

September 6, 2024

The Honorable Jack Reed
Chairman
Committee on Armed Services
United States Senate

The Honorable Mike Rogers
Chairman
Committee on Armed Services
U.S. House of Representatives

The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives

Dear Chairman Reed, Ranking Member Wicker, Chairman Rogers, and Ranking Member Smith:

As a 501(c)3 educational nonprofit, the National Defense Industrial Association (NDIA) represents more than 1,700 corporate and close to 65,000 individual members from small, medium, and large contractors, a majority of which are small businesses. For more than 100 years, NDIA has provided a platform through which leaders in government, industry, and academia can collaborate and provide solutions to advance the national security and defense needs of the nation.

NDIA appreciates your dedication to our national security and the U.S. Armed Forces with your collective efforts drafting and advancing both versions of the fiscal year (FY) 2025 National Defense Authorization Act (NDAA), H.R. 8070 and S. 4638. As you work towards the final Conference Report, on behalf of our membership, NDIA offers the following recommendations organized within three strategic pillars, which are foundational for building a modern, diverse, and resilient U.S. defense industrial base (DIB).

Restoring Industrial Readiness Powerhouses

NDIA and its members support sections 811 and 812 of H.R. 8070 and section 825 of S. 4638. These proposals would modify the Truth in Negotiations Act (TINA) to reduce the requirements that currently unnecessarily burden and elongate the procurement process and allow the government to reduce negotiation times for both primes and their subcontractors and suppliers. NDIA especially appreciates the inclusion of section 812 of the House version that was supported in a previous letter to the Committee (see Attachment 2).

However, NDIA opposes the inclusion of sections 809D and 813 of the House-passed bill. Enactment of these sections would complicate the negotiation process and slow down

defense procurement negotiations at a time when we need swifter procurement and acquisition. NDIA also opposes Senate NDAA section 827 that authorizes a contracting officer to determine commerciality based on a price determination. The commercial product determination should remain separate and distinct from the price reasonableness determination and should only be based on whether the product satisfies the commercial product definition in FAR 2.101.

Regarding general contracting, NDIA supports the Senate NDAA sections 821 and 822. These proposals remove major impediments to industry's ability to effectively serve the warfighter. Section 821 limits the number of fixed-price contracts for low-rate initial production to one, and section 822 allows contractors to appeal a unilateral definitization by a contracting officer.

NDIA opposes House NDAA section 227, which presents an additional burden for industry compliance, and section 872. By forcing losing protests to pay for DoD costs, section 872 will motivate contractors to skip the bid protest process and take their complaints to the courts to avoid the financial penalty if they are found liable.

NDIA also opposes Senate section 824 in its current form. In offering alternative capability-based pricing models for nontraditional contractors, section 824 discourages investment from traditional contractors. Instead of limiting these alternative pricing models to nontraditional contractors, NDIA recommends expanding the pilot to include the entire defense industrial base to maintain competition and increase innovation.

As for classified infrastructure, NDIA supports sections 865 of the House bill and 1547 of the Senate bill, which would establish a pilot program for access to shared classified commercial infrastructure. Expanding access while reducing costs to classified facilities will greatly benefit small businesses, nontraditionals, and academic institutions within the defense ecosystem.

Finally, NDIA also supports House section 312, which would extend the prohibition passed by Congress in the FY24 NDAA on the disclosure of greenhouse gases. The burden on industry for tracking greenhouse gases as currently drafted is overly burdensome, costly, and beyond the ability of some contractors to comply.

Resilient Supply Chains

Both versions of the FY2025 NDAA heavily feature provisions intended to re-align supply chains and to support the development of domestic and allied production capacity for critical raw materials and critical minerals. At the present time, the supply chains of many of the essential inputs for the U.S. defense industrial base are dominated by the People's Republic of China – noted in the 2022 National Security Strategy as the only competitor to

the United States with “the intent and, increasingly, the capacity to reshape the international order.”

