POLSINELLI

Publications

January 21, 2026 • Updates

FY2026 NDAA: A Commercial Reset for Defense Contracting

For years, the Department of Defense[1] has said it wants to buy more like the commercial market. The FY2026 NDAA puts real weight behind that promise.

The National Defense Authorization Act (NDAA) for Fiscal Year 2026 includes some of the most contractor-friendly reforms in decades for commercial companies and nontraditional defense contractors (NDCs). Together, these provisions significantly reduce government-unique compliance burdens, raise key pricing and accounting thresholds and strengthen statutory preferences for commercial products and services.

If implemented as written, the FY2026 NDAA materially reshapes the risk-reward calculus for companies considering or expanding their participation in the defense market.

Key Takeaways

- **Nontraditional defense contractors receive sweeping relief from traditional government cost** accounting, pricing and business system requirements, including certified cost or pricing data (TINA) and FAR Part 31 cost principles.
- **Certified cost or pricing data thresholds jump from $2.5 million to $10 million, dramatically narrowing when defective pricing risk applies.** The increased threshold applies across both civilian and military contractors, significantly reducing when contractors must submit certified cost or pricing data.
- **Cost Accounting Standards (CAS) applicability is sharply curtailed, excluding many mid-size contractors that were previously subject to compliance with these regulations.**
- **DoD is constrained from over-flowing down DFARS clauses to commercial subcontractors, increasing predictability in commercial supply chains.**
- **Commercial-first acquisition is no longer aspirational, and past performance barriers are lowered.** Agencies must now provide written, senior-level justification when commercial solutions are bypassed, and expanded acceptance of commercial experience opens doors for nontraditional and commercial contractors.

A Structural Shift – Not Just Incremental Relief

Unlike prior NDAAs that made small or pilot-style adjustments, the FY2026 NDAA takes a

Related People

- Erin L. Felix
- Eyasu Yirdaw

Related Capabilities

- Government Contracts

more fundamental approach: it directly targets the cost-accounting, pricing and compliance regimes that have historically discouraged commercial companies from doing business with DoD.

The most consequential changes are not isolated; they compound. Exempting nontraditional defense contractors from *both* certified cost or pricing data *and* FAR Part 31 cost principles, while simultaneously raising TINA and CAS thresholds for everyone else, moves large segments of the defense market closer to true commercial norms. For many companies, this will be the first time DoD contracting can be pursued without building (or buying) an entire government-unique cost and pricing compliance infrastructure.

Expanded Compliance Exemptions for Nontraditional Defense Contractors

NDAA Section 1826 provides broad and unprecedented compliance relief for NDCs. Covered contractors are exempt from:

- Certified cost or pricing data requirements under 10 U.S.C. § 3702;
- FAR Part 31 cost principles and procedures; and
- The full suite of DFARS business system requirements, including accounting, estimating, purchasing, earned value management, property management and material management systems.

Who Qualifies as a "Nontraditional Defense Contractor"?

A nontraditional defense contractor is statutorily defined as an entity that has not performed a DoD contract or subcontract within the previous year that is subject to full CAS coverage.

Common examples include:

- Small businesses;
- Commercial technology companies entering the defense market for the first time;
- Venture-backed or private-equity-backed companies with predominantly commercial customers;
- Software, AI, data, space and advanced manufacturing companies selling standard commercial offerings; and
- Corporate subsidiaries or affiliates of traditional defense contractors operating under a commercial business model.

Common Misconceptions About NDC Status

5. **"Nontraditional" does not mean "small" or "startup."**
   Large, sophisticated companies – including publicly traded firms – can qualify as NDCs if they have not been subject to CAS in the past year.
6. **NDC status is not limited to first-time defense contractors.**
   Companies may retain NDC status even after performing DoD work, depending on the nature of those contracts and the pricing and accounting rules that apply.
7. **Commercial success does not disqualify NDC status.**
   Having significant commercial revenue, mature financial systems, or venture or private equity backing does not, by itself, make a company "traditional."
8. **NDC status is not permanent.**
   Eligibility is fact-specific and can change over time, particularly as a company's DoD contract mix evolves.

