Government Contracts Update

January 2026

NDAA for FY 2026 Reforms Acquisition Policies for Agencies and Contractors

The National Defense Authorization Act for Fiscal Year 2026 (NDAA) includes major acquisition reforms for government agencies and contractors. The NDAA was passed with widespread bipartisan support in Congress and signed into law by the president in December 2025.

While authorizing appropriations for the Department of Defense, Department of Energy, and other agencies, the NDAA each year includes extensive procurement policy provisions. This year it also includes more fundamental acquisition reform provisions originating with the Streamlining Procurement for Effective Execution and Delivery (SPEED) Act introduced in the House and the Fostering Reform and Government Efficiency in Defense (FoRGED) Act introduced in the Senate.

The NDAA includes an extensive number of comprehensive provisions relating to procurement policy and acquisition reform, and we briefly summarize here several of those provisions with implications for government contractors located in NDAA Titles XVIII (Acquisition Reform) and VIII (Acquisition Policy).

Title XVIII – Acquisition Reform

Section 1804 – Adjustments to certain acquisition thresholds and Section 1806 – Matters related to cost accounting standards

Section 1804 updates statutory dollar thresholds for major defense acquisition programs, for cost levels that trigger requirements for competitive procedures, and that trigger certain cost and pricing data submission requirements. The statutory threshold for submission of certified cost or pricing data is raised from $2 million (before inflation adjustments) to $10 million for defense contracts entered into after June 30, 2026, with implementation details specified in the statute.

Section 1806 raises the threshold for full coverage by the Cost Accounting Standards (CAS) from $50 million to $100 million; raises certain contract-specific statutory thresholds for mandatory CAS application from $2 million (before inflation adjustments) to $35 million; reforms the CAS Board; exempts portions of contracts from CAS; reforms certain contract price adjustment requirements concerning aggregate increased costs; and requires regulatory adjustments to the Federal Acquisition Regulation (FAR), Defense FAR Supplement (DFARS), and CAS regulations to implement these statutory changes.

Section 1826 – Exemptions for nontraditional defense contractors

This provision will exempt nontraditional defense contractors, including small businesses, from the Cost Principles in FAR Part 31, from requirements to provide certified cost or pricing data, and from a series of complex DFARS requirements, which generally relate to cost or pricing, accounting, and purchasing or business systems. DoD can waive this exemption under certain circumstances.

This provision will vastly simplify compliance requirements for these small businesses and nontraditional defense contractors. “Nontraditional defense contractors” are defined in 10 U.S.C. § 3014 as companies that are not currently performing a contract subject to full CAS coverage and that have not performed such a contract during the preceding one-year period.

Section 1821 – Modifications to relationship of other provisions of law to procurement of commercial products and commercial services

Title XVIII includes a series of notable provisions at Subtitle C – Matters Relating to Commercial Products and Commercial Services. These begin with Section 1821, which requires identification of defense-unique contract clause requirements for the procurement of commercial products and services that are based on statute, Executive Orders, or acquisition policies. This section should provide welcome assistance to DoD contractors with enormously complex DoD flowdown requirements, including both prime contractors and subcontractors.

Section (b) requires the DFARS to include a list of defense-unique contract clause requirements that may be applied to contracts for commercial products and services. Section (c) requires the DFARS to include a similar list for subcontracts. Section (d) requires the DFARS to include a similar list for contracts or subcontracts for commercially available, off-the-shelf items. These lists should provide needed guidance to both prime contractors and subcontractors and help them when transacting and negotiating with each other.

Section 1824 – Limitation on required flowdown of contract clauses to subcontractors providing commercial products or commercial services

This provision creates a new section of the U.S. Code that would limit the required flowdown of contract clauses for subcontracts and supply agreements providing commercial products or services.

