



FIRST CALL

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February 2023



Perseverance is a key aspect of any Government Contracting (GovCon) business. From the budding entrepreneur to the CEO of an existing small business, growth is not always easy and can take time. As a Board Member of NVSBC and a member for over 11 years, my venture into GovCon has been filled with many ups and downs. However, the phrase I learned playing high school football has kept me moving forward in life, no matter how many times I've failed: "Winners find a way!" As I look back at over my 30-year career, I'd like to thank those that educated and mentored me along the way to become the strong, optimistic, and sometimes hard-headed person I am today.

We had a saying in my family, or at least my mother did: "You're either going to college or joining the military." After pursuing some college at NC State University, I joined the U.S. Air Force (USAF) in 1993 as a Medical Logistics Specialist. I was passionate about the career that the USAF deemed I would be great at, and they were right. I excelled as an Airman in my new field and my supervisors noticed my mission-focused attitude. I was granted some great opportunities in my first assignment at Andrews AFB while continuing to pursue a degree at night from the University of Maryland.

Over the course of my 4-year assignment, I had the opportunity to work in warehouse distribution, acquisitions, and inventory management of four pharmacies within the hospital. This led me to my next career move, after I finished my time with the USAF in 1997 while also graduating from the University of Maryland. As a Managed Care Sales Representative working for a major pharmaceutical distributor, I managed the National Capital Region \$125M DoD/Federal Government Pharmaceutical Prime Vendor Program. It was a progression in my career that took me to new heights but allowed me to stay connected to what the USAF had trained me to do. From there, I moved into deploying medical supply chain systems across the U.S. Navy, and I eventually moved into software development, writing system requirements, performing testing, and designing data migration strategies. At that point, I decided I wanted to start my own GovCon business, so in 2005, RB Consulting, Inc. ("RBCI") was born.

I created RBCI out of my passion to continue serving, and supporting the mission meant providing the right medical supplies to give critical patient care—once a Medical Logistician, always a Medical Logistician! As with any GovCon, RBCI's goal is to support the mission of our customers and provide the best possible solutions to solve the government's problems. However, obtaining that first contract is key, and whether you're focusing on federal contracting or subcontracting, persevering through one loss to the next until you find that winning strategy takes courage and determination—qualities that Veterans are prone to have.

What was my experience starting RBCI? Unfortunately, I didn't have a mentor, no external organization I could join to initially help me develop my business model or understand the GovCon environment. It was trial by fire, and I've spent enough time and money to fail at this game multiple times. However, I've always moved forward and used those lessons learned to build a better business model. As Veterans, we are trained to have a "never give up" mentality, and the daily grind of growing a GovCon small business can be extremely overwhelming. Turning to industry experts and finding mentors to guide you along the way will significantly help you develop your GovCon business.

THOUGHT LEADERSHIP CON'T

Joining the NVSBC is one of the smartest things I did in my early years. I didn't always take advantage of the organization's networking and training opportunities, such as the Charlie Mike Training Series or the NVSBC Veteran Entrepreneur Training Symposium (VETS) conferences, but I have since changed my habits to venture out and meet people, attend events, and stay informed. By joining NVSBC, you're meeting other Veteran small business owners to share experiences, get support in finding government contracts, and reap the benefits of endless networking opportunities.

Look at connecting with NVSBC today, and consider one last saying I'm quite fond of: "Winners focus on winning, and losers focus on the winners."

Be a winner and persevere!

Robert Betters, President/CEO
RB Consulting, Inc.
Board of Directors, NVSBC

VIEWPOINT

Small businesses are suffering in government contracting's 'Valley of Death'



A recent report released at a large federal contracting conference put the final nail in the coffin. According to the Society of American Military Engineers (SAME), over the last 10 years, the number of businesses providing services to the federal government has shrunk 38%. Worse still, among contractors holding small business contracts, the sector shrunk 41%.

We better look long and hard at those numbers because what they mean is that for some time, without anybody much noticing it, small businesses serving the federal government have been getting quietly eviscerated.

The Pentagon actually noted the trend earlier this year. Said Deputy Defense Secretary Kathleen Hicks, a "substantial decline" in competition in the small business defense-industrial base poses a security threat. "We're down to about five prime contractors," she went on to note, adding "innovation largely occurs in the small business community. It's a huge driver of innovation."

