



Legislative Update

MSFC SBELT 20 February 2018



Reminder – FAR Changes Take Time



- Law passed (NDAA) or Presidential Memo signed
- Proposed rule to implement the statute is typically generated
- Internal agency review is conducted

- A proposed rule is included in the Federal Register for public comment
- All comments are reviewed
- Changes made, if needed

- A final rule is included in the Federal Register for comment
- FAR Council adopts the rule (DoD, NASA, GSA)

Open FAR Cases as of 2/16/2018

- ▶ As of 16 February 2018, there are 48 FAR Cases Open
- ▶ Many resulted from NDAAs – 2018, 2017, 2016, 2015, 2014, 2009



Open FAR Cases as of 2/16/2018

Some of Interest

| Case Number | Part Number | Title | Synopsis | Status |
|-------------|---|---|---|---|
| 2014-002 | 10, 13, 15, 16, 19, 2, 4, 42, 52, 7, 8, 9 | (S) Set-Asides Under Multiple-Award Contracts | Implements SBA's final rule (78 FR 61114) for sections 1311 and 1331 of the Small Business Jobs Act of 2010 (Pub. L. 111-240), which provides Governmentwide policy for partial set-asides and reserves, and setting aside orders for small business concerns under multiple-award contracts. | 02/15/2017 DARC Director tasked Small Business Team to review public comments, draft final FAR rule. Report due 04/12/2017. Report due date extended to 03/14/2018. |
| 2018-003 | | (S) Credit for Lower-Tier Small Business Subcontracting | Implements section 1614 of the NDAA for FY 2014, as implemented in the SBA regulations on 12/23/2016 (81 FR 94246), which allows prime contractors to receive credit toward goals in their small business subcontracting plans for subcontracts awarded by their subcontractors. | 11/15/2017 DARC Director tasked Small Business Team to draft proposed FAR rule. Report due 01/10/2018. Report due date extended to 03/07/2018. |
| 2017-019 | | Policy on Joint Ventures | Implements regulatory changes regarding joint ventures made by the Small Business Administration (SBA) in their final rule published in the Federal Register on July 25, 2016 (81 FR 48558). Also clarifies that 8(a) joint ventures are not "certified" in the 8(a) Program and that 8(a) joint venture agreements must be approved by SBA prior to award of an 8(a) contract. | 02/14/2018 DARC agreed to draft proposed FAR rule. DAR staff processing. |



The **Defense Acquisition Regulatory Council** (DARC) is a group overseen by DoD. DARC is in charge of the Federal Acquisition Regulation (FAR) on a joint basis with the Civilian Agency Acquisition Council (CAAC). The group is composed of representatives from each U.S. military department, the Defense Logistics Agency, and the NASA.

Open FAR Cases as of 2/16/2018

| Case Number | Part Number | Title | Synopsis | Status |
|-------------|---|---|--|---|
| 2017-010 | 13.106-1, 15.304, 16.505(b)(1), 16.505(b)(2) | (S) Evaluation Factors for Multiple-Award Contracts | Implements section 825 of the NDAA for FY 2017 (Pub. L. 114-328). Section 825 amends 10 U.S.C. 2305(a)(3) to address the requirement to include cost or price to the Government as a factor in the evaluation of proposals for certain multiple-award task- or delivery-order contracts and 2304c(b) to modify the exceptions to fair opportunity. Applicable to DoD, NASA, and Coast Guard. | 07/10/2017 CAAC Legal concurrence with draft proposed FAR rule. FAR and DAR staff resolving issues. |
| 2017-007 | 16.505 | (S) Task- and Delivery-Order Protests | Implements section 835 of the NDAA for FY 2017 (Pub. L. 114-328) and Public Law 114-260. Section 835(a) amends 10 U.S.C. 2304c(e)(1)(B) to raise the threshold for task- and delivery-order protests from \$10 million to \$25 million (applicable to DoD, NASA, and Coast Guard). Section 835(b) amends 41 U.S.C. 4106(f) to repeal the sunset date, which had already been repealed on 12/14/2016 by the GAO Civilian Task and Delivery Order Protest Authority Act of 2016 (Pub. L. 114-260). | 02/06/2018 CAAC Chair sent draft final FAR rule to OIRA. OIRA reviewing. |
| 2017-001 | 1.106, 22.21, 22.403, 52.212-5, 52.213-4, 52.222-62 | (EO) Paid Sick Leave for Federal Contractors | Implements E.O. 13706, Establishing Paid Sick Leave for Federal Contractors, as implemented by DoL final rule, published September 30, 2016 (81 FR 67598). | 02/14/2018 DARC agreed to draft final FAR rule. DAR staff processing. |

