



Weekly Report for February 16, 2018

## **GOVERNMENT CONTRACTS**

### ***81 Firms Land Spots on \$15B GSA Alliant 2 Small Business GWAC***

According to an article on [govconwire.com](http://govconwire.com), the General Services Administration has awarded 81 companies spots on the small business portion of a potential 10-year, \$15 billion government-wide acquisition contract vehicle for information technology platforms and services.

The agency noted the list includes some companies that were named “apparent winners” in the pre-award notice released in December as well as “contingent” awardees that were not listed in the notice and are subject to small business size challenges with the Small Business Administration.

## **LABOR AND EMPLOYMENT**

### ***House Passes Bill To Curb Lawsuits Over ADA Violations***

According to an article in Law360.com, the House of Representatives passed a bill on February 15, 2018, intended to curb allegedly abusive Americans with Disabilities Act (ADA) lawsuits even as critics argued it would undermine protections under the civil rights law. The House passed the [ADA Education and Reform Act of 2017](#) on a 225-192 vote, with a handful of Democrats joining Republicans on a measure that would give restaurant and other business owners as much as four months to comply with the ADA before they can be sued. The bill now heads over to the Senate, where it faces a steeper climb for passage and would require the support of nine of the chamber’s 49 Democrats to advance.

## **INTERNAL REVENUE SERVICE**

### ***Eliminating Unnecessary Tax Regulations***

Pursuant to the policies stated in Executive Orders 13777 and 13789 (the executive orders), the Treasury Department and the IRS conducted a review of existing regulations, with the goal of reducing regulatory burden for taxpayers by revoking or revising existing tax regulations that meet the criteria set forth in the executive orders. In a notice of proposed rulemaking treasury proposes to streamline IRS regulations by removing 298 regulations that are no longer necessary because they do not have any current or future applicability under the Internal Revenue Code and by amending 79 regulations to reflect the proposed removal of the 298 regulations. The proposed removal and amendment of these regulations may affect various categories of taxpayers. [83 Fed. Reg. 6806](#).

## **CAPITOL HILL**

### **Job Creation, Competition, and Small Business' Role in the United States Economy**

On Wednesday, February 14, 2018, the House Small Business Committee held a hearing titled "Job Creation, Competition, and Small Business' Role in the United States Economy." In the hearing, Members of the Small Business Committee heard from representatives of Goldman Sachs, Robert Louis Group, and Johnson Security Bureau, Inc., regarding the effect of access to capital on small firms' growth and expansion. The hearing also explored economic trends that show small firms' access to capital has been slow to recover, particularly in large urban and remote rural areas. Archived video footage of the hearing can be viewed [here](#).

### **Nominations**

On Wednesday, February 14, 2018, the Senate Committee on Small Business & Entrepreneurship held a hearing to consider President Trump's nominations of David C. Tryon to be Chief Counsel for Advocacy of the Small Business Administration, and Hannibal M. Ware, to be Inspector General of the Small Business Administration. If reported favorably by the Committee, the nominees would then need to be confirmed by a vote in the Senate in order to be appointed to their respective nominated positions by the President. Archived video footage of the hearing can be viewed [here](#).

## **PILIEROMAZZA BLOGS**

### **Review of NAICS Codes Assignments Reveals Inconsistencies and Small Percentage of Successful Appeals**

By [Ambika Biggs](#) and [John Shoraka](#)

The U.S. Government Accountability Office ("GAO") has released a report on its review of several issues related to the North American Industry Classification System ("NAICS") codes. Although it found that there are some inconsistencies in the assignment of NAICS codes – and thus size standards – for substantively similar procurements, only about 20 percent of NAICS codes appeals are successful. This is likely due to the fact that, in order to win a NAICS code appeal, an appellant must demonstrate that the contracting officer made a clear error of fact or law, not just that he or she had suspect intentions in assigning the code, such as favoring an incumbent. Read the article at <http://www.pilieromazza.com/blog>.

## **RECENTLY ISSUED GAO DECISIONS**

**Office Design Group, B-415411 (Jan. 3, 2018)**: In this pre-award protest, the RFP was initially set aside for SDVOSBs, with a set aside designation on the face of the RFP, and VA set aside provisions within it. The agency amended the RFP, removing the set aside provisions from within the RFP but keeping the set aside designation on the first page. The protester emailed the agency, seeking clarification, and the agency did not respond until after proposals were due, indicating the RFP was set aside. The protester then filed a protest at GAO, arguing the RFP was patently ambiguous. GAO agreed, holding that keeping the designation on the RFP but

removing the applicable provisions made the RFP inconsistent. GAO also held that the protest was timely, even though it was filed after award, because the email seeking clarification from the agency qualified as a pre-award protest, and the protester filed its GAO protest within 10 days of receiving the agency's response. (<https://www.gao.gov/assets/690/689865.pdf>)

**Dynaxys LLC, B-414459.3 (Jan. 30, 2018)**: The protester submitted a request for costs after GAO had conducted an outcome prediction session and the agency took corrective action. In the outcome prediction, GAO advised the parties it would likely sustain the protest on two grounds: (1) the agency's determination that the protester's price was unreasonable and (2) the agency's failure to consider the relative merits of the offerors' proposals. The protester sought costs associated with all of its protest grounds except for its OCI argument. The agency argued that recovery should be limited to the price reasonableness determination issue. GAO held that the protester was entitled to all of the costs it requested because its various arguments challenging the agency's evaluation under the non-price factors shared a common factual and legal basis with its clearly meritorious arguments, particularly the failure to consider the relative merits of the proposals. (<https://www.gao.gov/assets/690/689840.pdf>)

**Harper Constr. Co., Inc., B-415042, B-415042.2 (Nov. 7, 2017)**: In this single issue protest, the protester argued that the agency's evaluation of its proposal under an experience factor was unreasonable. The RFP required offerors to have experience with projects involving specific types of construction, including airfield paving. The agency rated the protester unacceptable after determining that it had not performed airport paving work – a subcontractor had when the protester was a prime – and the proposal did not include a letter of commitment from that subcontractor. The protester argued that the RFP did not limit experience to work an offeror had self-performed, and GAO agreed, finding the RFP was subject to two reasonable interpretations. Critically, there was no language limiting the type of experience that would qualify or otherwise narrowing the definition of “perform.” (<https://www.gao.gov/assets/690/689928.pdf>)