



FIRST CALL

www.nvsbc.org

Update from NVSBC

A message from NVSBC Executive Director, Scott Denniston



Happy New Year & welcome to a new decade! We hope you all had a healthy and happy holiday season.

As the new year dawns and we welcome a new beginning, I can't help but notice how the issues remain the same! In November, I told you about H.R. 4920 "Department of Veterans Affairs Contracting Preference Consistency Act". This bill places Ability One organizations as a higher priority in VA contracting opportunities than veteran and service-disabled veteran owned small businesses under Vets First. Unfortunately, the House passed this by voice vote just before the Christmas recess. NVSBC has written to all 100 Senators opposing H.R. 4920. **We have also issued a "Call to Action" asking you to do the same.** Our letter is at www.nvsbc.org, along with the addresses for each Senator. This will not be the last attempt by others to weaken Vets First. Now is the time for action!

The NVSBC Education Foundation has begun the year-long program call "Get FAR Sighted" in partnership with Jennifer Schaus & Associates. Sign up for these very informative webinars offered each Friday at 11AM EST. The webinars are also available on the NVSBC website. This is a great way, for free, to get your staff educated on the FAR.

Registration is open for the Department of Labor's "2020 HIRE Vets Medallion Award Program". Most of you go out of your way to hire veterans in your business. I would love to see EVERY NVSBC member firm register for this award to show vets do take care of vets. To register, go to www.HIREVets.gov.

We look forward to members renewing their membership in the NVSBC for 2020. We need all of you and hope you see value in our organization. The Board also encourages you to bring in a new member in 2020. There is strength in numbers!

CONTENTS



Update from NVSBC 1



Supreme Court Victory for VOSBs Undermined by Inaction

SBA Rule Will Hold Large Primes to Sub'k Plans 2



Cheat Sheet of Changes Affecting Small Businesses 3

D.C. Chapter Update



Lessons Learned: Never Miss a Hard Deadline 4

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

NVSBC Upcoming Event Snapshot

- Jan 24th - FAR Webinar part 5
- Jan 31st - FAR Webinar part 6
- Feb 6 - South Florida Dinner Event
- Feb 11-13 - 8(a) Conference
- Feb 12 - DC Metro Chapter Dinner
- Feb 18 - Mid-Atlantic Chapter Luncheon
- Mar 23-24 Venture Summit West
- May 5-7 - US DOE Forum and Expo
- May 26-29 - VETS20 - **Registration Open**

Supreme Court Victory for VOSBs Undermined by Inaction

In a major victory for the veteran small business community, in mid-January the U.S. Supreme Court denied cert (review) of the *PDS Consultants* case. A continuation of the *Kingdomware* saga, the *PDS* courts (beginning at the U.S. Court of Federal Claims and now ending at the Federal Circuit) further developed its principles by holding that the Veterans Benefits Act (VBA) puts veterans first over AbilityOne contractors with respect to VA procurement opportunities, as the statutory veteran precedence is specific to the VA (versus the Javits-Wagner-O'Day Act, which applies generally to all agencies in setting forth the AbilityOne preference).

Don't celebrate just yet, however. On October 30, 2019, Rep. Mark Takano (D-CA) introduced to the House of Representatives the Department of

Veterans Affairs Contracting Preference Consistency Act (HR 4920). This would "fix" the conflict between these two preferences by carving an exception into the VBA at 38 U.S.C. 8127(a) for products that have been on the AbilityOne list since on or before December 22, 2006. HR 4920 passed the House on December 16, 2019, and while it did not make it into this year's NDAA, it is now before the Senate and could become law.

This is why it is important that veteran business owners mobilize by reaching out to their senators! ***AbilityOne supporters have been very vocal and well-organized in supporting HR 4920, and elected officials are driven by the voice of the voting public!*** The word on the street is our elected officials are NOT hearing from vet business owners.



SBA Rule Will Hold Large Primes to Subcontracting Plans

For those small businesses contractors who have been included in a large prime's subcontracting plan, you may have been disappointed come performance time. It is unfortunately not uncommon for a prime to recruit contractors falling within a particular socioeconomic category (SDVOSB, WOSB, 8(A)) for small business evaluation credit, only not to use that contractor during actual contract performance.

In a final rule published near the end of 2019, the SBA aims to make it easier to hold large business prime contractors accountable for meeting the goals of their small business subcontracting plans. It is now a material breach of a contract or subcontract if a contractor with a subcontracting plan fails to comply in good faith with the requirement to submit reports and to cooperate with agencies to determine subcontracting plan compliance. In addition, agencies can consider a breach of these subcontracting plan reporting duties in past performance evaluations. The rule even provides examples of actions that could be considered "failure to make a good faith effort to comply with a subcontracting plan" at 13 C.F.R. § 125.3(d)(3)(ii). These include:

- Turning in subcontracting plan reports late.
- Not paying small business subcontractors on time.
- Not having a designated employee to monitor the subcontracting plan.
- Failure to maintain records or procedures to show compliance with subcontracting plan requirements.

Access the Final Rule (effective as of December 30, 2019) [here](#).



