When Bob posted his annual summary of the National Defense Authorization Act (NDAA) over at WIFCON, he offered the following description of this year's model:

It's about 80 Congressional perfections to defense contracting. Some perfections have perfected other annual perfections, etc. There is something for everyone to love in it, I'm sure.

We look at the NDAA to see what impacts contract compliance. What shows up in the NDAA often becomes regulatory direction, sooner or later. Unless it doesn't. (More on that in a bit.)

Let's look.

Section 802 revives a very old concept called "alpha contracting" and mandates that "The Secretary of Defense shall select at least 2, and up to 5, initiatives to participate in a pilot to use teams that, with the advice of expert third parties, focus on the development of complex contract technical requirements for services, with each team focusing on developing achievable technical requirements that are appropriately valued and identifying the most effective acquisition strategy to achieve those requirements." The associated Conference Report states that "this is intended to ensure that technical requirements are appropriately valued and that the most effective acquisition strategy to achieve these requirements is identified." We shall see.

Section 803 seems pointed directly at **Transdigm** . The Transdigm situation—and its **fallout** —is what you get when you get a bad DOD OIG report that seems designed to generate press rather than report objective results. Section 803 is more fallout from that much ballyhooed situation. It modifies "Section 2306a(d) of Title 10, United States Code, to specify that offerors who do not make a good faith effort to comply with a contracting officer's reasonable requests for data other than certified cost or pricing data are ineligible for award. The amendment would also direct contracting officers, when determining whether an offeror's price is fair and reasonable, to not base that assessment solely on the historical prices paid by the government."

Speaking of Transdigm fallout, Section 804 is more of the same, but pointed at the Secretary of Defense. It requires a report by the Comptroller General "on the efforts of the Department of Defense to obtain cost and pricing data for sole source contracts for spare parts."

Section 807 delayed implementation of a prior year's NDAA requirement. Section 830 of the 2017 NDAA would have required use of only firm, fixed-price contracts for FMS contracts, to be effective within 6 months of the public law's signature by the President. Well, that deadline came and went—with no new rulemaking. This is one of those times where the DAR Council (apparently) just didn't want to follow Congressional direction. There must have been a lot of behind-the-scenes activity because, three years later, the implementation of that requirement was delayed for another year. In the meantime, DOD issued a **Class Deviation** that covered contracting officers' backsides.

Section 810 makes it official: the Defense Cost Accounting Standards Board is dead. Created by a prior NDAA, it was a white elephant. Nobody wanted it and nobody knew what to do with it. I don't think it was ever staffed. The best thing that can be said is that its creation spurred the official Cost Accounting Standards Board into action, after years of inactivity. So, bye.

Section 818 requires that "market research for commercial products and services be documented in a manner appropriate to the size and complexity of the acquisition." So, okay then. That's super clear and helpful, isn't it?

Section 826 addresses a bit of DOD nitpickery related to the micro-purchase threshold. As readers know, Congress modified the micro-purchase threshold (and other acquisition thresholds) via a prior NDAA, but the DAR Council was strangely slow to implement the new thresholds. (Many blog articles on this topic were published; you can easily find them.) It took a series of Class Deviations to get around the DAR Council's lack of alacrity and, even so, the implementation of the new thresholds was uneven, primarily because the legislation was poorly drafted and didn't expressly modify all the statutory authorities it should have. (Or so went the argument.). Thus, the 2020 NDAA perfects the imperfect language from prior NDAAs, and amends Section 4106(c) of Title 41, United States Code, "by striking '$2,500' and inserting 'the micro-purchase threshold under Section 1902 of this Title'." And so DOD is now free to fully implement Congressional intent. Let's see how long it takes the DAR Council to do so, shall we?

Section 850 provides up to $37.42 million to fund the National Defense Stockpile to acquire rare earth and other critical defense materials. This is a topic we've been tracking for **ten years** . (About 7 years ago, I wrote an article for the ABA's Public Contract Law Journal on the topic.) Anyway, it's nice to see Congress finally authorize DOD to take action.

Section 870 permits prime contractor to take credit for lower-tier subcontractor awards with respect to socioeconomic reporting. It states:

… if the subcontracting goals pertain only to a single contract with a Federal agency, the prime contractor may elect to receive credit for small business concerns performing as first tier subcontractors or subcontractors at any tier … in an amount equal to the total dollar value of any subcontracts awarded to such small business concerns; and if the subcontracting goals pertain to more than one contract with one or more Federal agencies, or to one contract with more than one Federal agency, the prime contractor may only receive credit for first tier subcontractors that are small business concerns.

Section 873 directs that small businesses acting as prime contracts be paid as quickly as possible "with a goal of 15 days." So that's nice.

There are many other Sections (or "perfections," if you will) but those are the ones that caught our eye.