

# PRATT'S GOVERNMENT CONTRACTING LAW REPORT

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VOLUME 9

NUMBER 3

March 2023

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Library of Congress Card Number:

ISBN: 978-1-6328-2705-0 (print)

ISSN: 2688-7290

Cite this publication as:

[author name], [article title], [vol. no.] PRATT'S GOVERNMENT CONTRACTING LAW REPORT [page number] (LexisNexis A.S. Pratt).

Michelle E. Litteken, GAO Holds NASA Exceeded Its Discretion in Protest of FSS Task Order, 1 PRATT'S GOVERNMENT CONTRACTING LAW REPORT 30 (LexisNexis A.S. Pratt)

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# Fiscal Year 2023 National Defense Authorization Act: Key Provisions Government Contractors Should Know

*By Alex Barbee-Garrett, Stephanie Crawford, Rina Gashaw, Chris Garcia, Lyndsay Gorton, Michael Gruden and Olivia Lynch\**

*In this article, the authors discuss the most consequential changes for government contractors contained in the National Defense Authorization Act for Fiscal Year 2023.*

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023,<sup>1</sup> signed into law on December 23, 2022, makes numerous changes to acquisition policy. These include changes that provide new opportunities for contractors to recover inflation-related costs, authorize new programs for small businesses, impose new clauses or reporting requirements on government contractors, require government reporting to Congress on acquisition authorities and programs, and alter other processes and procedures to which government contractors are subject.

The FY 2023 NDAA also includes the Advancing American AI Act, the Intelligence Authorization Act for FY 2023, and the Water Resources Development Act of 2022, all of which include provisions relevant for government contractors.

## **CYBERSECURITY**

Section 1506 in Title XV, Cyber and Information Matters, instructs the Secretary of Defense to work with the Secretary of State, the National Cyber Director, the Director of the Cybersecurity and Infrastructure Security Agency, and the Director of the Federal Bureau of Investigation (FBI) to identify key cyber warfighting allies and partners. The Department of Defense (DoD) must then take steps to develop the cyber-defense and warfighting capabilities of the allies and partners identified, including by leveraging American commercial cybersecurity resources and technologies to harden existing partner/ally cybersecurity infrastructure.

Section 1509 provides for the establishment of a Joint Cyber Warfighting Architecture (JCWA) program executive office within the United States Cyber

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<sup>1</sup> <https://www.congress.gov/117/bills/hr7776/BILLS-117hr7776enr.pdf>.

Command (CYBERCOM). The JCWA is an “overarching vision”<sup>2</sup> created to synchronize existing cyber warfighting operations systems and integrate new ones. DoD has explained that it expects the JCWA to “guide the acquisition of needed cyber warfighting capabilities.”

Specifically, the Act authorizes the newly created JCWA program executive office to integrate outside acquisitions into the JCWA and to make acquisitions beyond the JCWA as deemed appropriate by the Secretary of Defense.

Section 1511 empowers the president to authorize the Secretary of Defense, acting through CYBERCOM, to conduct military cyber activities in foreign cyberspace if the president determines that such activities are necessary to defend against an active, systematic, and ongoing campaign of attacks in cyberspace by a foreign power against the government or the critical infrastructure of the United States.

For the purposes of this provision, “critical infrastructure” means “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.”

Section 1513 establishes priority projects for data management, artificial intelligence (AI), and digital solutions for business efficiency and warfighting capabilities within DoD.

Specifically, DoD will develop actions to acquire and grow the population of contractor personnel with expertise in data management, AI, and digital solutions and will use data management, analytics, enterprise cloud-computing environments, and operational-test environments within DoD components. DoD will also develop and implement cybersecurity and AI security solutions to protect against adversary actions.

Section 1533 requires creation of policies to test and evaluate the cybersecurity of commercial cloud-service offerings that provide storage or computing of classified DoD information. The policies will include tiered-test and evaluation requirements that align with different impact and classification levels. The plans will also explain how existing contracts with cloud-service providers (CSPs) will be amended to permit the same level of assessment as required of future contracts.

