

A photograph of an American flag flying in front of a classical building with a large column. The image is tilted and partially obscured by a green and white geometric overlay.

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Aerospace & Defense Insights:

Key Provisions of the FY 2024
National Defense Authorization Act
for Government Contractors



Through Aerospace and Defense Insights, we share with you the top legal and political issues affecting the aerospace and defense (A&D) industry. Our A&D industry team monitors the latest developments to help our clients stay in front of issues before they become problems and seize opportunities in a timely manner.

The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2024, which was signed into law on December 22, 2023, ushers in a host of challenges and opportunities for organizations that conduct business with the U.S. Department of Defense (DoD). The NDAA's provisions are aimed at driving the Federal government's short- and long-term acquisition priorities and policies in the coming years. In this A&D Insights, we address those NDAA provisions that are most consequential for defense contractors in terms of compliance demands and potential avenues for strategic growth. These provisions span across several key areas, including enhanced supply chain and cybersecurity restrictions, innovative procurement of technology, expanded Other Transaction (OT) authorities, commercial contracting developments, and small business contracting.

Supply chain security and domestic preferences

Continuing the trend of years past, the NDAA contains a litany of provisions to address supply chain vulnerabilities, strengthen domestic manufacturing capabilities for drones and other technologies, and limit reliance on critical minerals from China and other foreign adversaries.

- **Section 804** prohibits DoD from contracting with persons that have fossil fuel operations with (i) Russia, (ii) a person more than 50% owned by the Russian Federation, or (iii) a fossil fuel company that operates in Russia. The prohibition does not apply to persons with a valid license to operate in Russia issued by the Office of Foreign Assets Control (OFAC), nor does it apply when the Secretary of Defense and the Secretary of State jointly determine an exception: (i) is necessary to provide humanitarian assistance to the Russian people, or to provide disaster relief and other urgent life-saving measures; (ii) is vital to U.S. or North Atlantic Treaty Organization (NATO) military readiness, basing, or operations; (iii) is vital to U.S. national security interests; or (iv) the contract was a business operation with a fossil fuel company in another country that was entered into prior to the NDAA's enactment. DoD must notify Congress of any contract entered into pursuant to one of these exceptions.

- **Section 805** builds upon existing restrictions on contracting with entities with ties to the Chinese military. Specifically, Section 805(a)(1)(A) prohibits DoD from entering into, renewing, or extending contracts to procure goods, services, or technology with **any entity** identified on the DoD’s list of Chinese military companies (published annually)¹ or any entity under the control of such entity. Section (a)(1)(B) prohibits DoD from entering into, renewing, or extending contracts for “the procurement of goods or services **that include goods or services**” produced or developed by any such entity. DoD’s list of Chinese military companies is required by Section 1260H of the **FY 2021 NDAA**, which defines the term “Chinese military company” as an entity that is “(i)(I) directly or indirectly owned, controlled, or beneficially owned by, or in an official or unofficial capacity acting as an agent of or on behalf of, the People’s Liberation Army or any other organization subordinate to the Central Military Commission of the Chinese Communist Party; or (II) identified as a military-civil fusion contributor to the Chinese defense industrial base; and (ii) engaged in providing commercial services, manufacturing, producing, or exporting.”

The Section 805 prohibition does not apply to existing contracts or to contracts for goods, services, or technology that provide a service that connects to the facilities of a third party, including backhaul, roaming, or interconnection arrangements. The prohibition also does not apply with respect to “components,” as that term is defined at 41 U.S.C. § 105. The Secretary of Defense may waive the prohibition, if the entity seeking the waiver provides (i) a compelling justification for additional time to implement the requirements, and (ii) a phase-out plan to eliminate the covered goods, services, or technology from the entity’s systems. Critically, waivers remain in effect only until DoD determines there are commercial providers outside of China who can and will sell to DoD quality goods and services in the quantity demanded. The FY24 NDAA requires the Defense Federal Acquisition Regulation Supplement (DFARS) to be amended within 12 months to

implement paragraph (a)(1)(A) and within 18 months to implement paragraph (a)(1)(B).

Contractors should be aware of existing restrictions on selling goods or components from entities with certain ties to the Chinese military. For example, DFARS 225.770-2, prohibits DoD from acquiring items covered by the U.S. Munitions List or the 600 series of the Commerce Control List, through a contract or subcontract at any tier, from any Communist Chinese military company. DoD flows this prohibition to contractors through DFARS 252-225-7007, *Prohibition on Acquisition of Certain Items from Communist Chinese Military Companies*.

