

## GOVERNMENT CONTRACTING: A BRIEF OVERVIEW OF THE FIELD

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*Executive Summary: The federal government must obtain supplies, technology, and services from private companies. Almost half of the federal government's discretionary spending goes towards contracts,<sup>1</sup> and federal contract spending increases by billions of dollars each year.<sup>2</sup> Government contracts range from hiring carpet cleaning services to designing major weapons systems to producing life-saving vaccines. Fiscal Year 2025 saw a shift in focus to using government power to reevaluate agency spending and procurement.<sup>3</sup> This memorandum discusses the impact of Oak Groves Technologies, LLC v. United States on government contracts, as well as updates on government contracts as they relate to the current administration's regulatory reform efforts. Foundational elements for the field remain rooted in the separation of powers and administrative law.*

### I. BACKGROUND AND FOUNDATIONS OF GOVERNMENT CONTRACTING

Government contracts involve a private vendor contracting with the government to provide goods or services.<sup>4</sup> A patchwork of laws and administrative rules governs the field of government contracting. The power to contract is rooted in the power of Congress to dispose of government property,<sup>5</sup> implying a power to obtain property and retaining the power to pay the debts of the United States<sup>6</sup> incurred by governmental acquisition of said property. As a sovereign entity, the federal government enters into business contracts, thus incurring debt.<sup>7</sup> Federal agencies have used discretion in the day-to-day administration of contracting. Thus, federal agencies acting in official capacities contract directly for goods and services. Once the government has entered into an obligation, contract law governs and treats the agency as a party;

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<sup>1</sup> U.S. GOV'T ACCOUNTABILITY OFF., CONTRACTING DATA ANALYSIS: ASSESSMENT OF GOVERNMENT-WIDE TRENDS 1 (2017).

<sup>2</sup> Five Trends in Government Contracting for FY 2023, BLOOMBERG GOV'T (Mar. 19, 2022), <https://about.bgov.com/brief/trends-in-federal-contract-spending> (last visited Oct. 3, 2025).

<sup>3</sup> Exec. Order No. 14042, 86 Fed. Reg. 50,985 (Sep. 9, 2021); Press Release, S. SMALL BUS. ADMIN., Biden-Harris Administration Awards Record-Breaking \$178 Billion in Federal Procurement Opportunities to Small Businesses (Apr. 29, 2024), <https://www.sba.gov/article/2024/04/29/biden-harris-administration-awards-record-breaking-178-billion-federal-procurement-opportunities>.

<sup>4</sup> GOVERNMENT CONTRACTS, LEGAL INFO. INST., <https://www.law.cornell.edu/cfr/text/48/1.101> (last visited Oct. 3, 2025).

<sup>5</sup> U.S. CONST. art. IV, § 3, cl. 2 ("Congress shall have [p]ower to dispose of and make all needful [r]ules and [r]egulations respecting the [t]erritory or other [p]roperty belonging to the United States.").

<sup>6</sup> U.S. CONST. art. I, § 8. ("Congress shall have [p]ower . . . to pay the [d]ebts.").

<sup>7</sup> *United States v. Tingey*, 30 U.S. 115, 122–23 (1831); *Pacific Far East Line, Inc.* ASBCA No. 7629, 63 BCA ¶ 3835.

the agency does not enjoy sovereign immunity.<sup>8</sup> Only Congress has the power of the purse,<sup>9</sup> so an agency's power to contract has limitations pursuant to Congress's edicts, including a prohibition on contracting without prior Congressional authorization under the Appropriations Clause. Congress passes authorization and appropriation acts for each Fiscal Year (FY), detailing the specific purpose, time, and monetary limitations to which all contracts must adhere.<sup>10</sup> An agency may only incur obligations that will be performed within a specific appropriations period as set by Congress.<sup>11</sup> The Anti-Deficiency Act<sup>12</sup> further limits agencies, prohibiting contractual obligations in advance of or in preparation for Congressionally-provided appropriations.<sup>13</sup> Additionally, agencies can only obligate current FY funds to meet current FY needs, absent a statutory exception.<sup>14</sup> The Buy American Act<sup>15</sup> further limits contracts, generally requiring the agency to procure domestic materials and products.<sup>16</sup>

