



Procurement Management

FY 2018 NDAA

Change to Procurement Tresholds

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FY 2018 NDAA - Title VIII

Acquisition Policy, Acquisition Management, and Related Matters

On December 12, 2017, the 2018 National Defense Authorization Act (NDAA) was signed into law by President Trump. Title VIII of the NDAA contains many provisions designed to reduce burdensome regulation and improve the procurement process. Section 805, 806, and 811 would increase the Micro-Purchase Threshold (MPT) from \$3,500 to \$10,000, Simplified Acquisition Threshold (SAT) from \$150,000 to \$250,000, and Truthful Cost or Pricing Data (aka “TINA”) threshold from \$750,000 to \$2,000,000. The Cost Accounting Standards (CAS) threshold for contract awards would also increase to \$2,000,000 since it is tied to the TINA threshold.

The implementation dates are an important consideration for contractors to maintain compliance with both their Estimating and Purchasing Systems. No date has been established for the MPT or SAT change, and while Congress established July 1, 2018 as the date for the increase in the TINA threshold, the NDAA is not self-implementing. Before the thresholds change/increase, the provisions in the NDAA must be implemented by Regulation.

Implementing Requirements

The FAR Council and Defense Procurement and Acquisition Policy (DPAP) have opened cases to increase the procurement thresholds. A report on the proposed increase to TINA is due to the Defense Acquisition Regulatory Council (DARC) by March 21, 2018. Following the DARC report, 41 USC § 1707 requires a 60-day public comment period in the Federal Register before an amendment or modification to a regulation can take effect. To further manage expectations across industry, it is worth noting there are open FAR and DFARS cases from over two years ago associated with public laws that have not been effectuated in regulation.

Under President Trump’s Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, the Office of Information and Regulatory Affairs (OIRA) will need to determine if the amended regulation is significant and subject to the “two-for-one rule” and subsequently value the savings using its new “perpetual time horizon” model. OIRA has up to 90 days to approve/disapprove the proposed regulation. So, an increase to the TINA, SAT, and MPT thresholds could very likely extend sometime beyond July 1, 2018.

All of this could be upended with issuance of a FAR/DFARS class deviation, or expedited OIRA action as increases in the procurement thresholds may be seen as beneficial to both industry and the government. In the meantime, contractors should continue to follow the promulgated regulation and lower thresholds.



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