



October 31, 2025

The Honorable Roger Wicker
Chair
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Mike Rogers
Chair
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate
Washington, DC 20510

The Honorable Adam Smith
Ranking Member
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

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

On behalf of the American Council of Engineering Companies – the voice of the nation’s engineering industry – we wish to highlight key industry priorities in the context of the FY26 National Defense Authorization Act (NDAA). America’s engineering industry is a critical driver of the nation’s economy and provides essential support to a wide range of warfighter missions. As the House and Senate work to resolve differences between each chamber’s version of the bill, ACEC stands ready to support essential capabilities and infrastructure necessary to support our service members and provide for the common defense.

ACEC believes that the NDAA would be improved if the following provisions were removed:

Preference for Domestic Procurement of Professional Services: Section 858 of the House version of NDAA would restrict the ability of defense agencies to hire American companies uniquely qualified to deliver critical services that are owned by foreign entities. These companies already comply with existing and strict security rules under the Foreign Ownership, Control or Influence (FOCI) requirements with the Defense Counterintelligence and Security Agency (DCSA). Such U.S. entities have strict compliance provisions that are reviewed and renewed annually in concurrence with the Department. The Trump Administration has recently developed additional requirements addressing security risks and prohibitions for countries of concern.

ACEC notes the provision is much different than most domestic preference programs because it applies only to contracts with professional services firms. The provision defines a United States company as one that is not owned directly or indirectly by a foreign entity.

The provision would result in significant disruption for our DoD client agencies, which would be denied access to service providers that have a long history of support to the Department. Since there is no phase in period, the provision will drastically reduce the unique engineering capacity and capability that America's engineering industry provides at the exact time when that capacity and capabilities are needed more than ever.

These firms employ American citizens and taxpayers who perform critical services for the nation. We urge you to remove Section 858 of the House bill.

Other Transaction Authority: ACEC is concerned about the increased use of other transaction authority (OTA) in design and construction. OTAs are agreements outside the Federal Acquisition Regulations and are defined more by what they are not rather than what they are – not contracts, grants, cooperative agreements, nor cooperative research and development agreements. The National Aeronautics and Space Administration (NASA) first received OTA in the 1950s to help with the space race. OTAs are typically used for specialized research and development or prototyping, which made sense when America was trying to get to the moon, but have limited application in military construction.

The Revolutionary FAR Overhaul (RFO) is already underway but not finished. ACEC submitted feedback prior to the FAR Part 36 deadline in September, which contains procedures to purchase Architectural and Engineering (A/E) Services. DoD already has limited OTA authority for pilot projects and has not effectively proven success. The OTA model also often uses a consortia mechanism, which could restrict access to the defense industrial base when most of the bill seeks to expand competition.

We are concerned that expanded use of OTAs bypasses long-standing laws governing engineering procurement, including Public Law 92-582 and 40 U.S.C. Chapter 11, which mandate the well-established and successful Qualifications-Based Selection (QBS) procurement mechanism for acquiring engineering services on a competitive basis. QBS is the gold standard for procurement of professional engineering services, ensuring that the most experienced design team is hired to deliver the project and to protect the health and safety of the public. Numerous academic studies with quantifiable data have shown that QBS saves time, saves money, and delivers better outcomes for clients.¹ The use of OTAs circumvents this well-established process, raising concerns over design quality and safety.

ACEC recommends clarifying Section 2801 of the House bill by striking from paragraph (a) “planning, design, engineering, prototyping...” and adding this sentence to the end of the paragraph: “Procurement of professional architectural and engineering services shall be done in accordance with 40 U.S.C. § 1101.”

ACEC believes that the NDAA would be improved if amended:

Non-Traditional Defense Companies: ACEC appreciates initiatives to expand the defense industrial base and attract new companies in support of our military. A level

¹ ACEC Research Institute Study Shows QBS Saves Clients Time and Money; 2022. Found at: <https://www.acec.org/news/last-word-blog/post/acec-research-institute-study-shows-qbs-saves-clients-time-and-money/>

playing field, open to small businesses, mid-tier firms, and traditional defense companies is essential to mobilize at speed and deliver for the warfighter. We caution against language in law that favors certain sectors or business types but instead recommend focusing on *what* and *how* rather than *who* and *where*. For Architectural and Engineering (A/E) Services, professional engineers still need to be licensed and aspects such as cybersecurity requirements will likely need to be applied to designs. Generally, the House version is a better option of the two approaches instead of changes proposed in Senate Section 821.

Contractor Performance Assessment Reporting System (CPARS): The proposed changes to the Contractor Performance Assessment Reporting System (CPARS) in House Section 836-837 and Senate Section 867 appear to introduce a "negative-only" system, which eliminates positive performance data and focuses solely on poor performance. We understand the desire to ensure the government can identify and avoid companies with a history of poor performance or bad actions. Due process is found in existing suspension and debarment procedures.

ACEC agrees that reform is desired; however, we believe that there are critical areas where oversight and accountability need to be strengthened to ensure the reforms are effective and fair. The shift toward a fact-based approach is a positive step forward and aligns with broader acquisition streamlining efforts.

