



FIRST CALL

www.nvsbc.org

Update from NVSBC

A message from NVSBC Executive Director, Scott Jensen



Happy November!

With Veterans Day approaching, November is the month we remember the impact and importance of our nation’s veterans—both when they served and as they continue to serve after transition. We owe a debt of gratitude to those who selflessly wore the nation’s cloth in defense of the constitution and all for which it stands. Equally noble are the millions of veterans who then return to invest in the future of our country by starting their own small businesses.

We can all agree that business ownership at times can be as daunting as wearing that uniform! It takes the same level of courage, commitment, and tenacity; this is also why veteran business owners are likely to succeed in their endeavors (and why it just makes sense to do business with veterans)! So, this month, we at NVSBC join with you in celebrating our veterans and paying particular homage to those brave veterans who return home and continue their investment in our nation through business ownership!

By the time everyone reads this, several milestones have passed.

NVSBC celebrated our Gordon H. Mansfield Small Business

Awardee and our Champions of Veteran Enterprise award recipients. Congratulations to Tracy Solomon at TEVET for receiving the Mansfield Award and to all the federal agencies and large business prime contractors who have shown exceptional support for service-disabled and veteran-owned small businesses. You all are true champions! Thank you.

The election has come and gone. Now to understand the implications of the results and remain engaged with current and future federal policy decision makers to ensure that veteran owned businesses are at the forefront of every policy consideration and decision. NVSBC continues to monitor and connect to federal policy makers and our elected officials to ensure your voices are being heard. We represent you and take that commitment very seriously!

In closing, please join me in taking a moment this month to reflect on the sacrifices and successes of our nation’s veterans. We truly stand on the shoulders of giants. I plan to reach out to those closest to me this month and thank them for what they did and continue to do! Please consider doing the same.

CONTENTS



Update from NVSBC 1



Executive Order Enhances Non-Discrimination Rules for Contractors

New SBA Rules Clarify Joint Venture Nuances 2



Member Highlight: Raytheon Technologies 3

Will We Ever See Govt-Wide SDVOSB Certification?



VA Veteran Preference Eroded by Statute 4

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

SEEKING NVSBC MEMBER YEAR-END ACCOMPLISHMENTS

We all work hard, and we deserve recognition for the results. If you have a year-end goal you’re proud to report (any award, contract, or similar achievement), email Sarah S. Reida at scs@legalmeetspractical.com with a short blurb (no more than 100 words) for inclusion in our year-end issue for distribution next month. Please include “NVSBC 2020 Accomplishment” in the subject line

Executive Order Enhances Non-Discrimination Rules for Contractors

On September 22, 2020, President Trump issued [Executive Order \(EO\) 13950, “Combating Race and Sex Stereotyping.”](#) The Executive Order sets forth the policy of the United States “not to promote race or sex stereotyping or scapegoating” and prohibits federal contractors from inculcating such views in their employees in workplace diversity and inclusion trainings.

The EO became effective when signed on September 22, 2020, but the requirements for federal contractors and subcontractors will apply to contracts entered into 60 days after the date of the executive order—November 21, 2020. Even so, the Office of Federal Contract Compliance Programs (“OFCCP”) may investigate claims of sex and race stereotyping pursuant to its existing authority under EO 11246, which requires contractors and subcontractors to treat employees without regard to their race or sex, among other protected bases, and to take affirmative action to ensure such discrimination does not occur.

In a [FAQ webpage on the new EO](#), the OFCCP provides federal contractors with the lowdown on what should be known for purposes of compliance. This includes the definition of what constitutes “race or sex stereotyping” or “race or sex scapegoating,” as well as examples of what would be unlawful. It also outlines how an individual may file a complaint for such unlawful behavior via a new reporting hotline.

The EO itself notes that except for those contracts exempted from the EO, all executive agencies must include in every Government contract specific provisions whereby the contractor agrees that it “shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating, including [listing examples].” **Notably, in the event of non-compliance, the contracting officer may cancel, terminate, or suspend the contract, and the contractor may also be**

suspended or debarred from federal contracting.

