# National Defense Authorization Act for FY 2026 Emphasizes Reforms, Speed, and Efficiencies in Acquisition

**BY JOSEPH R. BERGER, ANDRÉS VERA, AND AMAIYA JOHNSON**

Joseph R. Berger

Andrés Vera

Amaiya Johnson

Major acquisition reforms are included in the National Defense Authorization Act for Fiscal Year 2026 (NDAA), passing with widespread bipartisan support in the U.S. House of Representatives and Senate, and signed into law by the president on December 18, 2025.[1] The annual NDAA, while authorizing programs and setting policies for the Department of Defense (DoD),[2] the Department of Energy, and other agencies, includes numerous sections focused on federal procurement policy, in addition to hundreds of program-specific provisions. This article highlights some of the most significant procurement policy reform provisions, with the biggest impacts on contractors going into effect with this year's NDAA.

## Overview of the NDAA Acquisition Reforms

Title VIII of the NDAA focuses each year specifically on acquisition policy and management, with more than 50 sections in this year's Title VIII. But this year the NDAA also includes significant, more fundamental acquisition reform provisions originating with the Streamlining Procurement for Effective Execution and Delivery (SPEED) Act (originally introduced in the House) and the Fostering Reform and Government Efficiency in Defense (FoRGED) Act (originally introduced in the Senate).[3] As a result of the SPEED and FoRGED Acts, a separate Title XVIII focuses on acquisition reform, including more than 25 additional sections in subtitles addressing the Defense Acquisition System, requirements process reform, commercial products and services, improvements to acquisition programs, and other modifications designed to strengthen the defense industrial base.[4] These reforms prioritize the United States' military advantage while establishing a new portfolio-based strategy that will enable and empower DoD portfolio acquisition executives with significantly more discretion to set priorities and shift resources between programs.[5]

According to the summary of the NDAA released by the Senate Armed Services Committee (SASC), the United States is operating in the most dangerous threat environment since World War II, and "there is broad consensus among Congress, the White House, the Department of Defense, and key allies about these current threats and the need to address them."[6] According to the SASC, given the complexity of the current geopolitical environment, "our nation must take action toward reindustrialization and work to rebuild the arsenal of democracy."[7] To achieve this goal, Congress is reforming and modernizing the Pentagon's budgeting and acquisition operations through the NDAA.[8] Among these reforms, the NDAA adopts key provisions of the FoRGED Act that prioritize commercial acquisition, eliminate statutory barriers, establish and support portfolio-based management, and expand the industrial base (particularly for commercial companies).[9]

According to a summary of the NDAA released by the House Armed Services Committee (HASC), the NDAA "focuses defense acquisition on one primary objective: quickly equipping warfighters with needed capabilities in the most cost-effective manner practicable."[10] The HASC states the NDAA prioritizes commercial solutions, eliminates regulatory burdens, develops a mission-oriented defense acquisition workforce, reforms foreign military sales, revitalizes the defense industrial base, and "ensures the acquisition system delivers for the warfighter at speed and scale."[11]

The White House, in its Statement of Administration Policy, states that under the 2026 NDAA, "the defense procurement system will now emphasize speed of

*Joseph R. Berger is counsel and Andrés Vera and Amaiya Johnson are associates in the government contracts practice at Thompson Hine LLP in Washington, D.C., where they specialize in government contracts litigation and regulatory compliance.*

delivery, production capacity, and innovation, revolutionizing the culture of the Department's acquisition activities."[12] (While the administration has renamed the agency the Department of War, the NDAA continues to refer in statute to the Department of Defense.[13])

The NDAA addresses a broad variety of procurement, acquisition, and program issues, including specific Army, Navy, Air Force, and DoD programs in Title I (titled "Procurement"); research, development, testing, and evaluation in Title II (including a focus this year on biotechnology issues); operation and maintenance in Title III (including sustainment of naval vessels and fighter aircraft); foreign military sales in Title XII (including measures that could accelerate program delivery); and military construction in Titles XXI–XXVIII.

Increasingly important to acquisition issues are Title XV, cyberspace-related matters (including cybersecurity and artificial intelligence (AI)), and Title XVI, addressing space activities (including the U.S. Space Force), intelligence matters, and strategic programs (including, this year, the "Golden Dome" missile defense system). For example, Section 1513, "Physical and cybersecurity procurement requirements for artificial intelligence systems," requires a framework for cybersecurity and physical security standards relating to AI and machine learning technologies. Section 1601 addresses the acquisition career path in the Space Force. And section 1651 modifies national defense policy to reflect the deployment of a next-generation missile defense shield.

