



# FIRST CALL

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September 2022

## Powerful Leadership Lessons of 9/11

Shock. Horror. Sorrow. These are words that will come to mind as this September 11th marks the twenty-first anniversary of the attacks on the World Trade Center in New York City, the Pentagon in Arlington and the downing of Flight 93 in Shanksville, PA. The events of that day represent a defining moment in our nation's history – 90% of us over the age of 30 remember exactly where we were the moment of the attacks. Yet, each generation experiences the shock, horror, and sorrow of traumatic global events. Our obligation is to move beyond the terrorist act to find lessons that can be drawn from that fateful day and the weeks that followed to benefit us as leaders within our families, our communities, and our businesses. So, what lessons can be learned from our experiences of that fateful day?

My memory of 9/11 is of a beautiful day - blue sky and the sun was shining. My company leadership team and I were in the middle of a presentation at the FDIC building in Washington, DC near the Old Executive Office Building. We knew something was up when the meeting was abruptly interrupted twice, the second time being told that the World Trade Center was struck by a plane, and they thought we could be under attack. As we evacuated the building into the streets of the Capitol, we realized there was really nowhere to go. All roads were blocked, parking garages were jammed, mass transit was at a stand-still, and traffic was blocked at all the major bridges leaving DC. F-16 fighter jets screeched overhead as alarms sounded from every direction. Information was scarce in these pre-iPhone days so we jammed into the nearest restaurant with a TV to follow the news and find out if we were really under attack.

As we learned of the magnitude of the terrorist attacks our first reaction was to check on our employees and families. We had team members onsite at the Pentagon and several other DC metro government facilities, and each had family in homes and schools nearby.

Reaching for our flip phones and Blackberries, we quickly learned that we could not reach anyone – all cell towers were jammed. With no access to communication and all transportation blocked we were forced to sit and wait, watching a foreign invasion via the TV and praying. A sense of frustration prevailed as we sat and watched the events unfold, events that claimed the lives of some 2,977 people and injured more than 6,000 others.

Reflecting on these events 21 years later, many lessons of positive leadership can be applied to business leaders today. It is clear there were many courageous and selfless acts during this terrorist attack. Clear examples were the passengers of Flight 93, the Mayor of New York, police commissioners, fire chiefs, the President and average citizens going above and beyond! These men and women exhibited traits of leadership (Semler, 3/16/15) under pressure that we can all learn from including:

- Share information frequently and address questions openly and honestly
- Control the flow of information to outside agencies to prevent interference
- Refuse to speculate about details that would distract people from the main message
- Focus on the problem and its solution while carefully avoiding blame
- Coordinate communications among groups to present a clear, unified message and delineation of responsibility.

These traits contributed to the extraordinary rescue and recovery efforts on 9/11 and the days and weeks that followed. As business leaders it's important to ask ourselves how we would react under similar circumstances. What leadership lessons can we each derive from our own experiences of this national disaster? And how will we apply those lessons learned in our lives today? While each of us will reflect on these questions differently,

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there are positive leadership lessons that can benefit us ALL in our daily business and personal lives. Here are a few:

