

Section 312: Transparency and Accountability of Contract Awards

Key Points

Section 312 of the Fostering Reform and Government Efficiency in Defense (FoRGED) Act mandates the public posting of notices for all contract awards or agreements within a reasonable timeframe after they are made. This notification must include the purchase order or a similar record detailing the quantities and prices of the acquired products or services, while also considering operational security ¹.

History of the Recommendation

The concept of transparency and accountability in government contracting, including defense procurement, has a long history, evolving from ancient practices of civilian oversight to modern legislative reforms ². Over time, there has been a growing recognition of the importance of public access to information to ensure that government activities are conducted in the public interest and to prevent corruption ³. In the United States, this principle is reflected in various pieces of legislation, such as the Freedom of Information Act (FOIA) and initiatives aimed at making federal spending more transparent ⁴.

Within the realm of defense contracting, the need for transparency has been highlighted by instances of waste, fraud, and abuse, particularly during periods of significant government spending like wartime ⁵. The post-World War II era and the Cold War saw an expansion of defense contracting, leading to regulations like the Federal Property and Administrative Services Act of 1949, which aimed to ensure efficient and ethical spending ⁵. Subsequent reforms, such as the Competition in Contracting Act (CICA) of 1984 and the establishment of the Federal Acquisition Regulation (FAR), further emphasized the importance of transparency and competition in federal procurement ⁵.

More recent initiatives, like the Department of Defense's (DoD) Procure to Pay (P2P) program, have focused on improving the traceability of contract expenditures back to budget streams, thereby enhancing transparency for both government leadership and taxpayers ⁶. The Defense Property Accountability System (DPAS) also plays a role in ensuring accountability for government property held by contractors ⁷. These efforts indicate a continuing trend towards greater openness in defense acquisition. Section 312 of the FoRGED Act appears to be a continuation of this trend, seeking to mandate a baseline level of public disclosure for all contract awards, thereby fostering greater transparency and accountability in the defense sector ¹. The specific legislative history of Section 312 within the context of the broader FoRGED Act (Senate Bill 5618 of the 118th Congress) indicates its introduction in December 2024, with the bill being referred to the Senate Armed Services Committee ⁹. The broader aim of the FoRGED Act is to promote defense innovation and government efficiency ¹¹.

Desired Effect of the Recommendation

The primary desired effect of Section 312 is to enhance transparency in Department of Defense contract awards. This increased transparency is intended to foster greater accountability in the expenditure of public funds and the management of defense resources.

- **Desired Effect 1: Increased Public Awareness:** Public posting of contract award notices, including details of the purchased items or services and their costs, will provide the public with greater insight into how the DoD is allocating its budget ¹. This heightened awareness can empower citizens and oversight bodies to scrutinize defense spending more effectively.
- **Desired Effect 2: Enhanced Accountability:** Making contract information publicly available can hold both government officials and contractors more accountable for their actions. The knowledge that contract details will be public may encourage more responsible decision-making throughout the acquisition process ¹⁴.
- **Desired Effect 3: Promotion of Competition:** While potential negative impacts on competition exist (discussed later), a degree of transparency can also promote competition in the long run. By understanding the types and values of contracts being awarded, potential new entrants to the defense industrial base may be better informed about opportunities ⁵.
- **Desired Effect 4: Facilitation of Oversight:** Publicly available contract data can significantly aid oversight efforts by Congress, the Government Accountability Office (GAO), and other auditing bodies. Easy access to detailed award information will streamline the process of monitoring contract execution and identifying potential issues ⁴.
- **Desired Effect 5: Deterrence of Misconduct:** The public disclosure of contract details may act as a deterrent against wasteful spending, fraud, and other forms of misconduct in defense contracting. The risk of public scrutiny can incentivize compliance with regulations and ethical standards ⁴.

Potential Negative Impacts of the Recommendations

While the intent of Section 312 is positive, several potential unintended negative outcomes could arise from the public disclosure of detailed contract award information.

- **Potential Negative Impact 1: Compromise of Operational Security:** The requirement to publicly post all contract awards, including quantities and prices, could inadvertently reveal sensitive information that, when aggregated or analyzed, could compromise operational security ¹. This risk is acknowledged in the provision itself, which includes the caveat "taking into consideration

operational security," but the interpretation and implementation of this consideration may be challenging and inconsistent.