The same conclusion has been reached by the Veterans Administration, the nation's second-largest federal government agency. "My vender base is going down," lamented Dr. Ernest Reed, director of category management support at the VA, when he spoke before a group of concerned small business owners attending the National Veteran Small Business Coalition's November meeting.

It's not only that the number of small business vendors are declining. The additional problem is that the current system the federal government has in place actually prevents small businesses from becoming bigger businesses. This, naturally, is the very opposite of what lawmakers intended when they structured programs to fuel small business growth.

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Unfortunately, due to the perverse consequences of these rules, the number of businesses able to graduate from what is known in the industry as the “small business size standard” has been a mere 2.5%. That is, over the last 10 years, only 2.5% of “graduating” small business companies were ever able to win prime contracts.

If a public high school in our region graduated only 2.5% of its students, that high school would be closed. While there are many factors involved, there is one structural problem within the federal government’s procurement system that drives these poor results. Intended to promote small business growth, the system does just that until they arrive at a precarious cliff. Just as these businesses begin to grow, with bigger annual revenues or more employees, the regulations bring them to an existential crisis.



They are suddenly prohibited from obtaining small business contracts — what their business initially grew on. It’s such an abrupt change that these small business size standards create something industry insiders refer to as the “Valley of Death.” The fact is, 97% of these businesses never survive that valley; they never get to what is called “full and open,” the massive endless terrain occupied by the bigger government contracting players.

There should be a transition period to support these companies and ensure innovation and competition in the national security industrial base, instead of this Draconian edict.

According to Gallup, Americans have more institutional confidence in small businesses than they do in the police, public schools, the medical system, church or even our U.S. military. It’s also important to remember that small business federal contractors bolster our national security at a time when on-shoring to reduce the potential for supply chain disruption and essential services is widely recognized as an urgent mandate.

To deal with this issue, SAME proposed a pilot aimed at guiding small businesses through the transition to “other than small.” Bipartisan legislation introduced Dec. 21 — “Solving the Unnecessary Contracting Cliff for Enterprises to Scale Successfully,” or SUCCESS — establishes a pilot “ramp” program and is a start. No member of Congress from D.C., Maryland or Virginia is currently a co-sponsor.

Not only must we urge our local representatives to pass SUCCESS, we must press them to go further. All small business contractors deserve a ramp to success. The business community, together with policymakers and federal agency heads, must clear the multiple regulations and roadblocks that limit today’s small business federal contractor from growing, innovating and protecting our country.

"NVSBC Board Member Nancy Langer, President and Sharon Heaton, CEO and co-founder of sbLiftOff authored an article published in the Washington Business Journal titled "Small businesses are suffering in government contracting's 'Valley of Death'"



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Small Business Strategy

6 Ways to Increase Company Value

I hear it all the time: profit, profit, profit. Yes, profit is the incentive, but it's just a piece of the larger puzzle when increasing company value. We explore 6 ways your organization can increase your company value right now.

Let's dig into it from a Growth CFO mindset.

Increase Company Value Tip 1 – Accounting is King

I deemphasize the role a Growth CFO has in accounting because simply, there's so much more to offer. But my colleagues and I can't get into the depth of the issues with a CEO who hasn't secured their accounting formula. Accounting is straightforward compared to Growth CFO level work.

You need a system that allows you to act, rebound, and realign when new information is presented. You need the hard details ready to go so you can reference them and make decisions at the moment, insured by the numbers.

To a buyer, this is paramount. No one wants to pay top dollar for a company whose books are not in order. This will also cause challenges and heartaches during due diligence.

The more your accounting works for your company before you sell, the less work a new CEO has to handle. The fewer surprises you can give them, the better – for you.

Increase Company Value Tip 2 – Make Sure the Company Works When You're Away

This is perhaps the hardest part for CEOs to realize; let's focus on it relatively upfront: a business that runs without you micromanaging every manager, employee, and contract worker can live well past your lifetime running things. Is this scary? Maybe a little: letting things fly can lead to disaster in the wrong circumstances.

But that's the distinguishing force. You need to develop leaders and trust their ability to convert. In many businesses, this is a no-brainer, and selling the company has little impact on your employee's ability to keep things running smoothly through the transition. Sure, things change, and your impact is undoubtedly felt. But if you take a leave, vacation, or sell, things need to operate at near-best – especially when a buyer is expecting to make a transition over months or years.

Growth CFOs work on CEO Mindset, CEO Owners Trap, and organizational capacity to assure that the financial flight plan can be met or exceeded by the team they have on the field.