- **Others before self.** This was emulated by the passengers on flight 93 and the many fire fighters and rescue personnel. They did not worry about their own personal safety. Their initial inclination was to save others. It was clearly a mentality of “others first”. A great example of “Servant leadership! What is your leadership style?
- **Effective Communication.** Effective, timely, honest and accurate communication proves to be the most significant leadership lesson in a situation of unknowns. Communications has to be unified and errors must be minimized and corrected if they happen. In uncertain times we all have a thirst for information. We want the facts and we want them now. I call this instantaneous gratification! As important, communication has to have some cadence of frequency even if it is a report that we “do not know”.
- **Lead by Example.** How often do we hear leaders have to “lead by example” or “your actions speak louder than your words”. More is expected of leaders. People watch your actions and can be swayed or inspired by them. Many of the leaders on 9/11 led by example and were physically present. They displayed their emotion and humanness and yet were inspirational to the many thirsting for information and leadership. They planned, acted and inspired others to action even in the face of extreme adversity!
- **Courage.** A lot of leaders during this time didn’t have the answers. Many were fearful but all had the courage to act. Courage is not the absence of fear. We all are fearful. Courage is how one overcomes and deals with fear. Clearly, many of the leaders did not let fear overcome them or their judgement. They overcame their fear, made decisions and moved to action. We all need courage at times to do the right things even in daily business transactions!
- **Acting not blaming.** Many of the leaders during this time of crisis spent no time on trying to affix blame nor to create a negative climate. They focused on taking accountability and action. They moved and acted with a common purpose to get through the crisis. Remember, an environment where people are allowed to blame others without taking personal responsibility can jeopardize your operations and organizational culture.
- **Contingency Planning.** You never know when a crisis will hit. Take the time to plan contingencies for emergency situations and rehearse them. As we have seen, a crisis can come in many different forms: terrorist attack, pandemic, floods, snow storm, energy failure, cyber-attack, etc. Our goal as leaders is to plan for and prioritize high-risk events with what appear to be unlikely occurrences. They may not happen but when they do there will be a game plan for action that could possibly save lives or your business.

I know there are many lessons to be learned from 9/11. I hope these thoughts and ideas can help you in navigating your business and even personal life. As a student of leadership, I am constantly inspired by the positive leadership skills of the many leaders I have the honor and pleasure of working with on a daily basis. I am constantly learning from them and re-enforcing my leadership skills. And I look forward to learning together as we build our businesses and our communities. Thank you and God Bless the United States of America.

Phillip Panzarella  
NVSBC Board of Directors  
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## Make Working Capital Work for You

Just like jets consume fuel, scaling up consumes cash. In broad strokes, there are three uses of cash. The first is working capital that covers the timing differences between paying your expenses and when you get paid by your customers. The second use is funding to build out your business such as hiring talent, space, and equipment. The third is funding business losses or using cash to get through tough times / down-cycles. This is the danger zone.

### Figure Out How Much You Need

Most CEOs that we work with don't like fooling around with a lot of numbers, especially numbers in the financial arena. So buckle up your seat belts because this gets slightly technical. First, measure the maximum number of days between when your team does the work including shipping product to when the customer bill is sent. Then add the average number of days to when you get paid, this is called Days Sales Outstanding (DSO) to determine the total number of days from when you do the work to when you get paid. This number might surprise you!

This is a subset of the Cash Conversion Cycle (but CEOs don't like going into rabbit holes). Next calculate the daily total cost to run your business including overhead, sales & marketing, and direct cost. This number might surprise you as well. Multiply this amount by the total number of days to calculate the minimal amount of working capital that you need.

The last step, since the world is not perfect, is to add a hedge. Figuring out the hedge is more art than science and is influenced by how big or small the minimal amount is. We typically hedge by 10-30% to ensure that we have enough fuel for the full flight.

### Get Capital Proactively

Think about how a bank would see your company and its finances. Do you have a good story about your loan-worthiness? Does the number story make sense or are there anomalies that you can explain easily? Can you access a credit line that can cover the time you need to make payroll and pay vendors before you get paid?

Even if you practice strict payment deadlines, it is normal not to have the cash you need to cover working capital requirements. Most often, the cash gap widens as growth accelerates and as the absolute size of the business gets larger.

Banks will look at your number story to determine how much "free" cash you have to support a loan. Many banks want something like 125%. In addition, banks and other lenders will compare your performance ratios to competitive benchmarks to determine if you are a good credit risk or not. Do you know your free cash flow amount and competitive benchmark standing? Now that you are ready, be Bold! Establish relationships with local, regional, and national banks plus other lenders such as PE firms before you need the cash.

### Start the Conversation Before You Need It

As an entrepreneur, lecturer, and author, I respect my contemporaries who are asking bold questions. The best business owners never stop learning.

