



## Legislative Update

### NDA

- The House this week will consider its version of defense authorization legislation (H.R. 2500), after the Senate passed the measure on a bipartisan 86-8 vote June 27.
  - Senate Bill Defense Spending Levels:
    - Total: \$733, Base: \$633 billion, OCO: \$69 billion, DOE: \$22.7 billion
  - Amendments: 658 amendments have been filed ahead of this week's floor debate. The House Rules Committee meets Tuesday and Wednesday to sift through the amendments. Here are a few highlights of amendments that could be considered:
    - Iran: Reps. Ro Khanna (D-Calif.), Matt Gaetz (R-Fla.) and others have an amendment to block military action against Iran unless authorized by Congress.
    - Low-Yield Nukes: Rep. Mike Turner (R-Ohio) filed an amendment to strip a provision that blocks funding to deploy a new low-yield submarine-launched nuclear warhead. The Armed Services Committee defeated the measure during the panel's markup last month.
    - Cutting spending: Khanna and Reps. Barbara Lee (D-Calif.) and Peter DeFazio (D-Ore.) offered an amendment to cut the Pentagon's war budget by \$17 billion and reduce the bill's topline to the same level as the current year's defense budget.
    - AUMF: House Intelligence Chairman Adam Schiff (D-Calif.) filed an amendment to sunset the 2001 Authorization for the Use of Military Force that underpins the war in Afghanistan and several other U.S. military operations worldwide. The proposal would repeal the 2001 AUMF in September 2021 and lay out expedited procedures to consider a replacement framework. The amendment also would immediately repeal a 2002 authorization enacted in the run-up to the Iraq War.
    - Border money: Conservatives, led by Rep. Andy Biggs (R-Ariz.), filed an amendment to strip provisions that limit military funding from being used for construction of barriers, fencing or a wall on the U.S.-Mexico border.
    - NATO: Lawmakers from both parties, led by Rep. Jimmy Panetta (D-Calif.), have offered an amendment to block military funding for withdrawing from the NATO alliance. A similar measure passed the House this year.

### Budget

- The deadline to fund the government is Sept. 30. The Treasury is already using “extraordinary measures” to avoid a default on the federal debt and will need a debt limit measure by October.
- The House is scheduled to be in session for 25 legislative days before the end of September, including three weeks in July and three weeks in September. The Senate is set to stay for one extra week at the end of July prior to the August recess.



## Regulatory Update

### Recently Filed Comments:

- DFARS 2019-D002 – Performance Based Payments – Comments Closed 5 July 19
- CPSR Appendix 24 Guidebook Revisions
- CASB Conformance of CAS to GAAP

### Open Cases

- FAR, 84 FR 30071 – Proposed - FAR Case 2018-003 –Implementing section 1614 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 to amended the Small Business Act to provide that, where a prime contractor has an individual subcontracting plan for a contract with a single executive agency, the prime contractor shall receive credit towards its subcontracting goals for awards made to small business concerns at any tier by subcontractors with individual subcontracting plans. In addition, section 1614 also provided new assurances for offerors to include in subcontracting plans. The new assurances relate to activities to be performed by the contractor to monitor the performance of subcontractors with regard to subcontracting plans, and by subcontractors to monitor the performance of their subcontractors with regard to subcontracting plans. Section 1614 requires the contractor to demonstrate procedures established to ensure subcontractors at all tiers comply with their subcontracting plans. Section 1614 also revised the definition of “subcontract” in the Small Business Act. – Comments due 26 Aug 19 (NDIA Case)
- FAR, 84 FR 29482 – Proposed - FAR Case 2018–007 Applicability of Inflation Adjustments of Acquisition-Related Thresholds implements a section of the NDAA for FY18 to make inflation adjustments of statutory acquisition related thresholds applicable, except for the Davis-Bacon Act, Service Contract Labor Standards statute, and trade agreements thresholds – Comments due 23 Aug 19 (CODSIA Case)
- SBA, 84 FR 29299 – Proposed - Small Business Size Standards Calculation of Annual Average Receipts SBA proposes to change its regulations on the calculation of annual average receipts for all receipts based SBA size standards and other agencies’ proposed size standards for service-industry firms from a 3-year averaging period to a 5-year averaging period implementing the “Runway Extension Act” – Comments due: 23 Aug 19 (CODSIA Case)
- DoD, 84 FR 32429 - Proposed – Information Collection - OMB Control # 0704-0489 DoD's Defense Industrial Base (DIB) Cybersecurity (CS) Activities Cyber Incident Reporting the information collection requirement is necessary to support mandatory cyber incident reporting requirements under 10 U.S.C. Section 393 (formerly Pub. L. 112-239, NDAA for FY 13, Section 941, Reports to Department of Defense on penetrations of networks and information systems of certain contractors and 10 U.S.C. Section 391 NDAA for FY15, Section 1632, Reporting on Cyber Incidents with Respect to Networks and Information Systems of Operationally Critical Contractors – Comments due: 6 Sep19 (For Consideration)

