

FY2024 NDAA: Department of Defense Acquisition Policy

August 17, 2023

Introduction

The Defense Acquisition System (DAS) is the process through which the U.S. Department of Defense (DOD) develops and buys goods and services from contractors. The process is based on [statute](#) and [regulation](#). The process involves numerous activities, including design, engineering, construction, testing, deployment, sustainment, and disposal of items purchased from a contractor. This product provides an overview of selected acquisition-related provisions in the House- and Senate-passed versions of a National Defense Authorization Act for Fiscal Year 2024 (NDAA; H.R. 2670 and S. 2226). For more background on defense acquisitions, see CRS Report RL34026, *Defense Acquisitions: How DOD Acquires Weapon Systems and Recent Efforts to Reform the Process*.

Legislative Proposals

Congress may incorporate provisions related to the defense acquisition process or individual acquisition programs in multiple titles in an NDAA. A recurring NDAA title (i.e., Title VIII of Division A) typically addresses acquisition policy, acquisition management, and related matters. In general, Congress uses the NDAA to establish or disestablish, amend, or direct study of elements of and processes related to defense acquisitions. For example, the [FY2022 NDAA](#) established a commission to study the effectiveness of the department's Planning, Programming, Budgeting, and Execution (PPBE)—an internal strategic planning process for allocating resources among the military departments, defense agencies, and other components.

The House and Senate-passed versions of an FY2024 NDAA include multiple proposals pertaining to acquisition policy, including those related to capability development, DOD contracting, and mitigating foreign influence over DOD contractors. **Table 1** below summarizes selected provisions from H.R. 2670 and S. 2226.

Table 1. Selected Acquisition Policy Proposals in the FY2024 NDAA Bills

| House-Passed H.R. 2670 | Senate-Passed S. 2226 |
|---|-----------------------|
| Proposals Related to DOD's Capability Development Process | |

Congressional Research Service

<https://crsreports.congress.gov>

IN12225

| House-Passed H.R. 2670 | Senate-Passed S. 2226 |
|---|---|
| <p>No similar provision.</p> <p>Sec. 803 would require the military services to designate a “Principal Transition Advisor” to support service secretaries with the transition of new technologies from research and development to fielding. This would include interfacing with relevant DOD innovation organizations and program managers.</p> <p>No similar provision.</p> <p>Sec. 851 would require DOD to launch a pilot program to conduct competitions to procure and field “attributable systems that solve urgent operational needs.”</p> <p>No similar provision.</p> | <p>Sec. 802 would require DOD to develop a more “streamlined” and modernized capability development requirements process, aligned with the Adaptive Acquisition Framework, by 2025.</p> <p>No similar provision.</p> <p>Sec. 803 would give the Director of the Strategic Capabilities Office (SCO) the authority to conduct acquisition activities, including the authority to negotiate memoranda of agreement with DOD components and military departments to procure capabilities, equipment, and services on behalf of SCO.</p> <p>No similar provision.</p> <p>Sec. 811 would give Combatant Commanders rapid and streamlined contracting authorities for certain time-sensitive and urgent situations.</p> |
| Proposals Related to DOD Contracting | |
| <p>Sec. 804 would require DOD to launch a pilot program to determine whether certain contractors that unsuccessfully protest a contract bid loss should be required to reimburse DOD for the costs to the government of conducting the protest.</p> <p>No similar provision.</p> <p>No similar provision.</p> <p>No similar provision.</p> | <p>No similar provision.</p> <p>Sec. 806 would require a DOD study on the feasibility and advisability of establishing a default commercial determination for the products and services acquired by DOD.</p> <p>Sec. 815 would exempt all software contracts and subcontracts from Earned Value Management (EVM) requirements in the Defense Federal Acquisition Regulation Supplement (DFARS), and would raise the dollar threshold for EVM requirements.</p> <p>Sec. 817 would require DOD to launch a pilot program providing higher progress payment rates to incentivize contractors to meet certain criteria, including meeting small business subcontracting goals and adhering to delivery schedule.</p> <p>Sec. 844 would amend the Small Business Act to provide measures to encourage DOD contractors to provide more timely payments to subcontractors.</p> |
| Proposals Related to Mitigating Foreign Influence in DOD Contracting | |

House-Passed H.R. 2670

[Sec. 808](#) would require contractors providing consulting services to DOD to disclose any previous contracts or financial awards from covered entities, including entities with connections to the governments of the People's Republic of China or the Russian Federation, as well as several entity lists maintained by the Department of Commerce.

Senate-Passed S. 2226

[Sec 812](#) would amend P.L. 113-291; 10 11 U.S.C. 4871 to add additional restrictions and procedures for preventing covered persons or entities from contracting with DOD.

[Sec. 819](#) would increase DOD requirements to confirm that contractors do not have conflicts of interest, including contracts, with covered foreign entities, including entities with connections to the governments of the People's Republic of China or the Russian Federation. Contractors found to have conflicts of interest with covered entities would be subject to additional surveillance.

Source: CRS analysis of legislation on Congress.gov

Discussion

Proposals Related to DOD's Capability Development Process

[Some defense experts](#) and policymakers have argued for a need for DOD to improve and/or accelerate its acquisition processes for new, innovative technologies.

Several provisions in the proposed versions of an FY2024 NDAA aim to modify acquisition processes, delegate authorities and responsibilities, and create new organizations to improve both how DOD develops capabilities and the speed at which such capabilities are developed and fielded.

Proposals Related to DOD Contracting

DOD contracting is a longstanding issue of interest for Congress. [Media coverage](#) in 2023 concerning DOD [contract pricing](#) and [subcontractor cash flow](#) has generated congressional interest in the topic.

The versions of an FY2024 NDAA contains several provisions related to DOD contractor transparency and adherence to regulation.

Proposals Related to Mitigating Foreign Influence in DOD Contracting

Some Members of Congress have expressed interest in preventing adversarial governments from having financial and other ties to DOD contractors, particularly after DOD identified China as the "[pacing challenge](#)" (i.e., the challenge against which to "pace" armed forces development) as well as department [efforts](#) to prevent foreign ownership, control, and influence (FOCI) in its supply chain.

Such interest is reflected in proposed FY2024 NDAA provisions that would increase reporting requirements regarding FOCI and increase restrictions on contractors found to have FOCI risk.

Author Information

Alexandra G. Neenan
Analyst in U.S. Defense Infrastructure Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.