

## What You Need to Know About the FY12 National Defense Authorization Act

Written by Nick Sanders

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Each year, Bob Antonio publishes a world-class analysis of key public laws that impact government contracting, and this year was no exception. WIFCON's [breakdown](#) of the FY2012 National Defense Authorization Act (NDAA) is a must-read for informed compliance and contracting professionals. The reason that the annual NDAA (and other similar legislation) is so important to read is that the contents include Congress' direction to the DOD. In other words, the contents of the NDAA (and other legislation) drive new FAR and DFARS Cases, which drive revisions to existing regulatory requirements. So to read the NDAA is to glimpse the DAR Council's future rule-making.

As we scanned the 50 or so separate sections, these are the ones that struck us as being of most importance to our readership and clientele.

Section 803 extended the ceiling on contractor executive compensation, and applies it to all contractor personnel, not just the top 5 highest paid executives at every segment—"except that the Secretary of Defense may establish one or more narrowly targeted exceptions for scientists and engineers upon a determination that such exceptions are needed to ensure that the Department of Defense has continued access to needed skills and capabilities".

Section 805 required the Director of DCAA to submit an annual report to Congress (separate from the Semi-Annual DOD IG Report) that contains—

(1) a description of significant problems, abuses, and deficiencies encountered during the conduct of contractor audits; (2) statistical tables showing--

(A) the total number of audit reports completed and pending; (B) the priority given to each type of audit; (C) the length of time taken for each type of audit; (D) the total dollar value of questioned costs (including a separate category for the dollar value of unsupported costs); and (E) an assessment of the number and types of audits pending for a period longer than allowed pursuant to guidance of the Defense Contract Audit Agency;

(3) a summary of any recommendations of actions or resources needed to improve the audit process; and (4) any other matters the Director considers appropriate.

Section 816 redefined the definition of the term "covered contract" for purposes of complying with the DFARS Business System clauses. The new definition is, "a contract that is subject to the cost accounting standards promulgated pursuant to section 1502 of title 41, United States Code, that could be affected if the data produced by a contractor business system has a significant deficiency."

Section 818 has been extensively discussed by many industry and technical associations. It required the DOD to assess current processes for detecting and avoiding counterfeit electronic parts, and to enhance them (as well as related acquisition regulations) so as to ensure that weapons systems are free of counterfeit parts. (Longtime readers will recall, perhaps with nostalgia, our many pleas and rants on the topic of secure supply chains.)

Section 853 required an assessment of "the feasibility and advisability of establishing an

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inventory of rare earth materials....” Again, longtime readers may recall our two articles on the strategic importance of rare earth materials. New readers are advised to use the site’s key word search feature.

Section 862 encouraged contractors to support Science, Technology, Engineering and Mathematics (STEM) programs. This may turn out to be an important Section, since DCAA has historically tended to treat such contractor efforts as unallowable contributions.

Section 2801 prohibited the use of “any form of cost-plus contracting” in relation to any military construction project or military family housing project. It will be interesting to see how the term “cost-plus” is used: whether it will be limited to forms of cost-reimbursement contracting, or whether it will be applied to all forms of “flexibly priced” contracts (which would include T&M contract types).

To sum it all up, there are a number of interesting provisions in the FY12 NDAA. Some will affect cost allowability and others will affect contracting with the Federal government. Stay tuned for the FAR and DFARS rule-making, which will be coming our way shortly.