

FY2026 NDAA Aims to Bolster Commercial Acquisition, Reduce Bid Protests, Prevent Harmful Foreign Influence in Supply Chain

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The National Defense Authorization Act for Fiscal Year 2026 (FY 2026 NDAA), Pub. L. No. 119-60, focuses heavily on reforming federal acquisition processes. Provisions include increasing use of commercial solutions, guarding against foreign influence in the supply chain, and reducing bid protests by allowing defense agencies to withhold payments from incumbent contractors that protest awards to other contractors.

Commercial Products

NDAA Furthers Existing Trends. Increasing use of commercial solutions is a goal of the current Administration (see our content covering updates in the last year here, here, and here) and an often-mentioned tool for streamlining the acquisition process and ensuring the Government can leverage industry innovation and efficiencies. In recent years, industry and government alike have recognized that the Defense Department has struggled to attract commercial and nontraditional suppliers, in part because of the regulatory burden of doing business with the Department. Factors include compliance costs; the difficulty of obtaining commercial item determinations; and a mismatch between how the Department buys and how the commercial market sells. As an example, a prior congressionally established advisory panel concluded that the Government's processes for determining whether a product or service is commercial can be more burdensome than the traditional development contracts that are designed for military-unique systems.

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Practice Areas

Bid Protests
Government Contracts
National Security
Strategic Competition & Supply Chain

In early 2025, both the House and Senate Armed Services Committees introduced reform proposals related to commercial acquisition as part of broader acquisition reform efforts. A Senate bill (the FORGED Act) would have established a default commercial acquisition framework and sought to reduce compliance requirements for nontraditional contractors. A House bill (the SPEED Act) focused on increasing dollar thresholds for compliance obligations and lowering barriers to entry for all contractors. Both chambers sought to address common pain points: limiting flowdowns to commercial subcontractors; remedying treatment of subscription-based software as “advance payments”; increasing use of Commercial Solutions Openings (CSOs); and proposing to reduce defense-specific requirements that made working with the Government less appealing to commercial providers.

Enacted Provisions. Notable acquisition reforms in the FY2026 NDAA align with the commercial procurement focus in the House and Senate bills.

- Section 1821 directs revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide a list of defense-unique clause requirements that may be applied to Department acquisitions of commercial products and services, and subcontracts for the same. Companion Section 1824 prohibits the Department from requiring flowdown to commercial subcontractors of any clauses not on the Section 1821 list.
- Section 1822 revises the commercial preference in 10 U.S.C. § 3453 to also apply to prime and subcontractors (the prior provision addressed agency officials only).
- Section 1823 authorizes acquisition of commercial products and services and nondevelopmental items through CSOs, including follow-on production contracts (including sole source awards).
- Section 1825 makes permanent DOD’s authority to acquire software, hardware, data, and services through consumption-based and subscription models and clarifies that payments under these arrangements are not “advance payments” under 10 U.S.C. § 3801.
- Section 1828 directs the Department to conduct a comprehensive review of its approach to acquiring commercial products and services and report findings and recommendations for statutory changes to Congress.

Key Takeaways. Commercial product and service providers will likely benefit from the effort in the FY2026 NDAA to reduce compliance burdens and improve avenues for the Department to acquire commercial products and services, but that may not be noticeable immediately. As with most NDAs, certain provisions require revisions to the DFARS, other rulemaking, or agency policy development to implement the FY2026 NDAA’s changes. As we approach statutory deadlines for Department action, many of which fall in June 2026, we may see more clearly how these efforts are progressing. Until then, contractors should continue to monitor the rulemaking process closely to see whether these changes translate into practice (including the DFARS open cases here).

Bid Protests

Reform Passed Despite Downward Trend in Number of Protests. Efforts to reform the bid protest process have been building momentum for nearly a decade: Congress has incrementally tightened the protest system by raising task order protest thresholds and directing GAO to evaluate potential structural changes to reduce “frivolous” protests. Last year, GAO published a report to fulfill a requirement in the FY2025 NDAA in which GAO discussed bid protest trends and the potential impact of enhanced pleading standards and fee-shifting proposals on protests before GAO (available here). GAO’s report noted that protests of Defense Department awards declined roughly 48% over the previous 10 years, and the protest effectiveness rate (meaning the percentage of protests for which GAO found merit or the agency took voluntary corrective action) remained around 50% over the same period. Voices in industry pointed to these numbers as evidence that the bid protest system was working as intended and that the case for sweeping reform was not supported by the data.