## **ECONOMIC PRICE ADJUSTMENTS RELATED TO INFLATION**

Section 822 in Title VIII, Acquisition Policy, Acquisition Management, and Related Matters, amends Pub. L. 85-804, codified at 50 U.S.C. § 1431 et seq.,

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<sup>2</sup> <https://www.gao.gov/products/gao-22-104695>.

to temporarily allow contractors (or subcontractors) to request price adjustments under DoD contracts (or subcontracts) where, “due solely to economic inflation,” actual costs of performance exceeded the price of a contract (or subcontract). Subcontractor requests may be submitted through (and certified by) a prime contractor, or may be submitted directly by a subcontractor.

Notably, DoD may only grant such requests if Congress specifically appropriates funds to carry out Section 822. Within 90 days of the enactment of such an appropriations act, DoD’s Under Secretary of Defense for Acquisition and Sustainment (USDA&S) must issue guidance addressing how DoD will consider and respond to contractor and subcontractor Section 822 requests. Section 822’s amendment of Pub. L. 85-804 is only effective through December 31, 2023.

### **FEDRAMP AUTHORIZATION ACT**

The “FedRAMP Authorization Act,” at Section 5921 of the FY 2023 NDAA, codifies into law the Federal Risk and Authorization Management Program (FedRAMP) cloud-service provider security assessment and authorization program within the General Services Administration (GSA). It also establishes practices to support the FedRAMP authorization process and improve its speed, efficiency, and transparency. The Act outlines several avenues for improved authorization processes.

First, the Act establishes a FedRAMP board, comprised of senior government officials and experts, to serve as a resource to accelerate the authorization process, update requirements and guidelines, monitor and oversee processes for determining requirements for authorization, and ensure consistency and transparency.

Further, the Act establishes a Federal Secure Cloud Advisory Committee to engage the public and private sectors to help continuously improve authorization processes. The committee will be made up of members from government agencies, subject-matter experts, and private CSPs, with at least two representatives from small businesses.

Finally, the Act establishes a presumption-of-adequacy clause that ensures FedRAMP authorization will be presumed adequate for use in any agency authorization process.

### **OTHER TRANSACTION AUTHORITY**

Section 7227(b) from the Advancing American AI Act extends the Department of Homeland Security’s research-and-development and prototype-project other transaction (OT) authority through September 30, 2024.

Section 717 in Title VII, Health Care Provisions, extends DOD’s OT authority to include using such authority to conduct studies and demonstration

projects on the health care delivery system of the uniformed services related to improving the quality, efficiency, convenience, and cost effectiveness of providing health care services to service members and former members and their dependents.

Section 842 in Title VIII, Acquisition Policy, Acquisition Management, and Related Matters, revises 10 U.S.C. § 4022, which addresses DoD's authority to carry out certain prototype OT projects. This section requires written approval by a "covered official"—a service acquisition executive, the Director of the Defense Advanced Research Projects Agency, the Director of the Missile Defense Agency, the USDA&S, or the Undersecretary of Defense for Research and Engineering (USDR&E)—determining that (1) the requirements related to appropriate use of prototype OT authority are met, and (2) the use of the authority is essential to meet critical national-security objectives. This approval must be issued prior to the exercise of any follow-on production contract or transaction expected to cost DoD in excess of \$100,000,000 (including all options). The section also eliminates the \$500,000,000 trigger for different approval on such follow-on production contracts or transactions.

Section 842 also requires written notice to congressional defense committees when this OT authority is exercised.

Finally, Section 842 allows a follow-on production contract or transaction to be awarded "even if explicit notification was not listed within the request for proposal for the transaction" under certain conditions.

Section 843 amends 10 U.S.C. § 4022 to define "prototype project" to include a proof of concept, model, or process, including a business process; reverse engineering to address obsolescence; a pilot or novel application of commercial technologies for defense purposes; agile development activity; the creation, design, development, or demonstration of operational utility; or any combination thereof.