- **Section 812** seeks to prevent conflicts of interest with certain foreign covered entities as applied to contractors that provide consulting services to the DoD under NAICS code 5416, Management, Scientific, and Technical Consulting Services. Section 812 will also require contractors to certify that they and their affiliates do not hold consulting agreements with covered entities, including with certain Chinese and Russian governmental entities, within the last five years. DoD may not enter into contracts with those contractors that are unable to make the required certification. Affected contractors also must maintain a Conflict of Interest Mitigation Plan that: (1) identifies risks; (2) includes a written course of action to avoid, neutralize, or mitigate actual or potential conflicts of interest; (3) describes contractor procedures to ensure individuals involved in contract performance do not provide consulting services to covered entities; and (4) describes contractor procedures to notify DoD of any unmitigated conflict of interest. The Secretary of Defense may waive the requirements on a case-by-case basis if deemed necessary in the interest of national security. DoD must amend the DFARS within 180 days to implement these requirements.
- **Section 825** bars DoD from contracting with any entity that provides data to covered logistics platforms, including LOGINK (China’s national transportation logistics public information platform) and similar platforms sponsored by a

1. See Tranche 1 (June 3, 2021), available at <https://media.defense.gov/2021/Jun/03/2002734519/-1/-1/0/ENTITIES-IDENTIFIED-AS-CHINESE-MILITARY-COMPANIES-OPERATING-IN-THE-US.PDF>; Tranche 2 (Oct. 5, 2022), available at <https://media.defense.gov/2022/Oct/05/2003091659/-1/-1/0/1260H%20COMPANIES.PDF>; Tranche 3 (Jan. 31, 2024), available at <https://media.defense.gov/2024/Jan/31/2003384819/-1/-1/0/1260H-LIST.PDF>.

foreign adversary or a commercial entity controlled by the government of a foreign adversary. The Secretary of Defense must inform U.S. allies and partners of the national security-related risks imposed by such platforms, and negotiate the removal of LOGINK and similar platforms from their ports.

- **Section 831** permits use of emergency acquisition authorities to replenish U.S. stockpiles of military supplies and defense articles that have been provided to Ukraine and other foreign allies.
- **Section 833** amends 10 U.S.C. § 4863 to extend the qualifying country exception for specialty metals to include specialty metals procured as mill product (which includes bars, billets, slabs, wires, plates, and sheet metals) or incorporated into a component other than an end item. Section 833 further requires suppliers of aerospace-grade metals for flight-related systems or components to inform DoD if any of the materials were known to be manufactured or processed in China, Iran, North Korean, or Russia. These changes are not required to take effect until December 22, 2025,
- **Section 835** increases the “Buy American” domestic content requirements for major defense acquisition programs as defined in 10 U.S.C. § 4201 to 65% for manufactured articles supplied through December 31, 2028; this threshold increases to 75% on January 1, 2029. The NDAA excludes purchases from foreign nations with reciprocal defense procurement agreements. Within one year, DoD must assess and report on the domestic source content for major defense program acquisitions.

In comparison, current FAR 25.101 provides that, except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components shall exceed 60 percent of the cost of all the components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.

- **Section 856** establishes a pilot program to analyze, map, and monitor supply chains for up to five weapons platforms. The pilot program must identify critical suppliers as well as potential risks and supplier vulnerabilities for covered weapons platforms, and propose risk mitigation strategies. The NDAA permits DoD to leverage a combination of commercial tools and new technologies, such as artificial intelligence, to improve supply chain data analysis capabilities.
- To bolster the visibility of foreign acquisition programs, **Section 873** demands that DoD conduct annual “industry days” to raise awareness within foreign government and the U.S. defense industrial base of the foreign military sales (FMS) process as well as foreign demand for U.S. weapons systems and potential partnering opportunities. The NDAA also calls for the creation of a DoD senior-level industry advisory group and DoD FMS points of contact.
- **Section 154** prohibits DoD from using appropriated funds to procure batteries produced by certain Chinese entities or their successors, including: Contemporary Amperex Technology Company, Ltd.; BYD Company, Ltd.; Envision Energy, Ltd.; EVE Energy Company, Limited; Gotion High tech Company, Limited; and Hithium Energy Storage Technology Company, Limited. A battery is “produced” by a covered entity if that entity assembled or manufactured the final product, or created or otherwise provided a majority of the batter components. The statute does not directly address whether the prohibition would apply to end items (e.g., automobiles) that contain such batteries as components. The prohibition takes effect on October 1, 2027.
- **Sections 1821 through 1833** enact the “American Security Drone Act of 2023” and impose new restrictions on DoD’s purchase of unmanned aircraft systems (UAS) from Chinese entities. Among these, **Section 1823** prohibits the procurement of any covered UAS manufactured or assembled by a covered foreign entity, including entities domiciled in China or subject to the

