

# THE VOSB SUMMARY: NEWS YOU NEED TO KNOW

## (A Quarterly Publication for VOSBs: The Spring Edition)\*



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### VA Shenanigans: Public Shaming With A Purpose

In wake of the Phoenix healthcare scandal, the VA recently announced that it would be cleaning house as it relates to employees violating its policies and federal regulations. In reality, however, it appears that the VA has not been cracking down on employees engaging in unethical behavior.

This leads the public to wonder: if the VA isn't willing to take action against employees not upholding its mandate, how can the problems with the system possibly improve?

It is important to understand that the VA is constrained in how it can discipline or terminate employees. Once a government employee survives a probationary period of employment, his or her job becomes a "property right" which is entitled to due process protection under the U.S. Constitution.

That being said, in recent months there have been three cases of egregious behavior by VA employees, with varying degrees of consequences:

**First**, Steven Pancoast, a former Safety Programs Administrator with the VA, was charged in Oklahoma for various fraud charges for misrepresenting his certifications as a trained law enforcement officer, as well as for possessing a firearm after a felony conviction (larceny/possession of a weapon). In his role as an investigator for the Oklahoma VA, Pancoast brought charges against those committing fraud relating to the VA and testified in court as a law enforcement officer.

**Second**, an unnamed Project Manager who served on the Market

Survey Team evaluating property sites for a new VA healthcare center, immediately realized that one of the properties was owned by a family member. She uttered such phrases as "I'm so uncomfortable here" and "I really shouldn't be here. Oh my God, I shouldn't be here." Regardless, she stayed on to evaluate the proposals, and her family member was selected. Using taxpayer dollars, the VA OIG conducted a lengthy investigation of the matter, and the result is ethics training for the Project Manager and her supervisors to whom she mentioned the issue. More taxpayer money will be spent on the requirement that the VA's attorney's "review this entire matter from start to end."

**Third**, Robin Paul, a case manager for the Roubedash VA Medical Center's Seamless Transition Integrated Care Clinic, which provides mental health services to transitioning combat veterans, has been placed on *paid* administrative leave after she circulated an email mimicking the popular "Elf on a Shelf." The email posed the elf in various parts of the clinic in situations including begging for Xanax and committing suicide using Christmas lights. Outraged veterans organizations are calling for Paul's termination.

These stories aren't merely colorful. They're a reflection of a larger problem: a lack of accountability within the VA. Stories like these should be circulated so the VA feels the pressure to remove characters that undermine its important goals.

Of these three, who do you think most deserves the axe?



## VA STATS ON DISABILITY CLAIMS PROCESSING: HOW ACCURATE ARE THEY?

On March 31, the VA issued a press release claiming that the federal initiative to provide timely decisions on disability payments to veterans has crossed a major milestone in its final sprint to eliminate the backlog of veterans' benefits claims. The press release claims that it has reduced its inventory of backlogged claims from a high of 611,000 claims in March of 2013 to fewer than 200,000 in March of 2015, while at the same time improving decision quality.

Under Secretary for Benefits Allison Hickey reiterated the VA's goal of eliminating the claims backlog by the end of 2015, crediting a combination of factors for the 67% drop in backlog, including, the extra hours of work put in by benefits claims processors across the nation, who have worked evenings, Saturdays and Sundays to drive the backlog down; as well as procedural efficiencies backed by automation tools and paperless claims processing.

While these numbers may look pretty, the fact of the matter is that by focusing its time on the backlog, the VA's claims processing has suffered in other areas (particularly by adding years to appeals). Learn about the flip side to this good news here: <http://wp.me/p2rFRT-jv>.

## FEDBID'S BLINK-AND-YOU-MISSED-IT SUSPENSION

Mere weeks after suspending Virginia-based reverse auction company FedBid, the Air Force lifted the suspension.

