

Holland & Knight Defense Situation Report: December 2022

A monthly roundup of defense policy news

Welcome back to Holland & Knight's monthly defense news update. We are excited to bring you the latest in defense policy, regulatory updates and other significant developments. If you see anything in this report that you would like additional information on, please reach out to authors or members of Holland & Knight's [National Security, Defense and Intelligence Team](#).

LEGISLATIVE UPDATES

General Congressional and NDAA Updates

After months of negotiation, leaders of the House Armed Services Committee (HASC) and Senate Armed Services Committee (SASC) on Dec. 6, 2022, introduced a compromise bill of the Fiscal Year (FY) 2023 National Defense Authorization Act (NDAA). This deal supports a national defense total of \$857.9 billion in funding for FY 2023 for national defense, which is \$45 billion more than what was included in President Joe Biden's budget request. Within this topline funding level, the legislation authorizes a total of \$847.3 billion within the NDAA, of which \$816.7 billion is authorized for the U.S. Department of Defense (DOD) and \$30.3 billion is authorized for national security programs within the U.S. Department of Energy. It also includes \$10.6 billion for defense-related activities outside of NDAA jurisdiction. The increase above the president's budget request reflects the effects of global inflation, provides additional security assistance to Ukraine and accelerates implementation of the National Defense Strategy. Additionally, the NDAA addresses use of Chinese semiconductors in government contracting (See Holland & Knight's previous alert, "[2023 NDAA Tightens Controls on Chinese Semiconductors in Government Contractor Supply Chains](#)," Dec. 27, 2022.).

On Dec. 8, 2022, the House passed the FY 2023 NDAA by a vote of 350-80, and on Dec. 15, the Senate passed the NDAA by a final vote of 83-11. On Dec. 23, President Biden [signed](#) the measure into law.

As prepared by the SASC, here are some NDAA highlights:

- Ensures servicemembers have access to quality housing, including by extending the authority to adjust the basic allowance for housing in high-cost areas
- Deters China by increasing U.S. investments in the Pacific Deterrence Initiative and authorizes the Taiwan Enhanced Resilience Act of 2022, which is designed to increase U.S. security cooperation with Taiwan
- Confronts Russia and supports Ukraine by authorizing increased funding for the European Deterrence Initiative and Ukraine Security Assistance Initiative
- Strengthens and secures the national supply chain and supports the defense industrial base, including temporary authorizations to waive certain restrictions related to contracts for munitions to support Ukraine or to increase DOD's stocks of critical munitions
- Modernizes U.S. military technology and capabilities, including hypersonic weapons, artificial intelligence (AI), quantum technologies and biotechnologies
- Authorizes \$1 billion for the National Defense Stockpile to acquire rare earths and critical materials required to meet U.S. defense, industrial and civilian needs

The NDAA also includes many provisions aimed at strengthening our nation's cybersecurity infrastructure. These provisions will:

- Require DOD to advance capabilities to support integrated cyber and electronic warfare techniques using radio-frequency transmission
- Require DOD to establish priority enterprise projects for AI and digital solutions for business efficiency and warfighting capabilities
- Mandate a five-year roadmap and implementation plan for rapidly acquiring AI systems for DOD cyberspace operations
- Set a policy for future DOD contracts with cloud service providers handling classified data that would permit the department to conduct independent testing of the commercial cloud infrastructure
- Establish a higher-education scholarship program in cyber and digital-related fields for students who agree to work for DOD

With regard to federal contracting, the NDAA changes many policies regarding the industry's ability to do business with the federal government. Some of the provisions will:

- Require DOD to collect and report additional data from businesses bidding on contracts for major weapon systems designated as commercial items
- Repeal a requirement for the DOD inspector general to conduct recordkeeping oversight reviews for DOD officials seeking employment with contractors
- Increase the threshold for DOD authority to use funds to modify terms and conditions of a contract due to inflation; the threshold increases from \$50,000 to \$500,000, requiring approval by an official at or above the level of an assistant secretary or their deputy, and from \$25 million to \$150 million, the amount requiring congressional approval
- Require DOD to establish a public-private talent exchange for up to 250 acquisition workers
- Direct DOD to establish guidelines on the acquisition of intellectual property and implement a training program for the acquisition workforce
- Codifies the [Mentor-Protégé Program](#) that partners small businesses with larger companies and establishes a five-year pilot program for a protégé firm to receive as much as 25 percent of the reimbursement for engineering, software development or manufacturing customization contracts

The NDAA also serves as a legislative vehicle for a number of non-defense authorizations, including several major authorization bills from other committees, including:

- Authorizations for the intelligence agencies, which was introduced by Sens. Mark Warner (D-Va.) and Marco Rubio (R-Fla.), chairman and vice chairman, respectively, of the Senate Select Committee on Intelligence
- Authorizations for U.S. Department of Homeland Security programs
- Legislation authorizing U.S. Department of State activities and diplomatic programs, which passed the Senate Foreign Relations Committee in September
- The Coast Guard reauthorization bill, which was introduced in September by Sens. Maria Cantwell (D-Wash.) and Roger Wicker (R-Miss.), chair and ranking member, respectively, of the Senate Commerce Committee

■ The Water Resources Development Act, introduced by Sens. Tom Carper (D-Del.) and Shelley Moore Capito (R-W.Va.), chair and ranking member, respectively, of the Senate Environment and Public Works Committee, which authorizes projects managed by the U.S. Army Corps of Engineers

Defense Appropriations Updates

While the NDAA authorizes \$847 billion to the Pentagon, Congress then had to pass a full-year defense appropriations bill to complete defense funding. On Dec. 20, 2022, Senate Appropriations Chairman Pat Leahy (D-Vt.) released the \$1.7 trillion FY 2023 omnibus appropriations bill. The defense appropriations bill [provides](#) \$797.6 billion for DOD, which is \$36.1 billion above the president's budget request. Both chambers in Congress passed the appropriations bills, and President Joe Biden [signed](#) the measure into law on Dec. 23.

DOD and SASC Nominations

On Dec. 1 and 14, 2022, the SASC voted by voice en bloc to favorably report out a list of 692 and 766 military nominations and promotions, respectively, in the U.S. Army, Navy, Air Force, Marine Corps and Space Force. The nominations were immediately reported to the floor following the Committee's action. The Senate also voted 92-3 to confirm the nomination of Robert Storch to be DOD Inspector General, the first Senate-confirmed official to assume the role since January 2016, and voted to confirm the nomination of Tia Johnson to be a judge of the U.S. Court of Appeals for the Armed Forces.

Before leaving D.C. for the year, the Senate in late December confirmed the nominations of Franklin Parker to be Assistant Secretary of the Navy for manpower and reserve affairs, Milancy Harris to be DOD Deputy Undersecretary for intelligence and security, Agnes Schaefer to be Assistant Secretary of the Army for manpower and reserve affairs, and Russell Rumbaugh as Navy Comptroller.

The remaining nominees who were pending within the SASC or awaiting votes on the Senate floor will need to be acted on by the end of the 117th Congress on Jan. 3, 2023. Because a new 118th Congress will be sworn in on Jan. 3, any Executive Branch nominees not confirmed by the Senate will be sent back to the White House and the nomination process will have to start over.

Other Congressional Updates

On Dec. 14, 2022, the House passed a bill targeting federal contractor conflicts of interest by a vote of 219-205. The bill, the Preventing Organization Conflicts of Interest in Federal Acquisition Act ([S. 3905](#)), which passed the Senate by unanimous consent on Aug. 1, 2022, would require updates to federal procurement rules regarding a contractor's business relationships. Under the measure, contractors would have to disclose when business relationships come into conflict with awarded federal contract work or when there is a potential for conflict.

EXECUTIVE AND DEPARTMENTAL UPDATES

Ukraine Updates and Military Assistance for Foreign Allies

Amid the end-of-year government funding negotiations and finalizing the NDAA, bipartisan support for additional defense funding to Ukraine was [included](#) in both the NDAA and defense appropriations bills. The final FY 2023 appropriations package included a total of \$45 billion in emergency funding to

Ukraine, which includes defense-related funding of an additional \$9 billion to the Ukraine Security Assistance Initiative, \$11.88 billion to replenish U.S. stocks of equipment, \$6.98 billion for defense and intelligence support, and \$6 billion in oversight.

During a visit to Washington, D.C., by Ukrainian President Volodymyr Zelenskyy on Dec. 21, 2022, the Biden Administration [announced](#) a \$1.85 billion package in additional weapons for Ukraine. The package included, for the first time, the Patriot Air Defense System, capable of bringing down cruise missiles, short-range ballistic missiles and aircraft at a significantly higher ceiling than by previously provided air defense systems. The package also includes expanded air defense and precision-strike capabilities, as well as additional munitions and critical equipment.

Additionally, earlier in December, the Biden Administration [announced](#) its 27th Presidential Drawdown Authority of \$275 million for Ukraine in weapons and other aid. This security assistance package will provide Ukraine new capabilities to boost its air defenses in addition to providing critical equipment that Ukraine is using so effectively to defend itself on the battlefield. In total, the U.S. has committed more than \$21.9 billion in security assistance to Ukraine since the beginning of the Biden Administration.

