

National Defense Authorization Act for Fiscal Year 2019 Includes Numerous Acquisition Reforms That Could Result in Significant Changes to Federal Procurement Procedures

September 2018

WHAT: President Trump signed into law H.R. 5515, the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019. The NDAA sets federal funding levels and outlines the spending and policy priorities for the U.S. Department of Defense (DOD). The FY 2019 NDAA authorizes base-level funding of \$639.1 billion for DOD for the upcoming fiscal year. Congress must still appropriate funds for DOD and all other federal agencies before the start of the new fiscal year on October 1, 2018. In addition to acquisition reforms, the policy provisions in the NDAA also enact significant changes regarding cybersecurity, foreign ownership of U.S. companies, and export control and international trade issues.

WHEN: The NDAA was signed into law on August 13, 2018. Most of the government contracts provisions require DOD to issue implementing regulations, although some provisions are effective immediately or on another date established by Congress.

WHAT DOES IT MEAN FOR INDUSTRY: There are several provisions in the FY 2019 NDAA that will directly affect contractors. These acquisition reforms include placing additional limits on sole-source and lowest price technically acceptable contracting, revising the definitions of “commercial item” products and services, requiring additional justifications and approvals for exercising multi-year contract authority or withholding consent to subcontract, directing full and open competition for the forthcoming GSA e-Commerce Portal, and providing exceptions for price competition on indefinite-delivery

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indefinite-quantity contracts in order to push competition to the task order level. Several of these changes were recommended by the "Section 809 Panel" on DOD acquisition reform that was established by the FY 2016 NDAA. Additionally, DOD will be required to submit reports to Congress on high-profile issues such as "second bite at the apple" bid protests filed at both the U.S. Government Accountability Office and the U.S. Court of Federal Claims, the use of Other Transaction Authority, and a mandated pilot program to accelerate contracting and pricing processes. Our further analysis of specific NDAA sections and their potential impacts on government contractors can be found in our September 2018 *Government Contracts Issue Update* newsletter.