### Other

- DPC - Policy Letter – Review of Prices Proposed by TransDigm and Affiliated Companies - 14 Jun 19 – Requiring uncertified cost data on all future contracts



## 2020 NDAA Contracting Policy Summary:

**Restrictions on Chinese Manufacturers:** The measure includes several provisions aimed at reducing procurements from Chinese manufacturers and sources.

**Drones:** DOD generally couldn't award a contract for unmanned aircraft or related systems made in China or another country that the department has labeled a strategic competitor.

**Railcars:** The bill would bar the use of federal transit funds to procure passenger railcars or buses from a manufacturer owned by a corporation that's located in China or another country designated by the U.S. Trade Representative.

**Rare-Earth Materials:** The measure would limit DOD's use of rare-earth metals from China found in many weapon systems.

The department would have to issue guidance to acquire specified rare-earth materials domestically or from allied countries using expedited procedures. It would have to dispose of some tungsten in the National Defense Stockpile and could use as much as \$37.4 million from fiscal 2020 through 2024 to acquire certain other materials.

The bill would add tantalum to a list of materials that the U.S. can't procure from China, Iran, North Korea, or Russia.

**Telecommunications:** DOD generally couldn't contract with certain foreign sources, including companies with a significant connection to Chinese companies Huawei Technologies Co. or ZTE Corp., to procure telecommunications services for military installations on U.S. territories in the Pacific Ocean.

It would have to expand requirements for contractors to address supply chain risks for telecommunications and video surveillance equipment made in a hostile country.

**Maduro Contracting Ban:** DOD couldn't contract with companies that do business with Nicolas Maduro's government in Venezuela, with some exceptions.

**Software Acquisition:** DOD would have to issue guidance to acquire software applications and upgrades using expedited procedures.

The guidance would include pathways to rapidly implement software applications on commercial hardware, and to insert software upgrades into weapon systems used solely by DOD. It would apply to contracts of \$50 million or less lasting no more than a year, with a possible extension.

DOD couldn't require a contractor to give up rights to noncommercial software developed solely with private funds, with some exceptions.

DOD would have to pursue contracts for specially negotiated licenses to use noncommercial software needed to support major weapon systems. It would also have to develop guidelines to acquire or obtain licenses for intellectual property.

**Pentagon & Contractor Employees:** The bill would create an exchange program between DOD and the private sector for acquisition professionals.

DOD would have to establish incentives for contractors to implement certain workforce training programs, and reflect those efforts in evaluations of contractor performance. It would also have to encourage contractors to make good faith efforts to use qualified apprentices for at least 20% of applicable positions in their workforce.



DOD would have to establish a Defense Civilian Acquisition Training Corps program at colleges, through which graduates could immediately obtain a Pentagon job.

DOD would be allowed to reimburse contractors for making investments in STEM programs.

**Online Marketplaces:** The fiscal 2018 NDAA authorized DOD to buy some commercial off-the-shelf items from online marketplaces, similar to Amazon.com. The General Services Administration (GSA) can contract with companies to run the electronic commerce portal.

The bill would require GSA to carry out a five-year testing program before awarding a contract. The agency would have to test different models for e-commerce portals, including one run by a provider that doesn't sell its own products.

In the committee report, the Armed Services panel said it was concerned about unfair advantages for online marketplace administrators that are also sellers.

**Contracting Repeals:** The measure would repeal provisions from previous defense authorization laws that:

Allowed DOD to waive any acquisition law or regulation in the interest of national security.