2. This does not include manufactured articles that consist wholly or predominantly of iron, steel, or a combination of iron and steel.

Chinese Government's influence or control. The American Security Drone Act includes limited exceptions for procurements required in the national interest of the United States that also meet certain enumerated purposes, such as research and analysis for electronic warfare or cybersecurity, or for counterterrorism and/or counterintelligence activities. **Section 1825** further bars federal funds from being used in connection with the operation of a covered UAS or drone, subject to the same limited exceptions described above. **Section 1829** directs OMB to work jointly with Department of Homeland Security (DHS), Department of Transportation (DOT), Department of Justice (DOJ), the National Telecommunications and Information Administration (NTIA), and other stakeholders to issue a government-wide policy to procure UAS (i) for non-DoD and non-intelligence community operations, and (ii) through grants and cooperative agreements entered into with non-Federal entities. The policy is due within 180 days and must include specifications to mitigate risks associated with processing, storing, and transmitting Federal information in a UAS. **Section 1822** directs executive agencies to inventory covered UAS within one year. Finally, contractors should keep an eye out for updated FAR regulations and guidance, to be issued within 180 days, that will implement this latest procurement prohibition.

- **Section 1414** directs DoD to develop a strategy to achieve supply chain independence for critical minerals by 2035. Among other objectives, the strategy should identify and assess significant supply chain vulnerabilities; provide recommendations to eliminate reliance on critical minerals mined or processed in China, North Korea, Russia or Iran; and identify potential partnerships with U.S. allies and partners to jointly reduce dependence on critical minerals mined or processed in or by such countries.

Cybersecurity and Artificial Intelligence

The NDAA bolsters existing cybersecurity initiatives, including the development of strategies and tactics to advance cyber warfighting capabilities, and introduces new requirements to regulate and leverage rapidly changing Artificial Intelligence (AI) technologies and capabilities.

- **Section 1502** establishes the Strategic Cybersecurity Program to ensure DoD's ability to "conduct the most critical military missions." The Program will include all systems, critical infrastructure, kill chains, and processes that comprise military missions related to (i) nuclear deterrence and strike; (ii) select long-range conventional strike missions; (iii) offensive cyber operations; and (iv) homeland missile defense. In an effort to build upon existing DoD cybersecurity initiatives, the Program will conduct end-to-end vulnerability assessments of covered systems, infrastructure and kill chains; remediate identified vulnerabilities; and review acquisition and system engineering plans for proposed systems or infrastructure.
- **Section 1506** directs the Commander of each geographic combatant command, in coordination with the U.S. Cyber Command, to develop a cyber support mechanism to support the operations of that combatant command. The developed cyber support mechanisms must include processes to enhance cyber capabilities, plans to develop and maintain sufficient cyber planning capacity, integration processes for cyber capabilities, and prioritization of cyber risks and vulnerabilities.
- **Section 1507** calls for DoD to review the implementation status of cyber "red team" requirements mandated under Section 1660 of the FY 2020 NDAA. The NDAA also calls for development of a plan to identify funding, resources, infrastructure, and metrics necessary for cyber red teams to achieve current and future DoD demands. DoD must issue regulations and guidance to implement the plan within one year.

