Warfighting Procurement Authorization: 2026 NDAA Poised to Enact Sweeping Changes to Defense Contracting

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PRACTICES Government Contracts

Each year, Congress enacts changes to procurement law as part of the National Defense Authorization Act (NDAA). Many of the provisions of interest to government contractors are contained in Title VIII, "Acquisition Policy, Acquisition Management, and Related Matters," and Title XVIII, "Acquisition Reform." The extent of the changes varies from year to year.

The NDAA for Fiscal Year 2026, as reflected in the recent House Rules Committee Print (which was passed by the House on Dec. 10, 2025, and is poised to be passed by the Senate in coming days), is set to make far-reaching changes to federal procurement law. The Executive Office of the President indicated in a Statement of Administration Policy that if the NDAA is presented to the President in its current form, he will sign it into law.

These changes come on the heels of remarks by Secretary Pete Hegseth at the National War College on Nov. 7, 2025, announcing acquisition reforms, accompanied by the release of several memoranda detailing planned reforms to United States military procurement to implement a "Warfighting Acquisition System." The 2026 NDAA provisions feature many of the same themes as the memos, such as enhancing acquisition speed, reducing regulatory burden and prioritizing acquisition of commercial products and services.

The following summarizes several of the most significant sections.

1. Nontraditional Defense Contractor Exemption from Cost Principles, TINA, Other Requirements (Sec. 1826).

In the greatest change to current requirements, Sec. 1826, Exemptions for Nontraditional Defense Contractors, calls for the Department of Defense (DoD) to exempt nontraditional defense contractors—including *all* small businesses—from both the Federal Acquisition Regulation (FAR) Part 31 Cost Principles and from requirements to provide certified cost or pricing data.

Sec. 1826 states: "For purposes of contracts, subcontracts, or agreements of the Department of Defense, products and services provided by nontraditional defense contractors . . . shall be exempt from . . . Section 3702 of title 10, United States Code [the Truthful Cost or Pricing Data Act]," and "Part 31 of the Federal Acquisition Regulation, or successor regulation." 10 U.S.C. § 3014 defines *nontraditional defense contractors* as companies that are not currently performing a contract subject to full coverage under the Cost Accounting Standards (CAS) and that have not performed such a contract during the preceding one-year period.

The NDAA further exempts "nontraditional defense contractors" from:

- DFARS 252.242–7006 Accounting System Administration;
- DFARS 252.234–7002 Earned Value Management System;

- DFARS 252.215–7002 Cost Estimating System Requirements;
- DFARS 252.242–7004 Material Management and Accounting System;
- DFARS 252.245–7003 Contractor Property Management System Administration;
- DFARS 252.244–7001 Contractor Purchasing System Administration;
- DFARS 252.242–7005 Contractor Business Systems;
- DFARS 215.407 Special cost or pricing areas.

These exemptions present many questions, including how cost-type contracts will be administered in the absence of FAR Part 31. Will the requirement that incurred costs be reasonable, allocable and allowable disappear entirely, or will auditors attempt to rely on these principles, at least to some extent, as inherent in the notion of cost-reimbursement contracting?

Note that these exemptions do not apply to civilian agency contracts. Accordingly, a nontraditional defense contractor awarded a civilian agency contract would be subject to the Cost Principles and would be required to provide certified cost or pricing data (assuming current triggering conditions are met). This presents additional questions about the applicability of the exemption to orders placed by DoD agencies under multiple award contracts issued by civilian agencies, or orders placed by civilian agencies under multiple award contracts issued by DoD agencies.

Sec. 1826 allows the head of contracting activity or delegee to waive the exemptions, or modify or partially apply them, with a written determination. It is possible that DoD could employ the waiver authorization to scale back the impact of the statutory change.

2. CAS Applicability Changes and Other Reforms (Sec. 1806).

Sec. 1806 has the potential to dramatically reduce future contracts covered by the Cost Accounting Standards (CAS) by adjusting coverage thresholds in two ways: (1) all contracts and subcontracts are exempt from CAS entirely if valued below $35 million, formerly $2.5 million, eliminating the "trigger contract" mechanism; and (2) the threshold for full CAS coverage increases from $50 million to $100 million.

This provision also makes several changes pertaining to the CAS Board. Beginning Jan. 1, 2028, Defense Contract Audit Agency (DCAA) officials and employees (any "individual who is a member of an audit entity of an executive agency") will be ineligible to serve on the CAS Board. Instead, the two federal government representatives (one from DoD and one from GSA) will be required to have "substantial experience in administering and managing covered contracts." The industry representative will be required to have such experience as well. Two additional nonvoting members may be appointed to the Board, "from academia, a nonprofit organization, or a private entity with substantial experience establishing financial accounting and reporting standards in compliance with Generally Accepted Accounting Principles." This addition appears intended to support the ongoing CAS-GAAP conformance effort. Finally, senior staff members supporting the board will increase from "two" to "not less than four."