Cheat Sheet of Changes Affecting Small Business

Surviving Spouse Provisions

H.R. 499, the Service-Disabled Veteran Small Business Continuation Act, has passed the House and is on to the Senate. This bill would impact the SBA's definition of "small business concern owned and controlled by service-disabled veterans" (located at 15 U.S.C. 623(q)) by altering the treatment of surviving spouses of SDVOSB owners. The "surviving spouse rule" currently only permits a surviving spouse to run a business as an "SDVOSB" if the veteran owner was 100% service-connected or died as a result of a service-connected disability. This status is good for 10 years. ***Per the amendment, however, a surviving spouse where the veteran merely had a service-connected disability may use the SDVOSB status for three years following the date of the veteran's death.***

Mentor-Protégé Programs

A Proposed Rule introduced in late December would consolidate the 8(A) Mentor-Protégé Programs with SBA's All Small Mentor-Protégé Program (84 FR 60846). This combination would present identical benefits from each program and also come with changes, such as removing the requirement that the mentor show good character and preventing the mentor from submitting competing offers on procurements.

The Rule also includes changes to the joint venture program. Most notably, it proposed to eliminate SBA approval for competitive 8(a) JVs, and it also proposes to change the 3-in-2 rule to two years.

The SBA extended the comment period for this rule, so if you have something to say, chime in! Access it here.

***The SBA posted a great presentation on end-of-year changes affecting small businesses here. Stay informed!**

South Florida Chapter Meets on February 6 (Boot Camp at 4:30)!

For those of you in the Fort Lauderdale area, don't miss the South Florida Chapter's Quarterly Business Dinner! This one is chock-full of information, as Barbara Carson, the Deputy Associate Administrator of the SBA's Office of Government Contracting and Business Development, will be presenting on topics affecting VOSBs. These include government contracting and business development policy updates, the Small Business Runway Extension Act of 2018, and the status of VetBiz verification moving to the SBA (and government-wide "official" certification). Her presentation is practically a federal contracting update bootcamp!

Federal government contracts attorney Sarah Schauerte Reida, Esq, will also present on the VA's use of other agencies to evade *Kingdownmare* and case updates on the Rule of Two.

D.C. Chapter Update

The D.C. Metro Chapter of NVSBC held its first monthly dinner meeting of the new decade on January 8, 2020! This event featured several content-rich presentations:

- Boot Camp Program: "**Big Company Concepts for Small Business Growth**"
 - Presenters: Mark Abel - Castlemar Consulting, and George Langbein - BGM Group
- Dinner Meeting Presentations:
 - Veteran Contract Update: "**VECTOR: VA & NVSBC Industry Partnership for Collaborative Marketing**"
 - Presenters: Richard Tucker, Burton Tu
 - Special Keynote Presentation "**Strategies to Grow Business, Build Value and Successfully Execute M&A Strategies**"
 - Speakers: Steve Ikirt - CEO 9th Way Solutions/Former CEO Information Innovators & Brian Tunney - Director, Kipps DeSanto.



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.

Lessons Learned: Never Miss a Hard Deadline

We all make mistakes. It's unfortunate, but it happens, and sometimes we have to simply lick our wounds and move on. As federal contractors, one of the most cringe-worthy mistakes is missing a hard deadline. These two cases indicate that when that happens, the best use of your time and money might be to let it go:

In *Mid-Continent Group, LLC*, as part of its application to the HUBZone Program, the SBA had conducted a formal size determination of the firm. On November 5, the Area Office found that Mid-Continent was other-than-small under its primary NAICS code. Accordingly, in order to timely appeal the size determination to the SBA Office of Hearings and Appeals, Mid-Continent had to file its appeal by the fifteenth day after notification. Due to issues including a poor internet connection and a tragedy involving one of Mid-Continent's attorney's family members, the appeal was filed one day late.

Although it clearly pained the OHA judge to do so, the appeal was dismissed as untimely:

"While I appreciate the unfortunate circumstances that led to the delay in transmission of the instant appeal, Appellant is asking me to exercise a discretion that the regulation denies me. . . . What Appellant is asking me to do is to, in effect, waive a statute of limitations, and that I cannot do. The regulation mandates that I dismiss this appeal."

SBA No. SIZ-6038 (Dec 21, 2019)

This illustrates a straightforward rule that applies to protests as well: if you are late in meeting a statutory deadline, you are out

of luck. No matter how sympathetic or good the reason, a judge simply doesn't have the discretion to give you a pass.

Espousing a similar principle, a recent GAO case held that an agency was right to reject a proposal that was four minutes late, even though the protestor had sent its offer six minutes short of the deadline. The agency's gateways did not receive the email until 11:04, and the offer did not reach the contracting officer's inbox until after the deadline.

The GAO agreed with the agency's decision to dismiss the proposal as late, concurring that the protestor's proposal didn't fall under any of FAR 52.212-1's exceptions. Because the "proposal was late and therefore ineligible for award, [Protester was] not an interested party to challenge the agency's subsequent evaluation and award decision." *Spanish Solutions Language Services, LLC*, B-418191 (2020).

While this case is grim, at least it provides a spark of hope. FAR 52.212-1 provides the limited exceptions to the "late" rule. Also, in the past, while **very rare**, proposals received after the due date and time have been found to be timely if the reason for tardiness was beyond the control of the offeror, such as government shutdown or a natural disaster.

Here's the takeaway: know where to cut your losses. We work hard on our proposals and submissions, so it's likely you'll fight a decision that an act was untimely. Still, know what you're up against, and brace yourself.

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.