Required military departments to pay penalties of as much as \$50 million a year, through reductions to research or procurement accounts, for cost overruns on major defense acquisition programs

#### **Other Contracting Provisions**

- Direct DOD to establish an academic Center for Acquisition Innovation that would consider proposals to streamline the acquisition process.
- Direct DOD to establish a database and issue annual reports on American-made items that are procured for major defense acquisition programs.
- Expand requirements for contractors to submit cost and pricing data, including for products procured solely by DOD and for sole-source contracts.
- Require DOD to procure additional ship components from manufacturers in the U.S., United Kingdom, Australia, or Canada.
- Reduce, to \$50 million from \$100 million, a procurement threshold for DOD to provide post-award debriefings and disclose its evaluation criteria and award decisions.
- Require GSA to revise the Federal Procurement Data System to include information on source selection procedures, including the use of lowest-price, technically acceptable methods.
- Restore a statutory requirement for DOD to provide Congress with Selected Acquisition Reports (SARs) containing status updates on major defense acquisition programs. DOD would have to propose an alternative methodology for providing status reports on major programs and rapid prototyping projects, including information on software development and cybersecurity tests.
- Extend for one year, through Oct. 1, 2021, a requirement for large federal agencies to consolidate and optimize their data centers.
- The committee report would require DOD to provide Congress with a report on senior officials who own or trade stock of companies that receive \$1 billion in annual revenue from the department.



## SMALL BUSINESS

**Size Standards:** The Small Business Administration would have to update the size standards it uses to classify businesses as small, as required by Public Law 115-324 (see BGOV Bill Summary), by Dec. 17, 2019. That law increased the number of years of financial information considered when classifying business to five, from three.

The measure would further modify the code to reflect the five-year standard and require the SBA to create a transition plan.

**Subcontracting:** The Defense Department's system for monitoring contractors' past performance for grants awarded to higher education institutions would be expanded to include incentives to award subgrants to minority institutions, such as historically black colleges and universities.

The measure would modify goals that prime contractors on larger federal contracts are required to develop for subcontracting with small businesses, including those owned by women, service-disabled veterans, and other targeted groups.

If the prime contractor's goals covered only one federal contract, it could receive credit for any subcontracts that are awarded to small businesses, including if a subcontractor further subcontracts the work. If the prime contractor's goals covered more than one contract or more than one agency, it would receive credit only for subcontracts it directly awards to small businesses.

Small subcontractors could bring disputes to the contracting agency's Office of Small and Disadvantaged Business Utilization if they didn't receive payment within 30 days of finishing work. The notice of nonpayment would have to be provided within 15 days of the end of the 30-day period.

If the office found that payment was unfairly withheld, and wasn't caused by a restriction imposed by the contracting agency, the contractor would have to make the payment within 15 days. If they didn't pay in that period, the incident would be noted in the contractor's performance assessment.

The House passed a bill with similar provisions on subcontracting goals and dispute resolution (H.R. 227; see BGOV Bill Summary) by voice vote on Jan. 8.

**Small Business Cybersecurity:** The SBA would have to train employees of small business development centers to provide counseling to small businesses on cybersecurity. The centers receive funding from the SBA and are generally overseen by universities and economic development agencies.

The SBA would reimburse as much as \$350,000 per fiscal year, subject to appropriations, for each center's training costs. The House passed a bill with similar provisions (H.R. 3170 in the 115th Congress; see BGOV Bill Summary) by voice vote on May 8, 2018.

The SBA would have to report annually to Congress on cybersecurity risks it faces and how it's addressing them. It would have to notify Congress if there's a threat, breach, or attack.

The Defense Department could enter into agreements with vendors to provide cybersecurity technical assistance to small businesses.



**Defense Research:** The Defense Department would have to spend 4% of its extramural budget for research, instead of 3.2%, on the Small Business Innovation Research (SBIR) program. Through the program, federal agencies provide awards to researchers developing technologies that can be commercialized and used for federal needs.

The Defense Department would have to establish a pilot to provide as much as 10% of SBIR awards to small businesses that are majority-owned by multiple domestic venture capital, hedge fund, or private equity firms. It wouldn't have to make a written justification for the awards, as currently required. The pilot would terminate on Sept. 30, 2022.

The Defense Department could authorize the U.S. Special Operations Command to use as much as 5% of the department's SBIR funding through fiscal 2021 for a pilot program to help small businesses develop technology for special operations forces.

The National Institutes of Health's Phase 0 Proof of Concept pilot for researchers to commercialize projects would be expanded to the Defense Department.

The maximum amount small businesses could receive from the Defense Department's research and development rapid innovation program would be doubled to \$6 million per project.

**Small Business Mentorship:** A Defense Department Mentor-Protege pilot program, in which small and large businesses partner to share expertise about defense contracting, would be permanently authorized.