In addition, the NDAA increasingly addresses cutting-edge emerging technologies. Section 1535 creates an AI Futures Steering Committee to proactively address advanced AI capabilities that are more advanced than any existing today, including those systems that approach or achieve artificial general intelligence (AGI). To keep pace with rival powers, the U.S. government will need access, through government contracts and other procurement mechanisms, to these evolving and unprecedented breakthroughs in commercial technology.

While the NDAA includes an extensive number of comprehensive provisions relating to procurement policy and acquisition reform, we highlight below a representative sample of those provisions affecting contractors in Title XVIII (Acquisition Reform) and Title VIII (Acquisition Policy), with some added context from the Joint Explanatory Statement (Joint Statement) released by the congressional negotiators in the House and Senate.[14]

## Title XVIII, Acquisition Reform

### *Section 1801, "Alignment of the defense acquisition system with the needs of members of the Armed Forces."*

As explained in the Joint Statement, the House bill contained a provision, adopted as NDAA Section 1801, that amends 10 U.S.C. § 3102 to establish and emphasize the customer-oriented "objectives of the defense acquisition system," to ensure that "the defense acquisition system expeditiously provides the armed forces with the capabilities necessary to operate effectively, to address evolving threats, and to sustain the military advantage of the United States in the most cost-effective manner practicable."[15]

While these objectives are not new, they are highlighted in new ways throughout these amendments, affecting the entire defense acquisition system. For example, this section makes conforming amendments to ensure these overarching objectives are implemented by the Under Secretary of Defense for Acquisition and Sustainment, the Director of Operational Test and Evaluation, the Director of Cost Assessment and Program Evaluation, Civilian Management, and the Service Chiefs throughout the defense acquisition system.

This section requires the Secretary of Defense to revise DoD Directive 5000.01, the principal DoD directive on the Defense Acquisition System,[16] and other relevant instructions, policies, or guidance, to prioritize the needs of end users—empowering a more agile and workable procurement system. This new guidance must require the following from the Defense Acquisition System, paraphrased from NDAA Section 1801(b):

1. The expeditious delivery of capabilities to enhance the operational readiness of the armed forces;
2. A leadership culture and organizational structure that empowers individuals in the management of the defense acquisition system;
3. Sufficient numbers in the acquisition workforce, properly trained and assigned;
4. Resource decisions to prioritize best value and seek to balance life-cycle costs, schedule, performance, and quantity;
5. Adoption and integration of advanced approaches in digital engineering, model-based engineering, and simulation environments;
6. Innovative solutions to enhance effectiveness of the armed forces and responsiveness to emerging threats, including the acquisition and integration of commercial products and commercial services; and
7. Workforce training and development that equally balance functional and technical skills with skills in cross-functional integration, critical thinking, and innovative approaches that best deliver solutions to operational problems.[17]

Crucially, the term "best value" is redefined to mean, "with respect to an acquisition, the optimal combination of cost, quality, technical capability or solution quality, and delivery schedule."[18] This furthers the DoD's policy objectives to prioritize best value solutions rather than elevate cost alone as the primary consideration. These newly highlighted principles also emphasize end-user capabilities delivered with speed and innovation to counter threats from adversaries and to cost-effectively sustain the military advantage of the United States.

### *Section 1802, "Establishment of the role of portfolio acquisition executive."*

The DoD is moving from its historic program- and platform-centric approaches to a broader portfolio-based strategy for the acquisition of capabilities across multiple platforms and systems. The NDAA formally establishes the role of a portfolio acquisition executive (PAE) as the senior official leading a portfolio of capabilities, responsible for the oversight of plans, budgets, and execution of programs assigned to that portfolio.[19] PAEs will report directly to the service acquisition executives, and program managers will report directly to the PAEs. PAEs are responsible for, among many other things, ensuring that all activities are aligned with the objectives of the defense acquisition system as amended by NDAA Section 1801, described above.

According to Section 1802(a), the portfolio acquisition executive "is the senior acquisition official designated by the component acquisition executive or the service acquisition executive of the military department concerned, as applicable, to lead a portfolio of capabilities, with authority for plans, budgets, and execution of programs assigned to the portfolio, including life-cycle management."[20]

For contractors, this means that PAEs may be critical decision-makers affecting contracting actions that are driven by the government's overarching missions. According to the Joint Explanatory Statement, Congress believes that transitioning responsibilities from program executive officers to PAEs "will enable the Department of Defense to transition from managing acquisitions on a program-by-program basis to managing portfolios of programs to better deliver capabilities to end-users. We believe that in order for portfolio management to work, PAEs must be provided with functional support from the disparate stakeholders of the acquisition system, including contracting, budgeting, engineering, and related disciplines, and be empowered to make decisions across all of these areas."[21]

### *Section 1803, "Amendments to life-cycle management and product support."*

This section establishes the product support manager as the "individual responsible for managing product support required to field and maintain the readiness and operational capability of a covered system throughout the life cycle" of that system.[22] The Secretary of Defense must designate a product support manager for each covered system, who will be "coequal" with the program manager and report directly to the PAE.[23]

