



FIRST CALL

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Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



I hope you are all having a grand summer! I apologize for not having a *First Call* edition since May. We are recovering from the success of VETS 19; however, that isn't to say we haven't been busy working for you!

THANK YOU to all who attended and participated in VETS 19! By far it was our most successful VETS yet (as you can see by perusing pages two through three). The kickoff by LTC (retired) Stewart Hill, British Army was "over the top". We have been in contact and he asked me to thank all participants for the very warm welcome he received. He said he has gone back to Britain with a renewed purpose to help British veterans the way he saw all of us helping each other! From May 26-29 of 2020, VETS 20 will be back in San Antonio at the Marriott Rivercenter, celebrating the 10th anniversary of the NVSBC!

This summer, the NVSBC has been following the actions on the "Section 809 Panel." If you attended VETS 19, you heard Larry Trowell, a Commissioner of the panel, discuss its recommendations. These include: reorganizing OSDBU

OSDBU offices and PTACs, increasing SBIR funding, 20% advanced payments to small businesses, and eliminating set-asides from DoD. The panel recommendations, if enacted, will have a profound impact on small businesses at DoD.

While the NVSBC is not a lobbying organization, it has provided letters of support to the Senate Small Business Committee regarding certain acquisition changes as part of the SBA Reauthorization Act. Specifically, we support removing set-asides from measurement of agencies' use of "Category Management" contracts, as well as exempting set-asides from inclusion in category management strategies. We also support provisions which would provide the same sole source limits for all socio-economic categories as currently exist in the 8a program. We also support making the requesting of a non-manufacturer rule waiver mandatory.

We'll keep you posted on this important development and our continued support. Remember – collectively, we can and are making a difference!

CONTENTS



Update from NVSBC 1



Highlights from VETS 19 2

Timing is Everything in Bid Protests



A (Procedural) Twist of GAO Events 4



Without Your Help, Vet Priority In Jeopardy 5

VA Reserves Position On Rule of Two and Micropurchases



Kingdomware Update: One Step Forward. . . Or Is It? 6

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

Check Out Our New Website!

Our new and refreshed website, which includes changes to navigation, with dropdown menus for both mobile and desktop versions, is live! We've also improved the structure of our content to make it easier to find information with only a few clicks. Check it out today at <http://www.nvsbc.org>.

HIGHLIGHTS FROM VETS 19 in SAN ANTONIO, TX

Scholarship Winners

The NVSBC Scholarship Program, made possible by a generous donation from AvKare, OBXtek (and support from many of our members), allows the NVSBC to offer ten new veteran business owners “scholarships” to cover attendance at our conference! This year’s scholarship recipients included:

- Dominic Contino (Logical Resources, CEO)
- Edward Dort (Directional Command, LLC, President)
- Josef Federsel (JFedersel, LLC, CEO),
- Kwamina Fox (Imperial Cyber Group, LLC, CEO)
- Von Griggs-Law (Griggs Safety Consultants, LLC, CEO)
- Valerie Ellis Lavin (Luminary Global, CEO)
- Al Sowers OneZero Solutions, CEO)
- Jeffrey Scheire (MO Studio, CEO)
- Christopher Yoosefi (CAY Industries, CEO)
- Brian Zivkefoose (Valiant Group, LLC, President).

Vets 19 by the Numbers

- Attendees – 415 total
- 215 veteran small business
 - 68 government reps
 - 81 prime contractor reps
 - 61 other support org reps

Exhibitors – 66

Sponsors – 9

- National Veteran Business Development Council
- BAE Systems
- General Dynamic Info Tech
- L3 Technologies
- The Boeing Company
- Northrup Grumman Corporation
- Raytheon Company
- Deloitte Services LP
- AVMedical



John Moliere of SCI

John Moliere Wins Gordon Mansfield Award

John Moliere of Standard Communications, Inc. (“SCI”) is this year’s recipient of this important award, which celebrates veteran-owned companies that provide employment opportunities for veterans and give back to the veteran community. In SCI’s case, it is comprised of over 34% veteran employees, and engages in actively recruiting, training, and deploying veteran employees to support approximately 200,000 telephones, ATMs, facsimiles, and other analog and VOIP devices at VA facilities across 27 states.