- **Potential Negative Impact 2: Reduced Bargaining Power:** Public disclosure of the prices the DoD has paid for goods and services could weaken its negotiating position in future acquisitions. Contractors may be less willing to offer competitive pricing if they know their prices will be immediately visible to competitors and the public ¹⁵.
- **Potential Negative Impact 3: Disincentive for Innovation:** Companies, particularly smaller or non-traditional defense contractors, might be hesitant to propose innovative solutions if the details of their contracts, including potentially proprietary information embedded in pricing structures, are immediately made public. This could stifle innovation within the defense industrial base ¹.
- **Potential Negative Impact 4: Increased Administrative Burden:** The requirement to prepare and publicly post detailed information for all contract awards, including purchase orders, could create a significant administrative burden for contracting officers and program offices within the DoD. This could divert resources from other critical acquisition activities ⁶.
- **Potential Negative Impact 5: Potential for Misinterpretation and Misinformation:** Publicly released contract data, especially complex technical specifications and pricing information, could be misinterpreted or used out of context, leading to public criticism and potentially misinformed debates about defense spending ¹⁴.

Mitigations the Organization Will Take to Diminish the Negative Impacts

To mitigate the potential negative impacts of Section 312, the DoD can implement several strategies:

- **Mitigation of Negative Impact 1:** Develop clear and comprehensive guidelines for determining what constitutes information that could compromise operational security. This would involve collaboration between acquisition professionals and security experts to establish specific criteria for redacting or withholding sensitive details from public disclosure ¹.
- **Mitigation of Negative Impact 2:** Implement strategies to manage the potential impact on bargaining power. This could include delaying the public release of certain pricing information for a defined period or employing negotiation tactics that account for the increased transparency ¹⁵.
- **Mitigation of Negative Impact 3:** Establish mechanisms to protect sensitive or proprietary information of innovative contractors. This might involve specific clauses in contracts that address intellectual property rights and limit the public

disclosure of certain technical or pricing details related to innovative solutions ¹.

- **Mitigation of Negative Impact 4:** Invest in the necessary resources and training to support contracting officers and program offices in fulfilling the new reporting requirements efficiently. This could include developing standardized templates and automated systems for generating and publishing contract award information ⁶.
- **Mitigation of Negative Impact 5:** Proactively engage with the public and media to provide context and explanations for publicly released contract data. This could involve publishing summaries and analyses alongside the raw data to help ensure accurate understanding and prevent the spread of misinformation ¹⁴.

DoD Personnel Most Affected

Several categories of DoD personnel will be most directly affected by the implementation of Section 312:

- **Contracting Officers:** These individuals will bear the primary responsibility for ensuring that all contract awards are properly documented and publicly posted in accordance with the new requirements. This will involve additional steps in the contract award process, including preparing the necessary documentation for public release and ensuring compliance with guidelines regarding operational security ¹⁶.
- **Program Managers:** Program managers will need to work closely with contracting officers to ensure that the information being disclosed aligns with program objectives and does not inadvertently reveal sensitive details. They will also be responsible for understanding the implications of public disclosure for their programs and for communicating these implications to relevant stakeholders ⁷.
- **Budget and Financial Management Personnel:** These individuals will be involved in ensuring that the financial information included in the contract award notices is accurate and consistent with budget records. They may also be responsible for developing processes to track and report on the impact of increased transparency on defense spending ⁶.
- **Public Affairs Officers:** Public affairs personnel will play a crucial role in communicating the purpose and implications of the new transparency requirements to the public and the media. They will also be involved in addressing any questions or concerns that arise from the public disclosure of contract information ¹⁸.
- **Legal Counsel:** Legal teams within the DoD will be responsible for interpreting the requirements of Section 312 and providing guidance to acquisition personnel on compliance matters, particularly regarding the balance between transparency

and operational security¹⁹.

Stakeholders Opposed and Rationale for Opposition

Several stakeholders might oppose Section 312, primarily due to concerns about potential negative impacts on their operations or interests:

- **Defense Contractors:** Some defense contractors, particularly those dealing with sensitive technologies or classified programs, may oppose the public disclosure of detailed contract information, fearing it could reveal proprietary information or undermine their competitive advantage³. They might also be concerned that increased transparency could lead to unwarranted public scrutiny and criticism.
- **Lobbying Groups:** Organizations that advocate for specific segments of the defense industry might oppose the provision if they believe it could negatively impact the business opportunities of their constituents. Their rationale for opposition would likely echo the concerns of the contractors themselves.
- **Foreign Governments (in some cases):** In instances where DoD contracts involve international partners or the acquisition of sensitive foreign technologies, the public disclosure of contract details could be opposed by the foreign governments involved, citing concerns about national security or the protection of sensitive information¹⁵.

