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Key Provisions in the House's 2024 NDAA Impacting Federal Contractors

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On June 30, 2023, the United States House of Representatives passed its version of the National Defense Authorization Act for the Fiscal Year 2024, H.R. 2670 (Rep. No. 118-125) (the “NDAA”).

Passed on a party-line basis, the House's version of the NDAA must still be passed by the Senate. The Senate majority leader previously signaled that the Senate will create its own version of the NDAA, which will necessitate the House and Senate utilizing the reconciliation process to arrive at a final version of the bill. Therefore, it is likely the final NDAA will differ from version initially passed by the House.

We highlight below several provisions that are likely to have an impact on federal contractors:

1. Acquisition Policy and Management

a. Sec. 802 – Prohibition on the Transfer of Certain Data on Employees of the Department of Defense to Third Parties

This section proposes a statutory provision prohibiting the transfer of individually identifiable Department employee data to entities outside the Federal Government unless required for the performance of a contract or subcontract.

b. Sec. 804 – Pilot Program on Payment of Costs for Denied Government Accountability Office Bid Protests

This section directs the Secretary of Defense to conduct a pilot program to determine the effectiveness of requiring contractors with revenues in excess of \$250 million to reimburse the Department of Defense for costs incurred in processing a covered bid protest denied by an opinion issued by the Government Accountability Office.

c. Sec. 805 – Pilot Program for Prototype Projects for Anything-as-a-Service

This section directs the Secretary of Defense to establish a pilot program to carry out prototype projects for Anything-as-a-Service, defined as a technology-supported capability provided as a service rather than a product for transactions less than or equal to \$100 million.

d. Sec. 807 – Prohibition on Contracting with Persons that have Business Operations with the Government of the Russian

Federation or the Russian Energy Sector

This section prohibits the Secretary of Defense from entering into a contract for goods or services with any person who has business operations with the Government of Russia or a fossil fuel company that operates in Russia, with some exceptions (including, the provision of humanitarian aid or disaster relief, and for military readiness and national security).

e. Sec. 808 – Organizational Conflict of Interests Relating to National Security and Foreign Policy

This section prohibits the Secretary of Defense from entering into, renewing, or extending contracts with a covered consultancy, defined as an entity that provides advisory and assistance services to a several banned entities including the Governments of China and Russia and additional entities listed by the Departments of State and Commerce. It also requires contractor offers for consulting services to include information regarding work with covered entities in the prior 5 years.

2. Amendments to General Contracting Authorities, Procedures, and Limitations

a. Sec. 822 – Modification to Truthful Cost or Pricing Data Submissions and Report

This section amends the Truthful Cost or Pricing Data Act by requiring the Secretary of Defense to identify in the annual report offerors that incur a delay greater than 200 days in submitting certain cost and pricing information, as well as include a public notation on such offerors in the system used by the Government to monitor or record contractor integrity and performance.

b. Sec. 831 – Modification of Contracts and Options to Provide Economic Price Adjustments

This section authorizes the Department of Defense to modify existing contracts to provide an economic price adjustment consistent with FAR 16.203-1 and FAR 16.203-2, and as specified in FAR 16.203-3, subject to the availability of appropriations.

3. Provisions Relating to Programs for Accelerating Acquisition

a. Sec. 851 – Pilot Program for Recurring Awards for Production, Investment, and Deployment through Competitions

This section requires the Secretary of Defense to establish a pilot program to acquire attributable systems, including short-range air defense and tactical precision strike systems, through repeated competition (every 2 years after initial completion) with the goal of incentivizing sustainable production, rapid deployment, and iterative improvements.

b. Sec. 853 – Defense Industrial Base Advanced Capabilities Pilot Program

This section directs the Secretary of Defense to create a pilot program to accelerate scaling, production, and acquisition of

advanced capabilities for national security. Participants in the pilot program must invest equity in small businesses or nontraditional businesses that meet certain security requirements.

4. Industrial Base Matters

a. Sec. 867 – Pilot Program for Analyzing and Continuous Monitoring of Key Supply Chains

This section establishes a pilot program under which a private entity would monitor supply chains for covered weapons platforms and analyze supply changes for the defense industry for vulnerabilities and opportunities for improvement.

b. Sec. 869 – Enhanced Domestic Content Requirement for Major Defense Acquisition Programs

This section directs the Secretary of Defense to assess the domestic source content of procurements carried out in connection with a major defense acquisition program. It requires that manufactured articles procured for a major defense acquisition program be manufactured substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States if the component articles, materials, or supplies exceeds 60% of manufactured articles by date of enactment; exceeds 65% between January 1, 2024 and December 31, 2028; and exceeds 75% on or after January 1, 2029.

We will continue to monitor the progress of the NDAA as it works through the legislative process.

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