The **Civilian Agency Acquisition Council** (CAAC) Assists the Administrator of General Services in developing and maintaining the Federal Acquisition Regulation (FAR) System by developing or reviewing all proposed changes to the FAR.

The **Office of Information and Regulatory Affairs** (OIRA) is a statutory part of the Office of Management and Budget within the Executive Office of the President.



Open FAR Cases as of 2/16/2018

6

| Case Number | Part Number | Title | Synopsis | Status |
|-------------|-------------------------|---|---|--|
| 2016-011 | 19, 52 | (S) Revision of Limitations on Subcontracting | Implements SBA's final rule (81 FR 34243) for section 1651 of the NDAA for FY 2013 (Pub. L. 112-239), which revised the limitations on subcontracting and the nonmanufacturer rule. Also implements SBA's regulatory clarifications concerning application of the limitations on subcontracting, nonmanufacturer rule, and size determination of joint ventures. | 06/05/2017 CAAC Legal concurrence with draft interim FAR rule. FAR and DAR staff resolving issues. |
| 2016-007 | 1, 22, 52 | (EO) Non-Retaliation for Disclosure of Compensation Information | Implements E.O. 13665, Non-Retaliation for Disclosure of Compensation Information, and associated DOL final rule. E.O. 13665 amends E.O. 11246 to provide for a uniform policy for the Federal Government to prohibit Federal contractors from discriminating against employees and job applicants who inquire about, discuss, or disclose their own compensation or the compensation of other employees or applicants. | 02/06/2018 Draft final FAR rule from FAR analyst to CAAC Legal. CAAC Legal reviewing. |
| 2016-005 | 1.102-2, 10.001, 10.002 | (S) Effective Communication between Government and Industry. | Implements section 887 of the NDAA for FY 2016 (Pub. L. 114-92), which provides that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. | 08/02/2017 DARC agreed to draft final FAR rule. DAR staff processing. |

“Similarly Situated”

740 Pages, 46 TITLES

7

FY18 NDAA

(Public Law 115-91/
H.R. 2810)
signed 12 Dec 17

Some Sections of Interest to MSBELT

- ▶ TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, & RELATED MATTERS
- ▶ TITLE XVI – STRATEGIC PROGRAMS, CYBER, & INTELLIGENCE MATTERS
 - ▶ Subtitle A—Space Activities
- ▶ TITLE XVII – SMALL BUSINESS PROCUREMENT & INDUSTRIAL BASE MATTERS

FY18 NDAA – Acquisition Policy

TITLE VIII—ACQUISITION POLICY, ACQUISITION MANAGEMENT, & RELATED MATTERS

Subtitle A – Acquisition Policy and Management

Subtitle B – Amendments to General Contracting Authorities, Procedures, and Limitations

Subtitle C – Provisions Relating (PR) to Major Defense Acquisition Programs

Subtitle D – PR to Acquisition Workforce

Subtitle E – PR to Commercial Items

Subtitle F – PR to Service Contracting

Subtitle G – PR to Other Transaction Authority and Prototyping

Subtitle H – PR to Software Acquisitions

Subtitle I – Other Matters

FY18 NDAA

Section 805 increases the **simplified acquisition threshold** to \$250K from \$100K.