Section 843 also permits DoD or other military departments to establish a pilot program for the use of OT authority to carry out prototype projects related to enhancing the ability of DoD to prototype the design, development, or demonstration of new construction techniques or technologies to improve military installations or facilities. Under this pilot program, no more than two projects may begin per fiscal year, and all transactions under the pilot program may not exceed \$200,000,000. The pilot program will terminate September 30, 2025.

Section 6711 in Title LXVII, Matters Relating to Emerging Technology, amends 50 U.S.C. § 3024(n), among other things, to grant the Director of National Intelligence (DNI) OT authority consistent with DoD's research and



development (10 U.S.C. § 4021) and prototype (10 U.S.C. § 4022) OT authority. The section directs the DNI to delegate this authority to heads of intelligence-community elements.

Section 6711 also provides additional criteria for intelligence-community OT follow-on production contracts. Annually for six years, the DNI is required to study whether the intelligence-community elements should have additional transaction authority beyond research and development and prototype project authority. The findings of the study are to be submitted to Congress along with legislative solutions or other actions to implement such authority, if advised.

Section 8160, among other things, grants the Secretary of the Army OT authority for prototype projects, including follow-on production transactions, to support basic, applied, and advanced research activities that are directly relevant to water-resources development projects and to support the missions and authorities of the Corps of Engineers. The Secretary is required to notify Congress prior to entering into an OT agreement.

### **OTHER NEW ACQUISITION POLICIES**

Section 217 in Title II, Research, Development, Test, and Evaluation, requires the Air Force to compete contract awards for demonstrations and tests of commercial electronics technology to determine whether such technology may enable electromagnetic warfare capabilities, including those identified in DoD's August 5, 2021 Electromagnetic Spectrum Superiority Strategy Implementation Plan.

Section 708 in Title VII, Health Care Provisions, requires a Government Accountability Office study of certain TRICARE contracts awarded from October 1, 2017 to September 30, 2022, with a report due no more than two years from the date of enactment. The study is to review (1) TRICARE managed care support contracts, including how such contracts were awarded, and (2) other TRICARE contracts valued at or over \$500 million, including basic information about the contracts, bid protests filed, and the number of contracts awarded through other than full-and-open competition. The study must also consider Defense Health Agency contract oversight, including information about the process for determining staffing needs and competencies relating to contract award, administration, or oversight with respect to the TRICARE program.

Section 802 in Title VIII, Acquisition Policy, Acquisition Management, and Related Matters, regulates the use of Multiple Award Contracts for Architectural and Engineering Services by prohibiting agencies from "routinely request[ing] additional information relating to qualifications from the contractor."

Section 803 requires contractors that supply commercial products (at the subsystem, component, and spare-part levels) for a major weapons system to provide additional information about the prior commercial sales and terms applicable to those products.

Section 803 also revises the scope of additional information the contracting officer can request under 10 U.S.C. § 3455(d).

Section 805 provides that unilateral modification of an existing contract, order, or other transaction that implements the requirements of an executive order (EO) issued by the president shall be treated as a change under the Changes Clause (FAR 52.243-1, -2, -3, -4, -5, or -6, as appropriate).

Section 807 broadens whistleblower protections for contractors under 10 U.S.C. § 4701 and 41 U.S.C. § 4172 to “grantee[s], subgrantee[s], or personal services contractor[s].”

Section 2812 in Title XXVIII, Military Construction General Provisions, requires DoD to issue a determination within 30 days of the issuance of any EO assessing whether the EO would cause either a cost or scope-of-work change on a military construction project, or life-cycle cost savings. The provision also requires DoD to notify Congress of its determination and certify to Congress that any cost estimates have been updated to account for the determination.