#### A. *The Procurement Process*

The procurement process can take many forms. To simplify this explanation, this paper focuses on competitive procurements.<sup>17</sup> Once an agency decides to procure goods or services and determines that the proposed action does not violate any limitations, the agency articulates specific needs and criteria in a solicitation.<sup>18</sup> Private parties then review the procurement needs

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<sup>8</sup> *Cooke v. United States*, 91 U.S. 389, 398 (1875) (explaining the federal government is treated as a party under contract law principles in disputes regarding the terms of a contract).

<sup>9</sup> U.S. CONST. art I, § 9, cl. 7 (“No [m]oney shall be drawn from the [t]reasury, but in [c]onsequence of [a]ppropriations made by [l]aw; and a regular [s]tatement and [a]ccount of [r]eceipts and [e]xpensures of all public [m]oney shall be published from time to time.”); *United States v. Nicoll*, 1 Paine 646 (C.C.N.Y. 1826).

<sup>10</sup> 31 U.S.C. §§ 1301, 1341, 1511–17, 1552; U.S. GOV'T ACCOUNTABILITY OFF., *PRINCIPLES OF FEDERAL APPROPRIATIONS LAW* 3–9 (4th ed. 2017).

<sup>11</sup> U.S. GOV'T ACCOUNTABILITY OFF., *PRINCIPLES OF FEDERAL APPROPRIATIONS LAW* 2–9 (4th ed. 2016) (stating that lengths range from definite—either fiscal year or multiple-year—to indefinite).

<sup>12</sup> 31 U.S.C. § 1341.

<sup>13</sup> § 1341(a)(1)(B).

<sup>14</sup> We are unable to cover exceptions to the bona fide needs rule here. For more information, *see generally* 41 U.S.C. § 253; U.S. GOV'T ACCOUNTABILITY OFF., *PRINCIPLES OF FEDERAL APPROPRIATIONS LAW* (3d ed. 2004); U.S. GOV'T ACCOUNTABILITY OFF., *FUNDING OF MAINTENANCE CONTRACT EXTENDING BEYOND FISCAL YEAR* (1996).

<sup>15</sup> 41 U.S.C. §§ 8301–8303.

<sup>16</sup> *Id.* § 8303; *Administration of the Buy American Act: Hearing Before the Subcomm. Of the H. Comm. on Gov't Operations*, 95th Cong. 38–39 (1978) (statement of J. Kenneth Fasick, Director of the Int'l Div. of GAO) (explaining the triggering conditions).

<sup>17</sup> For a full overview of the process, *see* L. Elain Halchin, CONG RESEARCH SERV., *OVERVIEW OF THE FEDERAL PROCUREMENT PROCESS AND RESOURCES* (2012), <https://fas.org/sgp/crs/misc/RS22536.pdf>.

<sup>18</sup> The pre-solicitation notices, solicitation notices, and later award notices, as well as sole source notices, are placed on the centralized website, Sam.gov, although advertisements may be placed elsewhere in addition to this posting. *See* U.S. GEN. SERVS. ADMIN., <https://sam.gov/content/opportunities> (last visited Sep. 17, 2024) (explaining it is the official location for government contracting opportunities). *See generally* Halchin, *supra* note 17 (providing a broad overview of the federal procurement process); U.S.

and “bid” to fulfill the contract.<sup>19</sup> The agency then uniformly evaluates all bids to fulfill the solicitation against the announced criteria.<sup>20</sup> Once an agency selects a prospective contractor and awards the contract, the agency will announce the winning bid.<sup>21</sup> An unsuccessful bidder can request a debrief that the agency must provide<sup>22</sup> or dispute the contract award in a “bid protest.”<sup>23</sup> If an unsuccessful bidder protests a bid, the winning bidder must wait for the resolution of the protest.<sup>24</sup>