NDIA supports section 847 of H.R. 8070, which promotes supply chain illumination efforts so that members of the defense industrial base can more accurately map which of their components and systems rely on imports from the PRC. This will enable the private sector to make targeted, informed, and impactful decisions and investments to shift away from Chinese-dominated supply chains.

However, other supply chain-related provisions in both versions—namely, House sections 807, 842, 852, and 1706 and Senate sections 851 and 885—require further consideration. These provisions would prematurely deploy widespread disincentives for industry’s use of Chinese-sourced critical minerals and rare earth elements before adequate incentives and supplies are in place. Developing new supply chains, from mines to processing and downstream manufacturing facilities, is highly capital intensive and takes a significant amount of time. Although industry supports alternative supply chains, the government must allocate sufficient time and resources to allow the shift of global supply chains to happen in a responsible manner to not compromise the integrity of the defense industrial base.

Advancing DoD Digital Modernization and Transformation

The future character of war focuses on the use of emerging and disruptive technology, and NDIA supports efforts that help to increase our technological competitive advantage. This includes support for House section 354 that would add budget flexibility to appropriations for software, increasing efficiency for software procurement and speeding up the acquisition process. NDIA also supports House section 1522, which provides reciprocity to allow for quicker approval of already reviewed cloud applications and cut down on redundant bureaucracy.

IP and data rights are also crucial to the companies that design, manufacture, apply, and maintain the cutting-edge technologies, systems, and platforms our armed forces rely upon to deter aggression and defend our nation and its interests. Protection of these rights is also essential to the Department’s ability to incentivize investment in innovation, to gain access to new suppliers at the prime and subcontractor levels, and to maintain access to the information and technical data necessary to support military equipment throughout its lifecycle.

As such, NDIA opposes section 828 of the Senate NDAA, which is akin to a compulsory licensing requirement that would put contractor data rights at risk. This provision would force contractors to provide access to undefined information, which may include closely held manufacturing trade secrets, without guardrails, limitation, or exceptions. Section

828 ultimately threatens the existing balance between the legitimate needs of DoD and industry to access and protect IP.

In closing, NDIA appreciates your support of the U.S. defense industrial base as it fulfills its mission in support of our national security and warfighters. Please do not hesitate to reach out if NDIA can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Norquist". The signature is fluid and cursive, with a long horizontal stroke at the end.

Hon. David L. Norquist
President & Chief Executive Officer
National Defense Industrial Association

Attachment 1: Overview of NDIA's Positions

Support	Oppose
Restoring Industrial Readiness Powerhouses	
House Sec. 312 Extending of prohibition on required disclosure.	House Sec. 227 Disclosure requirements for persons performing research or development projects for the Department of Defense
House Sec. 811 Modification to exception for submission of certified cost or pricing data for certain components and parts of commercial products	House Sec. 809D Review Panel on Fair and Reasonable Pricing and Contract Oversight
House Sec. 812 Application of recent price history and purchase orders to truthful cost or pricing data requirements	House Sec. 813 Elimination of late cost and pricing data submission defense
Senate Sec. 821 Limitation on Certain Options for Cost Contracts	Senate Sec. 824 Pilot program on capability-based analysis of price of goods or services offered by nontraditional defense contractors
Senate Sec. 822 Treatment of unilateral definitization of a contract as a final decision	Senate Sec. 827 Modifications to commercial product and commercial service determinations.
Senate Sec. 825 Extension of the pilot program for streamlining awards for innovative technology projects	House Sec. 872 Pilot program on payment of costs for denied Government Accountability Office bid protests
House Sec. 865 & Senate Sec. 1547 Pilot program for access to shared classified commercial infrastructure.	
Resilient Supply Chains	
House Sec. 847 Supply chain illumination	House Sec. 807 Prohibition on Department of Defense Procurement from Companies Providing Semiconductors and Semiconductor-Related Products to Huawei
	House Sec. 842 Amendment to requirement to buy strategic materials critical to national security from American sources
	Senate Sec. 851 Transparency in acquisition waivers issued by the Department of Defense
	House Sec. 852 Modification to procurement requirements relating to rare earth elements and strategic and critical materials.
	Senate Sec. 885 Phase-out of computer and printer acquisitions involving entities owned or controlled by China
	House Sec. 1706 Prohibition of funds to CCP entities.
Advancing DoD Digital Modernization and Transformation: IP	
House Sec. 354 Availability of O&M appropriations for software.	Senate Sec. 828 Requirement for contractors to provide access to reasonable repair materials.
House Sec. 1522 Modernizing DoD's Authorization to Operate process.	



