

3 Noteworthy Effects Of The 2025 NDAA

By **Adam Bartolanzo and Kathryn Carlson** (January 21, 2025)

The Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, the annual defense policy and budget bill signed into law last month, contains a discretionary topline budget of \$895.2 billion, to be split between the U.S. Department of Defense, U.S. Department of Energy and other federal agencies for national defense related spending.[1]

The NDAA is a critical piece of legislation that guides the creation of many federal procurement regulations, and this year's act is no different. Many of the changes will require government contractors to face diverse new restrictions, affecting areas from their protest rights to their commercial customer base.

Below are a few of the noteworthy effects of the 2025 NDAA.

Changes to Incorporate Greater Use of Innovative Technologies

A common theme of the NDAA is a bigger embrace of innovative technology within the DOD. This is explicit in Section 861, whereby the secretary of defense has been charged with creating a "competitive, merit-based program to accelerate the procurement and fielding of innovative technologies."

The program is tasked with using these technologies to reduce acquisition and life-cycle risks, address technical risks, and improve the timeliness and thoroughness of test and evaluation outcomes, and with rapidly implementing such technologies to directly support defense missions.

Another portion of the NDAA, Section 804, calls for the creation of an acquisition system using innovative technologies, to quickly develop prototypes that meet new and emerging needs of the DOD and then rapidly field them. These sections embody the belief that innovative technologies present tremendous potential for the DOD, and realize the value of accelerating the acquisition process to quickly introduce them.

To further support innovative technologies, particularly in the commercial realm, the 2025 NDAA approves the use of new methods to evaluate contractors for certain acquisitions.

For instance, Section 864 grants the DOD permission to use alternative capability-based analysis to evaluate proposals for commercial products or services submitted by nontraditional defense contractors. Not only does this open the door for new defense contractors that may have been deterred by previous evaluation metrics, it also allows the DOD to contract for the new technologies that these contractors are able to provide.

Additional Hurdles for Protesting at the Government Accountability Office

Section 885 of the act, titled "Proposal for Payment of Costs for Certain Government Accountability Office Bid Protests," has two large impacts.



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The first is an immediate change to Title 10 of the Code of Federal Regulations, Section 3406(f)(1)(B), which increases the threshold for bringing protests of defense task orders before the U.S. Government Accountability Office by \$10 million.

Contractors seeking to protest the issuance or proposed issuance of a defense task order are now barred from protesting at the GAO unless the awarded value of the task order surpasses \$35 million. An exception to this threshold are task order protests asserting "that the order increases the scope, period, or maximum value of the contract under which the order is issued," which can still be brought before both the GAO and the U.S. Court of Federal Claims.

Second, the act requires the comptroller general to submit a proposal to Congress no later than 180 days after enactment, outlining three reforms to the GAO's protest process: (1) an enhanced pleading standard; (2) benchmarks on the costs of a protest to the DOD and the GAO, and the profits lost to the contract awardee; and 3) a process whereby an unsuccessful protester will pay the costs and lost profits, according to those benchmarks, to the government and awardee.

The enhanced pleading standard could create hurdles for government contractors seeking to file protests before the GAO. Not only is there no indication of what the new standard will look like, the loser-pays portion of the proposal contemplated by Section 885 could have a chilling effect on those seeking to protest at the GAO.

Further, the standard does not require any exceptions for small businesses. Given that protest costs generally have a greater effect on small businesses' bottom lines than those of large defense contractors, Section 885's changes could have the unintended effect of discouraging small businesses from availing themselves of the GAO as a forum for protesting contract awards, notwithstanding Congress' original intent of establishing the GAO's bid protest jurisdiction as a less formal and expensive alternative to the courts.

More Restrictions on Contracting with Huawei

Another notable portion of the NDAA is Section 853, which prohibits the DOD from entering into or renewing contracts with contractors that are providing semiconductor products or services to Huawei Technologies Co. Ltd. Effective no later than 270 days after enactment, this prohibition on DOD contractors' business with the Chinese company is yet another move by the U.S. to limit China's access to semiconductor and chip-making technology.

Congress, citing national and economic security concerns, previously limited exposure to Huawei by prohibiting agencies from purchasing equipment and services from the company, and enacted sanctions that directly affected Huawei. Section 853 seeks to limit Huawei's involvement in the federal procurement process from a different angle — namely, by pressuring contractors who supply semiconductor products or services to Huawei to either terminate those contracts or lose out on valuable DOD contracts moving forward.

Conclusion

The 2025 NDAA is a wide-ranging statute. The foregoing provides just a few examples of the consequential changes introduced by this legislation as we start the new year. While it is difficult to predict how these changes will affect government contractors in the long run, it is certain that the act presents both new opportunities and new challenges for those in the government contracting marketplace.

On one hand, this year's NDAA is no different from past years, introducing a cavalcade of new hurdles contractors must now face in navigating the federal procurement system.

The new GAO jurisdictional threshold for task order protests and the request for a losers-pay proposal, for example, will cause unsuccessful offerors to think twice before turning to that forum for relief.

The prohibition against supplying semiconductors and related services to Huawei means that U.S. companies need to think more carefully about their commercial customer base, not only as a potential barrier to government contracts, but also as a potential source of compliance risk, particularly when it comes to products implicating national security interests.

But just as the NDAA brings new challenges each year, so too does it present new opportunities for those looking to contract with the government.

The NDAA's reforms calling for greater use of innovative technologies mean that commercial contractors in the tech sector should expect to see new avenues of entry into the world of government contracts.

And contractors can expect defense agencies to demonstrate a greater willingness to experiment now that new procurement vehicles are available for accelerating the procurement of innovative technologies.

So, while this year's NDAA gives government contractors much to look out for, it gives them much to look forward to in 2025 as well.

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[1] <https://www.congress.gov/bill/118th-congress/house-bill/5009/text>.