

Holland & Knight Defense Situation Report: November 2022

A monthly roundup of defense policy news

Welcome 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 the authors or members of Holland & Knight's [National Security, Defense and Intelligence Team](#).

November is National Veterans and Military Families Month. Holland & Knight honors and recognizes the significant role that military families and veterans have in supporting a stronger force and diverse nation.

LEGISLATIVE UPDATES

General Congressional and NDAA Updates

- After the midterm elections on Nov. 8, 2022, Republicans regained the majority in the House of Representatives, but failed to regain the majority in the Senate. With a new Republican House majority, we will likely see new priorities coming from the lower chamber's defense congressional committees, including larger defense budgets, additional action on Chinese competition, increased oversight of the Biden Administration's national security and foreign policy decisions – including the 2021 pullout from Afghanistan – and aid to Ukraine.
- Congress reconvened the week of Nov. 14 after being out of session for more than a month leading up to the midterm elections. Two of the priorities for the "lame duck" Congress are passing the National Defense Authorization Act (NDAA) and 12 appropriations bills to keep the government funded. As [reported](#) last month, the current continuing resolution of Fiscal Year (FY) 2022 funding expires on Dec. 16, 2022, and both chambers would like to pass the appropriations bills by then.
- On Oct. 11, 2022, the Senate formally took up the NDAA on the floor. Senate Armed Services Committee (SASC) Chair Jack Reed (D-R.I.) and Ranking Member James Inhofe (R-Okla.) offered a manager's package that included 75 amendments, comprising several pieces of must-pass reauthorizing legislation from other committees, along with other bipartisan provisions.
- House Armed Services Committee (HASC) and SASC staff have been working on informal conference negotiations for the NDAA throughout the last few months. If the current schedule holds, the NDAA will likely pass the week of Dec. 5, 2022.

DOD and SASC Nominations

While the Senate attempts to close out the NDAA, appropriations bills and other pieces of legislation, time is running out for the Senate to confirm the remainder of President Joe Biden's U.S. Department of Defense (DOD) nominations before year's end. Because a new Congress will be sworn in on Jan. 3, 2023, any Executive Branch nominees not confirmed by the Senate will be sent back to the White House and the process will have to start over.

EXECUTIVE AND DEPARTMENTAL UPDATES

Ukraine Updates

In the past month, the Biden Administration announced its 24th and 25th Presidential Drawdowns Authority of \$275 million and \$400 million, respectively, for Ukraine in weapons and other aid. This package, announced in late October, did not include new weapons systems, but focused on restocking ammunition for weapons systems already in the country, including for High Mobility Artillery Rocket Systems (HIMARS), precision-guided rounds and remote anti-armor mine systems, which Ukraine has been using against Russia in a new offensive to drive Russian forces from key southern areas. The package also included four satellite communications antennas to augment Ukraine's communications capabilities.

On Nov. 4, 2022, the White House and DOD announced approximately \$400 million in additional security assistance for Ukraine under the Ukraine Security Assistance Initiative (USAI). Unlike PDA, which DOD has continued to leverage to deliver equipment to Ukraine from DOD stocks, USAI is an authority under which the U.S. procures capabilities from industry. This announcement represents the beginning of a contracting process to provide additional priority capabilities to Ukraine. These include funding to refurbish HAWK air defense missiles, additional drones, tactical communications and surveillance systems, and funding for training.

In total, the United States has committed more than \$19.3 billion in security assistance to Ukraine since the beginning of the Biden Administration. Since 2014, the United States has committed more than \$21.4 billion in security assistance to Ukraine and over \$18.6 billion since the beginning of Russia's unprovoked and brutal invasion on Feb. 24, 2022.

DOD Releases 2022 Strategic Reviews

In late October, the DOD released the unclassified National Defense Strategy (NDS), Nuclear Posture Review (NPR) and Missile Defense Review (MDR). According to the DOD, for the first time in its history, the department conducted all major strategic reviews in an integrated way, aligned with the NDS. By weaving these documents together, the entire DOD is matching resources to goals.

The 2022 NDS sets the DOD's strategic direction and priorities for the Joint Force, identifying how the military will meet growing threats to U.S. national security interests and to a stable and open international system. The 2022 NDS also identifies three ways in which the DOD will achieve its priorities: integrated deterrence, campaigning and building enduring advantage. In this year's NDS, the DOD seeks to shore up the foundations for integrated deterrence and campaigning. In order to effectuate this, they will build enduring advantages across the defense ecosystem – the DOD, defense industrial base and the array of private sector and academic enterprises that add to the Joint Force's technological edge.

The 2022 NPR reaffirms that as long as nuclear weapons exist, the fundamental role of U.S. nuclear weapons is to deter nuclear attack on the homeland, our allies and our partners. The United States would consider the use of nuclear weapons only in extreme circumstances to defend the vital interests of the U.S. or its allies and partners. The NPR takes a comprehensive and balanced approach to defending vital national security interests and reducing nuclear risks, while affirming a continuing commitment to a safe, secure and effective nuclear deterrent and strong and credible extended deterrence.

The 2022 MDR underscores that missile defense contributes to integrated deterrence by undermining a potential foe's confidence in its ability to mount a successful attack.

DOD Issuing New DFARS Final Rules

In late October, the DOD issued seven new Defense Federal Acquisition Regulation Supplement (DFARS) final rules implementing provisions made under recent NDAs.

