President Obama vetoed the first version of the GFY 2016 NDAA and so a second version was submitted. As far as we can tell, the second version will become public law.

As has become a happy tradition, Bob Antonio's wonderful WIFCON site has published an **an alysis** of the NDAA. You need to review it. You need to review it because the NDAA provisions become DFARS regulations, as the DAR Council receives its marching orders (or many of them) from Congress via the NDAA. Thus: it is important to read the NDAA language if you want to see what's coming your way.

Here are some provisions we found interesting. There are more, of course. But we are bringing just a few to your attention, a foretaste of the contents, if you will.

Section 809 directed the Under Secretary of Defense (AT&L) to establish "an advisory panel on streamlining acquisition regulations." Let's all hope that goes better than the BBP-directed effort to roll-back non-value-added rules and regulations (which we've recently written about).

Section 812 eliminated the applicability of TINA to offset agreements, except for offset agreements that relate to "contract or subcontract under the offset agreement for work performed in such foreign country or by such foreign firm that is directly related to the weapon system or defense-related item being purchased under the contract."

Section 828 imposed a penalty for cost overruns on major defense acquisition programs (MDAPs). The offending military service will have to pay 3 percent of the overrun, the amount of which will be taken from the service's RDT&E budget. We are *sure* this provision will have no impact on a military service's willingness to take a risk on unproven technology in order to obtain an innovative and game-changing new weapon system. (Note: sarcasm.)

Section 844 directed SECDEF to ensure mandatory training in how to conduct market research.

Section 851 appeared to formalize the prior DoD decision to centralize the determinations of what is and what is not a commercial item. We would like to think that decision would not be necessary if acquisition professionals had received (or were going to receive) mandatory training in how to conduct market research, but what can you do?

Section 854 required the "establishment of a list" in the DFARS of "inapplicable defense-unique statues to contracts for commercial items and commercial available off-the-shelf items." Didn't we already have this in the FAR and DFARS? We thought DFARS 212.503 and 212.504 already listed laws that "are not applicable to contracts for the acquisition of commercial items." Guess we were wrong about that.

Section 873 implemented a pilot program "to provide an exception from the requirements under sections 2306a(1) and 2313 of title 10, United States Code, for contracts or subcontracts valued at less than $7.5 million that are awarded based on a technical merit based selection procedure."

Section 885 modified existing rules regarding counterfeit electronic parts "to expand the eligibility for covered contractors to include costs associated with rework and corrective action related to counterfeit electronic parts as allowable costs under Department of Defense contracts." This would seem to be good news.

Section 887 required the FAR Council "to prescribe a regulation making clear that agency acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry, so long as those exchanges are consistent with existing law and regulation and do not promote an unfair competitive advantage to particular firms." Guess that OFPP "myth-busting" memo wasn't getting the job done.

Section 893 is entitled "Improved Auditing of Contracts" and this is the one that prohibits DCAA from providing audit services to civilian agencies until it gets its incurred cost audit backlog down to a reasonable level (defined by the provision as being 18 months' worth). An early version would have required the SECDEF to use "outside auditing staff to help address DCAA's audit backlog," but that bit did not seem to make it into the language of the final bill sent to President Obama. We've already done **an article** on the early version, and we'll have more on this provision as events develop.

Section 896 required the SECDEF to survey "defense contractors with the highest level of reimbursements for cost-type contracts" to determine "the cost to industry of regulatory compliance with government unique acquisition regulations and requirements that are not imposed on commercial item contracts." It's like the 1990's all over again, isn't it? Only in 2016 Coopers and Lybrand won't be around (by that name) to conduct the study. Let's hope SECDEF Carter doesn't give this one to the same BBP folks who released that **p athetic study** to the USD (AT&L).

Section 899 would seem to raise the TINA threshold to $5 million (for certain contracts under certain conditions) under a pilot program to demonstrate the efficacy of "using risk-based techniques in requiring submission" of certified cost or pricing data. Quite frankly, we're not entirely sure what the provision requires. What do you make of this language? "The head of an agency shall establish a risk-based sampling approach under which the submission of certified cost or pricing data may be required for a risk-based sample of contracts, the price of which is expected to exceed $750,000 but not $5,000,000. The authority to require certified cost or pricing data under this paragraph shall not apply to any contract of an offeror that has not been awarded, for at least the one-year period preceding the issuance of a solicitation for the contract, any other contract in excess of $5,000,000 under which the offeror was required to submit certified cost or pricing data under section 2306a of title 10, United States Code."

The foregoing was simply a high-level summary of some of the provisions that caught our eyes. Again, we recommend readers head over to WIFCON and review the entire NDAA themselves. And stay tuned to see how the FAR Councils and DAR Council tackle some of the Congressionally mandated initiatives that they've been handed.