

Legislative Update

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Highlights

- FY14 Appropriations and Authorization Status
- NDAA Provisions: FY13 & FY14
- Comprehensive Subcontracting Plans (CSP) Program
- Counterfeit Electronic Parts Detection & Avoidance
- CAR Process
- Class Deviations re. Summary Subcontracting Reports
- Small Business Jobs Act - Final Rules

FY14 DoD Approps/Authorization Status

	Committee	Full Committee Passage	Chamber Passage	Conference	President Signature
National Defense Authorization Act - Authorizes how to spend money	HASC \$552.8B/\$85.8B	✓	✓	Passage by end of year likely	
	SASC \$526.6B/\$80.7B	✓			
Defense Appropriations - Provides money to spend	HAC (D) \$512.5B*/\$85.8B	✓	✓		
	SAC (D) \$516.6*/\$77.8B	✓			

All ignore \$475B defense sequestration cap

*HAC-D and SAC-D base funding do not include Military Construction funding

FY13 National Defense Authorization Act (NDAA)

- **FAR 2013-010:** Implements Sec. 1697, which removed statutory limitation on dollar amount of contracts for which women-owned small businesses can compete under WOSB Program.
 - No public comments received; DAR and FAR staff processing
- **Sec. 1641:** Amended Small Business Act to establish mentor-protégé program for all small business concerns, similar to that for 8(a) businesses; and required SBA to issue regulations related to non-DoD mentor-protégé programs.
- **Sec. 1651:** Prohibits primes from spending more than 50% of contract payment on subcontractors; requires that amounts expended on by covered small business on subcontractor that is “similarly situated” not be used in determining subcontracting limitations. NDIA/AIA believe small businesses should be able to exclude all small business subcontracts, not just those to “similarly situated” firms.

FY13 National Defense Authorization Act (NDAA)

- **Section 1653:** Requires potential contractor to notify any potential subcontractors it intends to include in its subcontracting plan; and requires agency heads to establish reporting mechanisms for subcontractors to report fraudulent activity by primes with respect to subcontracting plans. Industry opposed; it unnecessarily establishes unique fraud reporting mechanism duplicative of existing, more broadly focused mechanisms and falsely presumes widespread fraud in use of subcontractors.
- **Sec. 1682:** Clarifies Small Business Act provisions relating to misrepresentations, business integrity and present responsibility and requires fraudulent businesses be suspended or debarred; directed SBA to publish standard operating procedures for suspension and debarment.

FY14 National Defense Authorization Act (NDAA)

- **House Sec. 813/SASC Sec. 841:** Allowable Costs for Contractor Compensation
 - House Sec. 813 would freeze cap at \$763k (FY12 level); allow for annual adjustment based on BLS index; disallow compensation of top 5 execs entirely for companies awarded >\$500m in federal contracts in previous year; allow SecDef to grant exceptions; and apply to all federal contracts.
 - SASC Sec. 841 would lower cap to \$487k (FY95 level, adjusted for inflation); allow for annual adjustment based on BLS index; allow SecDef to grant exceptions; and apply only to defense contracts.
 - *Note:* Expect Senate floor amendment proposing cap of \$231k
- **NDIA/AIA View:** Strongly oppose arbitrary cap that does not reflect private sector practice and would limit access to talent. We oppose singling out defense contractors among all firms providing government goods and services. House's "top 5" provision has proven divisive among companies of different sizes.

FY14 National Defense Authorization Act (NDAA)

- **House Sec. 324:** Assessment of Outreach for Small Business Concerns Owned and Controlled by Women and Minorities Required Before Conversion of Certain Functions to Contractor Performance
- Would require DoD to determine that it has carried out sufficient local outreach programs to women-owned and socially and economically disadvantaged small businesses in geographical area near military base before it could convert function currently performed at base by DoD civilians to contractor performance.
- **NDIA/AIA View:** We oppose, as it would unnecessarily restrict DoD from making strategic decisions about its workforce structure. Would actually be more harmful to small businesses because it establishes needless barriers that prevent DoD from partnering with the private sector generally. Would delay potential awards to businesses until DoD completed its review.

FY14 National Defense Authorization Act (NDAA)

- **House Sec. 937:** Small Business Cybersecurity Solutions Office
- Would require DoD to report to Congress on feasibility of establishing office to assist small business concerns in providing cybersecurity solutions to federal government.
- **House Sec. 938:** Small Business Cyber Education
- Would require DoD to establish outreach and education program to assist small businesses that contract with DoD 1) better understand gravity and scope of cyber threats, 2) develop plan to protect their intellectual property, and 3) develop plan to protect business' networks.
- **NDIA/AIA View:** Support

FY14 National Defense Authorization Act (NDAA)

- **House Sec. 1607:** Reporting on Goals for Procurement Contracts Awarded to Small Business Concerns
- Would require each federal agency to submit annual report to SBA describing extent of its small business contracting, whether agency met its goals, and – in event of failure to meet its goals – justification and remediation plan. Would then require SBA to submit report to President and Congress detailing federal government's use of small businesses as prime contractors, looking at categories of businesses and type of contracting.
- **NDIA/AIA View:** Agnostic