Businesses can take advantage of certain programs, Acts, and initiatives to increase the chances of winning a contract bid. For instance, with the Executive Order “Ensuring the Future of America is Made in America by All of America’s Workers,”<sup>25</sup> the federal government launched an initiative in 2021 to emphasize domestic products and services in federal procurement to strengthen our national industrial base and create more American jobs.<sup>26</sup> Additionally, with the 1997 Small Business Reauthorization Act,<sup>27</sup> the federal government aims to award 23% of its contracting money to small businesses. Further, some states, such as Connecticut and New York, also offer special set-aside contracts for women- and minority-owned small businesses.<sup>28</sup>

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GOV’T ACCOUNTABILITY OFF., PRINCIPLES OF FEDERAL APPROPRIATIONS LAW (4th ed. 2016), <https://www.gao.gov/legal/appropriations-law-decisions/red-book> (outlining the legal principles of federal fiscal law).

<sup>19</sup> CDC, *Contracting Process* (Sep. 4, 2024) <https://www.cdc.gov/contracts/data-research>.

<sup>20</sup> Halchin, *supra* note 17, at 2.

<sup>21</sup> *Id.*

<sup>22</sup> JetCo Solutions Team, *What You Need to Know About Debriefings for Government Contracting*, JETCO SOLS., <https://www.jetcosolutions.com/what-you-need-to-know-about-debriefings-for-government-contracting> (last visited Oct. 3, 2025).

<sup>23</sup> 10 U.S.C. § 2305.

<sup>24</sup> 48 C.F.R. § 33.103 (2020).

<sup>25</sup> *Executive Order 14005 - Ensuring the Future is Made in All of America by All of America’s Workers*, Daily Comp. Pres. Docs. 1 (2021).

<sup>26</sup> *Id.*

<sup>27</sup> Small Business Reauthorization Act, Pub. L. No. 105-135, § 603, 111 Stat. 2632 (1997).

<sup>28</sup> For a list of states that offer these special contracts, see State Offices for Minority and Women Business Enterprises, MINORITY BUS. DEV. AGENCY, <https://www.mbda.gov/page/state-offices-minority-and-women-business-enterprises> (last visited Oct. 3, 2025).

## B. The Dispute Process

Disputes arise out of everything from new regulations to “broadened notions of due process.”<sup>29</sup> Most federal agencies follow processes and authority of the Federal Property and Administrative Service Act,<sup>30</sup> the Office of Federal Procurement Policy Act,<sup>31</sup> and the Federal Acquisition Streamlining Act of 1994.<sup>32</sup> However, the Armed Forces and National Aeronautics and Space Administration follow the Federal Acquisition Regulation (FAR),<sup>33</sup> which established the Civilian Board of Contract Appeals and the Armed Services Board of Contract Appeals.

The Budget and Accounting Act of 1921<sup>34</sup> established the Government Accountability Office (GAO), an administrative body that authors decisions in bid protests and provides advisory opinions. Unsuccessful bidders may protest awards under a request for “reconsideration” at the GAO.<sup>35</sup> An unfavorable GAO decision leaves a disappointed bidder with two avenues: either appeal to the Board of Contract Appeals<sup>36</sup> or directly file suit in the U.S. Court of Federal Claims (COFC).<sup>37</sup> The COFC’s jurisdiction over government contracts claims comes from the Tucker Act.<sup>38</sup> The COFC will review de novo any procurement on appeal from a GAO finding.<sup>39</sup> The bidder may also file protests directly in Federal District Court.<sup>40</sup> Appealing bidders from either venue may file with the United States Court of Appeals for the Federal Circuit.<sup>41</sup> Awardees with claims under an awarded contract may bring said claims. The contractor must initially exhaust administrative procedures by submitting a claim to the agency’s contracting officer for a written decision.<sup>42</sup> The contractor may then file the claim in District Court and appeal to the Federal Circuit.

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<sup>29</sup> *Alternatives for Resolving Government Contract Disputes*, ADMIN. CONF. OF THE U.S. (Dec. 18, 1987), <https://www.acus.gov/recommendation/alternatives-resolving-government-contract-disputes>.

<sup>30</sup> 40 U.S.C. § 112.

<sup>31</sup> 41 U.S.C. § 1101.