Notably, the already-existing EO 11246 binds contractors to not discriminate against employees or applicants on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin. If you take a close look at your contract or subcontract, you will likely find that FAR clause. You also may remember this requirement from your annual Sam.gov registration, as you are required to represent that you have complied with non-discrimination requirements. Violation of EO 11246 also can expose a contractor to similar penalties as a violation of EO 13950.

In a nutshell, this new EO is a reminder to contractors and subcontractors to develop strong policies and procedures to ensure that employees and applicants are treated equally, whether during the hiring process, training or in job performance. If not, this not only creates a poisonous work atmosphere, but it exposes contractors to liability risks unique to the federal marketplace.

New SBA Rules Clarify Joint Venture Nuances

If you are looking to form an SDVOSB joint venture (“JV”), you must ensure that your agreement contains the required provisions of 13 C.F.R. § 125.18. For a non-VA procurement, you must form a separate entity as a JV and register it in Sam.gov; for a VA procurement, that JV must also be separately verified in the VA’s VetBiz Vendor Information Pages. (To be verified, this comes down to whether the VA accepts the JV agreement, as the JV “piggybacks” on the status of the SDVOSB partner). JVs have many nuances, but two provisions in a [recent final rule](#) issued by the SBA provide additional clarity on requirements for eligibility:

- *First*, unlike prior interpretations by the SBA OHA, the Final Rule on the Consolidation of the Mentor-Protégé Programs (10/16/20) provides that “other partners to the joint venture may participate in all corporate governance activities and decisions of the joint venture as is commercially customary.”
- *Second*, this same rule also confirms that with respect to an SBA-approved mentor-protégé relationship, the mentor can own up to a 40% equity stake in the protégé, and perform up to 60% of the work of a JV set-aside contract.

Joint venture requirements can be tricky, so make sure you understand them before you venture (pun intended) to form one!



Member Highlight: Raytheon Technologies

United Technologies (“UTC”) joined NVSBC as a large business supporting member in 2020, committing to the annual Veteran Entrepreneur Training Symposium (“VETS-20”) as a platinum sponsor. When VETS-20 was shut down due to COVID-19, Inga Lee Puentes contacted us to inquire how the company could continue to support the NVSBC mission and veteran businesses. At that time UTC had merged with Raytheon Company (“RTN”) to become Raytheon Technologies. They agreed to become a Gold Sponsor for our Virtual VETS-20 event and apply the remaining sponsorship funding to support veteran-owned businesses for membership to NVSBC. To date, 13 companies have been gifted membership to NVSBC, which included 2020 and 2021 membership as well as a seat on our Virtual VETS-20 training seminars. During this challenging time, NVSBC has grown with the support of Raytheon Technologies. We want to extend our gratitude to Inga Lee Puentes and the Raytheon Technologies Supplier Diversity Council for their incredible support of NVSBC and veteran businesses nationwide.

Our Supplier Diversity Council (comprising supplier diversity leaders from Raytheon Technologies and our businesses, Pratt & Whitney, Collins Aerospace, Raytheon Intelligence & Space and Raytheon Missiles & Defense) saw this as a perfect opportunity to give back to our veteran-owned suppliers, as well as to NVSBC for the great services they provide for those suppliers. We are delighted to have made an impact during such a trying time for small, diverse and not-for-profit businesses. Calling NVSBC to give them this news was one of the most fulfilling calls of my career; it felt amazing to have the opportunity to give back and to know we were doing something that really mattered to these organizations. I would also like to thank my team for their tireless advocacy to Supplier Diversity.” Inga Lee Puentes, RTX Corporate Responsibility, Supply Chain.

***Similar to how our D.C. dinners introduced and/or highlighted our members, *First Call* will be providing a written monthly highlight. We refuse to let COVID-19 prevent our members from getting the visibility and recognition they deserve!**

NVSBC NOTES AND NEWS

Standard Communications and Owner John Moliere Receive Congressional Record Commendation

On September 22, the Hon. Denver Riggelman of the VA House of Representatives issued a commendation to Mr. Moliere’s company, Standard Communications, Inc., for their work in addressing the pandemic impact by installing medical IT solutions, to include a device to aid in the decontamination of medical equipment using ultraviolet light. The commendation praised the company’s “innovative solutions to the medical needs of our community.”

REMEMBER TO RENEW!