- **Section 1512** tasks DoD with establishing a cross-functional team to develop and implement a “threat-driven cyber defense construct,” as well as associated plans and milestones, for systems and networks that support the nuclear command, control, and communications (NC3) mission. The developed construct will be based on zero trust architecture principles, an analysis of comprehensive endpoint and network telemetry data, and control capabilities to enable rapid investigation and remediation of mission threats.
- **Section 1513** establishes a pilot program to encourage the National Security Agency’s (NSA) Cybersecurity Collaboration Center to contract with U.S. semiconductor manufacturers to improve supply chain cybersecurity for semiconductor design, manufacturing, assembly, packaging, and testing. DoD must report annually to Congress on program effectiveness and policy recommendations to address budgetary, security, and legislative gaps.
- **Section 1514** authorizes DoD to transfer to certain private sector entities, through cooperative research and development agreements (CRADAs) or other agreements, the data and technology developed under the More Situational Awareness for Industrial Control Systems (MOSAICS) program to enhance cyber threat detection and to protect critical industrial control system assets involved in electricity distribution.
- **Section 1521** requires DoD to establish a Chief Digital and AI Officer Governing Council to provide policy oversight for the responsible, coordinate, and ethical employment of DoD data and AI capabilities. This includes improving coordinate on AI governance within the defense industry sector as well as monitoring and updating recommendations for AI operational usage.
- With regard to procurement of cyber data products and services, **Section 1522** directs DoD to evaluate emerging cyber technologies, to include AI-enabled security tools, for efficacy and applicability to DoD requirements.
- Under **Section 1535**, the U.S. Cyber Command has 6 months to establish a three-year pilot program to contract with skilled contractor personnel to provide services to enhance the

readiness and effectiveness of the Cyber Mission Force.

- **Section 1544** directs DoD, within 120 days, to develop and issue DoD-wide guidance that defines near- and long-term outcomes and strategies related to AI adoption. DoD must also address accountability monitoring (including performance indicators and metrics) for AI-related activity; assess technical workforce needs; develop a strategic plan for the develop, use, and cybersecurity of generative AI; and develop a plan to identify commercially available and relevant large language models and make such models available on classified networks, as appropriate.

Innovative technology and software procurement

Several provisions in this year’s NDAA aim to improve DoD’s capabilities to procure innovative and critical technologies, advance major defense acquisition pathways, and negotiate intellectual property (IP) licenses.

- **Section 806** directs each Military Department, within one year, to designate a “Principal Technology Transition Advisor” to advise on transitioning technologies—including those from DoD science and technology programs, private commercial entities, research institutions, and universities—to meet identified and potential warfighter requirements. The Principal Technology Transition Advisor must consult with DoD innovation programs to identify private sector technologies; recommend the acquisition of identified technologies; and develop policies and procedures to promote opportunities for small business and nontraditional defense contractors to license DoD-developed intellectual property.
- **Section 807** requires the Director of the Strategic Capabilities Office to staff a senior contracting official with authority to enter into and administer contracts, grants, cooperative agreements, and OTs.

- **Section 808** requires DoD to implement a pilot program for the use of innovative intellectual property strategies to acquire data rights deemed necessary for operation, maintenance, and installation purposes. Suggested strategies include verifying and holding intellectual property data in escrow, and using royalties or licenses. Each Military Department, as well as the Under Secretary of Defense for Acquisition and Sustainment, must designate one covered pilot program by May 1, 2024. DoD must annually report on the program's effectiveness in acquiring the necessary technical data rights as well as recommendations to apply lessons learned.
- **Section 809** establishes a pilot program to explore the use of consumption-based solutions (i.e., "anything-as-a-service" contracts) to address DoD needs. "Anything-as-a-service" is defined as "a model under which a technology-supported capability is provided to the [DoD] and may utilize any combination of software, hardware or equipment, data, and labor or services that provides a capability that is metered and billed based on actual usage at fixed price units." The technology acquisition model should provide users on-demand access, quickly add newly released capabilities, and bill based on actual usage at fixed price units. Pilot program participation should be limited to agreements with measurable outcomes, such as a comparison of delivery speed against traditional acquisition models. DoD must brief Congress on the implementation of the pilot program by June 30, 2024.
- **Section 810** calls for DoD, within one year of the NDAA's enactment, to revise program guidance for major defense acquisition programs, as well as acquisition programs and projects using rapid prototyping acquisition pathways, to integrate planning for exportability features under 10 U.S.C. § 4067. Within three years, DoD must revise guidance for program protection plans to integrate a requirement to determine exportability for covered programs.
- **Section 811** mandates that by October 1, 2025, DoD must coordinate to develop and implement a streamlined requirements development process to improve alignment between modern warfare technologies and system development while reducing delivery time. The requirements



development process must achieve a number of objectives, to include maximizing DoD usage of commercial products or services; establishing a process to rapidly validate commercial product or service abilities to meet DoD needs; developing a requirements framework and pathways that are aligned to the adaptive acquisition framework; and ensuring requirements processes for software, AI, and data reflect a more rapid, dynamic, and iterative approach as compared to traditional hardware systems. To ensure the resulting requirements development process effectively leverages the innovation ecosystem, DoD must collaborate with industry partners, DoD contractors and nontraditional defense contractors, as well as DoD science and technology reinvention laboratories on development of the process. By October 1, 2024, DoD must report to the congressional defense committees on the development and implementation of the process.

that exceptional circumstances otherwise justify use of the OT authority.

