

FY2025 NDAA: Department of Defense Acquisition Policy

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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 enacted, House-passed and Senate Armed Services Committee (SASC)-reported versions of a National Defense Authorization Act for Fiscal Year 2025 (NDAA, P.L. 118-159, 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, and P.L. 118-159.

Table 1.: Selected Acquisition Policy Proposals in the FY2025 NDAA Bills

House-Passed H.R. 8070	SASC-Reported S. 4638	Enacted P.L. 118-159
Proposals Related to the Defense Acquisition System (DAS)		

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House-Passed H.R. 8070	SASC-Reported S. 4638	Enacted P.L. 118-159
<p>Sec. 831 would have amended 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 included 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.</p>	<p>No similar provision.</p>	<p>Sec. 832 amends Title 10, U.S.C., to add a new section containing specific training requirements for DOD. These requirements include establishing a “deployable” “training program that supports cross-functional personnel and contractors” involved “in any phase of the acquisition and sustainment lifecycle” to ensure personnel receive training on “innovative acquisition and fielding procedures, flexible contracting frameworks, and business negotiation skills.”</p>
<p>Sec. 801 would have amended Title 10’s milestone certification requirements for Major Defense Acquisition Programs (MDAPs). This would have eliminated several requirements currently in place for Milestone B approval for MDAPs, before the programs enter engineering and manufacturing development, and replaced them with factors for approval aimed at “streamlining” the process.</p>	<p>Sec. 803 would have amended 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 have been replaced with factors for approval aimed at “streamlining” the process. These factors were similar to the House provision. The provision also contained unique language requiring DOD to provide Congress “reasonable lifecycle cost and schedule estimates” with the concurrence of the Director of Cost Assessment and Program Evaluation (CAPE).</p>	<p>Sec. 807 adopts the House provision with an amendment that adds the unique SASC language.</p>
<p>No similar provision.</p>	<p>Sec. 802 would have amended Title 10’s certification requirements for MDAPs, aiming at “streamlining” the Milestone A approval process.</p>	<p>Sec. 806 adopts the Senate provision.</p>
<p>No similar provision.</p>	<p>Sec. 804 would have amended Title 10 to modify the definition of an MDAP to include “highly sensitive classified program[s].” This would have required that these programs follow the Nunn-McCurdy/cost overrun reporting process.</p>	<p>Sec. 809 requires that DOD establish guidance for military services to submit “cost growth reports” to Congress for “highly sensitive classified programs that experience cost growth thresholds outlined in the Nunn-McCurdy/cost overrun reporting process (10 U.S.C. § 4371).</p>
<p>No similar provision.</p>	<p>Sec. 806 would have required that DOD establish an advisory panel on “streamlining the requirements process” of DOD and “develop[ing] options for reform.”</p>	<p>Sec. 884 adopts the Senate provision.</p>

House-Passed H.R. 8070	SASC-Reported S. 4638	Enacted P.L. 118-159
Sec. 871 would have amended 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.	No similar provision.	Sec. 881 adopts the House provision.
Proposals Related to DOD Contract Pricing		
Sec. 811 would have amended 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. 814 adopts a version similar to the House provision.
No similar provision.	Sec. 827 would have amended 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 have allowed 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."	Not adopted.
Sec. 812 would have amended 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 have created 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" if DOD had considered the contract to have a "reasonable price."	No similar provision.	Sec. 815 amends Title 10's TiN chapter to create an exception for cost and pricing data submission to include certain subcontracts with a proposed value less than or equal to \$5 million if DOD has determined "the prices submitted under such clause are fair and reasonable based on supported cost or pricing data within the last 12 months."

House-Passed H.R. 8070	SASC-Reported S. 4638	Enacted P.L. 118-159
Sec. 813 would have amended 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."	No similar provision.	Not adopted.
Sec. 818 would have extended by one year a temporary DOD authority originally established in P.L. 85-804, to modify certain contracts based on the effects of inflation.	No similar provision.	Sec. 824 adopts the House provision.
Sec. 832 would have amended 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.	No similar provision.	Sec. 834 amends a different section of Title 10 than the House-passed provision. It also instead requires that DOD "establish criteria in performance evaluations for appropriate personnel to reward risk-informed decisions that maximize the acquisition of commercial products, commercial services, or nondevelopmental items other than commercial products."

Proposals Related to Mitigating Foreign Influence in DOD Contracting

House-Passed H.R. 8070	SASC-Reported S. 4638	Enacted P.L. 118-159
<p>Sec. 225 would have prohibited 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 have required 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> <p>Sec. 226 would have prohibited 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 would have required 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> <p>Sec. 242 would have required 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 to Congress, no later than 270 days after the date of the enactment of the provision, an unclassified report that may include a classified annex.</p>	<p>Sec. 218 would have prohibited DOD from providing funding authorized to be appropriated by the NDAA to institutions of higher education conducting DOD-funded “fundamental research” with institutions included on “a list of academic institutions of the People’s Republic of China, the Russian Federation, and other countries” that represent an intellectual property transfer or other national security risk” previously defined in a previous NDAA (P.L. 115-232, U.S.C. § 4001 note).</p> <p>No similar provision.</p>	<p>Sec. 238 adopts a modified version of the Senate provision.</p> <p>Not adopted; however, the Joint Explanatory Statement for the FY2025 NDAA requires that DOD provide a briefing on “the foreign capital disclosure requirements” of DOD organizations “that routinely engage with commercial entities backed by private equity or venture capital funds” to the defense committees by 15 July 2025.</p>

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 the FY2025 NDAA modify DOD’s acquisition processes, including some titled as “streamlining” current policies and procedures. Others could increase the amount of congressional oversight of certain DOD acquisition programs.

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.

The FY2025 NDAA contains several provisions related to DOD contract pricing, which include requirements that could decrease the amount of executive and congressional oversight and regulation. In the [Joint Explanatory Statement](#) for the FY2025 NDAA, Congress expressed concerns that DOD “is not adequately able to reach fair and reasonable pricing with sole source providers,” and directed the Undersecretary of Defense for Acquisition and Sustainment to provide a briefing to the defense committees no later than March 1, 2025.

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 the FY2025 NDAA, which further restricts DOD-affiliated research institutions from working with adversarial countries under most circumstances.

Author Information

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

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