<sup>32</sup> Pub. L. No. 103-355, 108 Stat. 3243.

<sup>33</sup> 48 C.F.R. § 1.301 (2019).

<sup>34</sup> *Id.* § 301, 42 Stat. at 23. When it was created, the agency was known as the General Accounting Office. The name changed (but its initials remained) in 2004. U.S. Gov’t Accountability Office, *About GAO: History*, <https://www.gao.gov/about/what-gao-is/history> (last visited Sep. 17, 2024).

<sup>35</sup> Bidders may also appeal through an applicable administrative body, such as the Armed Services Board of Contract Appeals, based on the jurisdiction of the agency at issue. ARMED SERVICES BOARD OF CONTRACT APPEALS, <https://www.asbca.mil> (last visited Sep. 17, 2024).

<sup>36</sup> Government Contracts Group, *Timeline of a Contract Disputes Act Claim*, MORRISON & FOERSTER (Nov. 7, 2016), <https://govcon.mofo.com/protests-litigation/timeline-of-a-contract-disputes-act-claim>.

<sup>37</sup> 41 U.S.C. §§ 7104, 7107; *see also* 28 U.S.C. § 1491.

<sup>38</sup> Tucker Act, Ch. 359, 24 Stat. 505 (1887).

<sup>39</sup> 41 U.S.C. § 7104(B)(4).

<sup>40</sup> U.S. GEN. ACCT. OFF., BID PROTESTS: CHARACTERISTICS OF CASES FILES IN FEDERAL COURTS 5 (2000), <https://www.gao.gov/products/GGD/OGC-00-72>.

<sup>41</sup> 41 U.S.C. § 7107(A)(1)(B); 28 U.S.C. §§ 1295(A)(3), (10).

<sup>42</sup> 41 U.S.C. § 7103(a)(1).

## II. GOVERNMENT CONTRACTS AND REGULATORY REFORM

### A. *Department of Defense*

To fully appreciate the government contracts landscape, a look at the agency responsible for the most contracts—the DOD—is imperative.<sup>43</sup> The DOD contracts with 222,000 companies, and these companies are targets for hackers trying to access sensitive data.<sup>44</sup> Compared to other agencies, the DOD has the most burdensome cybersecurity requirements in its Defense Federal Acquisition Regulation Supplement (DFARS) provisions and contract clauses. While the DOD has always had more burdensome requirements, it has recently shifted its focus to ensuring its contractors *actually* comply with them.

The DOD launched a CMMC framework in 2020 to address its concern that defense contractors have not adequately implemented their cybersecurity obligations.<sup>45</sup> In response to the evolving cybersecurity threats, the DOD revised the framework to create CMMC 2.0 in 2021.<sup>46</sup> The updated framework is a tiered model—comprising three levels—that requires “companies entrusted with national security information [to] implement cybersecurity standards at progressively advanced levels, depending on the type and sensitivity of the information.”<sup>47</sup> CMMC 2.0 allows the Department to verify the implementation of cybersecurity standards by requiring companies to demonstrate compliance through either self-assessment or a third-party audit.<sup>48</sup>

In August 2024, the DOD published a proposed rule to implement the CMMC 2.0 program that would effectively require all government contracts to incorporate the CMMC 2.0 program.<sup>49</sup> The DOD’s rule is consistent with the previous rule released on December 26, 2023, which set forth requirements for the implementation of CMMC 2.0 program.<sup>50</sup> The 2024 rule provides additional color on how the CMMC program will be implemented and introduces new clauses.<sup>51</sup>

According to the 2023 rule, contractors will be required to be certified at three levels, including Level 1 for safeguarding Federal Contract Information (FCI) for contractors that handle FCI, Level 2 for contractors broadly safeguarding Controlled Unclassified

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<sup>43</sup> LIBR. OF CONG., *Federal Government Contracting: A Resource Guide* (Nov. 2023), <https://guides.loc.gov/federal-government-contracting>

<sup>44</sup> BLOOMBERG GOV’T, *Cybersecurity for Government Contractors*, (July 7, 2022), <https://about.bgov.com/brief/cybersecurity-for-government-contractors>.