## **PILOT OR NEW PROGRAMS**

Section 804 in Title VIII, Acquisition Policy, Acquisition Management, and Related Matters, provides designated senior DoD officials authority to waive key statutory or regulatory acquisition requirements to meet urgent operational needs upon written determination that the requirements “would unnecessarily impede the urgent acquisition and deployment of [a needed capability].” To access this waiver authority, the Secretary of Defense must provide a written determination that the capability is “urgently needed to eliminate a documented deficiency” that has or is likely to result in loss of life or critical mission failure in: combat, contingency operations, or cybersecurity.

Section 804 also provides new reprogramming authority to use “any funds available to the [DoD] if the determination includes a written finding that the use of such funds is necessary to address in a timely manner the deficiency,” but does set aggregate caps for this authority.

Section 808 limits major defense acquisition programs to one low-rate initial production lot if the milestone decision authority authorized the use of a fixed-price type contract at the Milestone B approval decision and the scope of work of that contract includes both development and low-rate initial production. Section 808 provides for a waiver of this limit.

Section 818 extends by one year the pilot program to accelerate contracting and pricing policies authorized in Section 890 of the FY 2019 NDAA, which waives the submission of certified cost or pricing data in exceptional circumstances.

Section 819 extends for one year the pilot program distribution support and services for weapons systems contractors authorized in Section 883 of the FY 2017 NDAA. That pilot program permits DoD to provide storage and distribution-services support to a contractor in support of the performance of a DoD contract for the production, modification, maintenance, or repair of a weapon system.

Section 834 requires the Director of the Acquisition Innovation Research Center to recommend curricula for members of the acquisition workforce on the financing and operations of start-up businesses, and a program must be developed to offer incentives for completing the curriculum. An exchange pilot program must also be established allowing for a temporary assignment of members of the workforce to a start-up or vice versa.

Section 861 requires that, within one year of enactment, DoD submit a comprehensive strategy to the congressional defense committees aimed at (1) increasing competitive opportunities available for appropriate U.S. companies to transition critical technologies into major weapon systems and other programs of record, and (2) enhance the integrity and diversity of the defense industrial base.

Section 862 requires that each military department conduct an outreach event by March 1, 2023 and every 180 days thereafter, in order to collaborate with the private sector, raise awareness within the private sector of key advanced system development areas and capability needs, as well as the department's potential solutions to address the capability needs.

Section 884 requires DoD to ensure that guidance on proper markings for controlled unclassified information is included in all program classification guides for classified programs and all program protection plans for unclassified programs at the next regularly scheduled update.

## **PROVISIONS RELATED TO ACQUISITION PROFESSIONALS**

The FY 2023 NDAA creates two new public-private talent exchange programs for acquisition professionals in DoD and the private sector.

Section 831 creates a public-private talent exchange program for acquisition professionals, with an exchange of up to 250 members of the acquisition workforce per fiscal year.

Section 843 establishes acquisition workforce training incentives related to start-ups, including a public-private talent exchange program between the

acquisition workforce and employees of start-ups. Pursuant to 10 U.S.C. § 1559g, private sector acquisition employees detailed to DoD under either exchange program would receive pay and benefits from their private organization and would be subject to some federal-employee restrictions, including government ethics.

## **RUSSIA AND UKRAINE**

Subtitle D of Title XII, Matters Relating to Foreign Nations, addresses several matters related to Russia. Of note, Section 1241 extends the Ukrainian Security Assistance Initiative until December 31, 2024. The Initiative permits DoD to provide support to Ukraine to:

- Enhance the capabilities of Ukraine’s military to defend against further aggression;
- Assist Ukraine in developing combat capability to defend its sovereignty and territorial integrity; and
- Defend itself against actions by Russia and Russian-backed separatists.

Further, Section 1245 prohibits DoD from using funds for any activity that recognizes the sovereignty of Russia over territory internationally recognized as Ukraine, and Section 1246 requires DoD to submit a report outlining its plan to provide security assistance to Ukraine’s armed forces.

Section 6807 requires the DNI to submit an assessment of the cumulative and material effects on Russia attributable to the sanctions imposed by the United States, European countries, and international community in response to Russia’s invasion of Ukraine. The report must also include a description of Russia’s evasion efforts and an explanation of the methodology used to create the report. The report will be submitted within 180 days after the enactment of the NDAA and every 180 days thereafter for two years.