Contractors should be prepared to work with product support managers in addition to program managers and PAEs throughout the life cycle of a system they support. The product support manager is charged with achieving the defense acquisition system objectives established in Section 1801 (as described above) and with identifying, developing, implementing, incentivizing, and measuring quantifiable best value, outcome-based product support, which must optimize life-cycle cost, readiness, and operational capability of a covered system.[24] The product support manager also must coordinate with engineers to ensure that each system is supported by a performance-based life-cycle sustainment plan.[25]

### *Sections 1804, "Adjustments to certain acquisition thresholds," and 1806, "Matters related to cost accounting standards."*

Section 1804 updates statutory dollar thresholds in Title 10 for major defense acquisition programs, for cost levels that trigger requirements for competitive procedures and certain cost and pricing data submission requirements. These changes will provide smaller DoD contractors with substantial relief from often-expensive compliance obligations. The statutory threshold for submission of certified cost or pricing data is raised from $2 million (before inflation adjustments)[26] to $10 million for defense contracts entered into after June 30, 2026.[27] This increase is intended to eliminate time-consuming procedural impediments for both agency personnel and contractors when contracting below the new, higher threshold.

Section 1806 amends Title 41 more broadly, and, in summary, (a) raises the threshold for full coverage by the federal Cost Accounting Standards (CAS) from $50 million to $100 million; (b) reforms the CAS Board while ensuring that members of executive agency audit entities are ineligible to serve as members (beginning in 2028); (c) requires cooperation between the Secretary of Defense, CAS Board, and Comptroller General; (d) raises certain contract-specific statutory thresholds for mandatory CAS application from $2 million (before inflation adjustments) to $35 million, and exempts portions of contracts from CAS; and (e) reforms certain contract price adjustment requirements concerning aggregate increased costs.[28] To implement these statutory changes, Section 1806 also requires certain regulatory adjustments to the Federal Acquisition Regulation (FAR), Defense Federal Acquisition Regulation Supplement (DFARS), and CAS regulations.[29]

The Joint Explanatory Statement also directs the DoD Secretary, within 90 days of enactment of the NDAA, to "conduct a review to identify actions to streamline the [DoD] implementation of compliance with requirements associated with the cost accounting standards[.]"[30] This makes clear that Congress intends DoD to simplify the complex CAS compliance requirements, where they apply. That will be welcome news for those contractors not already exempted by the increased dollar threshold in Section 1806. The CAS regulations are perceived as a significant barrier to entry for new companies and small businesses in the defense industrial base, and these extensive changes will reduce burdens for those companies while refocusing regulatory compliance and enforcement on larger contracts and contractors.

### *Section 1826, "Exemptions for nontraditional defense contractors."*

Taking a complementary approach to Sections 1804 and 1806, Section 1826 exempts nontraditional defense contractors, which include small businesses, from (1) the cost principles in FAR Part 31, (2) requirements to provide certified cost or pricing data, and (3) a series of additional, complex DFARS requirements that generally relate to cost or pricing, accounting, and purchasing or business systems.[31] DoD can waive this exemption (in whole or in part) under certain circumstances.

This provision will vastly simplify compliance requirements for nontraditional defense contractors and small businesses and is one of the most consequential NDAA provisions in terms of the reduction of regulatory burdens and barriers. "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 have not performed such a contract during the preceding one-year period. This should include small businesses because, under the current CAS regulations, contracts and subcontracts with small businesses are exempt from all CAS requirements.[32] Here also, with respect to the complex requirements exempted under Section 1826, compliance and enforcement will refocus on larger contracts and contractors. This also, in turn, should encourage greater participation of small businesses and nontraditional contractors in the defense industrial base.

#### *Section 1807, "Establishment of Project Spectrum."*

Section 1807 also focuses on helping smaller businesses in the defense industrial base. The House bill contained a provision, adopted here, that codifies "Project Spectrum," the purpose of which is to provide small businesses and other covered entities (including medium-sized businesses) access, through an online platform, to digital resources and services that increase awareness about cybersecurity risks and help those small- and medium-sized companies comply with the DoD's cybersecurity requirements.[33]

Under Section 1807, the director of the DoD Office of Small Business Programs must establish and maintain the program "Project Spectrum" to facilitate compliance with the requirements of the defense acquisition system more generally, which may include the Cybersecurity Maturity Model Certification (CMMC) program and requirements related to foreign ownership and control.[34] This program should be helpful to participants as they work to comply with the complex new cybersecurity requirements imposed by the recent finalization of the CMMC program final rule[35] and pending rules relating to foreign ownership, control, and influence.[36]

#### *Section 1821, "Modifications to relationship of other provisions of law to procurement of commercial products and commercial services."*