Let things fly. Stop hovering over every departmental change. Trust and believe in your structure, because that's where the beauty lies. You've delegated the role – let it proliferate on its own.

Lastly, make sure to announce your absence when you leave. Being upfront always makes things easier, and announcing the change will allow you to let go just a bit more.

Increase Company Value Tip 3 – Curate Stellar Employees

As we've discussed before, talent is key and leads the charge into any arena you're willing to conquer. Make this overt to buyers. A good employee adds potential to your company, and a series of strong managers and individuals add power, value, and overall shine to what your company looks like at a glance, and a deeper view, to a potential buyer.

Do you create loyalty with your hires? It starts with newcomers and transcends into those who keep the lifeblood thriving year after year. Loyalty marks your impact on the company as a whole, and it should already drive your profit margins and growth incentives. But as a Growth CFO who's handled plenty of companies through transition and succession, I know for a fact that buyers need to know that your employees play for your team alone.

If you've got people who stay for the long haul, promote that upfront! Be loud about why people stay here, and your buyer will buy in. Don't fall for the owner's trap!

Increase Company Value Tip 4 – Develop a Recognizable Brand

You do this every day. So why talk about it? Simply, the easier it is for a random person to locate and recognize your brand, the more market value it has. This means selling price, almost directly. Even if your marketing strategy is perfect, only rolled out a year prior, it's a great idea to revamp it and redesign it for the transitional period. Get something ready to bust out the gates before you're ready to hand it all over.

Let the people know you're ready to grow. Frame the transition in a positive light. This is a time where new things will happen and stakeholders stand to benefit. Refresh the content on your site, testimonials, webinars, campaigns, and more. Everything the light touches should feel this change, and you want it all to align with this new era your company is about to embark upon.

Increase Company Value Tip 5 – Develop a Desirable Office Environment

This goes hand-in-hand with stellar employees. People want to stick around when they know and feel, that you want them there. Get the physical space going. Architecture, feel, and comfort matter more than you might think from your own office. But just think about what you take for granted in your chamber.

Developing an incredible workplace [keeps people around and feeling good at work](#). The better they feel, the more time they'll spend interacting and collaborating in shared spaces. Art and decor go a long way, just like they would in your home. Bright, colorful environments have psychological benefits. And while you shouldn't break the bank to make the office pop, it's more impactful than you'll think at a glance.

Increase Company Value Tip 6 – Move Forward with an Unimpeachable Vision

The clearer you think about – and belief in – your vision, the better it trickles down into every facet, nook, and cranny of your organization. This is exciting to newcomers and buyers. They want something that sparks with vision and is laden with unique ideas that will lead it forward to new heights.

Many of the Companies we work with do not have a clear vision for the future, let alone have everyone rowing in the same direction. How could they do this if they don't know where they are going? Think about all these things we've mentioned in terms of your perspective. Are you hitting all the marks, checking all the boxes? Well, if not, who are you waiting for to come to buy? This stuff comes first and foremost, and until you do it all, you might not find the buyer you're hoping for – or who you deserve beneath it all.

Outsourcing and hiring advisors can make sense for any company at any time. But if you're already thinking of battling operating costs, it's to your benefit to enlist the help of a trained professional skilled in helping owners make these kinds of decisions. It might not come naturally to you, but you can train yourself to know what to look out for and when to bring in outside help.

KIRK W. MCLAREN MBA, CPA, IFM | CEO Foresight CFO | Georgetown University Lecturer
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.

Calendar of Events - NVSBC



VETFEDACADEMY



WASHINGTON DC NETWORK DINNER

SBA Certification Updates
(4:00 – 5:00 PM EST)



Marc Goldschmitt, PMP
Founder & CEO
Goldschmitt and Associates, LLC

Access to Capital: Challenges and Strategies for Veteran-Owned Small Business GovCons!
(5:30 – 8:30 PM EST)



Barb Carson
Managing Director, Programs and Services
Institute for Veterans and Military Families
Syracuse University
(Moderator)



Ken Dodds
Government Contracting Industry Expert
Live Oak Bank

DC Networking Dinner event is
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Sharon Heaton
CEO and M&A Advisor
sbLITOff



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Wednesday February 8, 2022



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Mark Jaeger
V.P. of Tax Development
TaxAct

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9 February 2023



Paul Hawkins
Attorney
Reaves GovCon Group

Available
16 February 2023



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Part 6: Don't Forget the Jurisdictional Limits for Task Order Protests

Welcome back, loyal readers! This is part six of our series on common contractor bid protest mistakes. So far we have covered: [the difference between size/status protests and bid protests](#); [deadlines for pre-award protests challenging solicitation terms](#); [when to act in competitive range exclusions](#); [when/how debriefings *may* – but don't always – impact protest deadlines](#); and, last month, we [demystified debriefings](#) overall. Next up, we are tackling a very important and often misunderstood topic: Task order protests.

