



# FIRST CALL

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## Update from NVSBC

*A message from NVSBC Executive Director, Scott Denniston*



On behalf of the NVSBC Board, Heather Lee, Earl Morgan and myself, we wish you and your loved ones a very Happy Thanksgiving! In spite of all the political “noise” coming from our political leaders, we are so blessed to living in this great country. Please take time to give thanks for all our active duty troops wherever they are serving and a special prayer for all those who never made it home to celebrate Thanksgiving!

This week I attended the Coalition of Government Procurement Fall Conference. Dr. Michael Wooten, Administrator of the Office of Federal Procurement Policy, discussed his goal of a “Frictionless Procurement System.” He aims to greatly shorten the time from a requirement to delivery. Bottom line, the acquisition cycles in the government are too long.

Another panel discussion centered on the “Future of Competition” in the government acquisition process. The Competition in Contracting Act was passed in 1984, along with the last major re-write of the FAR. The FAR was written in a time where the government purchased supplies rather than

services, which is the case today. This was also before the internet and so many technological advances. So, the question becomes, is the FAR relevant for today’s world? With the explosion of IDIQs, OTAs and soon to come “E-Commerce” portals do government acquisition rules need to be modernized? Dr. Wooten believes so, and also that small businesses MUST be part of this discussion.

Last month I discussed that Ability One was working to introduce a bill to give them access to VA acquisition opportunities over VETS First. A bill has been introduced, H.R. 4920 “Department of Veterans Affairs Contracting Preference Consistency Act.” The bill was referred to the House Veterans Affairs Committee for consideration. Please read the bill and let your representatives in Congress know what you think about this.

A very HAPPY THANKSGIVING to all!

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

### NVSBC Event Snapshot

- Dec 3 - DC Metro Chapter Dinner **\*\*note this is the FIRST Tuesday\*\***
- Dec 3 - New England Venture Summit
- Dec 10-11 - VA Small Business Engagement
- Jan 1 - NVSBC renewal time (BUT you are welcome to renew NOW!)
- Jan 8 - DC Metro Chapter Dinner
- Jan 9 - NorCal Chapter interest meeting
- Jan 21 - Mid-Atlantic Chapter Luncheon
- Feb 6 - South Florida Dinner Event
- Feb 12, 2020 - DC Metro Chapter Dinner

## VA Brings Back VetBiz Simplified Reverification

Following a system upgrade earlier this month, the VA has brought back Simplified Reverification for those firms going through the VetBiz reverification process with no changes to the business since the last verification. However, Simplified Reverification requires firms to meet very specific criteria:

- The firm has to be in the last 120 days of its 3-year term.
- The firm must have less than \$1 million in total VA contracts over the past three completed fiscal years and the current fiscal year to-date.
- The company must answer a series of questions from the CVE.

If a firm is not eligible for Simplified Reverification, the standard reverification process applies. This process is simpler than an initial application, as the CVE only

requires that the business answer four questions and then upload only the business documents that were changed or received since the previous verification.

Particularly due to new system glitches, the VetBiz process has been a thorn in business owners' sides. It's nice that the CVE is taking steps to counterbalance those problems by making efforts to make the process otherwise easier.



## SBA Overhauls HUBZone Rules

Effective December 26, 2019, the SBA will implement rules overhauling regulations for its HUBZone Program, making it easier to participate in the program and cutting through red tape. Key changes include:

1. HUBZones will only be required to certify on an annual basis, versus expressly qualifying as a HUBZone at the time of each offer for a HUBZone contract or award.
2. HUBZones must maintain at least 20% HUBZone residents as employees when performing a HUBZone contract.
3. An individual will still be treated as a HUBZone resident so long as that individual worked for the firm and resided in the HUBZone upon certification.

Access the final rule [here](#).

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## VetBiz Move to SBA: Don't Hold Your Breath

A bill to move VetBiz verification to the SBA has passed in the House and is purportedly on the Senate's fast track. Such a term is somewhat amusing, however, in light of the fact that even if the bill is signed into law, it won't actually go into effect for at least two years.

The Verification Alignment and Service-disabled Business Adjustment Act (HR 1615), which was referred to the Senate by the House on November 14, 2019, details the long-awaited plan to move VetBiz verification to the SBA. Among other provisions, this would abolish the VA's Center for Verification and Evaluation (which is currently tasked with the verification process) and transfer all of its functions to the SBA as of the "transfer date."

The "transfer date," however, is defined as "the date that is two years after the date of enactment of this Act, except that such date may be extended an **unlimited** number of times by a period of not more than six months (provided the SBA and the VA provide justification for the necessity of the extension).

We've all waited years for the SBA to take over the VetBiz verification process. What's an additional two, plus infinity?

Access the text and progress of HR 1615 [here](#).



## Veterans Lose *Kingdomware* Issue Appeal

As you may know, in 2018 the U.S. Court of Federal Claims denied a claim requesting declaratory and injunctive relief with respect to a *Kingdomware* violation, holding that while the plaintiffs were right under the letter of the law, the court would decline to take action against the VA in the interest of enabling it to obtain medical supplies needed to support veteran end users.

