr. Scruggs successfully led the effort to raise funds for the design and construction of the Vietnam Veterans Memorial (the “Wall”). He shared stories of sparring with Congress, the media, and powerful people determined to end plans for the Memorial. His story encourages us to help others overcome adversity through courage, teamwork, and creative solutions.

Stephanie Alexander & Katie Bilek, Vice Presidents of our Match Making program, provided updates on the latest matches made with large primes and the schedule for upcoming activities including events with Boeing, GDIT, Harris, Raytheon, L3 and Northrop Grumman. For future opportunities, go to govmates.com to learn more.

This month’s Boot Camp training program, moderated by Katie Bilek, was entitled “**Joint Ventures That Win: How It’s Done.**” NVSBC Chairwoman Heidi Gerding shared the details of her firm’s (HEITech) successful JV with AMTIS. Also, Jon Williams of PilieroMazza provided insights on JV programs and regulations. Boot Camp programs provide hands-on training on critical business skills for veteran entrepreneurs and are offered each month at 4-5:30PM prior to the dinner meeting.

The D.C. NVSBC Chapter meets on the 2nd Wednesday of each month from September through June at the Key Bridge Marriot in Arlington, VA. To add your email to our event notifications, please email Scott Semple at scott.semple@nvsbc.org.



SIDE DEALS NOT ALLOWED IN SDVOSB CONTRACTING

As you likely know, in order for an SDVOSB joint venture to be eligible for an SDVOSB set-aside, it must execute a joint venture agreement meeting very specific requirements to ensure the SDVOSB retains control and receives a certain percentage of the profits. The point of this is to make sure that the firm reaping the benefits of an SDVOSB set-aside contract is, in fact, an SDVOSB.

You're also not allowed to make a side deal that undermines the joint venture agreement, effectively rendering it useless. In other words, you can't escape legal requirements on a technicality.

According to a Department of Justice press release issued in April, Action Telecom, Inc. and A&D General Contracting, Inc., attempted to do just that when they formed a joint venture (the "JV") that ultimately obtained nearly \$11 million in SDVOSB set-aside contracts from the Army Corp of Engineers and the VA.

As set forth in the indictment, although the parties signed a joint venture agreement that complied with the SBA's regulations, six months later, the owners of the two firms "signed a secret side agreement that made the JV ineligible under the SDVOSB program." For instance, the side agreement stated that the non-SDVOSB would run the joint venture's jobs and retain 98% of all government payments. Also, the non-SDVOSB appointed the project manager (which the SDVOSB is supposed to do). When the DOJ had inquired into the JV's information—twice—each time it provided its "official" JV agreement and not the secret side agreement.

Furthermore, the indictment describes a variety of ways in which the JV did not operate as a legitimate SDVOSB because it was controlled by the non-SDVOSB firm and its owner. Most notably, the veteran owner worked only nominally for his company, and invested most of his time working full-time for a telecommunications company. Meanwhile, the owner of the other firm controlled the day-to-day management, daily operation, and long-term decision making of the JV. Consistent with their side agreement, the SDVOSB received a small fee for the use of the veteran's status.

Acting United States Attorney Robinson said "One important way in which our country tries to repay the debt of gratitude we owe to our veterans is by setting aside some government contracts for those who have been disabled during their service. But unscrupulous contractors have abused this program through 'rent-a-vet' schemes, such as the one described in today's indictment. The Department of Justice will work to ensure that criminals who abuse important contracting programs such as the SDVOSB are held to account.

While we need no reminder, this instance is a sobering example of what can happen if a firm circumvents set-aside rules. Always be cognizant of your obligations, ask around if a deal seems too good to be true, and consider the spirit and purpose of the SDVOSB program(s).

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.