The suspension stemmed from a VA Inspector General report that said Susan Taylor, a Veterans Health Administration deputy procurement officer, pressured staff repeatedly in emails to speed up the acquisition process and pick FedBid for the reverse auction contracts. It also detailed how Ms. Taylor improperly disclosed non-public VA information and misused her position for private gain. FedBid and its CEO, Ali Saadat, were in collusion with Ms. Taylor relating to these unsavory actions.

On February 23, the Air Force granted a reprieve for FedBid, responding positively to its proposal for how it would maintain honesty and integrity

and act in compliance with all laws and terms.

In an agreement entered into by FedBid and the Air Force, FedBid admitted there was a sufficient basis for its debarment, but that debarment would be terminated so long as the Air Force was satisfied with FedBid's conduct. The Agreement also required FedBid to sever business ties its CEO (Saadat), whose debarment remains on the table.

The lesson learned from this is clear: because debarment is a matter of discretion exercised by the debarring official, a contractor can escape this harsh penalty if it shows penance. Here, FedBid took a number of substantial remedial steps, including removing Mr. Saadat from the management chain, hiring legal counsel to educate it on its policies, requiring its employees and board members to sign a revised code of business ethics, and appointing a chief compliance officer. By

acknowledging responsibility for its actions and taking measures to prevent future violations, it has escaped a more severe penalty.

Under FAR Part 9.4 (Debarment, Suspension and Integrity), a contractor can be debarred for action that indicates "a lack of business integrity or business honesty that seriously and directly affects the present responsibility." In deciding whether to debar a contractor, a debarment official must consider factors such as the contractor's efforts to mitigate future issues, whether effective controls were in place, and whether it took appropriate disciplinary action against responsible individuals.

In FedBid's case, it clearly hired an attorney who looked at these factors. Because it did this, it is again free to pursue federal government contracts.

## **SBA PROPOSES “UNIVERSAL” MENTOR-PROTEGE PROGRAM**

The SBA has proposed to establish a government-wide mentor-protégé program available to all small businesses. This is a welcome development especially for SDVOSBs, as the VA’s pilot mentor-protégé program has ended. **Comments to the rule must be received on or before April 6, 2015.**

In the proposed rule released on February 5 (the Rule), the Small Business Administration proposes to establish a single, “universal” mentor-protégé program, open to all small businesses and not just those with certain socioeconomic designations. (This program would be identical to the 8(a) mentor-protégé programs, although some commenters have noted that it cannot be *truly* identical per the authority granted by the 2013 NDAA, because the NDAA excludes non-profits as mentors). Notably, the SBA’s proposed mentor-protégé program would allow SBA-approved mentor-protégé joint ventures to qualify as “small” for any federal government prime contract or subcontract – a benefit currently available only to 8(a) companies.

Small businesses seeking a mentor-protégé relationship would be required to submit information to the SBA in adherence to the Rule. The SBA’s Director of Government

Contracting would review and approve/decline these applications.

While right now, the number of spots in the program is not proposed to be “capped,” the comments to the Rule note that if the number of firms seeking approval becomes unwieldy, the SBA may institute certain “open” and “closed” periods for the receipt of further applications.

So who can be a mentor/protégé?

In keeping with the Rule’s general goal of having the universal program mirror the already-existing 8(a) program, a business will generally only serve as a mentor to one protégé, but the SBA can approve a mentor having up to three protégés.

To be a protégé, a business must qualify as “small” under its NAICS code. Only those firms that are affirmatively determined to be small and have not received a negative determination from the SBA pursuant to a size protest may be protégés. A protégé will normally only one mentor, but it may have two mentors under certain circumstances.

Benefits of the program are similar to those of the 8(a) mentor-protégé program. A protégé may joint venture with its SBA-approved mentor and qualify as a small business for any federal government contract or subcontract (so long as the protégé is “small” under the applicable NAICS code). The exclusion from

affiliation also applies, allowing a joint venture between the mentor and protégé to be deemed “small” for purposes of a procurement. A mentor may also own an equity interest of up to 40% in the protégé firm in order to raise capital for the protégé firm.

