



FIRST CALL

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August 2022



There are so many interesting topics in motion! The CVE certification, score cards, end of fiscal year, to name a few. As an owner for 20+ years, I am sharing my thoughts on prime contracting, and if you don't read the entire article, it all boils down to this recommendation – *talk to the agencies, help them understand your challenges, and offer solutions.*

Since starting my business, I have been befuddled when meeting agency reps at conferences and they always say – *you need to be a subcontractor to get into the business.* This approach is encouraged and believed to be in the best interest of small business. Access to capital supports success and the subcontractors now at the mercy of a prime contractor pay schedule. The process to report a prime not meeting its obligations takes time and jeopardizes prime-sub

relations. We need to focus on prime contracting to small business.

The solution? *Advocating and protecting prime VO and SDVO set-aside opportunities.* VO and SDVO set-aside contracts are being eliminated by moving requirements to other socioeconomic categories, or using Best-in-Class acquisition vehicles, in the name of strategic sourcing. In pursuit of prime contracting opportunities, VO and SDVO SBCs invest time and resources into business development planning, responding to market research, and aligning their business to competition. When an acquisition strategy is changed or consolidated, often last-minute, VO and SDVO SBCs lose access to the opportunity and have wasted their resources. The impact, which is disheartening at best, is not limited to small business. Once a set-aside is removed from the VO/SDVO program, it could take decades (or multiple acquisition cycles) to course correct, expending more time, resources, and taxpayer dollars. We need our customers to limit, and report, SDVOSB recompetes they intend re-designate.

VO and SDVO SBCs have a platform to promote prime contracting. The Executive Order 13985, on Advancing Racial Equity and Support for Underserved Communities through the Federal Government, increased small business goals, and senior executive (SES) accountability for small business spend gives a renewed sense of small business support. As members of the NVSBC, we ask that you educate yourself on industry trends by joining the NVSBC outreach activities, including Charlie Mike 22 webinars, and promote VO and SDVO SBC prime contracting to your customers. Respond to market research, especially large business opportunities, and encourage SDVOSB designation – *and then follow-up.* We need to encourage small business prime contracting by identifying large business opportunities that may be designated wholly, or in part, as SDVOSB and open the gates to prime contracting opportunities. Furthermore, we need to voice our concerns when an SVOSB contract is moved out of the designation. Accountability and increasing prime opportunities sincerely demonstrates commitment to the veteran small business community.

Cynthia Miracle
NVSBC Board of Directors
Founder & CEO, MIRACORP

NATE MCFADDEN, ELEVATED TECHNOLOGIES

Nate McFadden, owner of [Elevated Technologies](#) in Grand Rapids, Michigan, didn't always plan on becoming an entrepreneur. After serving as an infantry officer in the Marine Corps for nearly 10 years, Nate spent another decade working his way up at a global elevator company. However, as he learned the ropes in the elevator industry, Nate began to notice some shortcomings in how large corporations were approaching elevator safety. Determined to address these problem areas, Nate branched out on his own and launched his small business, Elevated Technologies.

Nate was then able to acquire a U.S. Small Business Administration (SBA)-backed [loan](#) to help get his business off the ground. Eager to learn about potential growth opportunities for his new business, Nate sought guidance from his local [Veterans Business Outreach Center](#) (VBOC), VetBiz Central.

"I really recommended that he move forward with getting his [Service-Disabled Veteran-Owned Small Business (SDVOSB)] verification, and that was really what propelled Nate to getting into the federal market," says Matt Sherwood, a business counselor at VetBiz Central.

Nate subsequently received his [SDVOSB verification](#) through the federal government, enabling him to pursue [set-aside federal contracts](#) only available to SDVOSBs. He also obtained a third-party SDVOSB certification that qualified him for corporate contracts. Nate's multimillion-dollar business now has a presence in 35 states (and growing!), and has received nationally recognized awards. "He is ... the epitome of what I think a successful entrepreneur or 'vetrepreneur' really is," says Matt.

Nate highly recommends that veteran entrepreneurs take advantage of all SBA resources at their disposal, including expert guidance from their local VBOCs. "Having access to the network of resources that the SBA can connect us with is critical. And thinking about what the VBOC did for us ... just knowing that somebody's rooting for you and that there are resources available if things come up ... gave us some confidence that we were doing things right," Nate says.