Mr. Moliere’s leadership philosophy is to run SCI as if it were a small military unit. We applaud his credo and thank him for his continuous support to our veterans.

Did You Miss Vets 19? There’s Always Next Year!



SAVE THE DATE!



Champion Awards Recognized at VETS 19

The members and Board of Directors of the NVSBC are pleased to recognize those major organizations, both federal agencies and large business prime contractors, who have shown exceptional support for service-disabled veteran small businesses by exceeding the 3% goal and by exceeding 8% in awards to veteran small businesses. It is important they be recognized so that their example will be seen and emulated by others! On behalf of the entire veteran small business community, THANK YOU!

Exceptional Support of SDVOSBs in FY 2018 - Federal

Defense Logistics Agency
Department of the Treasury
Environmental Protection Agency
Idaho National Laboratory
NASA – Armstrong Flight Research Center
NASA – Marshall Space Flight Center
U.S. Department of Homeland Security
U.S. Department of State

Exceptional Support of VOSBs and SDVOSBs in FY 2018 – Federal

Defense Health Agency
Defense Intelligence Agency
Headquarters Marine Corps
Installations & Logistics
Marine Corps Systems Command
Oak Ridge National Laboratory
US Small Business Administration

Exceptional Support of VOSBs Business in FY 2018 - Prime Contractor

Harris Corporation, Release Systems

Exceptional Support of SDVOSBs in FY 2018 - Prime Contractor

BAE Systems, Electronic Systems
BAE Systems, Hawaii Shipyards
Grainger Industrial Supply Institute
Jacobs
L3 ISR Systems
Northrop Grumman Tech Services
Raytheon Intelligence,

Information and Services

Exceptional Support of VOSBs and SDVOSBs in FY 2018 - Prime Contractor

AECOM
BAE Systems; Intelligence & Security Sector
BAE Systems, Norfolk Ship Repair, Boeing Defense, Space and Security
Booz Allen Hamilton
CACI
Deloitte Consulting LLP
DynCorp International
General Dynamics Info. Technology
Harris Corporation, Space Superiority
L3 Technologies Electron Tube Operations
Leidos, Inc.
ManTech International Corporation
Northrop Grumman Mission Sys
Parsons
SAIC
Wood Environment & Infrastructure Solutions, Inc

Troop on the Stoop Wins Streetshares Pitch Competition



The NVSBC collaborated with the Streetshares Foundation on a \$25,000 military veteran-owned small business pitch competition for VETS 19. Generous support for this competition was provided by The Boston Beer Company's Brewing the American Dream Program.

The public voted on the Streetshares Foundation website to determine the top three finalists to make their final pitch in front of the VETS 19 attendees and a panel of guest judges, including NVSBC President Eric Daily and NVSBC Board of Director Cynthia Miracle. The final rankings are:

- 1st Place: Blake Wayman, Founder, Troop on the Stoop - \$15,000
- 2nd Place: Joseph Zoleta, CEO, Black 6 Coffee Trading Co - \$6,000
- 3rd Place: Ana Lewis, Founder, Native or Not - \$4,000

Congratulations to the three finalists!

Timing is Everything in Bid Protests

As this is an issue we see time and again, it's worth revisiting: know when to protest procurement actions. A recent bid protest, *Best Practices Group*, B-417768 (July 30, 2019), provides excellent guidance on the rules. Unfortunately, such guidance comes at the expense of an inexperienced protestor that attempted to learn as it went. And as we know, with anything involving law or regulation, the devil is always in the details.

In *Best Practices Group*, a disappointed offeror filed an agency-level protest with the VA more than two weeks after the award date. The protest challenged the terms of the solicitation as defective, and it also challenged the evaluation of proposals. The VA dismissed both protests as untimely, noting that any protest relating to defects in a solicitation is due before the offer due date.