Based on your business structure, goals, and available resources, this development has the potential to expand your federal government contract arena. Access the Rule at: <https://www.federalregister.gov/articles/2015/02/05/2015-01548/small-business-mentor-protg-program-small-business-size-regulations-government-contracting-programs>.



## FRAUD SPOTLIGHT: CONTRACTOR PAYS \$1.1 MILLION SETTLEMENT

On March 28, 2015, the Department of Justice issued a press release announcing that Gilbane Building Company will pay the U.S. \$1.1 million to resolve allegations that W.G. Mills Inc. - a company with which Gilbane merged in 2010 - violated the False Claims Act by creating a front company in order to secure a Coast Guard SDVOSB set-aside contract. The front company, Veterans Constructors Incorporated (VCI), will also pay the U.S. \$50,000 plus five annual contingency payments equal to one percent of its total revenue.

This case began when two Florida whistleblowers brought suit in Florida under the False Claims Act, and the government joined the lawsuit (which happens in less than 25% of cases). The suit effectively alleged that VCI was set up to be a front for W.G. Mills. According to the DOJ press release, the government also contended that VCI's affiliation with W.G. Mills rendered it ineligible for the contract, that W.G. Mills performed the contract work, and that the Coast Guard would not have awarded VCI the contract had it known it was a "front."

The claims resolved by the settlement are allegations only; there has been no determination of liability.

## SBA RULE COULD MAJORLY IMPACT SMALL BUSINESSES

On December 29, the SBA published an announcement in the Federal Register regarding proposed amendments to the regulations implementing provisions of the NDAA of 2013 pertaining to performance requirements applicable to small business and socioeconomic program set-aside contracts and small business subcontracting. The SBA also proposes to amend its regulations concerning the nonmanufacturer rule and affiliation rules. (<https://federalregister.gov/a/2014-29753>).

Any small business competing in the federal arena should monitor these changes, as they may have major implications on business operations. Changes include, but are not limited to, the following:

Compliance With Limitations on Subcontracting - The SBA proposes to revise 13 CFR 125.6 to incorporate new definitions and calculations for limitations on subcontracting. The SBA will now look at the total award amount, not contract cost, in determining compliance with LOS requirements.

Affiliation/Identify of Interest - The SBA proposes to revise 13 CFR 121.103(f) to clarify the types of relationships between individuals that create a presumption of affiliation. It will also explicitly state that economic dependence will be presumed if a small business receives 70% of its revenue from another company.

Joint Ventures - The SBA proposes to amend 13 CFR 121.103(h) to broaden the exclusion from affiliation to two or more small businesses that propose to joint venture on a procurement without being

affiliated for purposes of that procurement requirement.

Calculation of Annual Receipts - The SBA proposes to amend 13 CFR 121.104, which explains how annual receipts are calculated and what is counted.

Size Protests - The SBA proposes to amend 13 CFR 121.1001(a) to clarify that any offeror that has not been eliminated for reasons not related to size has standing to file a size protest.

NAICS Code Appeals - The SBA is also seeking comments on what is the appropriate timeline for filing a NAICS code appeal.

Nonmanufacturer Rule - The SBA is proposing to clarify that the limitations on subcontracting and the non-manufacturer rule do not apply to small business set-aside contracts valued between \$3,000 and \$150,000.



### TAKE ADVANTAGE OF FREE ADVICE FROM THE CVE

For VOSBs/SDVOSBs going through the verification process with the VA's Center for Verification and Evaluation (CVE), the CVE is working to make the process less painful. It now offers webinars to business owners, where a CVE member walks the audience through a PowerPoint presentation and then allows for questions.

If you are a verified business, you should receive an email from the CVE inviting you to take part in the webinar. Please know that this is not mandatory – the CVE is merely reaching out to those who are close to having their verification period expire, and you can take the advice or leave it. The email will provide a link where you can choose from a number of different dates and times; and after the webinar, the CVE will send you the slides. It's worth checking out if you have questions about what the re-verification process entails – spend the hour on the webinar rather than spin your wheels during the actual process.

