SEC. ___. TRUTH IN NEGOTIATIONS ACT THRESHOLD FOR DEPARTMENT OF DEFENSE CONTRACTS.

Section 2306a(a)(1) of title 10, United States Code is amended—

(1) in subparagraph (B), by striking "contract if" and all that follows through clause (iii) and inserting "contract if the price adjustment is expected to exceed $2,000,000.";

(2) in subparagraph (C), by striking "section and—" and all that follows through clause (iii) and inserting "section and the price of the subcontract is expected to exceed $2,000,000." ; and

(3) in subparagraph (D), by striking "subcontract if—" and all that follows through clause (ii) and inserting "subcontract if the price adjustment is expected to exceed $2,000,000.".

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

The proposal seeks to extend threshold revisions already initiated by Congress in section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and support the efficient administration and execution of Department of Defense (DoD) programs. This proposal would revise language in section 2360a of title 10, United States Code, in order to standardize the Truth in Negotiations Act (TINA) threshold changes already initiated by Congress, by uniformly applying $2M as the threshold for changes and modifications to contracts without regard to the date on which the contract was entered into. Standardizing the thresholds will enable contracting officers to streamline the acquisition process, promote efficiencies, and improve acquisition timelines during the administration of DoD contracts, allowing the acquisition contracting workforce to meet the vital needs without the unintended administrative burden of adhering to two separate certification standards.

By enacting section 811, Congress made an effort to create efficiencies within the acquisition community, significantly increased the TINA threshold from $750,000 to $2,000,000 in several scenarios presented in 10 U.S.C. 2306a. However, the revised threshold does not apply to changes or modifications to existing contracts or subcontracts that were entered into before June 30, 2018. Standardizing these thresholds for DoD contracts and subcontracts avoids

any unintended ill effects that maintaining a dual certified cost and pricing threshold would have on the Defense industry.

This action would substantially reduce the award timeline for critical changes or modifications to existing DoD contracts entered into prior to June 30, 2018, when the value falls between $750,000 and $2,000,000. Under the current statute, TINA requires that the Government obtain certified cost and pricing data in sole source negotiated contract actions above a certain value. Certified cost and pricing data is an extensive set of data that requires contractors to complete an exhaustive independent analysis to compile and disclose all facts within their knowledge that could affect price negotiations. Ensuring compliance with the TINA certification adds a substantial amount of time to contractor proposal turnaround time and Government evaluation of the same.

TINA includes authority to waive the requirement for certified cost and pricing data for an "exceptional case." 10 U.S.C. 2306a(b)(1)(C). To use this exception, the head of the procuring activity, without delegation, must make a determination that the TINA requirements must be waived and justify that determination in writing. However, case-by-case waivers are not the appropriate solution to facilitate the efficiencies sought by this proposal to address the problem.

Budgetary Implications: This proposal would have no budget impact.

Changes to Existing Law: This proposal would make the following changes to section 2306a of title 10, United States Code:

§ 2306a. Cost or pricing data: truth in negotiations

(a) REQUIRED COST OR PRICING DATA AND CERTIFICATION.—(1) The head of an agency shall require offerors, contractors, and subcontractors to make cost or pricing data available as follows:

(A) An offeror for a prime contract under this chapter to be entered into using procedures other than sealed-bid procedures that is only expected to receive one bid shall be required to submit cost or pricing data before the award of a contract if—

(i) in the case of a prime contract entered into after June 30, 2018, the price of the contract to the United States is expected to exceed $2,000,000; and

(ii) in the case of a prime contract entered into on or before June 30, 2018, the price of the contract to the United States is expected to exceed $750,000.

(B) The contractor for a prime contract under this chapter shall be required to submit cost or pricing data before the pricing of a change or modification to the contract if—

~~(i) in the case of a change or modification made to a prime contract referred to in subparagraph (A)(i),~~ the price adjustment is expected to exceed $2,000,000~~;~~.

~~(ii) in the case of a change or modification made after July 1, 2018, to a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price adjustment is expected to exceed $750,000; and~~

~~(iii) in the case of a change or modification not covered by clause (i) or (ii), the price adjustment is expected to exceed $750,000.~~

(C) An offeror for a subcontract (at any tier) of a contract under this chapter shall be required to submit cost or pricing data before the award of the subcontract if the prime contractor and each higher-tier subcontractor have been required to make available cost or pricing data under this section and~~—~~

~~(i) in the case of a subcontract under a prime contract referred to in subparagraph (A)(i),~~ the price of the subcontract is expected to exceed $2,000,000~~;~~.

~~(ii) in the case of a subcontract entered into after July 1, 2018, under a prime contract that was entered into on or before June 30, 2018, and that has been modified pursuant to paragraph (6), the price of the subcontract is expected to exceed $2,000,000; and~~

~~(iii) in the case of a subcontract not covered by clause (i) or (ii), the price of the subcontract is expected to exceed $750,000.~~

(D) The subcontractor for a subcontract covered by subparagraph (C) shall be required to submit cost or pricing data before the pricing of a change or modification to the subcontract if~~—~~

~~(i) in the case of a change or modification to a subcontract referred to in subparagraph (C)(i) or (C)(ii),~~ the price adjustment is expected to exceed $2,000,000~~; and~~.

~~(ii) in the case of a change or modification to a subcontract referred to in subparagraph (C)(iii), the price adjustment is expected to exceed $750,000.~~

(2) A person required, as an offeror, contractor, or subcontractor, to submit cost or pricing data under paragraph (1) (or required by the head of the agency concerned to submit such data under subsection (c)) shall be required to certify that, to the best of the person's knowledge and belief, the cost or pricing data submitted are accurate, complete, and current.

(3) Cost or pricing data required to be submitted under paragraph (1) (or under subsection (c)), and a certification required to be submitted under paragraph (2), shall be submitted—

(A) in the case of a submission by a prime contractor (or an offeror for a prime contract), to the contracting officer for the contract (or to a designated representative of the contracting officer); or

(B) in the case of a submission by a subcontractor (or an offeror for a subcontract), to the prime contractor.

(4) Except as provided under subsection (b), this section applies to contracts entered into by the head of an agency on behalf of a foreign government.

(5) A waiver of requirements for submission of certified cost or pricing data that is granted under subsection (b)(1)(C) in the case of a contract or subcontract does not waive the requirement under paragraph (1)(C) for submission of cost or pricing data in the case of subcontracts under that contract or subcontract unless the head of the procuring activity granting the waiver determines that the requirement under that paragraph should be waived in the case of such subcontracts and justifies in writing the reasons for the determination.

(6) Upon the request of a contractor that was required to submit cost or pricing data under paragraph (1) in connection with a prime contract entered into on or before June 30, 2018, the head of the agency that entered into such contract shall modify the contract to reflect

subparagraphs (B)(ii) and (C)(ii) of paragraph (1). All such modifications shall be made without requiring consideration.

(7) Effective on October 1 of each year that is divisible by 5, each amount set forth in paragraph (1) shall be adjusted in accordance with section 1908 of title 41.

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