

FY2025 NDAA: Department of Defense Acquisition Policy

July 30, 2024

The Defense Acquisition System (DAS) develops and maintains 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 includes 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-passed and Senate Armed Services Committee (SASC)-reported versions of a National Defense Authorization Act for Fiscal Year 2025 (NDAA, H.R. 8070 and S. 4638). For more information on DOD contractors, see CRS In Focus IF10600, *Defense Primer: Department of Defense Contractors*, by Alexandra G. Neenan.

Legislative Proposals

Congress may include provisions related to the DAS or individual acquisition programs in multiple titles in an NDAA. In past years, a recurring NDAA title (i.e., Title VIII of Division A) typically addresses acquisition policy, acquisition management, and related matters. The FY2025 House-passed and SASC-reported NDAA versions both include such a title. Congress has used the NDAA to establish or disestablish, amend, or direct study of, elements of and processes related to defense acquisitions. The House-passed and SASC-reported versions of an FY2025 NDAA include multiple proposals pertaining to acquisition policy, including proposals related to the DAS, defense contract pricing policy, and mitigating foreign influence in DOD contracting. **Table 1** below summarizes selected provisions from H.R. 8070 and S. 4368.

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

House-Passed H.R. 8070	SASC-Reported S. 4368
Proposals Related to the Defense Acquisition System (DAS)	

Congressional Research Service

<https://crsreports.congress.gov>

IN12397

House-Passed H.R. 8070

[Sec. 831](#) would amend Title 10, U.S.C., to add a new section containing specific training requirements for DOD/Defense Acquisition University (DAU) training related to the [Adaptive Acquisition Framework](#) (AAF). These requirements include training on “relevant innovative procedures and best practices of the private sector for acquiring goods and services” and new acquisition authorities applicable to the AAF.

[Sec. 801](#) would amend [Title 10’s milestone certification requirements](#) for Major Defense Acquisition Programs (MDAPs). This would eliminate several requirements currently in place for [Milestone B approval](#) for MDAPs, before the programs enter engineering and manufacturing development, and replace them with factors for approval that aim to “streamlin[e]” the process.

No similar provision.

No similar provision.

No similar provision.

[Sec. 871](#) would amend the [Federal Acquisition Regulation](#) (FAR) to prohibit the delegation of DOD’s authority to grant waivers related to certain conflicts of interest to levels “below the level of deputy head” of the relevant agency.

SASC-Reported S. 4368

No similar provision.

[Sec. 803](#) would amend [Title 10’s milestone certification requirements](#) for MDAPs, and would strike several Milestone B approval requirements for MDAPs before the programs enter engineering and manufacturing development. These requirements would be replaced with factors for approval that aim to “streamlin[e]” the process. These factors are similar to the House provision. The provision also contains unique language requiring DOD to provide Congress a “reasonable lifecycle cost and schedule estimates” with the concurrence of the Director of Cost Assessment and Program Evaluation (CAPE).

[Sec. 801](#) would amend [Title 10’s certification requirements](#) for MDAPs that aim to “streamlin[e]” the [Milestone A](#) approval process.

[Sec. 804](#) would amend Title 10 to modify the definition of an MDAP to include “highly sensitive classified program[s]”. This would require that these programs follow the Nunn-McCurdy/cost overrun reporting process.

[Sec. 806](#) would require that DOD establish an advisory panel on “streamlining the requirements process” of DOD and “develop options for reform.”

No similar provision.

Proposals Related to DOD Contract Pricing

[Sec. 811](#) would amend Title 10’s [Truthful Cost or Pricing Data \(Truth in Negotiations/TiN\) chapter](#) to amend the [commercial product exemption](#) to include not just the commercial product or service but “such commercial product, or a component or part of such a commercial product, or a service procured for support of such product.”

No similar provision.

[Sec. 827](#) would amend Title 10’s TiN chapter to amend the commercial product exemption to allow for contracting officers to presume non-commercial determinations from prior acquisitions in addition to presuming commercial determinations from prior acquisitions.

[Sec. 827](#) would amend Title 10’s commercial item determination process by creating a “formal appeals process for contractors when a non-commercial determination” is made by DOD. It also would allow DOD contracting officers to “determine the product or service to be [n]on-commercial” if “the price offered by the contractor is not fair and reasonable, or the contractor denies requests for additional cost or pricing data.”