Learn more at: [https://www.va.gov/osdbu/library/you\\_asked\\_we\\_listened.asp](https://www.va.gov/osdbu/library/you_asked_we_listened.asp). Also, if you have questions about the webinars/want to attend, email the CVE at [vaosdbu.cvepre-appbriefs@va.gov](mailto:vaosdbu.cvepre-appbriefs@va.gov). Please include your business name and DUNS number in any correspondence.

### THE TRUTH ABOUT CVE SITE VISITS

As a veterans attorney who handles a large number of VetBiz applications, I've been seeing a large number of unannounced site visits of verified businesses. The idea of an audit makes anyone's skin crawl, and CVE audits can be particularly scary because of the scant information available relating to them. Well, if you're subject to an audit - or think you might be - read this and hopefully feel a bit better...

CVE audits happen for four major reasons: 1) at random (most common); 2) based on fraud tips; 3) if the business holds a VA contract; or 4) as part of pre-verification screening. If you are subject to an audit, know it has *most likely* occurred because your business was selected

randomly. (Lucky you!). Verified businesses can be subject to audits after 90 days of verification. They aren't subject to random audits if less than 90 days are left.

Also, know that the documents requested by the CVE generally have nothing to do with your business specifically. In a site visit, the CVE will ask for the same documents as it does during verification (contract signature pages, tax returns, payroll, etc). It also might ask for documents relating to affiliation (such as information on what your company pays subcontractors). These documents are all part of their big checklist - there isn't something about your business that makes them think they'll find a smoking gun in there.

As a general tip, in order to prepare for an audit, keep good records. Look at the CVE's required documents list (which is the same for your initial verification as for re-verification), and make sure they're easily accessible at your office. Then, if a CVE official shows up at your door, you can produce all the documents he requests and not have to worry about submitting documents later.

CVE audits are not fun. They can seem unnecessary, and a lot of businesses feel picked on for having to go through them.

You can, however, make it out of them unscathed (and still verified).



## VETS 15: A VOSB CONFERENCE WORTH ATTENDING

I am actively involved in the National Veteran Small Business Coalition (NVSBC), a veteran business organization with the purpose of transitioning veterans into business owners servicing the federal government. This year, NVSBC is hosting its annual conference from June 8 through the 11th in Norfolk, where it will bring together federal agencies, prime contractors, and veterans to network and discuss how to take full advantage of the federally-mandated contracting opportunities set aside for veteran-owned small businesses.

Quite honestly, whether a conference is worth attending depends on the goals of your business. This one is worth taking a look at especially if you are a start-up, as it offers a good mix of learning sessions and networking opportunities. The agenda features sessions on the CVE verification process, financing options, contract management, simplified acquisitions, GSA schedules, and more.

Registration is currently open. If you're an NVSBC member, it's \$349 to register; if you're a non-NVSBC member, it's \$399. This includes all three days of the conference, access to the exhibit hall, and

entrance to its networking events and luncheons.

This year, the keynote speaker is General Michael Hayden, former director of the Central Intelligence Agency. There will also be a number of procurement officials mixing with veteran business owners, likely more than last year given that Norfolk is only a few hours away from the Washington, D.C. area (previously, the conference was in Tahoe, NV).

For more information about the conference, the website can be accessed at: <http://www.veterantrainingsymposium.com>.

**THANKS FOR READING!**

*Below: Archer, the Legal Meets Practical, LLC Mascot*



## LEGAL MEETS PRACTICAL, LLC

### ABOUT

My legal practice, based in the Atlanta area, is designed to help growing VOSBs, particularly with the VetBiz verification process. I come from a family of both veterans and small business owners, and I understand the value in legal counsel who can clearly communicate while providing effective legal solutions. Hiring a lawyer should simplify your life, not complicate it.

### MISSION STATEMENT

My mission is to provide accessible, high-quality legal services to small business owners and to veterans.

### BLOG

If you found the information in this newsletter helpful, sign up for my weekly blog on veterans issues at: <http://www.legalmeetspractical.com>.

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