For those who have not yet renewed their NVSBC membership, remember that the current rate applies through the end of the year. As of January, our modest increase in membership fees will be in effect. Renew [here](#).

Will We Ever See Government-Wide SDVOSB Certification?



Several months ago, First Call covered the section of the 2021 NDAA which would expand SDVOSB verification government-wide and transfer certification authority from the VA to the SBA. As of August 5, the relevant Section 831 of the 2021 NDAA has passed the House and gone on to the Senate.

The reading of this provision does little to instill confidence that government-wide certification will happen any time soon. Per its language, government-wide certification is to be effected within two years after its enactment (i.e., when it finally becomes law), and the SBA and the VA can jointly extend this deadline as many times as they want, for time periods of up to six months apiece. Then, once the government-wide certification requirement *does* apply (i.e., contractors will have to be “officially” certified when it comes to *all* federal procurements, not just for VA procurements), it will be in the hands of the SBA versus the VA.

While it makes sense for the SBA, which oversees/processes all other federal certifications, to be tasked with this one as well, this development may be merely plodding a course established years ago rather than adapting to change. The VA’s procedures have improved tremendously, resulting in much faster processing times. Considering that the VA is now processing these applications by applying the same rules that apply to all federal agencies (given a rule change that standardized the eligibility requirements across all agencies), why not simply implement the government-wide certification process using the VA’s platform and system already in place?

VA Veteran Preference Eroded by Statute

Mere months after the enactment of a law carving an exception into the VA's statutory preference for veterans, the U.S. Court of Federal Claims has [ruled](#) that the VA misinterpreted its scope in transferring a prescription glasses deal to nonprofits that employ the blind. *Superior Optical Labs, Inc. v. U.S.*, No 21-1211C (Oct 2020).

This represents another twist in the *Kingdomware* saga, where one of our own members prevailed at the U.S. Supreme Court in arguing that the Veterans Benefits Act at 38 U.S.C. § 8127 et. seq. ("VBA") requires the VA to set aside contracts for VOSBs when certain requirements are met. In *PDS Consultants*, where the plaintiff prevailed at both the U.S. Court of Federal Claims and the Federal Circuit Court of Appeals, the resulting case law affirmed that for the VA, the preference for veteran-owned firms is supreme. This includes any preference for firms covered by the AbilityOne Program (via the Javits-Wagner-O'Day Act, which applies to all agencies versus the VBA, which is unique to the VA).

In response to the Federal Circuit's holding in *PDS Consultants*, Congress passed the Consistency Act of 2020, which amends the VBA. The Consistency Act prioritizes blind and severely disabled entities by requiring the VA to use AbilityOne non-profit providers, rather than prioritizing VOSBs, when procuring any products or services added to the AbilityOne list *prior to December 22, 2006*.

In passing the bill, the Senate added an exception to protect some requirements that the VA

had already transitioned to VOSBs. If the VA awarded a contract for a covered product or service to a VOSB pursuant to a Rule of Two determination *between December 22, 2006 and August 7, 2020*, the VA could not transition these requirements back to the AbilityOne program until a new Rule of Two analysis was conducted and the VA determined in writing that there was no reasonable expectation that two or more VOSBs could compete.

In the protest at hand, which was considered on an expedited basis, a contractor challenged the VA's decision to move the requirements at the VA VISN 2 and 7 Networks currently set-aside for veteran-owned small businesses back to the federal AbilityOne program

In granting the protest and the relief requested of a permanent injunction, the CoFC found that based on the language of § 8127(d)(1), awards made pursuant to a Rule of Two determination which were made after December 22, 2006 and in effect before August 7, 2020, shall continue to be set aside for VOSBs until such time as the Rule of Two is no longer satisfied. In so holding, the CoFC stated: "It seems clear that Congress' intent in adding the exception to the Consistency Act was to prevent the VA from transitioning contracts previously awarded to [VOSBs] as a result of a Rule of Two analysis back to the AbilityOne program.

This exception, and the exception to the exception, is nuanced. The big takeaway is this: since *Kingdomware*, the veteran preference continues to be chipped away, and we must do what we can to protect it.

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 Jensen with your comments at: scott.jensen@nvsbc.org.