Our primary concerns with the proposed CPARS reform language:

- Positive data is essential to uphold revised FAR 1.102's principles to "promote merit" and making awards to contractors who "demonstrate superior ability to perform." Without positive feedback, FAR meritocracy collapses, and mediocrity prevails. Balanced positive and negative data ensures agencies can both avoid risks and identify/reward excellence to best meet program and mission objectives. Furthermore, this provision provides an advantage to new companies who do not have past performance and increases risk to the government. ACEC recommends that positive performance should still be measured and highlight positive contractor outcomes.
- Additionally, oversight at the leadership level and ratings at the agency would decrease the probability of improper and retaliatory evaluations. ACEC recommends annual reviews of the effectiveness of the process (vs three years) and include a review of rebuttal content and frequency to ensure there's no government overreach. Rebuttals should also be reviewed by the Head Contracting Agency (HCA) and adjudicated or approved according to the HCA's review. Similarly, changing ratings from the assessing and approving official after a period of time should also require HCA review. Approval at this level will ensure that the intent of the actions laid out in the NDAA are achieved.

We would like to work with you to improve CPARS to be more objective rather than subjective. ACEC recommends modifications to the CPARS language found in both versions consistent with our comments.

Shipyard Infrastructure Optimization Program (SIOP) Infrastructure: ACEC and our member companies support the SIOP infrastructure program, which is critical for the future of our Navy. House Section 2809 says that cost-plus incentive-fee contracting *may* be authorized for the program. If this provision remains, the flexibility of the word *may* should to be retained.

ACEC supports many provisions in the bills including the following:

Progressive Design-Build Authority: ACEC supports the use of Progressive Design-Build (PDB) project delivery on projects where it makes sense to do so. These provisions provide clarity on continued use of this alternative project delivery method. There are several reasons behind PDB's success:

- Early and Iterative Planning: Owners/clients and builders collaborate from the outset to refine scope, cost, and schedule.
- Shared Risk and Transparency: PDB leads all delivery models in effective risk allocation, reducing conflicts and rework.
- Owner Empowerment: Continuous engagement enables cost-informed decisions and greater control.
- Strong Team Dynamics: Integrated teams foster trust and real-time problem solving.

In May, the ACEC Research Institute released a landmark Phase One report that showed a resounding 79% of industry stakeholders report being satisfied or very satisfied with the PDB approach.² Minimal dissatisfaction (only 6%) underscores the growing reputation of PDB as a preferred method in markets that demand accountability, early collaboration, and flexible project evolution.

House Section 2804 and Senate Section 2803 appear to be explicitly authorizing Progressive Design-Build. If this language is modified in conference, we encourage the section title retaining "Authority to Use Progressive Design-Build Procedures" so it is clear that Congress is authorizing PDB. Consider additional report language to clarify that point.

Energy Dominance: Energy is a foundational element of national defense, enabling virtually every military capability and influencing strategy at every level of warfare. ACEC supports America's continued investment in energy dominance in support of our warfighters. Senate Section 922 establishes an Advanced Nuclear Transition Working Group to develop and execute a strategy to accelerate the procurement and fielding of commercial advanced nuclear capabilities, in compliance with laws, regulations, and agreements, and consistent with best practices. The language also authorizes a pilot program for deploying microreactors at United States military installations to strengthen energy resilience and reduce reliance on civilian power grids.

Space: ACEC supports America's continued leadership in space. ACEC supports provisions in House Section 1605 and Senate Section 1502 to study national needs for

² "Progressive Design-Build: Practice, Perceptions and Potential," ACEC Research Institute; May 18, 2025. Found at: <https://www.acec.org/resource/progressive-design-build-practice-perceptions-and-potential/>

future space launch capacity. Whether it is going to the moon or winning wars, America's engineering industry, working with government, make launch infrastructure possible.

AUKUS: ACEC is encouraged that both bills support the trilateral security agreement between Australia, the United Kingdom, and the United States (AUKUS). Senate Section 1235 establishes and maintains a security cooperation partnership to strengthen cooperation among the defense industrial bases of the United States and allied and partner countries in the Indo-Pacific region. The shore and maritime infrastructure are essential in supporting this security partnership to deter threats in the Indo-Pacific region. America's engineers are eager to help our warfighters and our allies.

Ukraine Support and Reconstruction: ACEC strongly supports Ukraine's critical wartime needs and future post-conflict infrastructure reconstruction. We appreciate language in Senate Sections 1223, 1224, and 1227 that extends the period of funds for services in support of Ukraine as well as a strategic plan for Ukraine weapons depot maintenance. We encourage Congress to go further and tie reconstruction funds to American engineering companies. The federal government's promotion of American engineering to compete with other countries' firms, to win work, and to expand the influence of American engineering knowledge and best practices into non-US markets is essential for durable peace and security.

Thank you for your consideration and attention to these important provisions, and please let me know how we can assist you in advancing this critical national security legislation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda Bauer Darr".

Linda Bauer Darr
President and CEO