Additional Resources

Successful implementation of Section 312 will likely require the DoD to allocate additional resources in several areas:

- **Funding:** Resources will be needed to develop and implement the necessary systems and processes for publicizing contract award information, including potentially upgrading IT infrastructure and creating user-friendly interfaces for accessing the data⁶.
- **Training:** Contracting officers, program managers, and other affected personnel will require training on the new requirements of Section 312, including guidelines for determining what information can be publicly disclosed and the procedures for posting award notices¹⁶.
- **Personnel:** The increased administrative burden associated with preparing and publishing detailed contract information may necessitate the allocation of additional personnel within contracting offices and program offices⁶. Expertise in data management, cybersecurity, and public affairs may also be required.

Measures of Success

The success and effectiveness of Section 312 can be measured through several indicators:

- **Compliance Rate:** The percentage of contract awards for which notices are publicly posted within the specified reasonable timeframe, adhering to the

guidelines for including required information and considering operational security¹.

- **Accessibility and Usability of Data:** The ease with which the public and oversight bodies can access and understand the publicly posted contract information. This can be assessed through user feedback and website analytics.
- **Number of Inquiries and Feedback:** The volume and nature of inquiries and feedback received from the public, media, and oversight bodies regarding the publicly disclosed contract information. This can indicate the level of public engagement and scrutiny.
- **Impact on Oversight Activities:** The extent to which the publicly available contract data facilitates more effective oversight by Congress, the GAO, and other relevant entities⁴. This could be measured by the number of reports or investigations that utilize this data.
- **Perception of Transparency and Accountability:** Surveys of public opinion and stakeholder perceptions regarding the transparency and accountability of DoD contracting after the implementation of Section 312.

Alternative Approaches

While Section 312 mandates a broad public posting of contract awards, alternative approaches could potentially achieve similar outcomes with varying levels of effectiveness and efficiency:

- **Enhanced Reporting to Congress and Oversight Bodies:** Instead of universal public posting, the DoD could be required to provide more detailed and timely reports on contract awards directly to relevant congressional committees and oversight agencies like the GAO. This would provide those with a direct oversight responsibility with the necessary information without the potential risks associated with broad public disclosure.
- **Expansion of Existing Transparency Initiatives:** The DoD could build upon existing transparency initiatives, such as the information already available on websites like <https://www.defense.gov/News/Contracts/>, which currently announces contracts valued at \$7.5 million or more¹⁷. The threshold for disclosure could be lowered, and the level of detail provided could be increased.
- **Targeted Disclosure Based on Risk or Value:** Rather than mandating the disclosure of all contract awards, a threshold based on contract value or a risk assessment could be established. This would focus transparency efforts on the most significant or potentially problematic contracts.
- **Secure Data Portals for Vetted Stakeholders:** The DoD could create secure online portals accessible to vetted researchers, journalists, and advocacy groups, providing them with more detailed contract information under non-disclosure

agreements. This could allow for in-depth scrutiny while mitigating some of the risks associated with fully public disclosure.

Section Specific Question 1:

What new requirements for reporting contract award information or enhancing accountability does Section 312 impose on Contracting Officers or Program Offices?

Section 312 imposes a new requirement on Contracting Officers and Program Offices to publicly post notice of all contract awards or other agreements. This goes beyond the current practice of announcing contracts above a certain threshold (e.g., \$7.5 million)¹⁷. The new requirement includes all contract awards, regardless of value, and mandates the inclusion of the purchase order or other record of the transaction, detailing quantities and prices of individual products or services acquired. Contracting Officers will need to develop processes to ensure this information is posted within a reasonable period after the award, while also carefully considering and addressing any potential operational security concerns that might necessitate redactions or withholding of specific details¹. This represents a significant expansion of the information that needs to be proactively disclosed.

Section Specific Question 2:

This question was not provided in the user query.

Summary

Section 312 of the FoRGED Act aims to enhance transparency and accountability in Department of Defense contract awards by requiring the public posting of detailed award information. While this provision has the potential to increase public awareness, facilitate oversight, and deter misconduct, it also presents potential challenges related to operational security, bargaining power, innovation, administrative burden, and the risk of misinterpretation. The DoD can mitigate these risks through careful implementation, clear guidelines, and the allocation of necessary resources. The success of Section 312 will depend on the DoD's ability to effectively balance the goals of transparency and accountability with the need to protect sensitive information and maintain an efficient acquisition process. Alternative approaches to enhancing transparency exist, but Section 312 represents a significant step towards greater openness in defense contracting.

Recommendation Text from Forged Act follows:

SEC. 312. TRANSPARENCY AND ACCOUNTABILITY OF CONTRACT AWARDS.

Notice of all contract awards or other agreements shall be...source

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