



FIRST CALL

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Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



This was a tough weekend, watching the hurricane and thinking of our members and friends in the Carolinas. Praying you all came through safely!

October is shaping up to be a busy month for the NVSBC. Tom Leney is speaking at the South Florida and Tampa chapter meetings on October 3rd and 4th respectively. This is a great time to learn what plans VA has for VOSBs and SDVOSBs in FY 2019. Just this week, the D.C. Chapter dinner speaker was Matt Blum from OMB, who discussed “category management”. This is a hot topic with Tom Leney as well. Tom is also interested in speaking to construction firms regarding getting more involved in VA work. On October 11th I have the pleasure of speaking at the initial meeting of the Denver NVSBC chapter.

The VA’s NVSBE event for construction and related firms will be October 31st through

November 2nd in New Orleans. NVSBC will be participating and have booth #1212. We hope to enlist many members for our Construction Industry Group, which we expect to kick off in January. If you are in New Orleans, please stop by and say hello! If you are not coming to NVSBE and are interested in participating in the industry group, please email me at scott.denniston@nvsbc.org.

We are excited to announce the official launch of “GoVets” with the distribution of the VA information memo to all purchase card holders. If you offer products, are CVE-verified, and have not registered on “GoVets,” you are missing a great opportunity to sell your products. In the near future, we will be taking “GoVets” to other agencies and large business prime contractors. If you have any questions regarding “GoVets,” contact support@govets.com.

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

THE COLORADO KICKOFF!

The NVSBC is growing! October 11 marks the inaugural meeting of our Colorado chapter at the Denver Tech Sheraton. If you are local to the area, join us from 6 to 8:30 PM for what we expect to be the first of approximately six to eight meetings during the year. Access additional information and the registration link [here](#).

2019 NDAA Provisions That May Affect You

The 2019 NDAA has a number of provisions that might affect you as a small business contractor. Here's the breakdown:

- Section 880 instructs the Government to “avoid using [LPTA] source selection criteria in circumstances that would deny the Government the benefits of cost and technical tradeoffs in the source selection process,” directing a revision to the FAR to limit the use of LPTA in certain circumstances. This is a welcome change for many small business contractors; after all, no one likes to spend time and effort writing a proposal not even reviewed by the Government because a lower-priced proposal was deemed technically acceptable.
- The NDAA reflects that the DoD plans to increase the micro-purchase threshold

from \$5,000 to \$10,000. This matches the increase given to civilian agencies in last year's NDAA.

- Section 822 establishes an expedited bid process for DoD small value contracts with a value of less than \$100,000.
- Section 851 requires the development/implementation of a new small business strategy to “better leverage small businesses as a means to enhance or support mission execution.”
- Section 852 implements prompt payment obligations on the DoD, requiring the establishment of an accelerated payment date with the goal of payment to small business prime contractors within 15 days after receipt of a proper invoice.

Access the full text of the 2019 NDAA here.

HOT TAMPA CHAPTER EVENT!

At its October 4th dinner meeting (preceded by a boot camp presentation from 4 to 5 PM), the Tampa chapter will feature Mr. Tom Leney, the Executive Director of Small and Veteran Business Programs of the VA. Mr. Leney will provide updates on verification changes, the importance of verification, strategies for positioning yourself for federal opportunities, and discuss the upcoming NVSBE. ***An early bird rate is offered, but you need to act fast – register by September 21 to take advantage!*** Click here for location and registration info.

Also, remember to save the date for the Florida GovCon Summit in Tampa from March 27th to the 28th! Contact Jenny Clark at JWClark@Solvability.com for details.

D.C. Chapter Update

The D.C. Metro Chapter of NVSBC kicked off this season with its 12 September monthly dinner meeting. This featured an enlightening presentation on the very hot topic of Category Management by Mr. Mathew Blum, Associate Administrator at the Office of Federal Procurement Policy – OMB. A topic which has caused much concern among small business firms, Mathew clarified that category management focuses on collaboration and sharing of business analysis by market experts to enable more informed buying for common goods and services using a combination of government-wide, agency and local contracts – **not one-size-fits-all contracting**. Agencies are expected to pursue category management & small business contracting together, and his presentation provided many valuable insights.

Stephanie Alexander & Katie Bilek, 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 CapGemini, GDIT, Northrop Grumman and many other large primes. They also reminded everyone to join our new Match Making platform – go to **govmates.com** for info.

Judy Bradt, VP Training & Education, presented this season's schedule of Boot Camp training programs. Boot Camps are offered each month prior to the 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. For event notices, check NVSBC.org.



Best Practices for VetBiz Technical Problems

Ever since the VA's CVE "upgraded" its VetBiz verification website, veteran business owners have been experiencing issues preventing them from completing even simple tasks such as responding to document requests and removing and adding NAICS codes from their profiles. Worse, the CVE has been less than stellar in communicating workarounds for resolving issues, responding and resolving help desk tickets, and providing helpful input during calls to the help desk. The problems have gotten so bad that the VA recently extended verification times by sixty days for those firms that should have expired between May 21 and August 31. Now, word on the street is that it plans to do so again. This means that if you are expiring relatively soon, so long as you begin the process before you expire, you won't actually expire because the VA plans on affording a(nother) grace period.

So, don't fret if you're worried about being reverified before your expiration. Assuming this information is true (and we have no reason to doubt it), a grace period will apply.