<sup>45</sup> U.S. DEP’T OF DEF., *About CMMC*, <https://dodcio.defense.gov/CMMC/About> (last visited Sep. 17, 2024).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Defense Acquisition Regulations System, 89 Fed. Reg. 158 (Aug. 15, 2024).

<sup>50</sup> Cybersecurity Maturity Model Certification Program, 88 Fed. Reg. 89,058 (Dec. 26, 2023).

<sup>51</sup> Defense Acquisition Regulations System, 89 Fed. Reg. 158 (Aug. 15, 2024).

Information (CUI), and Level 3 for high-level protection of CUI.<sup>52</sup> Contractors will need to submit self-assessment scores to the Supplier Performance Risk System (SPRS) under Level 1.<sup>53</sup> Level 2 assessment will be completed by SPRS and Level 3 assessment will be completed by the DOD.<sup>54</sup> This aims to reduce the burden on smaller contractors while still maintaining cybersecurity standards. It also ensures that more sensitive information is protected with higher assurance. The rule outlines the clause DFARS 252.204-721, which covers DOD contractors and requires them to comply with the level specified in their respective contract.<sup>55</sup> The rule also said that CMMC 2.0 aligns more closely with the National Institute of Standards and Technology's (NIST) cybersecurity standards, particularly NIST SP 800-171 for Level 2 and NIST SP 800-172 for Level 3.<sup>56</sup> This alignment helps streamline the compliance processes. In May 2024, the NIST published final versions of Special Publications (SP) 800-171 Revision, Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations where it introduced “organization defined parameters” to make NIST security controls more flexible by allowing agencies to specify values for parameters within the security controls.<sup>57</sup>

The Defense Acquisition Regulations System published a final version of this rule effective November 10, 2025.<sup>58</sup> The final rule includes significant changes from the proposed rule. Among these changes are changes in terminology and definitions to bring the rule in line with commonly used DoD language.<sup>59</sup> Also included were substantial procedural changes that more clearly define what CMMC status is required prior to awarding a contract.<sup>60</sup> The most relevant changes include updates to the Solicitation Provision and Contract Clause.<sup>61</sup> The clause incorporates the requirements from the 2023 tiered compliance reporting structure and

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<sup>52</sup> Evan C. Williams, Jason Coffey, & Adam S. Hickey, *US DOD Proposes Final Rule for Cybersecurity Maturity Model Certification (CMMC)*, MAYER BROWN (Jan. 18, 2024), <https://www.mayerbrown.com/en/insights/publications/2024/01/us-dod-proposes-final-rulefor-cybersecurity-maturity-model-certification-cmmc>.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Cybersecurity Maturity Model Certification Program, 88 Fed. Reg. 89,058 (Dec. 26, 2023).

<sup>57</sup> Ron Ross & Victoria Pillitteri, *Protecting Controlled Unclassified Information in Nonfederal Systems and Organizations*, NIST U.S. DEP'T OF COM. (May 2024), <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-171r3.pdf>.

<sup>58</sup> Defense Federal Acquisition Regulation Supplement: Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019-D041), 90 Fed. Reg. 43560 (Sep. 10, 2025) (codified as 48 C.F.R. pts. 204, 212, 217, 252).

<sup>59</sup> *Id.*; see also Dept. of Defense, *Summary of Significant Changes From the Proposed Rule* (Sep. 10, 2025), <https://www.federalregister.gov/documents/2025/09/10/2025-17359/defense-federal-acquisition-regulation-supplement-assessing-contractor-implementation-of> (providing a summary of changes made to the final rule at promulgation).

<sup>60</sup> Dept. of Defense, *Summary of Significant Changes From the Proposed Rule* (Sep. 10, 2025), <https://www.federalregister.gov/documents/2025/09/10/2025-17359/defense-federal-acquisition-regulation-supplement-assessing-contractor-implementation-of>.

