

Column: The 2019 NDAA's Impact on Small Business Procurement

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On Aug. 13, the John S. McCain National Defense Authorization Act ("NDAA") for Fiscal Year 2019 was signed into law by President Trump.

As with prior NDAA's, the 2019 NDAA includes a number of provisions that affect procurement policy, management, and related matters. Below, we summarize some of the more notable provisions that will impact small business procurement.

Section 822—Establishment of Expedited Process for Small Value Contracts

Among other things, Section 822 of the 2019 NDAA requires the Secretary of Defense, by no later than Dec. 1, 2019, to develop a plan and schedule for an expedited bid protest process for Defense Dept. contracts with a value of less than \$100,000.

In carrying out this requirement, the Secretary is permitted to consult with the Government Accountability Office and the U. S. Court of Federal Claims to the extent such entities may establish a similar process at their election.

The Secretary must submit a report on the plan and a schedule for its implementation, which shall include a request for any additional authorities that the Secretary determines appropriate for such efforts, to the congressional defense committees by no later than May 1, 2019.

Section 851—Small Business Strategy

Section 851 of the 2019 NDAA requires the Secretary to develop and implement a new small business strategy "to better leverage small businesses as a means to enhance or support mission execution." See H. Rept. 115-874.

According to the House conference report, "such a strategy should include plans to integrate small businesses into a holistic view of industry; to realign the Department's small busi-

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ness programs with agency mission under a unified management structure; and to clarify points of entry into the defense market."

To that end, the 2019 NDAA requires the Secretary to ensure that there is a unified management structure within DOD for the functions of DOD relating to:

- (1) programs and activities related to small business concerns;
- (2) manufacturing and industrial base policy;
- and (3) any procurement technical assistance program.

In addition, the Secretary is required to ensure that programs and activities of DOD related to small business concerns are carried out so as to further national defense programs and priorities and the statements of purpose for DOD acquisition, as set forth in Section 801 of the 2018 NDAA.

Lastly, the Secretary must also ensure that

- (1) opportunities for small business concerns to contract with DoD are identified clearly and that
- (2) small business concerns have access to program managers, contracting officers, and other persons using their products or services to the extent necessary to inform such persons of their emerging and existing capabilities.

This new small business strategy must be developed within 180 days of the enactment of the 2019 NDAA. And, upon its completion, the Secretary must

transmit the strategy to Congress and publish it on a public DOD website.

By increasing points of entry, Section 851 expands small business engagement in the defense sector and increases the number of contract opportunities with DOD available to small business concerns.

Section 852—Prompt Payment of Small Business Contractors

Section 852 of the 2019 NDAA imposes prompt payment obligations on DoD. With regard to small business prime contractors, this provision requires the Secretary to establish, to the fullest extent permitted by law, an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if a specific payment date is not established by contract.

As for a prime contractor that subcontracts with a small business, Section 852 requires the Secretary to establish, to the fullest extent permitted by law, an accelerated payment date with a goal of 15 days after receipt of a proper invoice for the amount due if:

(i) a specific payment date is not established by contract and

(ii) the prime contractor agrees to make payments to the subcontractor in accordance with the accelerated payment date, to the maximum extent practicable, without any further consideration from or fees charged to the subcontractor.

If you would like to know more about the 2019 NDAA and its impact on acquisition policy and management, please contact PilieroMazza, and one of our government contracts attorneys will be happy to assist you.

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