Title XVIII, Acquisition Reform, includes a series of notable provisions at Subtitle C, Matters Relating to Commercial Products and Commercial Services. These begin with Section 1821, originating with the Senate bill, amending 10 U.S.C. § 3452 and requiring DoD to identify defense-unique contract clause requirements for the procurement of commercial products and commercial services that are based on statute, Executive Orders, or acquisition policies.[37] Section 1821(b) requires DoD to amend the DFARS to include this list of specific defense-unique contract clause requirements.[38] This should provide welcome assistance to contractors that commonly face enormously complex and lengthy DFARS flowdown requirements, and should encourage more and new commercial companies into the DoD contracting space with more predictable terms and conditions.[39]

Section 1821(c) also requires the DFARS to include a similar list for subcontracts.[40] Notably, in this subsection, the term "subcontract" includes a transfer of commercial products and commercial services between divisions, subsidiaries, or affiliates of a contractor or subcontractor but "does not include any agreement entered into by a contractor or subcontractor for the supply of products or services that are intended for use in the performance of multiple contracts with the Department of Defense or with other parties, and that are not identifiable to any particular contract."[41] Section 1821(d) continues by requiring the DFARS to include a similar list for contracts or subcontracts for commercially available, off-the-shelf items (COTS).[42] These lists should provide additional needed guidance to subcontractors and help them when transacting and negotiating with prime contractors.[43]

#### *Section 1824, "Limitation on required flowdown of contract clauses to subcontractors providing commercial products or commercial services."*

Section 1824 includes another provision similar to section 1821 that would further limit flowdowns for commercial subcontractors. Originally from the Senate bill, section 1824 creates a new section that will limit the required flowdown of contract clauses for subcontracts and supply agreements providing commercial products or commercial services.[44]

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 commercial services other than those included on the lists required by section 1821 (described above), or unless otherwise applicable under section 3452.[45] Further, the Secretary may not require the application of any contract clauses to "other supply agreements" for commercial products and commercial services unless otherwise applicable pursuant to section 3452(e).[46]

Section 1824, which applies to subcontracts after the lists required by Section 1821 are published,[47] would further limit new flowdown clauses and new regulatory requirements for subcontracts and supply agreements. Section 1824 may have the practical effect of limiting clauses that appear in new subcontracts to those on the lists required by Section 1821, but this also may depend on transactions and negotiations between primes and subcontractors. Sections 1821 and 1824, working in tandem, should provide welcome assistance for subcontractors and companies in the supply chain that have challenges understanding what complex DoD clauses potentially apply to their products and services, as well as prime contractors that must flow down required clauses.

***Section 1822, "Modifications to commercial products and commercial services."***
The NDAA adopts a provision from the Senate bill that establishes a formal process for determining the nonavailability of commercial products or commercial services.[48] This provision requires the DoD program manager to submit written memoranda, to be signed by the PAE and considered by the contract officer, before using noncommercial solicitation procedures, explaining the decision, as justified by market research and requirements analyses.[49] This provision will further solidify the existing statutory preference and Executive Orders requiring DoD to consider the commercial marketplace first and procure commercial products and services before utilizing any noncommercial approach.[50]

***Section 1823, "Modifications to commercial solutions openings."***
The Senate bill contained a provision, adopted here, expanding the purposes for which the commercial solutions openings (CSO) solicitation procedure may be used. CSOs were designed to provide opportunities for start-up companies to provide the federal government with new innovative commercial products and commercial services while using streamlined, simplified procurement procedures. CSOs were formerly limited to new technologies and applications under a pilot program,[51] but section 1823 now expands this tool to all commercial products and services.[52] This provision also creates an authority for sole-source follow-on production contracts.[53] Section 1823 amends 10 U.S.C. § 3458 to permit the acquisition of *any* commercial product or service through a competitive selection of proposals resulting from a general solicitation and a peer review, technical review, or operational review of proposals, as appropriate.[54] This reflects continued congressional encouragement of alternative acquisition procedures, including CSOs and Other Transaction Authority (OTA).[55]

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

***Section 804, "Multiyear procurement authority for covered systems and certain munitions."***
Multiyear procurement authority generally provides for more stable planning and demand for the industrial base. As explained in the Joint Statement, the House bill contained a provision, adopted here as section 804, that would require the Secretary of Defense to enter into a multiyear procurement contract for a covered weapon system if the system is projected to maintain full-rate production for five or more consecutive years and if a decision already has been made to move to full-rate production.[56] Covered systems are defined as a "major system" in 10 U.S.C. § 3041.[57] Section 804 requires the Secretary of Defense to submit to Congress a request for authorization to enter into multiyear contracts for covered systems.[58] And the NDAA also provides additional authorities and requirements permitting the multiyear procurement of certain munitions, including several listed complex missile systems.[59]

