



FIRST CALL

www.nvsbc.org

VETS 18 Is Four Months Away!

A message from NVSBC Executive Director, Scott Denniston



The site of VETS 18! (All other pictures in this issue feature our wonderful venue of Williamsburg, VA).

February was another active month for the NVSBC! Registration for VETS 18 is open at:

www.veterantrainingsymposium.com. We are working hard to bring you another educational and exciting event. This is the only time we are all together as one each year. We have a special effort to develop chapters around the country this year and need your help! This VETS 18 will have Industry Group meetings, including a new group for construction and A/E firms.

At the D.C. Chapter dinner this month, Kevin Boshears, OSDBU at DHS, gave us insight into the three major initiatives impacting small businesses in 2018. *First* is the new SBA's ALL Small Business Mentor/Protégé and benefits to small and large businesses alike. *Second*, the new SBA rule on the "Limitations on Subcontracting" which allow "similarly situated firms" to be considered for the 50% rule. *Third*, OFPP's push to enhance "Category Management" and the migration to "Best in Class" contract vehicles.

This month I also had the opportunity to hear the recently appointed GSA Administrator, Emily Murphy discuss her goals for GSA. These include: 1) Ethical Leadership in Contracting, 2) Reduce duplication in contract vehicles, 3) Government wide IT Modernization, 4) Increase Competition in FSS, and 5) Increase Transparency. Emily has always been a small business advocate while at GSA, SBA, House Small Business Committee and Armed Services Committee. We look forward to working with her to increase opportunities for SDVOSBs and VOSBs.

On Wednesday, March 14th the House Veterans Affairs Committee, Subcommittee on Oversight and Investigations will conduct a hearing on various proposed pieces of legislation which will affect VA acquisitions, predominantly for the Electronic Patient Record and Med/Surg Prime Vendor. NVSBC has been invited to testify. We will keep you posted on the takeaway of the hearing!

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

Do You Know Someone Who Deserves a Scholarship?

The VETS 18 Annual NVSBC Scholarship Program allows us to offer new veteran businesses a scholarship to attend the Veteran Entrepreneur Training Symposium (VETS) 18, June 10 – 14, 2018. The scholarship covers the cost of registration fees, per diem, and travel expenses. **The deadline for applications is Friday, March 30.** For eligibility requirements and to apply, visit www.nvsbc.org/vets2018-annual-nvsbc-scholarship-program.

CASE IN POINT: LEARN FROM THESE LESSONS

Can you learn from these case studies?

A recent GAO report provides insight into how contracting officers (“COs”) assign North American Industry Classification System (“NAICSs”) codes to federal solicitations. In short, COs are required under 13 CFR 121.402(b) to choose the NAICS code that “best describes” the work to be performed. As we as federal contractors know, this can be difficult considering the number of NAICS codes and the similarities among them. However, the choice of a NAICS code can make a huge impact on who can bid the contract, as it determines the size threshold that applies to the solicitation.

While bid protests based on the use of the wrong NAICS codes are difficult to win given the discretion afforded to federal agencies, remember that many procurements begin with a Sources Sought notice and other pre-solicitation activities. When the CO is not yet decided upon the right NAICS code, more than one may be listed.

Pay attention to these early activities, because this might give you as a prospective contractor the ability to provide input into the right NAICS code. And that might affect your changes of securing a contract.

In a recent GAO pre-award bid protest, the GAO *sustained* a protest where the solicitation was designated as an SDVOSB set-aside but failed to include the mandatory VAAR provision, VAAR 852.219-10. As such, it was unclear whether the solicitation was in fact a set-aside. *Office Design Group, B-415411*. The protestor succeeded in making the VA properly designate the contract.

The lesson is timing. Any objections relating to obvious ambiguities, unduly restrictive requirements, deviations from procurement law, and other abnormalities must be raised before bids are due.



If you dare, ride the Griffon at nearby Busch Gardens! At 205 feet high, it is the second-fastest Dive Coaster ever built.

CDA CLAIMS: THEY’RE HARDER THAN YOU THINK

If you’ve done business with the federal government, you might be familiar with the Contract Disputes Act (“CDA”). This governs disagreements between contractors and the federal government, most often involving monies lost by the contractor due to unanticipated contract developments. A contractor submits a “claim” to the government, which must comply with the requirements of FAR Part 33. This includes having the proper certification (if over \$100,000) and valid signature. If these steps aren’t followed, then when the claim reaches the appeal stage (i.e., it isn’t resolved by the contracting officer or the parties are at an impasse), the appeals board might dismiss it for lack of jurisdiction. Then you’re back where you started.