<sup>61</sup> *Id.* at Part II.A.5.

requires subcontractors to affirm their continuous compliance with the framework and submit self-assessment results.<sup>62</sup> The updates also stipulate that offerors will not be eligible for a contract award if they fail to maintain a current CMMC status.<sup>63</sup>

The final rule will be implemented in four phases beginning in November 2025, with the final phase scheduled for November 2028.<sup>64</sup> These requirements will also apply to subcontractors, and it will be the responsibility of the main contractor to ensure subcontractor compliance with the new rule.<sup>65</sup>

### *B. Trump Administration Executive Orders*

On April 9, 2025, President Trump issued Executive Order 14265, Modernizing Defense Acquisitions and Spurring Innovation in the Defense Industrial Base.<sup>66</sup> The order aims to “rapidly reform [the] antiquated defense acquisition processes, with an emphasis on speed, flexibility, and execution.”<sup>67</sup> It directs the Secretary of Defense, within sixty days, to submit to the President a plan refining the DoD’s acquisition framework.<sup>68</sup> The plan must prioritize commercial solutions and Other Transactions Authority agreements, centralize decision-making, and eliminate redundant tasks.<sup>69</sup> The order also instructs the DoD to review and alter its instructions, implementation guides, manuals, and regulations to effectively minimize unnecessary regulations.<sup>70</sup> Within ninety days, the Secretary of Defense must also review all Major Defense Acquisition Programs and consider whether to cancel those programs that are 15% behind schedule, 15% above cost, unable to meet key performance parameters, or misaligned with the DOD’s mission.<sup>71</sup> Collectively, the order underscores to contractors the Trump administration’s focus on commercial solutions contracting and its broader effort to streamline the defense acquisition process.<sup>72</sup>

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> See Tina D. Reynolds and Cody Brianna Fisher, *Department of Defense Finalizes Long-Awaited Cybersecurity Rule* (Sep. 11, 2025) <https://govcon.mofo.com/topics/departments-of-defense-finalizes-long-awaited-cybersecurity-rule>.

<sup>65</sup> *Id.*

<sup>66</sup> Exec. Order No. 14265, 90 Fed. Reg. 30220 (Apr. 18, 2025).

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Stephanie Barna, Peeter Terenzio, Martin Levy & Emma Merrill-Grubb, *Trump Administration Issues Executive Order Aimed at Modernizing Defense Acquisitions and Spurring Innovation* (Apr. 14, 2025), <https://www.insidegovernmentcontracts.com/2025/04/trump-administration-issues-executive-order-aimed-at-modernizing-defense-acquisitions-and-spurring-innovation>.

<sup>70</sup> Cody Brianna Fisher & Markus Gerhard Speedel, *Deregulating Federal Procurement: Implications of Three Recent Executive Actions* (Apr. 21, 2025), <https://govcon.mofo.com/topics/deregulating-federal-procurement-implications-of-three-recent-executive-actions>.

<sup>71</sup> *Id.*

<sup>72</sup> David S. Black, Cristian B. Nagel, Amy L Fuentes, Jeremy Dd. Burkhart, Mike R. Wakefield, Hillary J. Freund, et al., *New Executive Orders Seek to Improve Acquisition in the Defense Industrial Base* (Apr. 11,

On April 15, 2025, President Trump issued Executive Order 14275, Restoring Common Sense to Federal Procurement.<sup>73</sup> The order's primary purpose is to reform the Federal Acquisition Regulation (FAR), stating "FAR should contain only provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed."<sup>74</sup> This executive order implements the largest change to FAR in forty years and will seriously impact government contracts.<sup>75</sup> FAR is a regulation that governs the acquisition of goods and services by the executive branch agencies.<sup>76</sup> FAR guides contracting officers on various issues like the government's policy, agency requirements, exceptions to these requirements, and which clauses are required in government contracts.<sup>77</sup> The executive order effectively overhauls FAR and its previous procedures, and requires agencies to provide recommendations on how they will comply with the executive order's mandates.<sup>78</sup> While the order is likely to reduce contract complexity and lead to reduced barriers to entry for new commercial contractors, it could cause uncertainty as agencies work to comply with the order.<sup>79</sup>