***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.[60] The Secretary must identify relevant contracts or agreements for each covered system and conduct a review of the requirements with respect to covered technical data, including requirements for both data delivered and otherwise accessible by the DoD.[61] This section further requires the Secretary to (1) assess the available data to confirm that storage, classification, and marking are appropriate; (2) identify insufficiencies in covered technical data; and (3) address any insufficiencies in those data.[62]

As explained by the Joint Statement, this section requires the Secretary of Defense to identify programs where there are insufficient data available and to address that insufficiency.[63] The Joint Statement notes that Congress has legislated many times over the last two decades to ensure that DoD will plan for the technical data necessary to support and execute the planned product support strategy. According to Congress, the DoD's challenges related to technical data "are not rooted in an insufficiency in the law, but rather insufficiencies in the Department's planning and resourcing decisions made early in the acquisition phase related to the sustainment of the systems it procures, and in some cases the Department's insufficient inspection, acceptance, and management of technical data that have been negotiated."[64]

Therefore, the congressional negotiators strongly encouraged DoD to maximize competition and "take necessary planning, resourcing, and contracting actions to ensure that lack of technical data does not impede the effective operation and maintenance of systems acquired by the Department."[65] This admonition from Congress may manifest in more proactive actions by DoD to request data rights from contractors or to assert DoD data rights claims during competition or performance.

***Section 824, "Increasing competition in defense contracting."***
This provision 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 to be evaluated on that basis. This guidance will ultimately lead to new regulations.

This provision also requires the Secretary to prioritize contracting policies that ensure that cost efficiency and quality are key determining factors in awarding contracts.

Accordingly, section 824 provides that the Secretary must issue guidance on (a) when DoD should accept past performance on a wider range of projects, such as "a requirement without much precedent," in order to have increased competition among eligible firms, by including commercial or nongovernment projects as relevant past performance; (b) a means by which DoD may validate nongovernment past performance references; and (c) alternative methods of evaluation (other than past performance) that may be appropriate for a requirement without much precedent, such as demonstrations and testing of technologies as part of the proposal process.[66]

Section 824 also requires the Defense Acquisition Regulations Council to make recommendations to identify and eliminate specific, unnecessary procedural barriers that disproportionately affect the ability of small businesses and nontraditional defense contractors to compete for DoD contracts.[67] These provisions are intended to further promote participation and competition in the defense industrial base.

***Section 866, "Cybersecurity regulatory harmonization."***

This section seeks to reduce contract-specific cybersecurity requirements, given the comprehensive cybersecurity regulatory environment that already exists for DoD contracts and subcontracts. As explained in the Joint Statement, the House bill contained a provision that would require the chief information officer (CIO) of the Department of Defense to submit a plan to reduce the cybersecurity regulatory burden on the defense industrial base.[68] Section 866 directs the DoD's CIO, in coordination with the CIOs and representatives from the service acquisition executives of each military department, to harmonize and reduce unique cybersecurity regulations that might otherwise apply to the defense industrial base.

The deadline for this effort is June 1, 2026, and the DoD CIO must report annually to Congress not later than December 31, 2026, on the actions taken to implement this section.[69] As with "Project Spectrum" (discussed above), this process will likely be welcomed by industry given complex new cybersecurity requirements imposed on the defense industrial base through the recent finalization of the CMMC program final rule.[70]

***Section 874, "Annual report on contract cancellations and terminations."***

As explained by the Joint Statement, the Senate bill contained a provision requiring the Secretary of Defense to submit an annual report on any cancelled contracts for the preceding fiscal year, and for each of the fiscal years 2027 through 2031, to the congressional defense committees.[71] In the first report, the Secretary of Defense also would include reporting on any cancellations of contracts during fiscal year 2025. The NDAA includes the Senate provision but specifies the reports should cover any contract cancellations or terminations above the simplified acquisition threshold, currently $350,000.

The reports will include, among other elements, a brief justification of the rationale for each cancellation or termination, which may include contracts (1) that do not align with the priorities of the Secretary of Defense; (2) for which the requirement no longer exists; (3) for which the requirement has decreased; (4) for which the requirement exists, but the contract did not meet requirements for cost or the schedule or performance of the contract was unacceptable; or (5) any other rationale as determined by the Secretary.[72]

These reports will hopefully provide further illumination not only to the events of 2025 relating to the initial wave of cancelled contracts under the Department of Government Efficiency (DOGE), but also to similar termination decisions going forward. The cancellation or termination of any contract may have unanticipated consequences, not just for the program at issue, but for the government agency, its workforce, and the contracting community that supports its mission. While terminations and similar events are a fixture of government contracting, these new annual reports will hopefully coincide with improved management of such contract actions in the future.