Every CEO has unique personal motivations, but their objectives almost always match the following:

- Win new customers
- Retain and grow existing customers
- Attract and develop people capacity
- Reach top financial performance
- Gain access to capital at favorable terms

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*Having built and sold his first company before graduating from high school, Kirk is a natural at building growth companies and helping talented CEOs and their leadership teams exploit opportunities by obliterating obstacles that might get in their way.*

## #1: Don't Confuse Bid Protests and Size/Status Protests!

Welcome, readers, to the height of protest season! As we approach the end of the federal fiscal year, the number of contract awards being made increases. So too, therefore, do the number of protests challenging those award decisions. If you are currently asserting or defending a protest (or think you will be before October is over), you are certainly not alone. Unfortunately, if you are confused about the details, mechanics, timing and procedures relating to protests – well, you also are not alone. This is one of the most confusing areas of government contracting. Over the next few issues of this newsletter, I will be writing a series of articles addressing the most common mistakes that contractors make in connection with protests, and how to avoid them. Up first in our series: Don't Confuse Bid Protests and Size/Status Protests!

This is a **very** common area of misunderstanding. I frequently hear from my small business clients that they want to file a “bid protest” because one of their competitors for a set-aside contract does not actually meet the size or status requirements to bid on the contract. Maybe the client believes that the competitor is not, in fact “small,” or that the competitor is a “pass through” company, which is affiliated with a large company. Maybe the client thinks the competitor isn't really controlled by that veteran or woman owner, as the regulations require. My clients will say they want to file a “bid protest” to challenge the award to the ineligible contractor-competitor. But in reality, what they want to file is not a “**bid** protest.”

Bid protests concern a challenge to the *action taken by the agency* in connection with a specific procurement – like selecting inappropriate terms for a solicitation, or the misvaluation of offerors' proposals. In contrast, protests that focus on *a competitor's eligibility* to compete as a small business or

as a special status contractor - HUBZone, 8(a), Service Disabled Veteran Owned Small Business (SDVOSB) woman-owned small business (WOSB), etc. - are called **size** protests or **status** protests, and they are quite different from **bid** protests. Let's break down some of the most important differences.

- First, as a protestor, you file size/status protests in a different place than you would file a bid protest. Contractors can file a bid protest with the contracting agency, the Government Accountability Office (GAO), or the U.S. Court of Federal Claims. A size or status protest, however, is filed with the contracting officer, who then forwards it to the Small Business Administration's (SBA) Government Contracting Area Office (or, in the case of certain, limited SDVOSB eligibility questions, to the VA's Center for Verification and Evaluation (CVE) - though that will be changing in 2023 as the veteran-owned programs are consolidated), for a decision.
- Second, the deadlines to file size and status protests are different than the deadlines to file bid protests. We will be talking about bid protest deadlines in detail over the course of several future installments of this series; you will see the complex analysis that is required in order to calculate a bid protest filing deadline. As compared to bid protests, size and status protest deadlines are easier to calculate, but sometimes also easier to miss. If the contract is a competitive set-aside, the contracting officer is supposed to provide a notice of intent to award to a small business prior to making the award. Size and status protests must be filed within five business days after the contracting officer issues this notice. If no such pre-award notice is given, the deadline is five days from the notice of award/bid opening. In many cases, your size/status protest deadline may fall *before* the applicable bid protest deadline.