The new section, at 10 U.S.C. 3459, states that the Secretary of Defense may not require that a clause be included in a subcontract for the acquisition of commercial products or services other than a clause that is on the lists required by Section 3452 (as amended by Section 1821, described above) or unless otherwise applicable under that section. Further, the Secretary may not require the application of any contract clauses to "other supply agreements" unless otherwise applicable pursuant to Subsection (e) of Section 3452. The terms "other supply agreement" and "subcontract" are defined by Section 3452(c)(2).

Section 1824, which applies to subcontracts after the lists required by Section 1821 are published, would further limit new flowdown clauses and regulatory requirements for subcontracts and supply agreements.

Section 1822 – Modifications to commercial products and commercial services

This section establishes a formal process for determining the nonavailability of commercial products or services. This provision requires the DoD program manager to submit written memoranda, to be signed by the portfolio acquisition executive (a position newly established by the NDAA) and considered by the contract officer, before using noncommercial solicitation procedures, explaining the decision based on market research and requirements analyses. This provision will further solidify the existing statutory preference for commercial products and services within the DoD as reflected in these new procedures, which require consideration of the commercial marketplace before any noncommercial approach.

Section 1823 – Modifications to commercial solutions openings

This provision expands the purposes for which the commercial solutions openings (CSO) solicitation procedure may be used, formerly limited to new technologies and applications, now expanded to all commercial products and services. This provision also creates an authority for sole-source follow-on production contracts. This reflects continued congressional encouragement of alternative acquisition procedures, including CSOs and other transactions.

Title VIII – Acquisition Policy, Acquisition Management, and Related Matters

Section 805 – Addressing insufficiencies in technical data

This provision requires the Secretary of Defense to develop and implement a digital system to track, manage, and enable the assessment of data related to covered systems, and to verify the compliance of contractors and subcontractors with contract requirements related to technical data for those systems. This may result in more proactive actions by DoD to request data rights from contractors or to assert the data rights of DoD during competitions or performance.

Section 824 – Increasing competition in defense contracting

This section requires the Secretary of Defense to issue guidance that would allow entities with little or no federal government past performance to provide alternative evidence of past performance and be evaluated on that basis. This guidance will ultimately lead to new regulations. These provisions are intended to further promote participation and competition in the defense industrial base.

Section 866 – Cybersecurity regulatory harmonization

New cybersecurity requirements were imposed on the defense industrial base through the recent finalization of the CMMC program via final rule. This section seeks to reduce additional contract-specific cybersecurity requirements given the comprehensive cybersecurity regulatory environment that already exists for DoD contracts and subcontracts.

Section 874 – Annual report on contract cancellations and terminations

This section will require the Secretary of Defense to submit to the congressional defense committees an annual report on any cancelled contracts for the preceding fiscal year and for each of the fiscal years 2027 through 2031 not later than 10 days after the president's budget submission. In the first report, the Secretary of Defense will also include reporting on any contract cancellations during fiscal year 2025.

Section 875 – Ability to withhold contract payments during period of pendency of a bid protest

This provision authorizes the Secretary of Defense to withhold up to 5% of certain payments to an incumbent contractor who files a bid protest that is dismissed by the U.S. Government Accountability Office based on a lack of any reasonable legal or factual basis. This requires the Secretary of Defense, not later than 180 days after the date of the enactment, to revise the DFARS to establish procedures "for a contracting officer of the [DoD] to withhold payment of covered amounts to an incumbent contractor," when that incumbent files a bid protest at GAO.

The amounts withheld will be forfeited by the incumbent upon a determination by GAO "to dismiss such bid protest based on a lack of any reasonable legal or factual basis becoming a final determination." The covered amount is not greater than 5% of the total amount that would be paid to the incumbent without the withholding.

The prospect of potential withholding of payments may deter some protests by incumbents that would otherwise be filed at GAO. A potential protester may have alternatives, including protest options with the DoD agency or at the U.S. Court of Federal Claims, and a protester could withdraw its protest before any decision by GAO on a request for dismissal. While taking this new NDAA provision into account, a potential protester with good faith protest grounds must continue to weigh the advantages and disadvantages of the protest options available in each different protest forum.

FOR MORE INFORMATION

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