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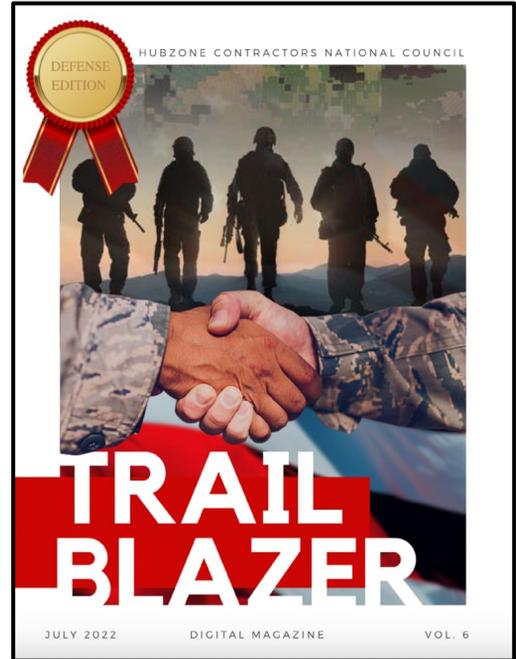


Around the NVSBC

HUBZone Contractors National Council's Trailblazer Magazine Defense Edition features an in-depth interview with NVSBC Executive Director Scott Jensen available now! [Click here.](#)

About Trailblazer:

Each month the magazine promotes various themes such as Military, Health, and much more. This monthly digital magazine highlights Leaders in Business and the Workforce that have made a difference in historically underrepresented communities. Much like the Biden Administration's quest to level the playing field, the Council's magazine will highlight the trendsetters that are doing just that around the nation and the world.



Service Before Self Podcast Episode 19: Veterans Helping Veterans Become Entrepreneurs



Your Host . . .
Colonel (Ret.) Sam Whitehurst
Vice President, Programs & Services
Dixon Center for Military and
Veterans Services
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Our Special Guest . . .
Scott Jensen
Executive Director,
National Veteran Small
Business Coalition



You can find this episode, as well as previous episodes, wherever you enjoy your podcasts . . . just search for Service Before Self



Voluntary CMMC assessments starting August 22

With the news that voluntary third-party assessments would begin this month, the Pentagon's contractor cybersecurity certification program took a significant step ahead. After a significant change late last year, the Cybersecurity Maturity Model Certification program is still in the early phases of rulemaking; nevertheless, officials have confirmed that optional CMMC assessments will start on August 22 and persist for several weeks. The "Joint Surveillance Program" of the DoD will govern the voluntary assessments. The assessments will be carried out by CMMC Third-Party Assessment Organizations (C3PAOs), under the direction of the Defense Industrial Base Cybersecurity Assessment Center. Companies who successfully complete evaluations during the optional phase will get CMMC Level Two accreditation after the standards go into effect, according to information provided by the DoD.

[Read more](#)



Thank You!

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Legal Briefs

Final Rule Provides Unprecedented Opportunity for Small Business Past Performance Credit

On July 22, 2022, the SBA issued a [final rule](#) that allows small businesses to receive a written performance record, similar to CPARS, reflecting its performance as a subcontractor to a large business prime. The rule will also allow a small business to better utilize its past performance when it acts as a member of a joint venture. In a nutshell, the rule provides:

- A small business can request and obtain a five-scale (adjectival) past performance rating when it acts as a first-tier subcontractor on a large business prime contract that includes a subcontracting plan. (In other words, if that FAR clause was not included in the prime contract, this does not apply). This must be requested within 30 days after completing a period of performance (i.e., so this can include the base year of performance and each option year), and the prime contractor must provide the rating within 15 calendar days of the request. The small firm may then use the rating report when bidding on a contract as a prime contractor.
- A small business that acts as a member to a joint venture may also use this past performance experience. To be considered, the small firm must include the duties and responsibilities that individual member performed within the joint venture.

For small firms that haven't been ready to take the leap to bidding on opportunities themselves, this credit may provide a valuable opportunity. When competing for work against past primes, relevant teaming experience may very well put these firms on an even playing field.



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SDVOSB Status Protests: Sometimes You Can't Avoid Them

On April 20, 2022, In and Out Valet Company (“Protestor”) protested the SDVOSB status of Spearpoint Logistics, LLC (“Spearpoint”) in connection with a VA Request for Quotations (“RFQ”). Protestor alleged that Spearpoint was financially dependent upon a non-SDVOSB, Granite Peak Group (“GPG”), and also that the veteran owner did not control the firm under the requirements of 13 C.F.R. § 125.13. [CVE Protest Of: In & Out Valet Company](#), SBA No. CVE-237-P (July 11, 2022).