* * * * *

In today's government contracting space, multiple award contracts (MACs) are increasingly common. As a result, many contractors hold some type of MAC with a federal agency. It is not unusual, then, for potential protests to arise in relation to the award of task orders *under* those MACs. Sometimes this leads to contractor frustration, as there are limits on what task orders can be protested, and where they can be protested. These limits can, in certain circumstances, prevent contractors from protesting a task order award. Fortunately, these limits are laid out in clear terms in FAR 16.505(a)(10), which at least allows contractors to be prepared. The FAR states in relevant part that:

(10) (i) No protest under subpart 33.1 is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except—

(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(B) (1) For agencies other than DoD, NASA, and the Coast Guard, a protest of an order valued in excess of \$10 million ...

(2) For DoD, NASA, or the Coast Guard, a protest of an order valued in excess of \$25 million ...

(ii) Protests of orders in excess of the thresholds stated in 16.505(a)(10)(i)(B) may only be filed with the Government Accountability Office, in accordance with the procedures at 33.104.

That's a lot of information, so let's break it down. To begin, 16.505(10)(i) establishes that "no protest" is the default rule for task orders. In other words, unless your situation fits within the limited exceptions outlined in 16.505(10)(i)(A) or (B), you will **not** be able to protest a task order award.

The exception laid out in 16.505(10)(i)(A) applies to protests of orders that would award work in excess of what is authorized by the underlying multiple-award contract. Such protests generally involve situations where the government is attempting to shoehorn in work that is not properly within the scope of the original contract, but should be the subject of a separate competition. These protests are akin to protests of modifications made to existing contracts that expand the contract's scope in violation of the Competition in Contracting Act. These are less common than those task order protests that can proceed under section (B).

Ten Biggest Bid Protest Mistakes

16.505(10)(i)(B) establishes minimum dollar thresholds, but those thresholds depend on what agency you are dealing with. The threshold is \$10 million for protests of task orders issued by civilian agencies, and \$25 million for protests of task orders issued by the DOD, NASA or the Coast Guard. These thresholds are strictly enforced. If the task order at issue does not meet this threshold, there is little point in protesting; the protest will be dismissed immediately for lack of jurisdiction.

In certain cases, it will be easy to tell if your potential protest is over or under the applicable dollar threshold. Other times, though, it becomes more complicated. For example, determining which threshold even applies can be tricky when dealing with a contract involving multiple agencies – what happens when you have an Army Task Order placed under a GSA MAC or GWAC? Or a VA Task Order placed under a DOE MAC? Is it the \$10 or the \$25 million threshold that controls? You can see how things can get a little confusing. Things can also get tricky when it is unclear what the value of the contract really is – for example, if the awarded contract is below the applicable threshold, but the protestor's price was above the threshold. Or if the agency, during source selection, engaged in some sort of price adjustment that pushed the awarded price over or under the threshold. In these more complicated scenarios, it is important to discuss, with a legal professional, the potential impact of the jurisdictional dollar threshold on your protest. You would not want to waste time or money pursuing a protest that is sure to be dismissed.

Even if you exceed the minimum threshold, your options are still more limited than they would be in other protest contexts. That is because task order protests may only be filed with the GAO, in accordance with GAO procedures. Contractors cannot file a task order protest at the Court of Federal Claims, which normally has concurrent jurisdiction over protests with the GAO. Because the GAO has shorter filing deadlines than the Court of Federal Claims, it is vital that contractors act very quickly if they want to take action on a task order protest. Fail to do so and you will lose your ability to protest.

All of the above said, if you are unable to file a task order protest due to the jurisdictional limits, you are not entirely without recourse. You can file a complaint with the agency's task-order and delivery-order ombudsman, though this process is admittedly not as clear cut as the protest process, and might not be as effective.

If you have questions about a potential protest of a task order award, or any other bid protest questions, you should consult a legal professional with experience in this specific area of law.

[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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