For those who are not yet verified, we're sorry, but to a degree you're at the mercy of the CVE and its new system. At this point in time, there is no estimate for the processing time of a new application. To a degree, this depends on the complexity of the application, the examiner, and the firm's speed in responding to document requests; however, issues with the system also play a huge role in delays (as well as the backlog that was created by the system, particularly in the months when it was down and no one could submit an application at all).

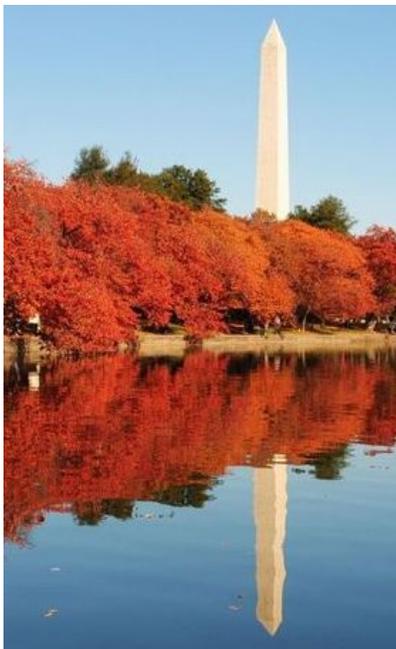
We do, however, have a few "best practices" and workarounds we've found with the new system. These won't fix your issues in dealing with it, but it might prevent a few headaches:

First, NAICS codes – If you need to add or remove one, do it via SAM.gov, which now syncs with VetBiz. You can submit a help desk ticket, but the CVE is very backlogged and also non-responsive.

Second, Document Request error responses – If you are uploading a document that is in fact in a required format but are getting the error message that it is not, try renaming the document description to have no spaces or special characters.

Third, make sure your examiner can see those responses where you explain why you don't have a document. Some examiners have issues accessing them, which is why you might get another request asking for the document when you've already explained why it's N/A.

A CAUTIONARY TALE: THINK BEFORE THROWING STONES



In a cautionary tale for all SDVOSBs, in *LW Construction of Charleston, LLC v. U.S.*, three years after a government contractor filed suit at the U.S. Court of Federal Claims against the VA for alleged wrongful termination of a construction contract, the VA filed a motion to bring counterclaims against LW. It alleged that LW knew it was not an eligible SDVOSB at the time of offer and therefore fraudulently obtained the set-aside contract at issue. (14-960). In July, the CoFC granted the motion.

During contract performance, the VA's CVE determined that LW was not an SDVOSB because it did not meet its "control" requirements. During the performance of its contract, the CVE confirmed that LW did not meet the requirements, but LW continued to perform the contract. It later claimed that the VA had full knowledge that its status had been revoked, which technically may not have been a problem because a change in status does not impact a company's ability to continue performing on a previously awarded contract. The issue, however, was whether upon *award* of the contract, LW had misrepresented its status as an eligible SDVOSB. In other words, if LW was aware it did not meet the requirements and pursued a set-aside anyway, the VA could properly pursue claims under the False Claims Act.

The takeaway is simple: before complaining about government misdeeds, first be certain that you yourself are on the straight and narrow.

LET'S TALK NAICS CODE CHALLENGES

NAICS code challenges aren't too common, but their success rate isn't bad. In fact, according to a GAO report covering 2014 through 2016, of 62 NAICS code appeals, the SBA OHA (which has jurisdiction to hear appeals of a contracting officer's assignment of a NAICS code) dismissed 35, denied 15, and granted 12. In other words, the success rate was around 20%, which isn't too shabby considering that of those that were dismissed, some of them may have been dismissed due to the contracting officer's decision to take corrective action and change the NAICS code per the appellant's request.

A recent SBA OHA decision, *NAICS Appeal of AMEL Technologies, Inc.* (SBA No. NAICS-5892), illustrates some of the procedural issues we should all be aware of when raising a NAICS issue. There, AMEL believed that the incorrect NAICS code had been applied; had the government chosen the NAICS code it desired, it would be "small," but it wasn't "small" under the chosen NAICS code. After the solicitation was issued, AMEL wrote to the contracting officer on its issue, but its email wasn't responded to for over a month. At that time, the CO communicated that she considered the matter closed because AMEL had failed to file a formal appeal with the SBA's OHA. *Under applicable regulations, a NAICS code appeal must be filed within 10 calendar days of issuance of the solicitation, or within 10 calendar days of an amendment affecting the NAICS code or size standard.* When AMEL then appealed the selection of the NAICS code to the SBA OHA, the SBA OHA dismissed the appeal as

untimely.

This case illustrates a few points in challenging the assignment of a NAICS code to a given solicitation. *First*, if a solicitation is released, know that you only have ten days to challenge the NAICS code at the SBA's OHA. It's all well and good to preserve a good relationship with the CO by raising the issue with them first, but if they don't issue an amendment within ten calendar days, you have to go to the SBA OHA or later lose the opportunity.

Second, it might be better to nip the issue in the bud at the pre-solicitation stage. If the agency issues a Sources Sought Notice or other preliminary solicitation documents seeking feedback from potential offerors, that is your opportunity to raise the issue of the proper NAICS code to apply to the solicitation. Take a look at 48 CFR 19.012, which provides guidance for selecting the NAICS code to apply to a solicitation, and explain in your response why a given NAICS code best describes the nature of the product or service being acquired.

In other words, when it comes to NAICS issues, timing absolutely matters.

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.