## Ten Biggest Protest Mistakes

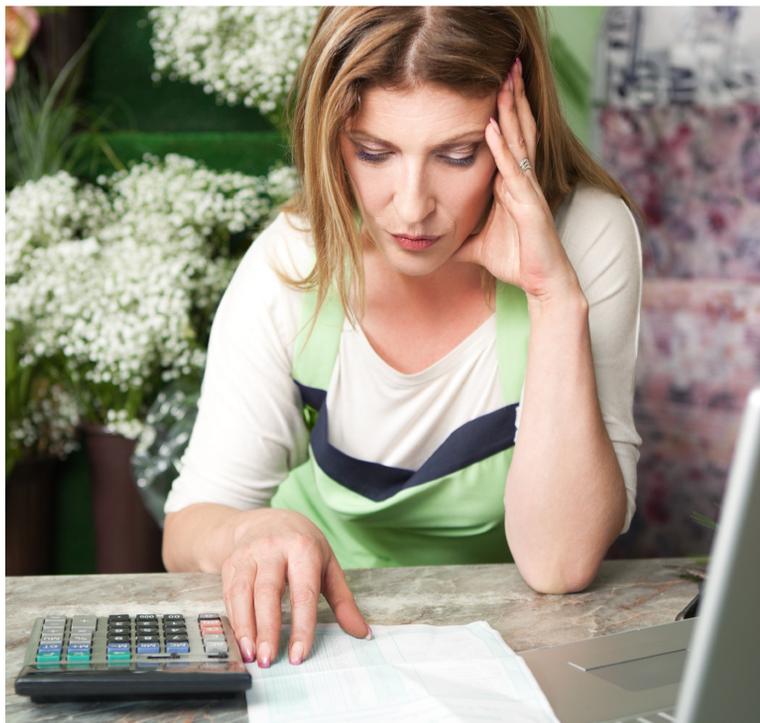
- Third, when filing a bid protest, the protestor should expect to participate in multiple rounds of briefing. In size/status protests, once the protest is submitted, it is up to the SBA to pursue the size/status investigation, and the protestor's role is largely over. In contrast, on the other side of things (i.e. if you are the contractor who's award is *being protested*, as opposed to the contractor who is *protesting*), there are major differences in terms of required contractor effort, and level of government involvement. In bid protests, though the awardee may intervene, the primary fight is between the protestor and the procuring agency. The agency steps in to defend its award decision. In size and status protests, the procuring agency does not really get involved. Rather, the burden falls on the protested entity to establish and prove its eligibility as a small and/or special status small business.

As you can see, it is critically important to recognize the differences between bid protests on one hand, and size and status protests on the other. The procedures and processes you need to follow, and – perhaps, more importantly – the deadlines you need to meet, vary greatly depending on which context you find yourself in. In some situations, when you lose out on a contract, you may have grounds to file **both** a size/status protest contesting the awardee's eligibility AND a bid protest challenging the agency's award decision. An experienced government contracting attorney can be of great assistance in determining which type(s) of protest you might be able to file, or how to defend against a protest filed against you.

Maria Panichelli is a partner in McCarter & English LLP's Government Contracts & Global Trade group, and she focuses her practice exclusively on federal contracting and small business procurement. McCarter's more than 375 sophisticated and exceptionally skilled lawyers in 11 offices deliver solid results and innovative solutions to our clients nationwide. We are trusted business advisors to our clients, which include an array of Fortune 100, mid-market, and emerging growth companies. Check out the NVSBC's webinar 'Charlie Mike' featuring Maria Panichelli on the ['Top Ten Tips About Protests: Fighting for and Keeping the Contracts You Deserve.'](#)

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# CBCA to Contracting Officer: It Isn't A "Final Decision" Just Because You Say It Is

In *Gulf Tech Construction, LLC v. Department of Veterans Affairs*, the U.S. Civilian Board of Contract Appeals dismissed a contractor's appeal for lack of jurisdiction, finding that the underlying claim in the appeal was merely an uncertified and unsigned request for equitable adjustment ("REA") submitted for negotiation purposes (CBCA 7447, August 12, 2022). This was despite the contracting officer subsequently treating the REA as a claim and issuing a final decision on the matter, to include describing appeal rights.

This case presents an interesting lesson on the procedures necessary to present a claim before a government contracts appeals board. Here, the contractor had submitted its REA at the request of its contracting officer, and in response received the type of final decision one would expect with a certified claim. The appeal rights described in the final decision indicated that if the contractor wanted to challenge the decision, they would need to file their appeal with the CBCA within ninety days. In order to preserve their rights, the contractor followed this direction.