Among other points, Protestor alleged that Spearpoint received critical financial support from GPG. Because Spearpoint “opened approximately 20 facilities within the last 2 years,” “the only reasonable explanation for this massive enterprise is that GPG either ‘gave’ or ‘loaned’ Spearpoint the necessary start-up monies.” In & Out also contended that Spearpoint’s President, Mr. Mitzel, did not control the day- to-day management of Spearpoint because he held “several positions within GPG” interfering with his duties and responsibilities at Spearpoint. Protestor also took issue with Mr. Mitzel residing in Idaho, where Spearpoint is based in Newark, Delaware.

In addressing Protestor’s allegation that Spearpoint has established 20 new facilities within the last two years, Spearpoint showed that it has opened only “4 facilities of relatively small size since its formation.” It also denied receiving loans or other financial assistance from GPG. It further noted that other service-disabled veterans owed the firm, and it was one of *those* veterans upon whom “control” was based in its operating agreement.

In essence, the facts alleged in the protest were wrong. A non-SDVOSB firm did *not* provide assistance, the firm did *not* have 20 new facilities, and the individual alleged to lack control was not the owner upon whom eligibility was based. While unclear where In & Out received its information, it’s clear that in applying

for VetBiz verification, Spearpoint dealt with several moving parts considering its multiple owners. Although it was screened by the CVE and found eligible, it was still subject to a protest where another firm accused it of “gaming the system” and “committing a fraud on the Government.”

This protest contains a few important lessons. First, if you are protested, know that it happens in federal contracting. This is a competitive atmosphere. Also, there may be public information out there that creates an appearance of an issue. As such, be careful that there is nothing misleading or questionable on your company website—for example, if you are a professional firm and the veteran owner has the license, list it. Or otherwise, do not create the risk of having it appear that someone else is running the operations by virtue of their technical expertise.

Still, you can do things perfectly but find your status protested. Be careful and thorough in responding. If you’re unsure how to handle a response, get help

Second, if *you* are considering protesting, be careful. Ultimately, veteran firms want to protect the integrity of the system, which should be the reason for questioning SDVOSB status. However, you don’t know the intricacies of a firm, suspicious-looking facts may mean nothing at all or reflect a true issue. When you protest, do so in good faith, based on actual facts, and avoid accusations. The record will speak for itself as to whether someone is truly up to no good.

SBA's Small Business Scorecard Reflects Over \$154 Billion Awarded to Small Businesses

As a contractor, you may know that federal agencies are subject to annual goals for awards made to small businesses. These goals include government-wide goals, as well as agency-specific goals, which are outlined at 15 U.S.C. § 644(g). For example, the goal for awards to small firms is 23% of the total value of all prime contracts, 3% to service-disabled veteran and HUBZone firms, and 5% to small disadvantaged firms and women-owned firms (“WOSBs”). Every year, the Small Business Administration issues a “scorecard” that reflects how the government performed in meeting these goals.

According to the [2021 scorecard](#), awards to WOSBs and HUBZones fell short of these goals. Awards to WOSBs came in at \$26.2 billion, or 4.63%. Meanwhile, awards to HUBZone firms came in at \$14.3 billion, or 2.53%. This is part of a trend—the government has not met the goals for either socioeconomic category for some years now.

Over \$154.2 billion was received by small firms. Representing 27.23% of total federal contracting dollars spent, this exceeds its goal of 23%. The largest sub-category was small disadvantaged businesses, including those in the 8(a) Program, which received \$62.4 billion, or 11.01% of all federal contracting dollars. That is over twice as much as its 5% goal for the year. SDVOSBs also exceeded the 3% goal for the year with \$25 billion, or 4.41% of all federal contracting dollars.

According to the agency-specific scorecards, most agencies met their small business goals with flying colors, with few exceptions. For the VA specifically—recognizing that many NVSBC members receive contracts from this agency—it received an overall score of “A.” Overall, the VA awarded nearly \$8.4 billion to veteran-owned small firms, or 24.2% of all contracts (compared with its goal of 17%).

The VA is obligated under 38 U.S.C. § 8127 to follow the *Kingdomware* precedent to award to veteran-owned small firms when certain criteria are met—in essence, that the contracting officer has a reasonable expectation that two or more responsible firms will bid, and that the award can be made at a fair and reasonable price that offers the best value to the government.

These numbers reflect that for nearly 76% of awarded contracts, the VA did not find that the “rule of two” satisfied in order to set aside an award for veteran-owned small firms. Does this percentage reflect that these firms are not qualified or overpriced for such contracts? Or that perhaps the VA should be more thorough in its market research? Or that veteran firms should be more vigilant in expressing interest in opportunities? Perhaps all of these factors are at play.

Sarah Schauerte is an attorney specializing in helping veteran-owned small businesses (VOSBs) grow. She specializes in assisting VOSBs in maximizing opportunities offered by federal government contracting programs.

Calendar of Events - FEDERAL



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