Why This Matters

Historically, even when DoD was willing to waive cost or pricing data certification, contractors were often still subject to FAR Part 31 cost allowability compliance requirements, government-unique accounting rules or DFARS business system audits. The FY2026 NDAA breaks this linkage. For qualifying NDCs, price reasonableness – not cost allowability – becomes the primary lens, aligning defense contracting more closely with commercial deal structures. For venture-backed, PE-owned and technology-driven companies, this combination can be a game-changer. It materially lowers barriers to entry and reduces downstream audit and False Claims Act exposure tied to accounting technicalities rather than performance.

Importantly, NDC status is fact-specific and contract dependent. Companies should evaluate their eligibility carefully, particularly if they have a mix of commercial and traditional government work or operate through multiple affiliates.

Higher Thresholds for Certified Cost or Pricing Data (TINA)

Separately, Section 1804 of the FY2026 NDAA raises the threshold for certified cost or pricing data from $2.5 million to $10 million for contracts and subcontracts awarded after June 30, 2026. And unlike the NDC provisions, the increased TINA threshold applies to both civilian and military awards.

Why This Matters

The $2.5 million TINA threshold has long been a difficult hurdle for small, emerging and innovative commercial companies. Meeting these certification obligations often required companies to adopt government-unique pricing, disclosure and accounting practices long before their business scale or operating model justified the investment. By raising the threshold to $10 million, Section 1804 meaningfully shifts when those obligations attach, reducing the number of awards that carry defective pricing exposure and easing the audit, negotiation and disclosure burden associated with contract pricing. In practical terms, this gives contractors greater flexibility to price their offerings in a manner consistent with commercial practices in their industries and decreases the risk that a single mid-size award will drive premature and costly changes to their internal systems.

At the same time, contractors should not view the higher TINA threshold as eliminating pricing scrutiny altogether. Companies should expect contracting officers to continue requesting supporting data *other* than certified cost or pricing data, particularly in sole-source or limited-competition acquisitions, and contractors should still be prepared to support the reasonableness of their price even absent a formal certification requirement.

Cost Accounting Standards: A Narrower Net

NDAA Section 1806, in turn, substantially narrows the population of contractors subject to full CAS coverage, reducing compliance obligations that have historically operated as a growth penalty for mid-size firms. Full CAS now applies only to contractors that receive $100 million or more in net CAS-covered awards in a cost accounting period, up from $50 million. In addition, the threshold for a single CAS-covered contract increases from $2.5 million to $35 million. The NDAA directs the Office of Federal Procurement Policy to implement these changes to the CAS regulations by June 15, 2026 (within six months of the statute's enactment).

Why This Matters

CAS compliance imposes substantial costs on affected contractors, including specialized

accounting system requirements, ongoing disclosure statement maintenance, audit exposure and dispute risk. For growing contractors, these obligations have often arrived before their revenue base can absorb them. The changes in Section 1806 ease this burden and create a longer runway before contractors must grapple with these requirements. Importantly, CAS will continue to not apply to small businesses, contracts for commercial products and commercial services and competitively awarded firm fixed price contracts (among other exceptions), regardless of contract value.

Limits on DFARS Flowdowns to Commercial Subcontractors

NDAA Sections 1821 and 1824 address a common supply chain management challenge by requiring DoD to publish a defined list of mandatory DFARS flowdowns applicable to subcontractors providing commercial products or services. The current DFARS approach already describes criteria that contractors must follow when determining which clauses to flow down to their commercial subcontractors, but it can be difficult in practice to assess – and argue in negotiations – whether the criteria actually apply to individual clauses. The NDAA's approach reduces this uncertainty by following the FAR 52.244-6 model of prescribing a designated list of clauses that must flow down.

Importantly, Section 1821 also clarifies the definition of "subcontract" for flowdown purposes, expressly excluding agreements for products or services that are intended for use across multiple customers as well as purchases that are not identifiable to a particular contract. This brings much-needed clarity for buyers regarding their supply chain flowdown obligations for commodity and common inventory items and gives commercial suppliers a clear basis to push back on customer attempts to flow down unnecessary clauses.