March 29, 2024

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Chairman
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Dear Chairman Reed, Ranking Member Wicker, Chairman Rogers, and Ranking Member Smith,

Thank you for your continued leadership and work to advance the fiscal year (FY) 2025 National Defense Authorization Act (NDAA). This legislation is critically important, and we applaud your dedication to enacting bipartisan legislation that provides for our country's defense.

The National Defense Industrial Association (NDIA) is the nation's oldest and largest defense industry association. NDIA's membership is comprised of over 1,700 corporate and 65,000 individual members. A majority of those members are small businesses that are critical to driving innovation for our warfighters. As your committees continue working on the FY2025 NDAA, NDIA's Small Business Division wants to express its support for two policy proposals.

The first proposal addresses the risk of loss for work in process (WIP) in cases where the security classification of the work impedes the ability of contractors to obtain commercial insurance on WIP and to have claims properly adjusted. With the increasing shift toward fixed-price contracts for large, classified acquisition programs, contractors face the inability to effectively insure WIP against the risk of loss due to the classified nature of such programs.

The risk of working on classified programs without insurance extends to the supply base. It can be incredibly impactful to small businesses that may sign contracts without knowing their inability to obtain insurance coverage. These small businesses may not have the resources to cover losses usually covered by insurance, which would likely drive away the small business supply base for critical classified programs.

For these reasons, NDIA's Small Business Division recommends that the FY2025 NDAA include a provision that requires the Department of Defense (DoD) to assume the risk of loss for WIP in cases where the security classification of the work impedes the ability of contractors to obtain commercial insurance on WIP and to have claims properly adjusted.

The second proposal considers the use of historical data of recent prices paid in determining whether the costs of a subcontract, a purchase order, or a modification to a subcontract or purchase order are fair and reasonable under certain circumstances. Large and small businesses alike support accelerating the contracting and pricing processes for the recurring purchase of the same goods or services for DoD and to reduce the amount of cost or pricing data required to be submitted under 10 U.S.C. §3701 et. seq., the “Truthful Cost or Pricing Data” Act, formerly known as the “Truth in Negotiations” Act (TINA).

This would allow the government to reduce negotiation times with the primes and to get on contract faster by eliminating the requirement for primes and higher-tier subcontractors to “roll up” cost or pricing data from certain subcontractors and suppliers. Moreover, subcontractors and suppliers—particularly innovative small businesses within the DIB supply chain—would be able to eliminate the additional time, cost, and compliance risk of having to continually provide cost or pricing data (and the supporting analysis) for numerous low-dollar repetitive subcontracts and purchase orders. Such savings would encourage these subcontractors and suppliers to stay in the defense supply chain and continue to do business with the Department.

Therefore, **NDIA’ Small Business Division urges the Senate and House Armed Services Committees to include in the FY2025 NDAA a provision that would require DoD contracting officers to rely upon historical data of recent prices paid in determining whether the costs of a subcontract, a purchase order, or a modification to a subcontract or purchase order are fair and reasonable under certain circumstances.**

Thank you for considering our request. We look forward to continuing to work with you on these and other issues that support the large number of small businesses within the DIB that are leading innovations in support of our warfighters.

Yours Respectfully,



ML Mackey
Chair, NDIA Small Business Division
CEO, Beacon Interactive Systems



Ally Veres
Vice Chair, NDIA Small Business Division
VP of Business Development, AEG Group