- **Section 822** amends 10 U.S.C. § 4022(i)(2)(A) to clarify that, with regard to the pilot program for installation or facility prototyping, the two prototype project limit per fiscal year does not apply to projects carried out for the purpose of repairing a facility. The NDAA also increases the permissible aggregate value of all transactions entered into under the pilot program from \$200M to \$300M.
- **Section 1603** amends 10 U.S.C. § 135 to authorize the Secretary of a military department to enter into OTs with commercial entities that intend to conduct space launch activities on a military jurisdiction. DoD may provide supplies, services, equipment and/or construction needed to facilitate the commercial space launch, although the commercial entity must reimburse DoD for any associated direct costs.

Other Transaction authority

OT authority continues to serve as an important contractual mechanism for DoD to leverage innovative technologies and is often the subject of NDAA's. This year's NDAA expands and clarifies DoD's OT authority for prototype projects and commercial space launches.

- **Section 821** modifies the approval authority for follow-on production contracts or transactions for prototype projects over \$100M. To exercise such authority, a covered official must now determine that the prior transaction for the prototype project that provided for the award of the follow-on production contract or transaction met the conditions for DoD to enter into such a transaction under subparagraph (d) of 10 U.S.C. § 4022. Such conditions tied to the prior transaction for the prototype project include (i) that at least one nontraditional defense contractor or nonprofit research institution participated to a significant extent; (ii) all significant participants were small businesses; (iii) at least one third of the total cost was paid out of non-Federal government funds; or (iv) the senior executive for the agency determines

Commercial contracting

Several NDAA provisions further DoD's statutory goal of acquiring commercial products and services to the maximum extent practicable, including new requirements to review the viability of implementing a default presumption of commerciality for acquired products and services.

- **Section 801** requires DoD, upon request, to provide a copy of any written commerciality determination to the contractor or subcontractor providing the product or service upon request.
- **Section 813** directs DoD, at least four times per year, to exercise its statutory authority under 10 U.S.C. § 3458 to competitively procure innovative commercial products and services. Proposals are selected from a general solicitation (deemed a "Commercial Solutions Opening") and are selected based on peer review. Per existing law, "innovative" is defined to mean (i) any technology, process, or method, including research and development, that is new; or (ii) any new application of a technology, process, or method. Ultimately, the use of this authority

seeks to decrease the administrative burden that commercial entities face when contracting with DoD, resulting in greater DoD access to innovative technologies and other solutions.

- **Section 875** tasks DoD with studying the feasibility and advisability of establishing a default presumption that DoD-acquired products and services are “commercial.” DoD must concurrently study the feasibility of requiring that products or services be deemed “other than commercial” prior to the use of non-FAR Part 12 acquisition procedures. DoD must report on its findings within 180 days.

Small business contracting

The FY 2024 NDAA includes several provisions aimed at furthering small business participation in the defense industrial base, including enhanced payment protections for small business subcontractors and higher small business subcontract goals. Notably, the NDAA also requires DoD to consider relevant past performance of a small business’s affiliate.

- **Section 862** amends the Small Business Act (15 U.S.C. § 637(d)(13)) to reduce from 90 days to 30 days the deadline by which covered prime contractors (i.e., those with a small business subcontracting plan) must pay small business subcontractors before triggering written notice to the contracting officer. The NDAA further grants contracting officers discretion to enter or modify the prime contractor’s past performance information in connection with any unjustified failure to fully or timely pay its small business subcontractors under a covered contract. In the event of such an unjustified failure to pay, prime contractors must cooperate with the contracting officer to correct and mitigate the subcontractor payment failure. The Small Business Administration (SBA) regulations must be updated within 180 days to implement these new requirements.