***Section 875, "Ability to withhold contract payments during period of pendency of a bid protest."***

This provision is, in terms of procurement reform and accountability, perhaps one of the more controversial parts of the FY 2026 NDAA. Section 875 authorizes the Secretary of Defense to withhold up to five percent of certain payments to an incumbent contractor who files a bid protest that is ultimately dismissed by the U.S. Government Accountability Office (GAO) based on a lack of any reasonable legal or factual basis. Section 875 requires the Secretary of Defense to revise the DFARS within 180 days (by mid-June 2026) 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.[73]

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."[74] The covered amount is "not greater than five percent of the total amount" that would be paid to the incumbent without the withholding.[75]

This provision may deter some protests by incumbents. A potential protester may have alternatives to consider, including agency-level protests with DoD or filing at the U.S. Court of Federal Claims. In addition, a protester might choose to withdraw its protest before any decision by GAO on a request for dismissal. However, the prospect of a potential withholding of payments may deter some protests that would otherwise be filed.

Notably, this provision would only apply to protests of DoD contracts; contracts with civilian agencies will not be subject to this same withholding.

Should this provision have these effects, it could continue a trend of fewer protests at GAO and (possibly) more at the Court of Federal Claims. According to the Bid Protest Annual Report to Congress for Fiscal Year 2025,[76] the "effectiveness rate" of a GAO protest was 52 percent, and the five-year average was also 52 percent. That means a protester has about a 50/50 chance of some form of relief, through either agency corrective action or winning a sustained decision (although only 14 percent of merits decisions were sustained). The effectiveness rate makes GAO an attractive protest venue, and about half of all protests may relate to DoD.

However, the number of protests filed at GAO last year went down. The Report also showed that during the 2025 fiscal year, GAO received 1,688 cases, and aside from FY 2022, that was the lowest number since FY 2008. This may reflect, in part, a reluctance by losing bidders to lodge a protest challenge against the administration. This also may reflect, in part, increasing utilization of the Court of Federal Claims as a protest forum.[77] If incumbents are deterred from protesting at GAO despite good faith allegations, they may be likely to protest at the court instead.

## Conclusion

With the incorporation of select provisions from the SPEED and FoRGED Acts, and numerous provisions focused on improving government contracting procedures, the FY 2026 NDAA includes an increased emphasis on acquisition reform, and this focus likely will continue in future NDAAs, as it does each year to varying degrees. With certain provisions reforming the entire defense acquisition system, some of this year's reforms affect primarily the government and how it operates, while others affect primarily contractors. Working together, these reforms ultimately should support the national security missions and objectives of the U.S. government, taking into account the ongoing commercial technology race between nations, while also improving accountability for government spending. The government's missions can be better achieved through its agencies, contractors, and commercial partners working in tandem with collective speed and efficiency, as encouraged by the latest NDAA reforms. PL

## Endnotes

1. *See* National Defense Authorization Act for Fiscal Year 2026 (FY 2026 NDAA), Pub. L. No. 119-60 (Dec. 18, 2025). The NDAA originated in the House of Representatives as H.R. 3838, Streamlining Procurement for Effective Execution and Delivery and National Defense Authorization Act for Fiscal Year 2026 (the House bill), and in the Senate as S. 2296, National Defense Authorization Act for Fiscal Year 2026 (the Senate bill). These bills were eventually consolidated into S. 1071, National Defense Authorization Act for Fiscal Year 2026, which became Pub. L. No. 119-60.

2. On September 5, 2025, President Trump renamed the Department of Defense the "Department of War." *See* Exec. Order 14,347, Restoring the United States Department of War, 90 Fed. Reg. 43,893 (Sept. 10, 2025). Congress, in creating the agency, has named it the "Department of Defense." *See, e.g.*, 10 U.S.C. §§ 111–13. The NDAA for FY 2026 continues to refer to the Department of Defense, and therefore this article refers to the agency primarily as the Department of Defense (DoD). The agency and administration now refer to the Department of War (DoW), and many contractors have adopted the nomenclature of their agency customer.

3. H.R. 3838, the Streamlining Procurement for Effective Execution and Delivery (SPEED) Act, was introduced by House Armed Services Committee (HASC) Chair Mike Rogers (R-AL) and Ranking Member Adam Smith (D-WA). S. 5618, the Fostering Reform and Government Efficiency in Defense Act (FoRGED Act), was introduced by Senate Armed Services Committee (SASC) Chair Roger Wicker (R-MS).

4. As a preview to the NDAA reforms, and as required by the April 9, 2025, Executive Order, Exec. Order 14,265, Modernizing Defense Acquisitions and Spurring Innovation in the Industrial Base, 90 Fed. Reg. 15,621 (Apr. 15, 2025), the Department of War released the "Acquisition Transformation Strategy: Rebuilding the Arsenal of Freedom." US Dep't of War, Acquisition Transformation Strategy (Nov. 2025), https://media.defense.gov/2025/Nov/10/2003819441/-1/-1/1/ACQUISITION-TRANSFORMATION-STRATEGY.PDF.