House-Passed H.R. 8070	SASC-Reported S. 4368
<p>Sec. 812 would amend Title 10's TiN chapter to include additional requirements for contractor submission of cost or pricing data for purchase orders in addition to contracts. It would also create a new exception for cost and pricing data submission to include subcontracts or purchase orders with a proposed value less than or equal to \$5 million where the "prices paid by the Government for a subcontract, purchase order, or modification... for the same good or service from the same subcontractor or supplier during the 12-month period immediately preceding" the proposed contract were considered to have a "reasonable price."</p>	No similar provision.
<p>Sec. 813 would amend Title 10's TiN chapter to no longer allow contractors to defend a contract price adjustment because "the cost or pricing data were submitted by the prime contractor or subcontractor after the date of agreement on the price of the contract."</p>	No similar provision.
<p>Sec. 818 would extend a temporary DOD authority originally established in P.L. 85-804 to modify certain contracts based on the effects of inflation by one year.</p>	No similar provision.
<p>Sec. 832 would amend Title 10 to require DOD to "establish and maintain performance incentives for contracting officers and program managers that request support" from the Director of the Defense Contract Management Agency, the Director of the Defense Contract Audit Agency, or other appropriate experts in the Department to make a determination whether a product or service is a commercial product or commercial service.</p>	No similar provision.
Proposals Related to Mitigating Foreign Influence in DOD Contracting	
<p>Sec. 225 would prohibit certain higher education institutions conducting DOD-funded research from entering into contracts with a "covered nation or a foreign entity of concern." It also would require that DOD publish any waivers issued for this requirement on a publicly available website with a "searchable database" and provide an annual report to Congress on the waivers issued for this requirement.</p>	No similar provision.
<p>Sec. 226 would prohibit DOD from providing funding authorized to be appropriated by the NDAA to higher education institutions conducting DOD-funded research that is "fundamental research in collaboration directly or indirectly with a covered nation or foreign entity of concern." It also requires any higher education institutions conducting DOD-funded research to "perform due diligence on any academic institution or laboratory the institution is collaborating with or intends to collaborate with."</p>	No similar provision.
<p>Sec. 242 would require that DOD conduct an independent study on the "foreign capital disclosure requirements" for DOD organizations that "routinely engage with commercial entities backed by private equity or venture capital funds." DOD would then provide a classified and unclassified version of the report to Congress no later than 270 days after the date of the enactment of the provision.</p>	No similar provision.

Source: CRS analysis of legislation on Congress.gov

Discussion

Defense Acquisition System (DAS)

Some defense experts and policymakers have [argued](#) that DOD [needs to improve](#) and/or [accelerate its acquisition processes](#). Several provisions in both chambers' versions of an FY2025 NDAA would modify DOD's acquisition processes, some titled as "streamlining" current policies and procedures. Others would increase the amount of congressional oversight of certain DOD acquisition programs.

In its [Statement of Administration Policy regarding H.R. 8070](#), the Biden Administration noted that it "opposes" Sec. 871 because of conflict-of-interest waiver restrictions. The Administration stated that this restriction of delegation would "create unnecessary mission disruption for many cases that do not warrant this level of scrutiny," but noted that it "welcomes the opportunity to work with Congress on a more tailored provision...where warranted."

DOD Contract Pricing

DOD contract pricing has been a long-standing issue of interest for Congress. Media coverage over the past five years concerning contract pricing has contributed to congressional interest in the topic. For more information on this subject, see CRS Report R47879, *Department of Defense Contract Pricing*, by Alexandra G. Neenan.

Both chambers' versions of an FY2025 NDAA contain several provisions related to DOD contract pricing, ranging from proposals that could increase the amount of regulation and oversight on contract pricing to proposals that could decrease the amount of oversight and regulation.

In its [Statement of Administration Policy](#), the Biden Administration noted that it "strongly opposes" Sec. 812 of H.R. 8070, saying that the provision would "limit the Department's ability to require a prime contractor to obtain certified cost or pricing data from a subcontractor." It states that increasing the cost threshold from \$2 million to \$5 million would "reduce the incentive for sole-source prime contractors to negotiate with their subcontractors... to keep costs under control, creating unnecessary risk for taxpayers."

Mitigating Foreign Influence in DOD Contracting

Some Members of Congress have expressed interest in preventing adversarial governments from having financial and material involvement in DOD contracting. For more information on this topic, see CRS Report R48110, *Department of Defense Contractors and Efforts to Mitigate Foreign Influence*, by Alexandra G. Neenan. This interest is reflected in draft provisions that would further restrict DOD-affiliated research institutions from working with adversarial countries under most circumstances.

In its [Statement of Administration Policy](#), the Biden Administration noted that it "objects" to Secs. 225, 226, and 1077 of H.R. 8070, stating that these provisions would "impose unreasonable security restrictions on research and create onerous restrictions on personnel." The Administration added that DOD "continually reviews security risks," particularly on sensitive projects, and that such provisions would "harm DOD's ability to keep pace with technology" and negatively impact its research talent pool.

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