

Public Policy in the Trump Administration

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Overview

- Legislative developments
 - FY2017 National Defense Authorization Act (NDAA)
 - FY2018 defense budget
 - Defense acquisition reform and innovation
- Executive actions
 - Regulatory freeze
 - Reducing regulation and controlling regulatory costs (2 for 1)
 - Fair Pay and Safe Workplaces EO and rule
 - Domestic preferences

Legislative Developments

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FY2017 NDAA

- FY2017 NDAA signed into law by President Obama on Dec. 23, 2016
- Authorizes \$619B in total defense spending (including for Overseas Contingency Operations)
- Acquisition reform
 - Dissolves Office of Under Secretary of Defense for AT&L by Feb. 2018
 - Establishes preference for fixed-price contracts over cost-type contracts
 - Reduces barriers to use of commercial products, processes, and standards
 - Promotes incremental acquisition processes that provide flexible funding for experimentation and prototyping with goal of rapid deployment of new technologies
- Innovation
 - Fully funds DARPA and SCO
 - Increases funding in support of DOD's Third Offset Strategy
 - Establishes DOD's Rapid Innovation Program as permanent program
 - Fate of DIUx?

Legislative Developments

FY2017 NDAA (cont.)

- Sec. 820: CAS and Audits
 - CAS should rely on commercial standards and accounting practices to maximum extent possible and conform to GAAP in one year
 - DOD to establish a Defense CAS Board
 - DOD may and DCAA must accept summary audit findings prepared by commercial auditors
- Sec. 811: Unfinitized Contract Actions (UCAs)
 - Profit allowed based on risks that existed when proposal submitted
 - Should eliminate major negotiation hurdle/DFARS Case 2017-D022 (proposed rule forthcoming)
- Sec. 824: B&P Costs/IR&D Costs
 - DOD-wide goal of limiting B&P costs to 1% of the amount of contractor sales to DOD
 - IR&D regulations may not "infringe on the independence of a contract to choose which technologies to pursue;" Congressional IR&D policy now conflicts with DOD policy

Legislative Developments

FY18 Defense Budget

- SASC Chairman McCain released "Restoring American Power" on Jan. 16, 2017
 - FY2018-2022 defense budget proposal supported by HASC Chairman Thornberry
 - Proposes \$640B base defense budget plus \$60B in OCO funds for \$700B in total defense spending in FY2018
 - \$430B increase in defense spending over next five years
- Trump Administration released its FY2018 budget blueprint, aka "skinny budget," on Mar. 16, 2017
 - Proposes \$639B in total defense spending
 - Repeals defense sequestration
- 141 House Republicans sign May 2, 2017 letter to Speaker Ryan urging a vote on legislation to repeal defense sequestration
- Administration expected to release its full FY2018 budget on May 22, 2017
- HASC and SASC markup of FY18 NDAA anticipated in June 2017

Legislative Developments

Defense Acquisition Reform and Innovation

- HASC Chairman Thornberry likely to release defense acquisition reform discussion draft during week of May 15, 2017
- Defense Innovation Unit Experimental (DIUx)
 - SECDEF Carter's flagship innovation initiative
 - Major developments
 - May 2016: DIUx 2.0 launches
 - July 2016: DIUx Boston office opens
 - Sept. 2016: DIUx Austin hub opens
 - Dec. 2016: Limitation on DIUx funds in FY2017 NDAA
 - Apr. 2017: 25 agreements totaling \$48M during past three quarters; Green light from Trump Administration to continue at "full speed"
 - Summer 2017: transition of prototype projects for use by U.S. military

Executive Actions

Regulatory Freeze

- Memorandum issued on President Trump's first day in office
- Typical at the beginning of a new administration
- Provides a plan for managing new and pending federal regulations
 - No regulations are to be sent to the Office of the Federal Register (OFR) until a department or agency head appointed by President Trump reviews and approves the regulation
 - Immediate withdrawal of regulations sent to the OFR, as of Jan. 20, 2017, but not yet published for review and approval
 - Temporarily postponed the effective date of regulations that were published in the OFR but not yet effective for 60 days in order to review

Reducing Regulation and Controlling Regulatory Costs (2 for 1)

- Requires federal agencies and departments to identify at least two existing regulations for repeal in order to offset costs of any newly promulgated regulations (EO 13771, Jan. 30, 2017)
 - Applies to executive branch agencies
 - Exceptions
 - Rulemaking required otherwise required by law
 - Rules related to military
 - Rules related to national security
 - Rules related to foreign affairs
- Beginning with FY2018, the head of each agency shall
 - Identify, for each regulation that increases incremental cost, the offsetting regulations; and
 - Provide the agency's best approximation of the total costs or savings associated with each new regulation or repealed regulation

Fair Pay and Safe Workplaces EO and Rule

- Fair Pay and Safe Work Places Rule
 - President Obama's EO required companies bidding on federal contracts or subcontracts of at least \$500,000 to disclose violations of labor laws
- Congressional Review Act Used to Rescind FAR Rule (HJ Res. 37)
 - Feb. 2, 2017: passed House (231-187)
 - Mar. 6, 2017: passed Senate (49-48)
 - Mar. 27, 2017: signed by President and Became Law; also issued EO 13782 revoking President Obama's Fair Play and Safe Workplaces Executive Order (EO 13673)
- Paid sick leave rule is unaffected (for now)
 - DOL Final Rule, 29 C.F.R. Pt. 13 (Sept. 30, 2016, 81 Fed. Reg. 67,598)
 - FAR Interim Rule, FAR 52.222-62 (Dec. 16, 2016, 81 Fed. Reg. 91,627)
 - Effective January 1, 2017 (prior to regulatory freeze)
 - Status of final rule: processing comments

Domestic Preferences

- New administration signaling increased focus on domestic preference requirements
- Buy American and Hire American (EO 13788, Apr. 18, 2017)
 - "Every agency shall scrupulously monitor, enforce, and comply with Buy American Laws, to the extent they apply, and minimize the use of waivers, consistent with applicable law."
 - By Sept. 15, 2017, head of agencies must
 - Assess the monitoring of, enforcement of, implementation of, and compliance with Buy American Laws
 - Assess the use of waivers by type and impact on domestic jobs and manufacturing
 - Develop and propose policies to ensure that Federal procurements maximize the use of materials produced in the United States, including manufactured products; components of manufactured products; and materials such as steel, iron, aluminum, and cement
 - By Sept. 15, 2017, Secretary of Commerce and the United States Trade Representative must assess the impacts of all United States free trade agreements and the World Trade Organization Agreement on Government Procurement on the operation of Buy American Laws
 - Report to the President by Nov. 24, 2017 on specific recommendations to strengthen implementation of Buy American Laws

Questions?