



Column: Small business goodies in the National Defense Authorization Act

by Pamela Mazza, managing partner, PilieroMazza PLLC

Often the House and Senate small business committees utilize the annual National Defense Authorization Act (NDAA) to effectuate changes for small business.

The NDAA must pass each year, so it is a useful vehicle upon which to attach small business provisions that otherwise may need to move through multiple congressional committees before becoming law.

Fiscal 2016 NDAA

The NDAA for fiscal year 2016 moved through both the House and Senate and went before the conference committee. On Oct. 7, the Senate approved the conference committee's report; however, on Oct. 22, President Obama vetoed the bill as presented.

The bill was revised and reintroduced, and the revised bill was approved by the House and Senate on Nov. 10. It was signed by the president on Nov. 25.

Key small business provisions

The following is a list of key provisions in this year's bill that will affect small business government contractors:

- Adjust SBA's scorecard to better determine if the agency is meeting each of the goals established for prime contracts and subcontracts, and rate of participation.
- Develop a method of calculating a score which can be used to evaluate compliance of the agency in meeting established goals.
- Agency heads are responsible for the agency's success in achieving small business prime contracting, as well as subcontracting goals and percentages.
- Increase the Simplified Acquisition Threshold/small business

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reserve to \$500,000

- Require agencies to use a variety of industries to meet small business goals.
- Amend the data quality improvement plan to require agencies to certify the accuracy of the data reported on bundled and consolidated contracts.
- Require agency to publicly publish notice if a solicitation requires substantial bundling and/or consolidation within seven days of making the determination.
- Require agencies to evaluate the past performance and qualifications of team members and joint venture partners during the solicitation process.
- Allow agencies to assist small businesses who have concerns, prior to the award of a contract, that a solicitation might be structured in a way that restricts the ability of small businesses to compete for the award.

Additional provisions

- Extends authorization for the Defense Department Mentor-Protégé Pilot Program by one year.
- Requires the Secretary of Defense to report to Congress on any negotiated comprehensive subcontracting plans that do not meet the subcontracting goals.
- Clarifies that the non-manufacturer rule only applies to contracts for products.

- Requires training of contracting officers, restricts third-party agent activities, requires honest price ranking, and requires that revisions to offers be allowed throughout the solicitation process.

- Increases surety bonds issued under the Small Business Administration's preferred program to 90% and makes it easier for small businesses to obtain compliant bonds.

- Establishes jurisdiction for the SBA's Office of Hearings and Appeals to hear appeals of size standards.

- Adjusts the HUBZone Program to better address areas subject to BRAC and disaster areas.

- Requires the Defense Department to report any negotiated comprehensive subcontracting plans that do not meet the negotiated subcontracting goals to Congress.

- Creates a pilot program which will make it easier to award contracts under \$7,500,000 to small businesses or non-traditional defense contractors.

Rulemaking and amendments

While some of these provisions may not require implementing regulations, others will be subject to SBA rulemaking and FAR amendments. Stay tuned for how these changes will affect the small business government contracting community.

Pamela Mazza is managing partner of PilieroMazza PLLC in Washington, DC. For over 25 years, PilieroMazza has helped small and mid-sized businesses to successfully navigate a diverse array of legal matters, including government contracting, SBA's procurement programs, litigation, labor and employment and corporate law. Visit www.pilieromazza.com.