After the appeal was docketed at the CBCA, the contractor requested an extended stay of proceedings for purposes of submitting a certified claim to the VA contracting officer. In response, the CBCA found that a stay was unnecessary, *because there was no claim to form a basis for appeal in the first place*. For one thing, the contractor did not request a final decision on its REA. And second, the claim was not certified, meaning that it did not contain the certification language set forth at FAR Part 33. Even though the contracting officer treated the REA as request for a final decision, the Contract Disputes Act "denies the contracting officer the authority to issue a decision" on a request for monetary compensation "until a contract claim in writing has been submitted to him for a decision."

In other words, just because a contracting officer calls a decision a "final decision," that doesn't make it so. The CBCA consequently dismissed the appeal, and the contractor must now file a certified claim if they intend to again appear before the CBCA.

The contractor did nothing wrong here. They submitted an REA per agency request, and then, when it appeared they needed to appeal a "final decision" per the appeal obligations cited in the decision, they did so. As it turned out, however, the contracting officer's direction was incorrect and the CBCA effectively remanded the matter so the contractor could submit an actual certified claim which met the requirements of FAR Part 33. Presumably the contractor will do so, and if a solution cannot be found at the agency level, the CBCA will be able to exercise jurisdiction over any appeal.

Still, this case shows that when it comes to submitting a claim, the onus is on the contractor to have it done properly and to select the correct route: claim or REA? Here, the contractor chose the REA process, which is fine, but the contracting officer took seven months to issue the "final decision." If receiving the money was vital, there was no mechanism to enforce a time limit (in general, a contracting officer must render a final decision on a certified claim within 60 days). And what if the statute of limitations had run out before it was confirmed the claim was not certified?

Know the difference between an REA and a claim. An REA typically works well if the understanding is the government will negotiate and it appears unlikely you will have to appeal the matter as a dispute. If the government fights back, however, a certified claim will give you the right to seek higher review. In general, familiarize yourself with [FAR Part 33](#), the certification process, and the steps necessary to file an appeal. If you don't, it could cost you time and money.

# Forming a Joint Venture: The Easiest Way to Lose a Contract on a Technicality

If you have a socioeconomic status and are interested in teaming with another firm for a set-aside contract, you're likely aware of the option of forming a joint venture. When it comes to VA SDVOSB set-aside contracts, this requires you to separately form the joint venture, obtain a Sam.gov identification number, and then register that joint venture in the VetBiz registry. That last step—other than all the inputting and CVE interface—largely involves getting the approval of your joint venture agreement, as the joint venture otherwise piggybacks on the eligibility of the SDVOSB managing venturer.

THE WORK DOES NOT STOP THERE! Once you have a verified joint venture, every single time you bid on an applicable set-aside, you need to make sure you execute an addendum that meets all the requirements of the joint venture regulation as it pertains to that individual solicitation. For SDVOSB set-asides, this is 13 C.F.R. § 125.18. Also, that addendum must be executed **before** offers are due. If not, and you are protested, you are dead in the water. (There is no opportunity to cure because you have to be compliant at the time you make your offer in order to qualify as an eligible SDVOSB).

In [Gray Venture, LLC](#), SBA No. VET-276, an SDOVSB joint venturer learned this lesson the hard way when its award was protested to the local SBA Area Office based on size. The SBA Area Office found that the two venturers were affiliated because the joint venture had not met all twelve requirements of 13 C.F.R. § 125.18, to include stating the purpose of the joint venture, naming the managing venturer and responsible manager, and setting forth the responsibilities of the parties. The decision was upheld by SBA OHA, although SBA OHA did find that the joint venture's agreement had set forth the purpose of the joint venture. Consequently, the joint venture was found not to be an eligible SDVOSB, and it lost the award.

Often, joint venture protests come down to a technicality: does the joint venture agreement comply with 13 C.F.R. § 125.18, and was that agreement in place before the offer? If you are bidding on contracts as an SDVOSB, you must make sure both those questions can be answered in the affirmative. If necessary, make a table listing each provision and where it can be found in your joint venture agreement. If you're protested, that just might be the best hour you've ever spent.

*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.*

## National Preparedness Month



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# 2nd Annual NVSBC Education Foundation Charity Golf Tournament



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