All other protests (for example, those based on unreasonable evaluation or exclusion from the competitive range) must be filed within 10 days of knowing the basis of the protest. The protestor then went on to protest to the GAO, which confirmed that the agency-level protests had been untimely and also noted that the subsequent protest filed to the GAO was untimely as well. The GAO also cited case law confirming that unfamiliarity with the regulations, or the decision to wait for an agency to inform a protestor of its rights, does not stop the clock from running.

If you are in the position of contemplating an agency-level or GAO protest, *Best Practices* is a good case to check out. By covering both agency-level and GAO-level protests, it provides a wonderful overview of the bid protest timeliness rules you must meet not to get booted at the door.

South Florida Chapter Update

The South Florida Chapter's August 1 meeting was successful, with its boot camp well received and attended and a rousing presentation from the local PTAC. Its contact sheet will now include business capabilities, and it will utilize Proximity to drum up contract opportunities based on the attendees' cage codes for the next event. PNC Bank was present and very pleased with the professional ambience and networking.

If you're in the area and are interested in experiencing the next event for yourself, contact Roger Reyes at roger.reyes@nvsbc.org!

A (Procedural) Twist of GAO Events

The GAO recently dismissed several bid protests to an \$82 billion procurement because another disappointed bidder had a case pending at the U.S. Court of Federal Claims (CoFC). *Aecon Management Services, Inc.*, B-417506.2, et. al. (August 7, 2019). This was despite the fact that the pending protests weren't associated with the one filed at court, and after the expenditure of most of the protestors' legal fees and effort.

In an interesting procedural twist of events, four companies protested the U.S. Army's logistics civil augmentation program procurement for various "Setting the Theater" services for the Army's Northern Command, Southern Command, African Command, European Command, Central Command, Pacific Command, and Afghanistan. Disappointed offeror DynCorp filed a protest on April 22, and three other companies filed suit on May 1. As anyone who has ever protested to the GAO knows, the GAO has a 100-day timeframe to resolve protests, meaning that a decision must be rendered in that period of time. On July 31, DynCorp, the first out of the gate, had its GAO protest denied. It then protested to the CoFC, as was its right to do.

Even though the other three offerors had nothing to do with DynCorp, and despite the fact that their decisions would have been issued imminently given the GAO's 100-day timeframe, the GAO promptly dismissed all three, noting that its regulations required it to dismiss any case "where the matter involved is the subject of litigation before, or has been decided on the merits by, a court of competent jurisdiction." The decision cites to no possibility to later re-filing, though, of course, the protestors have the option of going the DynCorp route and taking up the issue at the CoFC.

This is an odd one: who knew that another *disappointed* offeror could put a wrench in a GAO protest?



Without Your Help, Veteran Priority in Genuine Jeopardy

On July 11th, 8 Senators and 26 House members co-signed a letter to VA Secretary Robert Wilkie directing the Secretary to place the AbilityOne Program in front of Vets First. While the letter expressed support for both programs and referred to them as having “complementary missions” that are “important to creating opportunities for underserved populations,” the letter clearly and unequivocally asked the VA to prioritize Ability One over SDVOSB contracting preferences. In asking the VA to cease attempting to take away current AbilityOne Procurement List contracts, the letter stated: “VA should prioritize SDVOSBs using the Rule of Two after seeking to fulfill such requirements through the Ability One Procurement List. We request that the department take appropriate action to cease all

such activity across the Integrated Services Networks.”

Interestingly, this letter cites absolutely no statutory or case law basis for this stance, to include any analysis of disagreement with the *PDS Consultants* case (which confirmed the veteran preference over AbilityOne as referenced in the letter). Rather, it is a general, short letter that reflects no understanding of the Veterans Benefits Act or the statutory (and Supreme Court decision). Its guidance is alarming, as it effectively asks the VA to break the law.

In response to this action, the NVSBC sent a letter to each of its signatories, advising him or her of the NVSBC’s position and why the law clearly demonstrates that SDVOSBs do not come second to AbilityOne.