Finally, Sec. 1806 amends contract price adjustment requirements for cost accounting practice changes and the regulations protecting the government from payment of increased costs "in the aggregate." The Section states that, for changes in cost accounting practices: ‘‘(A) costs recovered by the Federal Government shall exclude any contract or subcontract (or any portion of such contract or subcontract) that is firm fixed-price, or that is not price-redeterminable based on costs," and ‘‘(B) for a fiscal year, for any contract or subcontract (or any portion of such contract or subcontract) that is not a firm, fixed-price contract or subcontract the costs recovered by the Federal Government shall not exceed the net increased costs, if any, paid to the contractor or

subcontractor for all changes in cost accounting practices implemented within the same fiscal year." Though this is subject to interpretation in the rulemaking process, paragraph (A) appears to correct recent Defense Contract Management Agency and DCAA guidance regarding the cost impact process, and paragraph (B) would appear to abrogate the Federal Acquisition Regulation (FAR) restriction on offsetting the cost impacts of unilateral cost accounting practice changes with savings achieved through other changes implemented at the same time or within the same fiscal year. *See* DCAA Memorandum for Regional Directors (MRD) 23-PAC 009(R); DCMA C-Note 24-02; FAR 30.606(a)(3)(ii).

Boeing has been litigating the lawfulness of the FAR offset restriction at the Court of Federal Claims and the Court of Appeals for the Federal Circuit for years. The most recent published decision is *Boeing Co. v. U.S.*, 119 F.4th 17 (Fed. Cir. 2024), which resulted in the Federal Circuit reversing a jurisdictional ruling by the trial court and remanding for consideration on the merits. Sec. 1806 might finally resolve this longstanding dispute, at least for future contracts.

3. TINA Applicability (Sec. 1804).

In addition to the total TINA exemption for nontraditional defense contractors on military contracts, Sec. 1804 increases the threshold for certified cost or pricing data on all government contracts, both defense and civilian, from $2.5 million (following an inflation adjustment earlier this year)[1] to $10 million.

4. DFARS Commercial Flow Downs List (Sec. 1821) and Commercial-First Policy Measures (Sec. 1822).

FAR 52.244-6, "Subcontracts for Commercial Products and Commercial Services," includes a list of 24 FAR flow down clauses that apply to subcontracts for commercial products and services. The Defense Federal Acquisition Regulation Supplement (DFARS) neglects to include a similar list, leaving contractors to review in some cases hundreds of clauses to determine whether flow down in commercial item subcontracts is "so specified in the particular clause" per DFARS 252.244-7000.

Sec. 1821 now directs that the DFARS "shall include a list of defense unique contract clause requirements based on laws, executive orders, or acquisition policies that may be applied to subcontracts for the procurement of commercial products and services." The DFARS will also include lists of clauses for commercial prime contracts, and contracts and subcontracts for commercially-available off-the-shelf (COTS) items.

The 2026 NDAA also doubles down on the current commercial-first policy. Before the DoD procures any noncommercial product or service, Sec. 1822 will require the portfolio acquisition executive to execute a written determination that, based on market research, "no commercial product, commercial service, or nondevelopment item exists that is suitable to meet the needs of the agency."

5. Incumbent Bid Protest Deterrence (Sec. 875).

Sec. 875 institutes a mechanism for disincentivizing incumbent protests. The DFARS will be amended to establish procedures for the contracting officer to withhold up to 5 percent of payments made to incumbents during the pendency of a bid protest filed by the incumbent (e.g., under a bridge contract). If the incumbent's protest is "dismissed" by the U.S. Government Accountability Office (GAO) "based on a lack of reasonable legal or factual basis," the incumbent will forfeit the withheld amount.

Note that withholding is authorized but is not required. Contracting Officers will have discretion to decide whether to require withholding.

The effects of this provision may be somewhat limited because it does not appear to contemplate forfeiture if a protest is *denied on the merits,* only if a protest is *dismissed* by GAO for lack of a factual or legal basis. This provision also applies only to GAO protests and not to protests at the Court of Federal Claims. It raises the question of how the Contracting Officer's decision may be challenged, and under what criteria. Given these oddities, and the fact that incumbent protests are more successful on average than non-incumbent protests, this provision appears ill-advised and likely to result in more litigation for agencies.

6. Multiyear Procurement Authority (Secs. 112, 128, 804)

Lack of multiyear contracting authority has long been cited as an impediment to investment in the defense industry. Sec. 804 creates new authority for the DoD to enter into multiyear contracts for critical munitions and other high-demand systems, including missile defense systems and low-cost hypersonic strike systems. Secs. 112 and 128 provide multiyear authority specifically for UH–60 Blackhawk aircraft and for yard, repair, berthing and messing barges, respectively.