FY14 National Defense Authorization Act (NDAA)

- **House Sec. 1608:** Program to Provide Federal Contracts to Early Stage Small Business
- Would establish “early state small business” category (defined as <15 employees and <\$1m in annual revenue) and require that contracting opportunities valued at \$3,000-75,000 be awarded either on sole-source basis or on set-aside basis involving competition between eligible early stage small businesses only.
- **NDIA/AIA View:** We oppose creation of additional set-aside categories; this will further break small business market into segments that limit ability of all small businesses to compete and will harm government’s ability to leverage small business innovation and taxpayer dollars through robust competition; it is overly prescriptive, mandating contracts of certain value be set aside. No data has been shared demonstrating need for new category.

FY14 National Defense Authorization Act (NDAA)

- **House Sec. 1609:** Credit for Certain Subcontractors
- Would give prime contractor credit towards its required subcontracting plan for small business concerns performing as subcontractors at any tier (for goals related to single contract with one agency), or small businesses performing as first-tier subcontractors (for goals related to multiple contracts with multiple agencies or to single contract with multiple agencies).
- **NDIA/AIA View:** We support this more thorough, transparent and accurate collection of small business contracting data. Current data collection process presents incomplete picture of flow of federal funds to small businesses.

Comprehensive Subcontracting Plan (CSP) Program

- Test program to determine whether CSPs will reduce administrative burden for contractors while enhancing opportunities for small business concerns; established in 1990; objective refined in 1993
- Due to expire end-2014; immediate challenges foreseen for participants if not extended before Sept. 2014
 - Participants may need to develop contingency plans
- CSP Day (Aug. 2012)
 - Joint industry, service/agency and DoD OSBP event
 - Focused on clarifying issues with current program, identifying potential improvements and developing path forward for program
 - Reached joint agreement: continue but modernize CSP
 - Recommendations summarized and submitted to DoD for consideration and action

Counterfeit Electronic Parts Detection & Avoidance

- **DFARS 2012-D055:** First of several regulations implementing Sec. 818 of FY12 NDAA, which resulted from 2011 SASC investigation on counterfeit electronics in defense supply chain
 - Comments submitted by AIA, others in industry
- Major concern: legislation/regulation does not focus on where counterfeits enter supply chain
 - Over 11 years of GIDEP reports, counterfeit incidents in which supplier was identified all stemmed from independent distributor or broker
 - Regulation seeks to address threat through purchasing systems of primes and upper-tier subcontractors
 - Transfers liability but does not effectively address desired goal of reducing occurrence of counterfeits
 - Relies on primes to flow down; small businesses reluctant to implement
 - CAS contracts only; ignores FFP, sealed bids, small business primes

Corrective Action Request (CAR) Process

- **DCMA Instruction 1201 (Dec. 2012):** Revised longstanding process by directing that primes receive Level II CARs for infractions by their subcontractors
 - Concern that there is not always sufficient oversight of subcontractors
 - Concern about privity of contract
- Led to extensive discussion between industry and DCMA
- Result: Revised instruction released early Sept., based on industry input
 - Level I-II CARs will not be routinely issued to primes for subcontractor infractions; will be issued directly to subcontractors, with info copies to prime
 - Level III CARs will be issued to primes when subcontractor is unwilling or unable to implement effective corrective action in timely fashion or when systematic repeat findings are identified, with info copies to subcontractors
 - Primes must be made aware of deficiencies in subcontractor systems – found by DCMA – that impact primes' business systems

Class Deviations re. Subcontracting Summaries

- **FAR 52.219-9 Deviation:** Reduces from biannual to annual frequency of summary subcontract reports submitted under individual subcontracting plan; and eliminates requirement for multiple summary subcontract reports submitted under individual subcontracting plan for construction and related maintenance and repair contracts, so only one consolidated report encompassing all contracts is required.
- **DFARS 252.219-7003 Deviation:** Changes entity to which contractor submits summary subcontract report in ESRS, from DoD component to DoD; and removes requirement for year-end supplementary report for small disadvantaged businesses and report for small disadvantaged participation.

Small Business Jobs Act – Final Rules

- **Small Business Subcontracting** (effective Aug. 15, 2013): Requires that prime contractor notify contracting officer in writing whenever subcontracts are not awarded at same percentage as indicated in subcontracting plan submitted with proposal for contract. [Reference: Federal Register (78FR 42391), pages 42391-42406]
- **Small Business Size and Status Integrity** (effective Aug. 27, 2013): Increases scrutiny of the reported size of "small business." Given concerns that certain large firms are benefiting from small-business contracting opportunities, all firms registered as such must update their size at least annually, procedure that must be certified by authorized official. [Reference: Federal Register (78FR 38811), pages 38811-38821]