Not only that, but under the CDA, the government has 60 days to issue a “final decision,” unless the contracting officer communicates before the running of that time that it needs more time. A recent appeal before the Armed Services Board of Contract Appeals (“ASBCA”) illustrates how the government can abuse that right. *Flour Federal Solutions, LLC (ASBCA 61431-983)*. There, the government delayed in issuing a final decision for nearly two years, as it instituted an audit that dragged on for many months (which it later cancelled). The contractor appealed its claim as a “deemed denial” (which occurs when the government fails to reach a final decision within the requisite time), and the ASBCA issued an order scolding the government and directing it to issue a final decision. While this is technically a win for the contractor, all this appeal does is force the government to do what it should have done two years ago. And if the government denies the claim, the contractor will be right back at the ASBCA.

The takeaway: Know what you’re getting into with CDA claims. Carefully review FAR Part 33 before initiating a CDA claim so you know your rights, and get help if you need it.



Ariel view of the capitol of Colonial Williamsburg

Tampa Chapter Update

The Tampa Chapter has been in existence for well over a year now. The President of the Tampa Chapter, Brian Book, continues to bring in excellent speakers and now combines the meeting with a dinner at the Centre Club in Tampa. Please visit our meetings ***the first Thursday of the month***. For tickets, visit <https://www.eventbrite.com/e/nvsbc-tampa-chapter-dinner-mtg-tickets-4768910941>. For more information, please contact Lynette Planto, NVSBC Membership, Lynette.planto@nvsbc.org.



On Thursday evening, January 4, 2017, Chris joined the NVSBC's Tampa Bay Chapter for dinner and presented on SOCOM and how small businesses can position themselves to do business with SOCOM. SOCOM, headquartered in Tampa Bay on MacDill Air Force Base alongside defense agency, U.S. Central Command, CENTCOM, is ready to do business with the small business community. Read more about the evening's presentation at www.nvsbc.org. His presentation is located on the NVSBC member's only web page at <https://www.nvsbc.org/wp-login.php>.

In February, Jim Scott (CPA/GCMA), of Penan & Scott, reviewed the major tax law changes affecting businesses. A copy of his presentation has been added to the member's only page on the NVSBC website located here.



Mr. Jim Scott

Our March 1st meeting will have a presentation by **Lillian Maldonado-Gutierrez**, Small Business Professional, 6th Contracting Squadron, MacDill AFB, on "Doing Business with MacDill." The services, products and resources from private and industry needed to operate and sustain organizations at MacDill comes from thousands of government contracts award and managed by the 6th Contracting Squadron (6th CONS). Many of these contracts are reserved (set aside) for small business concerns. We are also planning a Q & A session with **Karen Krymski**, *Govt Contracting Specialist at SBDC, Tampa* and **Yolanda Goodloe**, *Business Consultant at SBDC, Pinellas County Economic Development*.

D.C. Chapter Update



The William and Mary bridge

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. Boot Camps are offered each month prior to the monthly meeting. For event notices, check <http://www.nvsbc.org>.

The D.C. Metro Chapter of NVSBC held its monthly dinner meeting on February 7th. The meeting featured an engaging and informative presentation by Kevin Boshears, Director - Department of Homeland Security ("DHS") Office of Small and Disadvantaged Business Utilization ("OSDBU"). With over 27 years in Federal contracting as both a contracting officer and a leader in small business programs for the Departments of Treasury and Homeland Security, Kevin shared four themes that successful vendors consistently tell him are their keys to success in Federal business:

1. **Do your homework:** research who buys what you do. Then seek conversations and relationships with officials from Federal departments, agencies, bureaus or components.
2. **Understand contract vehicles:** be familiar with how your federal prospects CAN buy as well as how the data shows they DO buy.
3. **Networking.** Develop a rich, targeted, diverse network of relationships with competitors and partners as well as buyers, especially through industry days, events, and association memberships like **NVSBC!**
4. **Understand teaming**, as a broad umbrella term, and all its variations, including subcontracting, mentor-protégé and joint ventures, and how to leverage each to best advantage.

For a copy of the capture notes from Kevin's presentation, please contact Judy Bradt at judy.bradt@summitinsight.com.

UNANNOUNCED CVE SITE VISIT LEADS TO GUILTY PLEAS

On January 31, the former owners of a Missouri construction company, Patriot Company, Inc., pleaded guilty in federal court to their roles in a “rent-a-vet” scheme to fraudulently obtain more than \$13.8 million in federal contracts. It all started with an unannounced site visit by the VA’s Center for Verification and Examination (“CVE”), but it followed nearly nine years of the corporation successfully (and fraudulently) claiming SDVOSB status despite the veteran owner transparently not taking charge of its daily and long-term operations.

Jeffrey K. Wilson, a non-veteran, pleaded guilty to one count of government program fraud. Paul R. Salavitch, the service-disabled veteran upon whom SDVOSB eligibility was based, pleaded guilty to a misdemeanor charge of making a false writing. Wilson admitted he used Salavitch’s veteran and service-disabled veteran status in a “rent-a-vet” scheme to obtain 20 government contracts for which Patriot Company. received more than \$13.8 million. Meanwhile, Salavitch not only made false representations to the CVE in obtaining verified status, but he also certified his business as an SDVOSB every time he competed for these set-aside contracts.