In the NDAA, lawmakers supported \$10 billion to bolster Taiwan's defense amid growing threats from China. While the provisions do not include specific weapons and artillery, it requires the DOD and State Department to consider next steps Taiwan is taking against China. Additionally, House Foreign Affairs Committee and Senate Foreign Relations Committee leadership [signed](#) a letter to top appropriators encouraging robust funding to Taiwan and Ukraine as a part of the omnibus for year-end spending. The letter requested that Congress appropriate at least \$500 million for the foreign military financing grant program and an additional \$1 billion to replenish weapons and equipment using a presidential drawdown authority for Taiwan. The letter also requested \$500 million for foreign military financing to Ukraine and \$250 million for allies that are aiding Ukraine.

DOD Scouts Innovative Ideas from Industry, Allies and Partners

At the annual Reagan National Defense Forum, numerous DOD officials [spoke](#) about innovation and the need to partner with industry. The Rapid Defense Experimentation Reserve, which was introduced last year, is a collaboration between the military services, combatant commands, industry and coalition partners, with the aim of discovering new and innovative warfighting capabilities. The idea behind this initiative is to get the best ideas and test prototypes first in the laboratory, then in the field or even contested environments.

Heidi Shyu, Under Secretary of Defense for Research and Engineering, said that small companies are and will be playing a critical role and that the new Office of Strategic Capital (more below) will assist in funding companies developing technologies deemed critical to national security. She also said that the DOD is working with the U.S. Small Business Administration to help fund small startups and mentioned a number of DOD organizations focused on innovation, such as the Defense Innovation Unit, keying on accelerating the adoption of commercial technology for military use, the Army Rapid Capabilities and Critical Technologies Office that serves to expedite critical capabilities to the field to meet combatant commanders' needs, and each of the military research laboratories working to invent innovative warfighting solutions.

The challenges between the DOD and industry in arming Ukraine were also an overarching topic at the annual Reagan National Defense Forum. DOD Comptroller Mike McCord said that he envisions the DOD's budget for next year to include requests for multiyear procurement to restock and rearm Ukraine, a rarity for munitions, which will encourage manufacturers to stay the long term in assistance and include some of their own capital investments for partnership.

Secretary of Defense Establishes Office of Strategic Capital

On Dec. 1, 2022, Secretary of Defense Lloyd Austin [established](#) the Office of Strategic Capital (OSC), a DOD organization that will help build an enduring technological advantage by partnering with private capital providers. OSC will connect companies developing critical technologies vital to national security with capital. Critical technologies such as advanced materials, next-generation biotechnology and quantum science often require long-term financing to bridge the gap between the laboratory and full-scale production, often referred to as the "Valley of Death" in industry.

As an office overseen by the Secretary of Defense, the OSC will have an advisory council that includes the Under Secretaries of Defense. The OSC will work across policy, acquisition and research efforts to increase the amount of capital available to critical technology companies. OSC will also help counter non-market actions by strategic competitors that use U.S. capital markets to advance their own technology goals.

While existing offices rely on grants and contracts to deploy capital, OSC is investigating the use of non-acquisition-based tools, such as loans and loan guarantees. Many other federal agencies use credit programs to participate in capital markets through loans, loan guarantees, development funds and other tools.

DIU Solicitations

Since publication of November's *Defense Situation Report* newsletter, the [Defense Innovation Unit](#) (DIU), which aims to leverage new technologies for the U.S. military, published four new solicitations.

The first is for applicability within the Raptor Open System Tactical Helmet Display (ROST-HD). The F-22 Raptor is the only modern fighter aircraft – of all fourth- and fifth-generation fighters flown by the U.S. Air Force and Navy – without a helmet-mounted display (HMD). This technology enables pilots to receive battlespace information via the display while maintaining visual awareness of friendly aircraft and adversary air and ground targets or responding to inbound threats. This gap in capability equates to reduced lethality and survivability in future conflicts. To provide this capability, the DOD is seeking a highly customizable, lightweight, projection-based HMD compatible within the F-22 system.

The second solicitation is for agile fuel management (AFM). As the U.S. military is rethinking its approach to the battlefield and adapting new technologies for warfighters in austere environments, the DOD is searching for a commercial solution for both airborne and ground-based fuel pumping units that are mobile, rapidly deployable and able to connect to easy-to-store, collapsible fuel storage containers. This capability will be utilized globally to fuel or resupply fuel at the point of need.

