



FY2016 National Defense Authorization Act Impact on HUBZone Small Businesses

The Fiscal Year 2016 National Defense Authorization Act (NDAA) was signed into law on November 25, 2015. In addition to authorizing defense programs, the NDAA makes important changes to small business procurement, each of which are described below.

Past Performance for Members of Joint Ventures

The government would accept the past performances of individual businesses that make up a joint venture. This is limited to bids on bundled, consolidated, or multiple-award contracts where the joint venture has no past performance.

Expanded HUBZone Eligibility

Areas impacted by a base closure or qualified disaster will have expanded HUBZone eligibility for a minimum of 8 years. In addition, Native Hawaiian Organizations (NHOs) would qualify as HUBZone companies.

Modification to Scorecard Program for Small Business Contracting Goals

The annual scorecard detailing progress toward fulfilling small business contract award goals is modified to also include the number of small businesses receiving prime and subcontract awards. Currently, the scorecard only measures dollars awarded to small businesses.

SBA Office of Hearings and Appeals Included in Law

OHA is now included in the Small Business Act, formalizing OHA's presence. This helps ensure that OHA will continue to review petitions on size standards for businesses and review size standards as a whole.

Acquisition Strategies for Major Defense Acquisition Programs

An accompanying acquisition strategy on how to use small businesses must be included in all major defense acquisition programs, major automated information systems, and major systems.

Standardization of Commercial Item Determinations

A central publically accessible database of all procured items considered "commercial items" will be established. This allows contracting officers to use an earlier commercial item determination in subsequent purchases.

Department of Defense Mentor-Protégé Program Extended 3 Years

The agency's program is authorized for an additional three years. The section also directs the Secretary of Defense to provide recommendations on how to better identify small businesses new to federal contracting. Within a year after passage, the U.S. Comptroller General must report to Congress on a way to harmonize the program with SBA's Mentor Protégé-Program.

Better Data on Contract Bundling

The Administrator of the SBA must provide annual reports to House and Senate Small Business Committees on the accuracy and completeness of data used to justify consolidating or bundling contracts, the first of which must be presented by October 1, 2016. The U.S. Comptroller General must also testify on the effectiveness of the certification process and the accuracy of labeled contracts.

Clarification of the Non-Manufacturer Rule

The law clarifies that small businesses with construction or service contracts are exempt from the non-manufacturer rule. A change in a previous NDAA made the application of the non-manufacture rule ambiguous.

Certification Requirements for Small Business & Business Certification Specialists

Business opportunity specialists located in SBA District Offices will receive more training after they are hired.

Increase in Surety Bond Requirements and Guarantees

The guarantee rate for surety bonds issued under the SBA's Preferred Program is increased to 90% from 70%. Also, individual sureties must now have sufficient assets to redeem the bonds.

Expanded Duties of the Small and Disadvantaged Business Utilization Office

The DOD's Offices of Small and Disadvantaged Business Utilization (OSDBU) will serve as intermediaries between contracting officers and small businesses concerned with the competitive fairness of a contract.

Enhanced Accountability for Small Business Subcontracting Goals

Agency officials will be responsible for meeting subcontracting goals in addition to prime contracting goals. Currently, senior procurement officials at agencies have no responsibility for meeting subcontracting goals.

Reporting of Contractor Failure to Meet Subcontracting Goals

The Secretary of Defense must give annual reports to Congress on any negotiated, comprehensive subcontracting plan that does not meet subcontracting goals.

Pilot Program to Streamline Innovative Technology Procurement

A newly established program that allows innovative technology contractors an exception from the requirement to provide cost or pricing data throughout the bidding process (as outlined in sections 2306a[1] and 2313 of Title 10, United States Code) for contracts under \$7.5 million awarded based on the technical merit procedure.

Review of Government Access to Private Sector Intellectual Property

The Secretary of Defense is required to enter into a contract with an independent entity to conduct a review of regulations and practices related to Government Access to and use of private sector firms' intellectual property rights.

Government-Industry Advisory Panel

Members will include the Department of Defense (DOD), large and small businesses, and institutions of higher education. The panel is devoted to ensuring fair prices, cost-effective maintenance and changes to DOD systems, and encouraging innovation in the private sector that aligns with DOD's future needs. The council must be appointed within 90 days and must submit their report by September 30, 2016.