5. Previewing these changes for the DoD, Secretary Pete Hegseth announced the Strategy and related directives in a speech at the National War College on November 7, 2025. *See also* Press Release, US Dep't of War, Secretary of War Announces Acquisition Reform (Nov. 10, 2025) [hereinafter Acquisition Reform Press Release], https://www.war.gov/News/Releases/Release/Article/4329487/secretary-of-war-announces-acquisition-reform/. The Secretary also redesignated the "Defense Acquisition System" as the "Warfighting Acquisition System" (with related instructions for structural transformation); reformed the Joint Requirements Process to accelerate warfighting capabilities; and reformed the Department's security cooperation mechanisms for allies and partners. *Id.*

6. Press Release, US Sen. Comm. on Armed Servs., SASC Chairman Wicker and Ranking Member Reed Commend Final Passage of the Fiscal Year 2026 National Defense Authorization Act (Dec. 17, 2025), https://www.armed-services.senate.gov/press-releases/sasc-chairman-wicker-and-ranking-member-reed-commend-final-passage-of-the-fiscal-year-2026-national-defense-authorization-act; US Sen. Comm. on Armed Servs., Exec. Summary, Fiscal Year 2026 National Defense Authorization Act (2025), Preface, at 1, https://www.armed-services.senate.gov/imo/media/doc/passage_fy26_ndaa_executive_summary.pdf.

7. *Id.*

8. *See id.*

9. *See id.* at 2.

10. House Armed Servs. Comm., The FY26 NDAA: Implementing President Trump's Peace Through Strength Agenda, at 3, https://fy26_ndaa_conference_text_legislative_summary.pdf.

11. *Id.* at 3–5.

12. Statement of Administration Policy on S. 1071—[NDAA] for Fiscal Year 2026 (Dec. 9, 2025), https://armedservices.house.gov/uploadedfiles/sap_ndaa_2026.pdf.

13. *See* note 2, *supra*.

14. Joint Explanatory Statement to Accompany the National Defense Authorization Act for Fiscal Year 2026 (Dec. 7, 2025) [hereinafter Joint Statement], https://armedservices.house.gov/uploadedfiles/fy26_ndaa_joint_explanatory_statement.pdf.