Section 806 increases the **micro-purchase threshold** to **\$10K** from \$3K.

Open FAR Cases as of February 16, 2018

| Case Number | Part Number | Title | Synopsis | Status |
|-------------|--|--|--|---|
| 2018-004 | 13.003, 13.501, 16.206-2, 16.206-3, 16.207-3, 19.203, 19.502-1, 19.502-2, 19.508, 2.101, 25.703-2, 25.703-4, 52, 9.104-5, 9.406-2, 9.407-2 | (S) Increased Micro-Purchase and Simplified Acquisition Thresholds | Implements sections 805, 806, and 1702(a) of the NDAA for FY 2018. Section 805 increases the MPT to \$10,000 and limits use of convenience checks to not more than 1/2 the MPT. Section 805 increases the SAT to \$250,000. Section 1702(a) amends section 15(j)(1) of the Small Business Act (15 U.S.C. 644(j)(1) to replace specific dollar thresholds with the terms "micro-purchase threshold" and "simplified acquisition threshold." | 01/19/2018 DARC Director tasked Acquisition Strategy Team to draft final FAR rule. Report due 03/21/2018. |



FY18 NDAA

Section 811 increases to **\$2 million** from \$750K the threshold for the **submission of cost or pricing data for prime contracts awarded after June 30, 2018**. The threshold for modifications to those prime contracts, subcontracts awarded under those prime contracts, and modifications to those subcontracts also increases to \$2 million. The new threshold will be subject to periodic updating to keep pace with inflation pursuant to 41 USC § 1908. This provision should reduce the number of contracts and subcontracts, and modifications thereto, that are subject to the Truthful Cost or Pricing Data statute (formerly known as the Truth in Negotiations Act, or TINA) and reduce the associated liability for alleged defective pricing.

2018-005

(S) Modifications to Cost or Pricing Data and Reporting Requirements

Implements **section 811** of the NDAA for FY 2018. **Section 811** modifies 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase the TINA threshold to \$2 million and require other than certified cost or pricing data.

01/19/2018 DARC Director tasked Acquisition Finance Team to draft proposed FAR rule. Report due 03/21/2018.



FY18 NDAA – Small Business

TITLE XVII—SMALL BUSINESS PROCUREMENT AND INDUSTRIAL BASE MATTERS

- Sec. 1701. Amendments to HUBZone provisions of the Small Business Act.
- Sec. 1702. Uniformity in procurement terminology.
- Sec. 1703. Improving reporting on small business goals.
- Sec. 1704. Responsibilities of Business Opportunity Specialists.
- Sec. 1705. Responsibilities of commercial market representatives.
- Sec. 1706. Modification of past performance pilot program to include consideration of past performance with allies of the United States.
- Sec. 1707. Notice of cost-free Federal procurement technical assistance in connection with registration of small business concerns on procurement websites of the Department of Defense.
- Sec. 1708. Inclusion of SBIR and STTR programs in technical assistance.
- Sec. 1709. Requirements relating to competitive procedures and justification for awards under the SBIR and STTR programs.
- Sec. 1710. Pilot program for streamlined technology transition from the SBIR and STTR programs of the Department of Defense.
- Sec. 1711. Pilot program on strengthening manufacturing in the defense industrial base.
- Sec. 1712. Review regarding applicability of foreign ownership, control, or influence requirements of National Industrial Security Program to national technology and industrial base companies.
- Sec. 1713. Report on sourcing of tungsten and tungsten powders from domestic producers.
- Sec. 1714. Report on utilization of small business concerns for Federal contracts.

FY18 NDAA - HUBZone

Section 1701 outlines changes to **SBA HUBZone**.

- Online Tool by 1 Jan 2020
- Household Income
- Certification Timeline
- Base Closure Areas
- Governor-Designated Covered Areas

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