Section 5590 requires the president to create a report listing persons who knowingly participated in the sale, supply, or transfer of gold indirectly or directly to or from Russia. The president must block property of the identified individuals. Additionally, alien identified individuals will be inadmissible to the United States and their existing visas will be revoked. The section provides some exceptions to this rule (i.e., for humanitarian efforts such as the sale of food, medicine, or medical devices).

## **REPORTS RELATED TO CHINA AND RUSSIA**

Several sections require reports regarding China and Russia. Three sections directly address Russia’s war in Ukraine. Section 5599 and Section 6525 require reports regarding China’s support to Russia related to Russia’s invasion of

Ukraine led by the Secretary of State and DNI respectively. Section 5523 requires a report that analyzes the impact of Russia’s war against Ukraine on China’s diplomatic, military, economic, and propaganda objectives with respect to Taiwan. Additionally, Section 6524 requires the DNI to provide a report on activities taken by China and Russia in Latin America and the Caribbean that are intended to increase China’s and Russia’s interests.

## **SUPPLY CHAIN SECURITY**

Section 5949 amends Section 889 of the FY 2019 NDAA (Public Law 115-232; 41 U.S.C. 3901 note prec.), expanding the current prohibition implemented at FAR 52.204-24, -25, and -26 (which applies restrictions to covered telecommunications equipment and services produced by Huawei and certain other Chinese entities of concern), to further prohibit the heads of executive agencies from procuring, obtaining, or issuing contracts to procure or obtain any electronic parts, products, or services that include covered semiconductor parts or services.

This section defines “covered semiconductor parts or services” as a semiconductor product or service that incorporates a semiconductor product that is designed, produced, or provided by:

- Semiconductor Manufacturing International Corporation (SMIC);
- ChangXin Memory Technologies (CXMT) or Yangtze Memory Technologies Corp (YMTC); or
- An entity that the Secretaries of Defense or Commerce, in consultation with the DNI or the Director of the FBI, determines to be an entity owned or controlled by, or otherwise connected to, the government of a foreign country of concern.

Section 5949’s prohibition goes into effect five (5) years after the enactment of the 2023 NDAA. Within three (3) years of this NDAA, however, the Federal Acquisition Regulatory Council is required to issue implementing regulations for this prohibition, including flowdown requirements.

Section 5949 also includes additional guidance on the requirements for the semiconductor prohibition implementing regulations and the development of a microelectronics traceability and diversification initiative. The section also includes guidance for recommendations on mitigating supply chain risks relevant to government acquisition of semiconductor products and services.

Provision (c) of Section 7227 “encourages” the GSA to pilot commercial off-the-shelf supply chain risk management tools to improve the ability of the federal government to monitor, predict, and respond to specific supply chain threats and vulnerabilities that could inhibit future Federal acquisition operations.

Section 220 directs the Secretary of Defense to establish a working group of industry, academia, and DoD components to coordinate on microelectronics issues of mutual interest, to include dialogue and coordination on the following topic areas:

- Future research needs;
- Infrastructure needs and shortfalls;
- Technical and process standards;
- Training and certification needs for the workforce;
- Supply chain issues; and
- Supply chain, manufacturing, and packaging security.

Section 220 further provides that, not later than March 1, 2023, the Secretary of Defense shall develop a charter and issue policies for the Working Group. This provision shall terminate on December 31, 2030.

Section 860 requires that, within one year of enactment of the NDAA, the USDA&S must develop and issue guidance for risk management of DoD supply chains for pharmaceutical materiel and identify supply chain information gaps regarding DoD's reliance on foreign suppliers of drugs and drug products.

Section 860 further requires that the Under Secretary submit a report to Congress regarding:

- Existing information streams;
- Vulnerabilities in the pharmaceutical supply chain; and
- Recommendations to address information gaps and vulnerabilities from reliance upon foreign suppliers.