Most notably, the DOD repealed a 2019 regulation that required contracting officers to first consider fixed-price contracts for defense procurement worth more than \$25 million when considering what type of contract to use. Despite the requirement's intention to control costs for defense contractors, the 2022 NDAA mandated the repeal of this rule as the report language in the bill explained that it caused "procedural delays that hinder innovative advances in weapons systems programs."

Another rule prohibits contracting officers from using only historical prices when determining that a price of a contract is fair and reasonable. The rule also requires that prospective contractors make a "good faith effort to comply with a reasonable request" to provide data other than certified cost or pricing data.

DIU Solicitations

Since publication of October's *Defense Situation Report* newsletter, the [Defense Innovation Unit \(DIU\)](#), which aims to leverage new technologies for the U.S. military, has published three new solicitations. The first is for multilevel security and data-federation through blockchain. As the DOD is moving toward a new Secure Internet Protocol Router (SIPR) network to exchange sensitive information, it believes a new SIPR 2.0 system that uses Web 3.0 blockchain technology can be leveraged to build systems that focus on protecting the data independently of the systems that store, transport and process it through decentralization. As such, the DOD is seeking a solution that would enable integration of commercially available components on a Web3/blockchain platform that would allow for cross-domain (classification level) sharing and uses cryptography modules as determined by the DOD.

The second DIU solicitation is for stable tactical expeditionary election power (STEEP) hardware and software options that can integrate with the DOD's existing generators to provide enhanced energy storage and an intelligent power system. As the DOD is anticipating it will need to increase its operations in austere, remote locations where efficient storage and use of energy will play a vital role, it is thinking about the logistical needs and traditional energy management practices it employs. The DOD currently lacks a microgrid systems-integrated energy storage solution that can enhance grid resilience and fuel efficiency and optimize tactical generator performance. As such, the DOD is seeking a STEEP hardware and software solution that will be able to integrate multiple energy sources in a microgrid configuration by incorporating renewable energy, energy storage and power supply based on technological maturation.

The third DIU solicitation is for environmental remediation and restoration from PFAS (E2RP). The DOD is looking for commercially viable technologies for the on-site destruction and remediation of per- and polyfluoroalkyl substances (PFAS) tied to the department's continued usage of aqueous film-forming foam (AFFF) to suppress liquid fuel fires. Because PFAS impacts all types of water systems and researchers have demonstrated an association between exposure to PFAS and various health effects, the DOD is seeking a preferred solution that incorporates technologies capable of treating

impacted materials of concern, including soils, sediments, biosolids, investigation-derived wastes, storm waters and groundwater.

Defense Information Systems Agency's 2022 Forecast to Industry

On Nov. 7, 2022, the Defense Information Systems Agency (DISA) held its annual Forecast to Industry event. DISA provided its industry partners in-depth information about the agency's acquisition and procurement plans. Members of DISA's senior leadership presented briefings addressing tactical acquisition issues, requirements and planned procurements for FY 2023 and 2024. This year's event, themed "Power of Trusted Partnerships | Compete, Act and Win," focused on DISA's desire to purchasing technology systems that are ready for the battlefield.

DOD Leadership Holds Meeting with Prime Contractors

DOD announced on Nov. 8, 2022, that Deputy Secretary of Defense Kathleen Hicks and various Under Secretaries held a classified roundtable with the DOD's largest contractors to discuss the National Defense Strategy, the status of the defense industrial base, supply chain resilience and workforce concerns.

According to the unclassified readout after the meeting, the engagement reinforces the DOD's stance that persistent engagement with industry is beneficial to a healthy defense industrial base and a healthy workforce behind it. It was an opportunity for industry attendees to provide feedback on accelerating weapons development and production and building more capacity across the industrial base for producing weapons and equipment.

Across the defense acquisition, commercial industry and organic industrial base workforces, the DOD is working with its partners to invest in recruiting, retaining and adapting the workforce so the full spectrum of the defense ecosystem will be able to leverage advanced manufacturing techniques and a highly skilled labor pool when producing innovative capabilities.

DOD and White House Propose Federal Supplier Climate Risks and Resilience Rule

On Nov. 10, 2022, the White House and federal contracting agencies proposed regulations amending the Federal Acquisition Regulation (FAR) to implement a requirement to ensure certain federal contractors disclose their greenhouse gas emissions and climate-related financial risk and set science-based targets for emissions reduction. (See Holland & Knight's Government Contracts Blog, "[Proposed Greenhouse Gas Rules Create Significant Contractor Compliance Requirements](#)," Nov. 15, 2022.)

The rule, posted in the [Federal Register](#), was formally proposed by the DOD, General Services Administration (GSA) and NASA. Under the rule, federal contractors receiving more than \$50 million in annual contracts would be required to publicly disclose Scope 1, Scope 2 and relevant categories of Scope 3 emissions, disclose climate-related financial risks, and set science-based emissions reduction targets. Federal contractors with more than \$7.5 million, but less than \$50 million, in annual contracts would be required to report Scope 1 and Scope 2 emissions. All federal contractors with less than \$7.5 million in annual contracts would be exempt from the rule. Small businesses with more than \$7.5 million in annual contracts would be required to report only Scope 1 and Scope 2 emissions under the proposed rule.



Army Seeking New Technologies for Sensors and Secure Communications

The Army's Rapid Capabilities and Critical Technologies Office (RCCTO) published a request for information for two new technologies for sensors and secure communications in the Indo-Pacific region. The first technology solution the Army is seeking is a long-endurance surveillance system that can operate unattended and synchronize with other space-based systems. The second solution the RCCTO is seeking is for communications gear that can securely share intelligence and targeting data across the Army's area of responsibility in the large Indo-Pacific region.

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