- **Section 863** increases the Federal-wide subcontracting goal for service-disabled veteran-owned small businesses (SDVOSBs) from 3% to 5% per fiscal year.
- Continuing the changes to SDVOSB contracting, **Section 864** will prohibit contractors from self-certifying their SDVOSB eligibility. Instead, the Small Business Administration must certify contractor and subcontractor SDVOSB status. Contractors who previously self-certified as SDVOSBs must file for SBA certification within one year of the NDAA’s enactment in order to keep their SDVOSB status until the SBA rules on their certification application. The SBA must promulgate regulations to implement this change within 180 days; the new requirement then takes effect on the following October 1.
- **Section 865** will require DoD to consider the past performance of small business affiliates, if relevant, during past performance proposal evaluation and source selection. DoD has until July 1, 2024 to amend the DFARS to implement this new requirement.

Inflationary relief

In an ongoing effort to combat the impacts of inflation on defense contractors, the NDAA extended inflation-related authority through the coming year.

- **Section 824** advances DoD’s continued efforts via a modification to Public Law 85-804 to counteract the impacts of inflation by extending through December 31, 2024 the temporary inflation-related authority granted in Section 822 of the [FY 2023 NDAA](#). Contractors should take note, however, that while this section authorizes inflation-related relief, it does not appropriate funds for such relief.

Other developments

The NDAA set forth a number of additional provisions of interest for defense contractors:

- In furtherance of DoD's efforts to identify contractors who refuse to provide requested other than certified cost or pricing data, **Section 802** directs the Under Secretary of Defense for Acquisition and Sustainment to develop a framework to revise what constitutes a denial of uncertified cost or pricing data, which should (i) identify situations where such denials occur, (ii) identify whether the denial is from the prime contractor or the subcontractor, and (iii) establish a timeframe by which failure to provide the requested uncertified cost or pricing data is deemed a "denial." Moreover, contractors who are included on the annual DoD report identifying offerors who refuse to submit the requested uncertified cost or pricing data can now obtain "appropriate" portions of the report.
- **Section 803** prohibits contractors and subcontractors from selling, licensing, or transferring individually identifiable DoD employee data to any person other than the U.S. Government, with limited statutory exceptions. The requirement will be implemented via a new contract provision included in all DoD contracts on or after the December 22, 2023. The Secretary of Defense may waive the prohibition under appropriate circumstances.
- **Section 823** extends and revises the "Never Contract with the Enemy" Act to authorize contracting officers to take certain procurement-related actions, including termination for default and/or exclusion, against foreign persons or entities that engage in enumerated acts (such as acts of violence or foreign intelligence against the United States) deemed harmful to or that risk United States and/or its partners and allied missions and forces. Contracting officers must report the exercise of a covered procurement action to the Under Secretary of Defense for Acquisition and Sustainment within 15 days, as well as include such action in the Federal Awardee Performance and Integrity Information System.
- **Section 826** authorizes DoD to use appropriated funds to modify the terms and conditions of fixed-priced contracts with economic price adjustments, consistent with FAR 16.203-1 and 2. DoD must issue implementing guidance within 30 days following the NDAA's enactment.
- **Section 862** reduces the time by which prime contractors must notify the contracting officer of past due payments to subcontractors from 90 days to 30 days. The provision further authorizes contracting officers to modify a prime contractor's past performance for the unjustified failure to make full or timely payments to subcontractors. The contractor must cooperate with the contracting officer to correct and mitigate the payment failure.
- **Section 874** establishes a pilot program to incentivize contractor performance by increasing progress payments up to 10% higher than the customary rate on a contract-by-contract basis. Contractor participation is voluntary, and DoD's authority to conduct the program will sunset on January 1, 2029.
- In an effort to strengthen DoD's antitrust role, **Section 857** requires concurrent notice to DoD of any proposed mergers or acquisitions that must also be noticed to the Department of Justice or the Federal Trade Commission under Section 7A of the Clayton Act.
- **Section 827** will exempt DoD contracts and subcontracts for software from earned value management systems requirements. The provision also extends earned value management system requirements for cost and incentive contracts valued between \$20M to \$50M, and requires contractor use of an earned value management system for all contracts valued between \$50M to \$100M. DoD must update the DFARS within 180 days to implement these requirements.
- **Section 318** prohibits DoD from requiring that defense contractors or non-traditional defense contractors (NTDCs) disclose a greenhouse gas (GHG) inventory or otherwise report GHG emissions as a condition of receiving contract award. The prohibition is indefinite for NTDCs, but expires on December 22, 2024 for traditional defense contractors. This latest development comes on the heels of a controversial proposed FAR rule that would require certain contractors to disclose GHG emissions (covered in-depth [here](#)).