Why This Matters

Over-flowdown of DFARS clauses has been a persistent friction point between defense primes and commercial suppliers. These NDAA provisions directly address this issue by mandating a closed universe of required flowdown clauses, which should result in reduced negotiation time, supply-chain resistance and unintended compliance creep.

Expanded Recognition of Commercial and Nontraditional Past Performance

Section 824 of the FY2026 NDAA addresses structural barriers to entry into the defense market and directs DoD to modernize how past performance and contractor capability are evaluated.

Within one year of enactment, DoD must issue guidance clarifying when and how the agency should accept commercial and non-government past performance as relevant for DoD awards, particularly for procurement requirements with limited precedent. The statute also requires DoD to establish methods for validating non-government references, such as attestations from customer officials and verifiable points of contact, and to expand the use of alternative evaluation techniques (e.g., demonstrations, testing and other proof-of-capability approaches) where traditional past performance metrics are not well suited.

Importantly, this guidance is intended to supplement, not replace, existing past performance policies, signaling an expectation that contracting officers will have greater flexibility rather than a new mandatory checklist.

Why This Matters

For small businesses, startups and commercial firms seeking to enter or expand in the

defense market, past performance has long presented a Catch-22: contractors are expected to demonstrate DoD experience to win DoD work, but they cannot obtain that experience without first winning a contract. As a result, otherwise capable firms are frequently disadvantaged in competitive procurements against incumbents with deep CPAR histories.

Section 824 acknowledges this problem and directs DoD to evaluate contractor capability beyond traditional, government-only past performance records. If implemented in a meaningful and consistent way, this provision should:

- Enable offerors to rely more heavily on commercial customer experience, R&D work, pilots and prototype efforts;
- Reduce overreliance on CPARs where a requirement is novel or emerging;
- Increase the use of demonstrations, testing and technical proof points as substitutes for formal past performance ratings; and
- Improve competitive access for first-time primes, commercial technology companies and crossover contractors that have strong technical credentials but limited federal contracting history.

"Commercial-First" Is Now a Statutory Gate, Not Just a Preference

Finally, Section 1822 strengthens DoD's obligation to prioritize commercial products, commercial services and non-developmental items. This Section prohibits an agency from acquiring a *noncommercial* product or service unless the agency head affirmatively determines based on market research that no suitable commercial product, commercial service or non-developmental item exists.

The statute also explicitly extends these market research and commercial analysis obligations to buyers (both prime contractors and subcontractors at any tier), including those supporting acquisition officials through consulting or advisory roles.

Why This Matters

For years, DoD policy has favored commercial solutions, but in practice agencies have routinely continued to default to government-unique requirements and custom development. In addition, higher-tier contractors frequently err on the side of conservatism when asked to approve commercial status for subcontractor products and services due to concerns about being second-guessed by the government. Section 1822 changes this dynamic by requiring agencies to affirmatively document at a senior level why a commercial solution will not meet the government's needs before proceeding down a noncommercial path. This gives contractors a clearer basis to engage during market research, challenge unsupported assumptions about product capabilities and agency requirements and press for commercial treatment during acquisition planning. This documentation requirement will also produce a more concrete record that contractors can rely on in discussions with program offices, during proposal preparation, and, where necessary, in pre-award protests if an agency departs from a commercial approach without adequate support.

The Bottom Line

Taken together, the FY2026 NDAA represents a decisive shift away from legacy, government-unique acquisition practices and toward a defense marketplace that more closely resembles commercial reality. The real test will be in implementation, but for small, commercial and nontraditional contractors, this NDAA meaningfully lowers barriers to entry, reduces compliance-driven risk and improves the economics of doing business with DoD.

[1] President Trump signed an Executive Order on September 5, 2025, renaming the Department of Defense to the Department of War. The NDAA for FY2026, however, refers to the agency as the Department of Defense, and this alert similarly retains this naming convention for consistency.