7. Data Rights Assessment (Sec. 805)

Sec. 805, Addressing Insufficiencies in Technical Data, calls for the Secretary of Defense to "develop and implement a digital system to track, manage, and enable the assessment" of technical data "to verify the compliance of contractors and subcontractors with contract requirements related to technical data . . . ." The Department is directed to review the physical and electronic storage of data, assess marking and rights requirements, and identify license rights to determine whether there is an "insufficiency in covered data that negatively affects the ability of the Secretary to effectively operate a covered system and maintain such covered system in a cost-effective manner . . . ." If the Department deems data rights to be insufficient, it will either challenge markings it deems to be improper, or "request the relevant contractor to provide the Government with options for the covered data required to address the insufficiency . . . ." Sec. 805 only applies to "covered systems," defined as major defense acquisition programs, and acquisition programs or projects "using the rapid prototyping or rapid fielding acquisition pathway" and above certain thresholds.

The final bill will not include the controversial right of repair provisions proposed in the House and Senate versions of the NDAA.

8. Commercial Solutions Openings Expansion (Sec. 1823)

Sec. 1823 makes two notable changes to DoD's Commercial Solutions Opening (CSO) authority. First, use of CSOs in place of traditional procurement methods will now be authorized for all commercial products, commercial services and nondevelopment items, not just *innovative* commercial products and services. Second, when CSOs are used, DoD will have authority to issue follow-on production contracts or transactions (including sole source contracts, subject to justification and approval), similar to follow-on production contracts for prototype Other Transaction Authorities (OTAs).[2] This is another step in the decades-long effort to place greater reliance on commercial products where feasible.

9. Defense Production Act Extension (Sec. 8101).

Sec. 8101 includes a clean, one-year extension of the Defense Production Act (DPA). The extension runs from Sept. 30, 2025, to Sept. 30, 2026, and thus would arguably apply retroactively. In any case, the sunset provision of the DPA is structured in a manner to avoid disruption of active contracts in the event of a lapse.[3] Congress could not agree to extend the DPA for a longer period despite its general importance to the national defense.

10. Expansion of the U.S. International Development Finance Corporation

Sec. 8701 of the 2026 NDAA, the "DFC Modernization and Reauthorization Act of 2025," reauthorizes the U.S. International Development Finance Corporation (DFC), America's development finance institution, and greatly expands the DFC's power and scope of the projects it can support. Sec. 8701 raises the DFC's spending cap from $60 billion to $205 billion and allows DFC to use those funds in a much broader range of countries.

Previously, the DFC was mainly limited to projects in "less developed countries" with more restricted ability to act in "upper-middle-income countries." While the new text still prioritizes investment in "less developed countries," it adds additional categories including "High-Income Countries" and only prohibits DFC action in certain "Countr[ies] of Concern" (such as Russia, Cuba and others) and "Wealthy" countries, defined as a country "among the top 20 countries with the highest gross domestic product per capita at purchasing power parity, as calculated by the World Bank."

Even so, DFC can still act in "Wealthy" countries that are "Five Eyes" nations (the United Kingdom, Canada, Australia and New Zealand) as well as in "the overseas territories" of Wealthy countries. Additionally, "Sectoral Exceptions" permit support of projects in Wealthy countries in the fields of "Energy," "Critical minerals and rare earths" and "Information and communications technology, including undersea cables."

While newly-permitted investments in High Income and Wealthy countries are limited and only authorized in certain conditions, this reauthorization represents a significant refocusing of the agency.

Conclusion

The 2026 NDAA changes to federal procurement will have particularly striking effects on government contracts cost and pricing, and commercial products and services contractors.

Taken together, the threshold increases and exemptions for nontraditional contractors are likely to make government-unique cost and pricing requirements (CAS, cost principles, certified cost or pricing data) predominantly a concern for the core group of large primes, at least on defense contracts. The NDAA reduces the burden, risk and barriers to entry for everyone else.

Companies that sell commercial products or services are best positioned to take advantage of the new rules. The exemptions from the cost principles, TINA and other requirements should limit and better define the government-unique compliance obligations for commercial contractors. The expanded commercial-first policy measures and expanded authority to use CSOs for commercial products and services should help pave the way for new entrants to the defense market as well.

Samuel Johnson once characterized second marriages as "the triumph of hope over experience." For the government contracts community, that expression seems apt as a description for each new procurement reform initiative. And yet, the scope and magnitude of the changes proposed in the

2026 NDAA offer hope that this time may be different. Congress appears to have been listening to industry about the major impediments to investing in defense and taken steps to change the rules accordingly. Time will tell if this is effective.

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[1] 90 Fed. Reg. 41,872 (Aug. 27, 2025).

[2] *See* 10 U.S.C. § 4022.

[3] *See* D. Ramish, Z. Prince, E. Amorosi, Defense Production Act Lapse: Effects on Rated Contracts and Orders (Nov. 17, 2025).