Looking ahead

The FY2024 NDAA provides insight into the government's priorities across cyber and supply chain security, acquisition authorities, commercial contracting, and small business contracting, among others. The NDAA also establishes new and expanded opportunities and complex compliance obligations for federal contractors that do business with DoD and the Intelligence Community. Contractors that monitor the NDAA's implementation will be best positioned to navigate the ever-changing regulatory landscape while capitalizing on new and potentially lucrative contracting opportunities.

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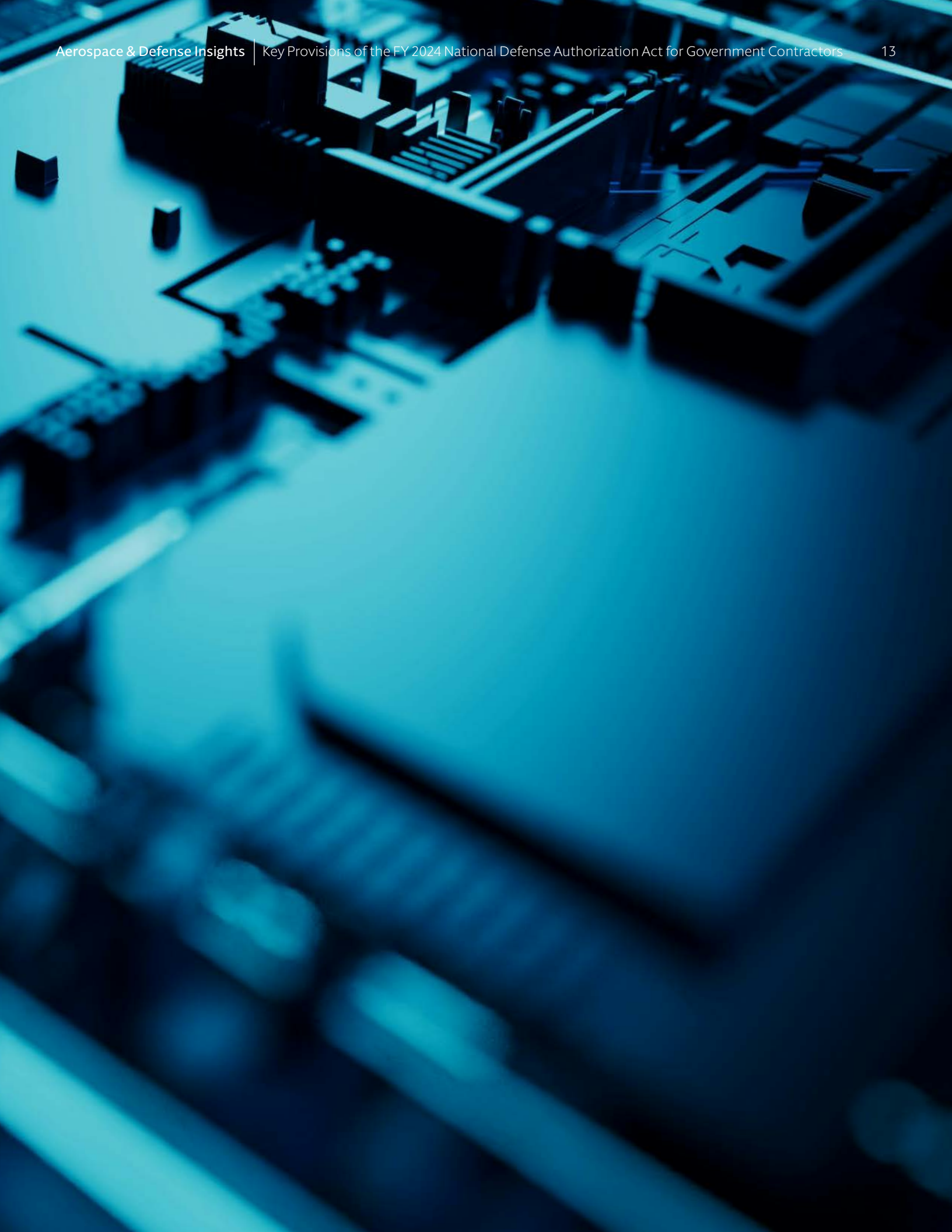
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