The third solicitation is for quickly getting to and operating in the geosynchronous orbit (GEO) and extending into the xGEO region (the region beyond the GEO). As the U.S. prepares to return to the moon, the need for responsive access to the xGEO region is necessary. The DOD is seeking commercial solutions for implementing responsive access to xGEO and demonstrating timely and

precise delivery of a space vehicle (SV) to a predetermined orbit in the region. Secondary to this solicitation, the DOD recognizes that the communications infrastructure is sparse, the radiation environment is harsh, and gravity from the moon and sun have greater effects on station keeping and maneuvering. As such, the DOD further seeks technical demonstration of a suite of payloads or instruments onboard the Sinequone SV in the xGEO region of space and to provide the means to develop and improve procedures and best practices for operation.

The fourth solicitation is for heat pump solutions to improve space heating and water heating efficiency. The DOD owns and operates thousands of buildings on 500 bases globally, across a wide range of climate zones where space and water heating typically contribute to more than 45 percent of a building's energy consumption. Most of these buildings are outfitted with outdated and inefficient air and water heating and cooling systems. With the rise of high efficiency in heating and cooling systems over the last handful of years, as well as the push to reduce the DOD's energy usage, there is a renewed interest in finding creative ways to improve energy efficiency. The federal government is seeking to prototype a system (or systems) that will improve the energy efficiency of and reduce greenhouse gas (GHG) emissions associated with space and water heating systems in DOD buildings.

DOD Contributes to Registered Cybersecurity Apprenticeship Program

Under the Defense Department United Services Military Apprenticeship Program (USMAP) umbrella, the U.S. Department of Labor (DOL) has established several cybersecurity trades to support the goals of the National Cyber Security Registered Apprenticeship Program and is in the process of developing more apprenticeships. In January 2022, the DOD and DOL partnered to establish the first federal cybersecurity apprenticeship program.

Since the program's inception, the DOD identified and developed standards for 15 critical cybersecurity occupations to address military needs and potentially serve as a model for other federal agencies. The largest DOL-registered apprenticeship program, USMAP is a formal military training program that provides enlisted active-duty and reserve servicemembers opportunities to improve their job skills and the ability to earn a nationally recognized journeyworker certificate upon completion. As part of the portfolio of the Office of the Undersecretary of Defense for Personnel and Readiness, USMAP permits enrolled servicemembers to record their on-duty work hours for time-based apprenticeships or demonstrate existing mastery through competency-based apprenticeships.

Furthermore, DOD issued a memo – jointly signed by the Chief Information Officer and the Undersecretary of Defense for Acquisition and Sustainment – aimed at expanding the cybersecurity workforce by encouraging the use of registered apprenticeship programs. These efforts will help DOD and the defense industrial base continue to identify, recruit, develop and retain the cybersecurity workforce that can support the nation's efforts to defend against current and future cyber threats and attacks.

NSA Releases Series on Protecting DOD Microelectronics from Adversary Influence

On Dec. 8, 2022, the National Security Agency's (NSA) Joint Federated Assurance Center (JFAC) Hardware Assurance Lab publicly [released](#) four Cybersecurity Technical Reports to help the DOD protect field-programmable gate array (FPGA)-based systems from adversary influence. The reports were created to help secure FPGAs – a form of programmable microelectronic components – during manufacturing, acquisition, programming and first attachment of the devices.

NSA is part of a federation of DOD organizations that promote and enable software and hardware assurance through the Joint Federated Assurance Center. NSA JFAC, which strengthens and supports microelectronics hardware assurance for DOD programs by providing vulnerability detection, analysis and remediation capabilities, drafted the report as a follow-up to its introductory guide, [DOD Microelectronics: Levels of Assurance Definitions and Applications](#).

DOD Launches Website Aimed at Garnering Innovation

The DOD on Dec. 9, 2022, announced significant updates to the Innovation Pathways website that will allow it to serve as a "one-stop shop" for learning how to deliver innovation to the DOD. This [site serves as a gateway](#) for industry, small businesses, students, universities and other organizations within the department itself to discover opportunities with DOD organizations and affiliate programs involved in research and development.

DOD Solicits Carbon Pollution-Free Electricity

On Dec. 16, 2022, the Defense Logistics Agency (DLA) Energy [issued](#) solicitations for the purchase of carbon pollution-free electricity (CFE) to support DOD installations and federal agencies in two regions. This is an important step in transforming how the U.S. government buys and manages electricity as the nation is aiming to achieve a carbon pollution-free electricity sector by 2035.

A Notice of Opportunity was issued for North Carolina and South Carolina for developers to submit CFE proposals to DLA Energy. DLA Energy also issued an RFP for the purchase of electricity, including CFE, in Texas. DLA Energy intends to work with the selected developer(s) as part of Duke Energy's [Green Source Advantage](#) program to bring new clean energy supplies onto the grid commensurate with DOD requirements in those states. The RFP solicits proposals that include CFE to meet a percentage of the aggregated electricity load of DOD and other federal agency customers.

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