



Weekly Report for October 9, 2017

## **SMALL BUSINESS ADMINISTRATION**

### **Women-Owned Small Business Federal Contract Program NAICS Code Updates**

The U.S. Small Business Administration (“SBA”) has updated the North American Industry Classification System (“NAICS”) codes authorized for use in the Women-Owned Small Business (“WOSB”) Federal Contract Program (“WOSB Program”). The update is being made to reflect the U.S. Office of Management and Budget’s NAICS revision for 2017, identified as NAICS 2017. NAICS 2017 created 21 new industries by reclassifying, combining, or splitting 29 NAICS 2012 industry codes. These changes would impact eight of the 2012 NAICS codes designated for use under the WOSB Program. The designations of industries contained in SBA’s notice of NAICS Code updates, apply to all solicitations issued on, or after, October 1, 2017. [82 Fed. Reg. 47277](#).

## **GOVERNMENT CONTRACTING**

**“The RISE Act allows SBA to give agencies double credit for contracting goaling purposes!”** *Small Business Administration Bulletin*, October 13, 2017. Retrieved from [govdelivery.com](#)

In an October 13, 2017 bulletin, the Small Business Administration reminded the HUBZone community that, during the period of a presidentially declared major disaster, procuring agencies can provide contracting preferences for the small businesses located in the affected areas.

The Recovery Improvements for Small Entities After Disaster Act of 2015 (“RISE Act”) authorizes SBA to:

- establish contracting preferences for small businesses located in disaster areas, including HUBZone firms, and
- give agencies double credit for awards to these small businesses that are located in the presidentially declared major disaster areas.

For more information, please see: [RISE Act § 2108](#), [15 U.S.C. 644\(f\)](#), [FAR § 6.208](#), [FAR § 26.202-1](#)

## **“Defense Contractors Could Face Pay-Back Clause for Losing Bid Protests”**

Nextgov, October 10, 2017. Retrieved from [nextgov.com](http://nextgov.com)

The Senate’s version of the House of Representative’s (H.R. 2810) National Defense Authorization Act (“NDAA”) 2018, contains provisions that could make it more difficult for companies to protest contract awards, particularly those made by defense and military agencies.

Specifically, § 2340 of the NDAA proposes to “require contractors who file bid protests with the Government Accountability Office on a contract with the Department of Defense to pay to the Department of Defense costs incurred for processing a protest at the Government Accountability Office and the Department of Defense when such a protest is filed by a party with revenues in excess of \$100 million during the previous year where all of the elements of such protest are denied” by GAO.

The provision would also require incumbent contractors that protest a follow-on contract award “to have all payments above incurred costs withheld on any bridge contracts or temporary contract extensions awarded to the contractor as a result of a delay in award resulting from the filing of such protest.” The protesting companies are spared paying fees only if GAO “upholds any of the protest grounds” or if the contract in question is scrapped.

According to GAO data, bid protests have increased significantly across the government over the past decade. In fiscal 2008, bidders filed 1,652 protests; in fiscal 2016, they filed 2,789.

In a September 7, 2017 letter addressed to Sens. John McCain, R-Arizona, and Jack Reed, D-Rhode Island, U.S. Comptroller General Gene Dodaro asked the Senate Armed Services Committee chair and ranking member to delete the provision.

In his letter, Mr. Dodaro said GAO “expresses no view on the policy of imposing protest processing costs on certain contractors whose protests are denied,” but rather takes issue with the provision because it would require GAO to implement new procedures and collect data it currently does not need, nor have. In addition, Mr. Dodaro expressed concern “that assessing costs associated with processing covered defense protests could involve GAO in federal court litigation concerning both the application of the requirement to pay costs” and the amount of costs to be paid.

Full text of the current version of the NDAA 2018 can be found [here](#).