Section 871 further requires the Director of the Defense Health Agency to publish guidance for risk management for the pharmaceutical supply chain and establish a working group to assess risks to the pharmaceutical supply chain within one year of enactment.

Section 857 provides that any contractor that provides to DoD a system with a permanent magnet that contains rare earth elements or strategic and critical materials disclose the provenance of the magnet with delivery of the system. The disclosure must include where:

- Any rare earth elements and strategic and critical materials used in the magnet were mined;
- Such elements and minerals were refined into oxides;

- Such elements and minerals were made into metals and alloys; and
- The magnet was sintered or bonded and magnetized.

If a contractor cannot provide that information, the Secretary of Defense must require the contractor to implement a supply chain tracking system “to the fullest extent possible” so that the contractor is able to make the required disclosure no more than 180 days later. Section 857 also provides for a waiver of the tracking requirement if the Secretary of Defense determines that the system is necessary to meet the demands of a national emergency, or the contractor that cannot currently make the required disclosure is making “significant efforts” to do so. Such a waiver may be renewed as many times as the Secretary of Defense deems necessary.

These rare earth magnet requirements will go into effect no earlier than thirty months after the enactment of the FY 2023 NDAA. Before the requirement goes into effect, the Secretary of Defense must certify to the House and Senate defense committees that there is no national security risk, or that any such risk is fully mitigated.

Separately, Section 857 also amends Section 1211 of the FY 2006 NDAA (Pub. L. 109-163; 10 U.S.C. 4651), expanding the restrictions implemented at DFARS 252.225-7007, which bars contractors from acquiring items that are controlled under the International Traffic in Arms Regulations (ITAR) or the 600-series of the Export Administration Regulations (EAR) from Communist Chinese Military Companies.

Section 857 re-defines “Communist Chinese Military Companies” as “Chinese Military Companies,” and expands the definition to include:

- Chinese Military Companies identified by DoD under its FY21 NDAA Section 1260H authority;
- Any “Non-[Specially Designated National] Chinese military-industrial complex company”; or
- Any other “covered company,” which broadly includes any company “owned or controlled by the People’s Republic of China.”

In addition, the amendment expands the covered goods and services beyond ITAR-controlled and 600-series items to also include items on the Commerce Control List (CCL) that contain “strategic and critical materials” (defined as those designated under Section 3(a) of the Strategic & Critical Materials Stock Piling Act at 50 U.S.C. 98b(a)), rare earth elements, or energetic materials used to manufacture missiles or munitions. With respect to these added products and services, the restrictions only go into effect after DoD certifies that there are sufficient commercially viable providers outside of China.

Section 857 also includes a referral provision that permits the Comptroller General to refer noncompliance matters to the Department of Justice, relevant Inspectors General, or other enforcement agencies if the Comptroller General has determined that a contractor has “willfully or recklessly” failed to comply with the provisions of Section 857.

Section 882 directs the Secretary of Defense to conduct a Security Clearance Bridge Pilot Program to allow the Defense Counterintelligence and Security Agency (DCSA) to sponsor the personal security clearances of employees of innovative technology companies that are performing a DoD contract while the government completes adjudication of the same company’s facility clearance application. “Innovative technology companies” are nontraditional defense contractors that are either (1) specifically selected by the Under Secretary of Defense for Research and Engineering (USDR&E), or (2) provide goods or services related to the 14 critical technology areas identified by USDR&E or to information technology, software, or hardware that is unavailable from any other cleared entity. The Pilot Program permits DCSA to sponsor employees of up to 75 innovative technology companies. Once an innovative technology company receives its facility clearance, DCSA will transfer any employee personal clearances to the company. The pilot program expires on December 31, 2028.

## **EXPORT CONTROLS AND OUTBOUND INVESTMENT**

Section 5589 extends the president’s ability to limit certain sensitive exports, including hacking tools, to foreign civilian intelligence or police-type entities. Prior to this extension, these exports could only be blocked if they were made to a foreign military intelligence entity.