The *Electra-Med* case involved the VA's Medical-Surgical Prime Vendor Next General (MSPV) Program, whereby the VA awards several contracts to Prime Vendors. The VA can then place orders with these Prime Vendors to obtain certain medical supplies, available only on the VA's MSPV "Master List." Because of the VA's own planning and procurement issues, the Master List contained only 7,800 of the 80,000 items sought. As such, the VA issued a Class

Justification and Approval to allow the Prime Vendors to modify the process of creating the Master List and allow the Prime Vendors to select the items on the Master List. Among other issues (invoking CICA), the plaintiffs argued that the VA could not allow the Prime Vendors to select non-SDVOSBs to provide products for the Master List without first applying the Rule of Two.

On appeal, in an only six-page opinion, the Federal Circuit affirmed. Analyzing the appeal from an "abuse of discretion" standard, the Court found that in light of the "significant public interest factor of patient safety and the brevity of the remaining (contract) term, it would affirm the denial of the injunction. It did, however, remand to the CoFC to address the exercising of option periods, as this would be considered a new procurement."

The lesson here: Even if the law is on a protestor's side, that might not be enough to win a protest.

Welcome Timothy Devine to the NorCal NVSBC Chapter Board of Directors!

The NorCal Chapter welcomes Timothy Devine, of Aviate Enterprises, Inc., to its Board of Directors! A long-time NVSBC member, Mr. Devine served for 25 years in the U.S. Air Force and founded Aviate to use his experience in Bioenvironmental Engineering and Occupational Safety and Health to assist federal, state, and local purchasing professionals.

The NorCal Chapter has tentatively scheduled January 9, 2020 for its first event, with the intention of holding events every second Tuesday of each month.

## D.C. Chapter Update

The D.C. Metro Chapter of NVSBC held its November dinner meeting on the 11th. Our guest speaker for our dinner meeting was Soraya Correa - Department of Homeland Security (DHS) Chief Procurement Officer. In her capacity as the Senior Procurement Executive, Ms. Correa oversees the work of nine Heads of Contracting Activity that provide operational procurement services to DHS components, directorates, and offices. Her presentation entitled "**Why the DHS Small Business Program is Successful**" provided a review of the creative programs at DHS including the Acquisition Innovations in Motion (AIiM) framework, the Procurement Innovation Lab (PIL), and the Education, Development, Growth, and Excellence (EDGE) mentoring program. These programs make DHS a very Veteran Small Business friendly environment – and we appreciate Soraya's commitment to Veteran business owners!

The D.C. Chapter meets monthly (2nd Wednesday) from September through June at the Key Bridge Marriot in Arlington, VA. It offers boot camp training prior to each meeting (4:00 PM to 5:30 PM), as well as match-making opportunities via its platform of govmates.com. To date, there have been over 25,000 matches, which have resulted in over 4,000 introductions resulting in net new business for govmates.com members. For event notices, check NVSBC.org.





## GAO BID PROTEST REPORT: AIM FOR CORRECTIVE ACTION

On November 5, 2019, the GAO filed its annual report to Congress. This responds to the requirements of the Competition in Contracting Act (31 U.S.C. § 3554(e)(2)) that the Comptroller General report each instance where a federal agency did not fully implement a GAO recommendation, or where the GAO did not issue a protest decision within 100 days after the date of the protest filing. The GAO reported no instances of either; however, it is of some interest to note that with respect to the *Veterans4You* decision (where the GAO held that the VA failed to follow Kingdomware requirements in procuring gunlocks through the GPO case), the GAO cut it close by issuing its decision on day 100.

In its Summary of Overall Protest Findings, the GAO noted that it received a total of 2,198 cases, 2,071 of which were protests. Of the protests resolved on the merits (i.e., the GAO issued a decision on the substantive grounds of the protest), only 13% were resolved in favor of the protestor. The most prevalent reasons for sustaining a protest were: 1) unreasonable technical evaluation; 2) inadequate documentation of the record; 3) flawed selection decision; 4) unequal treatment; and 5) unreasonable cost or price evaluation.

However, these are not necessarily the “best” protest grounds. These are also some of the most common protest grounds, so it is logical that they would result in the highest number of sustained protests.

The GAO also reported an “effectiveness rate” of 44%. These are bid protests where the protestor received some form of relief. As the sustain rate was 13%

this means that the agency took corrective action in 31%. Corrective action is where, instead of defending a protest (which includes producing an agency report of relevant documents and a legal memorandum), the agency decides to take measures to address the protestor’s concerns or complaints. This can include cancelling a solicitation and reissuing it with amendments (applicable in a pre-bid protest alleging defects in a solicitation); or re-evaluating proposals (applicable in a post-award unreasonable evaluation protest).

Sometimes obtaining corrective action should be a contractor’s end goal. If a contractor’s protest grounds aren’t strong enough for a sustained GAO decision, an agency can still decide to take corrective action if the protest convinces it that doing so is in its best interest. As such, while a bid protest must always be in good faith and based on viable grounds, also offers an opportunity to educate the agency.

The GAO’s Report emphasizes two bid protest principles that have existed for a long time:

- Receiving a sustained decision at the GAO is very difficult, and requires both meritorious grounds and the Agency’s refusal to take corrective action on its own.
- “Unreasonable evaluation” remains the most commonly sustained bid protest ground. As such, always ask for a debriefing to get any additional support for a potential protest.

Before diving into a protest, be informed.

## 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](mailto:scott.denniston@nvsbc.org).