Even so, Congress proceeded with protest reforms. The House’s first version of the FY2026 NDAA proposed procedures for contracting officers to require incumbent contractors whose protests were dismissed to disgorge profits to the agency. Defense Department leadership also sought statutory authority to penalize incumbent contractors that file losing protests.

Enacted Legislation. The FY 2026 NDAA includes a provision to implement a fee-shifting model for GAO bid protests, albeit scaled back from earlier proposals. Section 875 directs the Department to establish procedures allowing contracting officers to withhold up to 5% of payments on a current contract when the incumbent contractor files a GAO protest in circumstances when that incumbent continues to perform (either through a bridge contract or contract extension) while the protest is pending. The amounts withheld would be forfeited if GAO dismisses the protest for lacking any reasonable legal or factual basis and the dismissal becomes final after any reconsideration. Notably for contractors, it is not clear from the statute whether or to what extent funds would be forfeited following a partial dismissal of only certain protest arguments, particularly when GAO sustains the protest on other grounds. These and other questions about implementation, including whether the withholding will be mandatory or discretionary, have been deferred to the DFARS rulemaking process.

Key Takeaways. Section 875 is the first enacted federal legislation that imposes a direct financial consequence on an incumbent contractor for filing an unsuccessful bid protest. This may impact the types of arguments contractors make in protests and whether contractors file protests at GAO or instead pursue more protests before the Court of Federal Claims or at the agency level. Additionally, temporary withholding of 5% of revenue during a protest’s pendency may disrupt cash flow, particularly for smaller contractors. How DOD implements the withholding procedures (and how aggressively contracting officers use the authority in practice) will determine whether Section 875 functions as a meaningful deterrent to protests of DOD contract awards or remains largely symbolic.

Supply Chain and Sourcing Restrictions

Continued Focus on Securing Supply Chain from Potentially Harmful Foreign Influences. Congress remains interested in expanding sourcing restrictions on goods and services from China and other “foreign entities of concern,” including North Korea, Russia, and Iran. Chiefly, Section 836 of the FY2026 NDAA directs the Department to establish and maintain a publicly available online repository where offerors can voluntarily register covered products and submit attestations of compliance with “covered sourcing requirements.” The provision requires contractors to acknowledge that False Claims Act (FCA) liability may be imposed for any false attestations. But that’s not all: The Secretary of Defense must also provide a briefing to the Senate and House Armed Services Committees by May 1, 2027, on the feasibility of using the repository as a common platform for contractor supply chain substantiation.

Congress extended contractors a temporary safe harbor for voluntary disclosures through January 1, 2028. During that period, contractors may voluntarily disclose noncompliant items discovered in their supply chains to avoid penalties for the noncompliance, which could include rejection of contract deliverables or nonpayment.

Other provisions also address limiting foreign influence in the defense supply chain. Sections 841 through 851 impose a series of targeted procurement prohibitions. These would prohibit the Department from procuring specified technologies and materials from China and other covered nations, including: certain metals (Section 844); photovoltaic cells, modules, and inverters (Section 847); covered additive manufacturing machines (Section 849); computers and printers produced by entities owned or controlled by China (Section 850); and biotechnology equipment or services (Section 851).

Key Takeaways. Supply chain and sourcing restrictions continue to be prominent in the NDAA and the Administration’s policy goals. The Government is also continuing its efforts to motivate compliance in the defense industrial base by seeking attestations of compliance and invoking the FCA as the chief enforcement tool.

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The FY2026 NDAA reflects Congress’s efforts to improve the federal acquisition process. Even so, when these updates will reach the process depends on implementation. Wiley’s Government Contracts attorneys continue to monitor the implementation, including through rulemaking, and contractors should monitor those developments closely as agency guidance takes shape.