The recently passed an omnibus appropriations act<sup>3</sup> that funds the NDAA (among other things) includes language encouraging the Departments of Commerce and Treasury to establish an outbound investment screening program to address the threats in certain sectors critical to U.S. national security and its economic and technological competition with China. The bill also authorizes \$20 million in funding to stand up the new screening mechanism, to be established via an EO.

## **SMALL BUSINESS**

Section 856 in Title VIII, Acquisition Policy, Acquisition Management, and Related Matters, codifies the DoD mentor-protégé program. Additionally, it increases the program participation term from two to three years and reduces

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<sup>3</sup> <https://www.appropriations.senate.gov/imo/media/doc/JRQ121922.PDF>.



the mentor eligibility threshold from \$100 million in DoD contract and/or subcontract awards during the previous fiscal year to only \$25 million in DoD contract and/or subcontract awards.

Section 871 codifies the scorecard in the Small Business Act (15 U.S.C. § 631 et seq.). The section also expands the agency scorecard reporting requirements to include information on awards made to concerns in the Service-Disabled Veteran-Owned Small Business (SDVOSB), Women Owned Small Business (WOSB), Historically Underutilized Business Zone (HUBZone), and 8(a) Business Development programs.

Section 872 extends the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs to 2024 and requires continued implementation of a DoD risk assessment of SBIR and STTR awardees.

Section 873 creates new obligations for agencies that bundle or consolidate contract requirements. The agencies must share information with the Small Business Administration (SBA) identifying the impact of bundling or consolidating contracts.

Section 874 requires the Secretary of Defense to establish a small business integration working group within 60 days after enactment of the NDAA. The working group is to ensure the integration and synchronization of the activities of the military departments and other components of DoD with respect to small business concerns.

Section 875 requires the Secretary of Defense to establish a program by December 31, 2027 to assess commercial due diligence tools, techniques, and processes in order to support small businesses in identifying attempts by malicious foreign actors to gain undue access to, or foreign ownership, control, or influence over small business entities and technologies. The Secretary of Defense is required to brief Congress on the status of the program by April 1, 2023 and provide a final report by March 1, 2028.

Section 876 requires the Secretary of Defense to conduct a study on the metrics necessary to assess the effectiveness of the SBIR and STTR programs in meeting DoD's mission needs.

## **SOFTWARE & TECHNOLOGY**

Subtitle D of Title VIII, Acquisition Policy, Acquisition Management, and Related Matters, includes sections aimed at enhancing DoD's approach toward software and related goals.

Section 841 amends 10 U.S.C. § 3791 to require the USDA&S to develop guidelines and resources related to the acquisition or licensing of intellectual property. These must include:

- Strategies supporting the use of modular open system approaches;
- Evaluation and negotiation of intellectual property licenses in competitive and non-competitive awards; and
- Models and best practices for specifically negotiated licenses.

These must further include definitions, key terms, examples, and case studies that clarify differences between:

- Detailed manufacturing and process data;
- Form, fit, and function data;
- Data required for operations, maintenance, installation and training;
- Modular system interfaces; and
- Technical data pertaining to an interface between an item or process and other items or processes necessary for the segregation of an item or process from, or the reintegration of that item or process with, other items and processes.

In furtherance of this directive, the USDA&S must ensure that the acquisition workforce receives training on the above guidelines and resources.

Section 846 requires the USDA&S, in consultation with the DoD Chief Information Officer and the DoD Chief Digital and Artificial Intelligence Officer, to submit to the congressional defense committees a report on covered software—software developed using a software acquisition pathway established under FY 2020 NDAA Section 800, which includes applications software and imbedded software—delivered in the past fiscal year. This report must describe covered software being developed using iterative development, as defined in the FY 2018 NDAA Section 891, and timelines of that development, including software delivered within intervals of three, six, nine, and twelve months after acquisition. The report also requires an explanation of why iterative development was not used for any such software delivered.