Wilson’s plea agreement cites 20 contracts with the U.S. Department of Veterans Affairs and the U.S. Army, totaling \$13,819,522, which were fraudulently obtained by Wilson, Salavitch and Patriot Company. The contracts, which ranged as high as \$4.3 million, included construction projects in Missouri, South Dakota, Texas, Nebraska Oklahoma, Michigan, Indiana, Tennessee, Iowa, Illinois and North Dakota. Under the terms of the plea agreement, Wilson is subject to a sentence of up to 18 months in federal prison without parole. Salavitch is subject to a sentence of up to one year in federal prison without parole. Wilson and Salavitch must also consent to the federal civil forfeiture of approximately \$2.1 million. Sentencing hearings will be scheduled after the completion of presentence investigations by the United States Probation Office.

In September 2013, the Veterans Administration conducted an unannounced site visit of Patriot Company. The site inspector discovered that Salavitch was working 40 miles

away at his full-time job as a federal employee with the Department of Defense in Leavenworth, Kasasn. In December of 2013, the Veterans Administration de-certified Patriot Company.

If you are a VetBiz-verified firm, you remember what it was like to go through the verification process. The CVE digs into everything, especially if a veteran has outside employment. They’ll inquire into the number of hours spent elsewhere versus at the applicant firm, ask how the veteran is able to adequately balance his time under the meaning of the regulations (i.e., he must still work “full time” for the applicant firm, and control the daily and long-term operations), and make sure a non-veteran (here, Wilson) in a managerial or executive role isn’t really the one running the show. However, because Patriot Company competed for VA set-asides prior to the verification process being in place, it escaped these inquiries. Point being, maybe we find the CVE’s examination intrusive, but it’s worth it if it stops firms like this one from taking contracts away from legitimate VOSBs.

Also, keep in mind that we are a community. It’s our obligation as VOSBs competing in the federal marketplace to be respectful of our competitors and not sound the alarm without a grounded, rational reason. . . but to also keep our eyes peeled lest another \$13.8 million go to another illegitimate business.



Step back in time by visiting lovely colonial Williamsburg.

VA's VetBiz Regulations to Merge with SBA's

On January 29, the Small Business Administration ("SBA") issued a proposed rule to implement provisions of the 2017 National Defense Authorization Act that placed the responsibility for issuing regulations relating to ownership and control for the Department of Veterans Affairs ("VA") verification of veteran-owned small businesses ("VOSBs") and service-disabled veteran-owned small businesses ("SDVOSBs") with the SBA. Pursuant to the NDAA, there will be one consolidated definition of ownership and control for these firms, which will apply across the board to all federal acquisitions. In other words: no more separate regulations for the VA (38 CFR Part 74) versus all other agencies (13 CFR Part 125) and no more VetBiz verification (though there will be another form of examination).

As a high level explanation of changes, the SBA is proposing to amend the definitions in 13 CFR 125.11 by incorporating language from VA's regulations and also from the SBA's 8(a) Business Development ("BD") program regulations. It is also proposing to define "surviving spouse" and the requirements for a spouse-owned SDVOSB to maintain eligibility. The SBA also proposes to add definitions for "daily business operations," "negative control," "participant" and "unconditional ownership." These will be gleaned from the SBA's 8(a) BD regulations at 13 CFR Part 124. The SBA will also add a definition for Employee Stock Ownership Plan, as well as replace the definition of "caregiver," "service-disabled veteran," and "surviving spouse." These definitions are being updated in consultation with the VA to ensure consistency across programs at both agencies.

If you have gone through the VA's VetBiz verification process, surely

you have heard many of these buzzwords cited in this article. Perhaps the CVE asked probing questions relating to how the veteran controlled the "daily business operations" by inquiring into his daily responsibilities, especially compared with a non-veteran also in an executive role. Now, the revisions will provide an actual definition to provide notice as to the specific requirements of this "control" element: "Daily business operations include, but are not limited to, the marketing, production, sales, and administrative functions of the firm, as well as the supervision of the executive team, the implementation of policies, and the setting of the strategic direction of the firm." Also, the definition of a "permanent caregiver" is much more robust, providing examples of how one may be recognized as a caregiver of a permanently and severely disabled veteran who owns an SDVOSB.

These are only a few examples. If you review the proposed rule, you'll see that many definitions material to the eligibility requirements have been altered or expanded upon. ***It is in your interest, as a participant in federal set-aside programs for VOSBs and SDVOSBs, to read this rule and comment if a definition is unduly restrictive, too broad, ambiguous, or presents other issues. Comments are due by March 30.*** Access the rule here.

This rule is a companion rule to one we discussed in the last *First Call*. Access that rule here. ***(Please keep in mind that comments for this rule close by March 12, 2018).***

We're sure you're also curious as to what this means for your verified status once the program moves to the SBA. There's no intel yet, but we'll let you know when there is.

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.