15. FY 2026 NDAA § 1801(a); *see also* Joint Statement, *supra* note 14, at 378–79, sec. 1801.

16. *See* DoD Directive 5000.01, The Defense Acquisition System, Change 1 (effective July 28, 2022), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/500001p.pdf. As noted above, the Secretary has redesignated the "Defense Acquisition System" as the "Warfighting Acquisition System," with related instructions for structural transformation. *See supra* note 5.
17. *See* FY 2026 NDAA § 1801(b).
18. *Id.* § 1801(e).
19. The Acquisition Transformation Strategy and related directives also emphasized the role of the portfolio acquisition executive, as discussed by the Secretary in his November 2025 speech at the National War College. *See supra* note 5.
20. FY 2026 NDAA, § 1802(a).
21. Joint Statement, *supra* note 14, at 379, sec. 1802.
22. FY 2026 NDAA, § 1803(a) (codified at 10 U.S.C. § 1733(a)).
23. *See id.* § 1803(a) (codified at 10 U.S.C. § 1733(b)).
24. *See id.* (codified at 10 U.S.C. § 1733(c)).
25. *See id.* § 1803(a), (c) (codified at 10 U.S.C. §§ 1733(d)(3), 4324).
26. The certified cost or pricing threshold was adjusted for inflation from $2 million to $2.5 million, effective October 1, 2025. *See* Federal Acquisition Regulation: Inflation Adjustment of Acquisition-Related Thresholds, 90 Fed. Reg. 41,872 (Aug. 27, 2025).
27. Section 1804 contains additional statutory implementation details. *See* FY 2026 NDAA, § 1804(c).
28. *See* FY 2026 NDAA, § 1806(a)–(f). Like other NDAA sections summarized here, Section 1806 also contains additional significant statutory details.
29. *See id.*
30. Joint Statement, *supra* note 14, at 381, sec. 1806.
31. *See* FY 2026 NDAA, § 1826(a).
32. *See* 48 C.F.R. § 9903.201-1(b)(3) (exempting small businesses from CAS coverage).
33. Joint Statement, *supra* note 14, at 381, sec. 1807.
34. *See* FY 2026 NDAA, § 1807(a)–(c). The CMMC program is set forth at 32 C.F.R. Part 170. Issues relating to foreign ownership and control were highlighted in section 847 of the FY 2020 NDAA (Pub. L. No. 116–92, § 847, 133 Stat. 1505 (Dec. 20, 2019)) and section 819 of the FY 2021 NDAA (Pub. L. No. 116-283, § 819, 134 Stat. 3751 (Jan. 1, 2021)). *See also* DoD Instruction 5205.87, Mitigating Risks Relating to Foreign Ownership, Control, or Influence for Covered DoD Contractors and Subcontractors (eff. May 13, 2024), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/520587p.pdf?ver=9FwW0T2akTUDKvFKJCcEbw%3D%3D&utm.
35. *See* Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 1029-D041), 90 Fed. Reg. 43,560 (Sept. 10, 2025).
36. *See Mitigating Risks Related to Foreign Ownership, Control, or Influence (DFARS Case 2021-D011)*, Off. of Mgmt. and Budget (2023), https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=0750-AL30.
37. Joint Statement, *supra* note 14, at 382–83, sec. 1821.
38. *See* FY 2026 NDAA, § 1821 (codified at 10 U.S.C. § 3452(b)).
39. Then again, industry might be slow to realize any benefit from this new language. Similar language was originally included in the NDAA for FY 2017. *See* Pub. L. No. 114-328, § 874, 130 Stat. 2000, 2308 (Dec. 23, 2016) (amending 10 U.S.C. § 2375 (now codified at 10 U.S.C. § 3452) to limit flowdowns for commercial contracts and subcontracts and requiring DoD to prepare a list of DFARS requirements that do not apply to contracts and subcontracts for commercial products and commercial services). *See also* 41 U.S.C. § 1906 (requiring a similar list of inapplicable requirements for commercial contracts and subcontracts).
40. *See* FY 2026 NDAA, § 1821 (codified at 10 U.S.C. § 3452(c)).
41. *Id.* (codified at 10 U.S.C. § 3452(c)(2)).
42. *See id.* (codified at 10 U.S.C. § 3452(d)).
43. As noted in note 39, *supra*, similar language has been included in previous NDAAs, purporting to limit subcontractor flowdown requirements. Thus far, DoD has not meaningfully advanced this limitation.
44. *See* Joint Statement, *supra* note 14, at 383–84, sec. 1824.
45. *See* FY 2026 NDAA, § 1824.
46. *See id.*
47. *Id.*
48. Joint Statement, *supra* note 14, at 383, sec. 1822.
49. *See* FY 2026 NDAA, § 1822(a), (b) (amending 10 U.S.C. §§ 3453, 3456).
50. *See* 10 U.S.C. § 3453; 41 U.S.C. § 3307; *see also* Exec. Order 14,271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracts, 90 Fed. Reg. 16,433 (Apr. 18, 2025); Exec. Order 14,265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base, 90 Fed. Reg. 15,621 (Apr. 15, 2025).
51. *See* National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 880, 130 Stat. 2313 (Dec. 23, 2016), amended by National Defense Authorization Act for Fiscal Year 2023, Pub. L. No. 117-263, § 7227(a), 136 Stat. 3675 (Dec. 23, 2022).
52. *See* Joint Statement, *supra* note 14, at 383, sec. 1823.
53. *See* FY 2026 NDAA, § 1823.
54. *See id.*
55. *See* 10 U.S.C. §§ 4021–22 (providing DoD Other Transaction Authority for research projects and prototyping).
56. *See* Joint Statement, *supra* note 14, at 158–59, sec. 804.
57. *See* FY 2026 NDAA, § 804(a)(4).
58. *See id.* § 804(a)(1).
59. *See id.* § 804(b).
60. *See id.* § 805(a).
61. *See id.* § 805(b).
62. *See id.* § 805(c)–(e).
63. *See* Joint Statement, *supra* note 14, at 160, sec. 805.
64. *Id.*
65. *Id.*
66. *See* FY 2026 NDAA, § 824(a).
67. *See id.* § 824(b).
68. *See* Joint Statement, *supra* note 14, at 173–74, sec. 866.
69. *See* FY 2026 NDAA, § 866.
70. *See* Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 1029-D041), 90 Fed. Reg. 43,560 (Sep. 10, 2025).
71. *See* Joint Statement, *supra* note 14, at 175, sec. 874.
72. *See* FY 2026 NDAA, § 874(b)(5).
73. *See id.* § 875.
74. *Id.*
75. *Id.*
76. GAO Bid Protest Annual Report to Congress for Fiscal Year 2025, GAO-26-900695 (Dec. 12, 2025), https://www.gao.gov/products/gao-26-900695#_ftn7.
77. According to the Court of Federal Claims annual report for FY 2025, there were 234 bid protest cases filed, and 247 cases closed. US Court of Federal Claims, Statistical Report for the [2025] Fiscal Year, https://www.uscfc.uscourts.gov/sites/cfc/files/AOstats-2025%20FINAL.pdf.