If you are in a state where your member of Congress signed the letter, PLEASE call, write, or visit your member and staff to tell them you DO NOT support this action. If we do not have our collective voices heard, other groups will be emboldened!

The signatories are: Jerry Moran, John Boozman, Ted Young, Bill Cassidy, Jon Tester, Robert Menendez, Susan Collins, John Kennedy, Sanford Bishop, Rob Estes, Steve Palazzo, Louie Gohmert, David Schweikert, Grace Meng, Mark Walker, Emanuel Cleaver, Robert Marshall, Eleanor Holmes Norton, Joseph Morelle, Greg Pence, Steve Watkins, Collin Peterson, Cedric Richmond, C.A. Dutch Ruppersberger, Fred Upton, French Hill, Trey Hollingsworth, and Gregory Meeks. Access more info here.

VA Reverses Position on Rule of Two’s Application to Micro-Purchases



The NVSBC has always fought the VA’s position that purchases under the micro-purchase threshold (currently \$10,000) are not subject to VETS First and the Rule of Two. Last month, the VA’s Office of General Counsel reversed this position, confirming that micro-purchases are now subject to Vets First and the Rule of Two analysis. This opens another \$5 billion to SDVOSBs.

This position is consistent with the holding in the *PDS Consultants* case, as decided (on appeal by the VA) by the Federal Circuit:

“[B]y [the] express language [of Section 8127(d) of the VBA], the statute applies to **all contracts** – not only competitive contracts.” (Emphasis Added). This includes contracts conducted under FAR Part 8. When the Rule of Two is triggered (when a contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by veterans will submit offers and that the award can be made at a fair and reasonable price that offers best value to the United States), the VA must apply competitive mechanisms to determine to whom the contract should be awarded.” 907 F.3d 1345, 1358 (2018).

Kingdomware Update: One Step Forward. . . Or Is it?

The NVSBC has always followed *Kingdomware* updates, watching with bated breath to see how the VA will (or won't) comply with its mandate under the Veterans Benefits Act (VBA) to set aside work for veteran companies when it has the reasonable expectation that two or more companies will submit an offer and that the award can be made at a fair and reasonable price that offers the best value to the VA.

On June 3, 2019, the GAO issued a decision that was a clear victory for veterans: in *Veterans4You, Inc.*, the GAO held that even if using another agency to acquire goods or services, the VA is still bound to adhere to the Rule of Two. B-417340, B-417340.2 (June 3, 2019). There, the VA had used the Government Publishing Office to acquire suicide gunlocks for veterans which included printed wallet cards and labeling. Arguing that a "printing mandate" applied to require the VA as an executive agency to have its needs met through the GPO, both the VA and the GPO maintained that the Rule of Two and *Kingdomware* mandate no longer applied, that this was not a VA procurement, but GPO procurement not subject to *Kingdomware*.

In sustaining the protest, the GAO found that the requirements of the VBA applied to the procurement.

It concluded that under Section 8128(a) of the VBA, the VA's set-aside requirements are mandatory even when other statutes (like the printing mandate) may apply. It further stated: "[A]ny time the VA is acquiring goods or services – without limitation – it is required to determine whether there are at least two SDVOSBs or VOSBs capable of meeting the agency's requirements at a fair and reasonable price." It then recommended that the GPO "coordinate its efforts with the VA to meet the VA's requirements for suicide prevention gun locks so as to give effect to the VBA."

While this decision involves the GPO, the wider-reaching implication is clear: how will courts interpret the VA's obligations under the VBA when procuring goods or supplies through another agency?

We'll find out soon. When the GPO issued an almost identical procurement to the one at issue in this protest, Veterans4You filed another bid protest, only this one in the U.S. Court of Federal Claims. Of the relief sought, Veterans4You seeks guidance from the Court on the applicability and scope of the VBA's requirements when the VA procures through another agency.

Both Veterans4You and its counsel, Sarah Reida, are NVSBC members.

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 Reida. 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.