On April 16, 2025, President Trump issued another Executive Order aimed at government contracts titled Executive Order 14271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracting.<sup>80</sup> The order directs government agencies to "procure commercially available products and services . . . to the maximum extent practicable."<sup>81</sup> It requires each agency's contracting officer to review all of the agency's open solicitations, pre-solicitation notices, solicitation notices, award notices, and sole source notices for non-commercial products or services.<sup>82</sup> Once a review is complete, the contracting officer must submit an application requesting approval of the non-commercial product or service.<sup>83</sup> Because contracting officers need to create applications for the approval of non-commercial goods, companies that primarily offer non-commercial products or services could experience delays

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2025), <https://www.hklaw.com/en/insights/publications/2025/04/new-executive-orders-seek-to-improve-acquisition-in-the-defense>.

<sup>73</sup> Exec. Order No. 14275, 90 Fed. Reg. 16447 (Apr. 15, 2025).

<sup>74</sup> *Id.*

<sup>75</sup> Erin L. Toomey & Frank S. Murray, *Preparing for a "Common-Sense" FAR: What Federal Contractors Need to Know About the Trump Administration's Plans to Streamline the Federal Acquisition Regulation* (Apr. 17, 2025), <https://www.foley.com/insights/publications/2025/04/far-contractors-trump-administration-streamline-federal-acquisition-regulation>.

<sup>76</sup> DAVID H. CARPENTER, DOMINICK A. FIORENTINO & MATTHEW D. TROUT, CONG. RSCH. SERV., R42826, THE FEDERAL ACQUISITION REGULATION (FAR): ANSWERS TO FREQUENTLY ASKED QUESTIONS (Apr. 7, 2025), <https://www.congress.gov/crs-product/R42826#:~:text=The%20FAR%20articulates%20the%20guiding,contracts%20for%20the%20government's%20convenience>).

<sup>77</sup> Toomey, *supra* note 75.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> Exec. Order No. 14271, 90 Fed. Reg. 16433 (Apr. 15, 2025).

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*



with their contracts.<sup>84</sup> On the other hand, companies with products or services that are commercially available could benefit from the order.<sup>85</sup>

### III. GOVERNMENT CONTRACTS IN THE NEWS

#### IV. *Impact of Oak Groves Technologies v. United States*

On September 16, 2024, the United States Court of Appeals decided *Oak Groves Technologies, LLC, v. United States*.<sup>86</sup> In *Oak Groves*, a contract the Army used to procure training for its special forces expired.<sup>87</sup> The Army issued a solicitation for a new small business, single award contract with an order ceiling of \$245 million.<sup>88</sup> Oak Groves Technologies and defendant F3EA were among the ten offerors who submitted bids.<sup>89</sup> Ultimately, the Army awarded the contract to F3EA after F3EA's proposal had the highest technical rating and lowest price among the contracts.<sup>90</sup> Oak Groves filed a protest with the GAO, alleging that F3EA improperly benefited from unequal access to information.<sup>91</sup> This claim was based on emails from two F3EA employees, stating that they overheard conversations between an employee of F3EA and the chairperson of the contract committee about the "intent for F3EA to get the work."<sup>92</sup> The Army initiated an internal investigation and found that Oak Grove's allegations were not credible.<sup>93</sup> The Army then reevaluated the proposals and again awarded the contract to F3EA.<sup>94</sup> Oak Grove then filed a complaint in the Court of Federal Claims, alleging that the Army inadequately investigated the award to F3EA, abused its discretion by not engaging in discussions or clarifications with Oak Grove, arbitrarily assessed various sections of Oak Grove's proposal, and awarded the contract to F3EA despite critical deficiencies in F3EA's proposal.<sup>95</sup> The Court of Federal Claims granted Oak Grove's motion for judgment and enjoined the Army from

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<sup>84</sup> Mitchell D. Dolman & Adam A. Bartolanzo, *New Executive Order Calls for Maximizing Cost-Effective Commercial Solutions in Government Contracting* (Apr. 23, 2025), <https://www.mslaw.com/mslaw-blog/new-executive-order-calls-for-maximizing-cost-effective-commercial-solutions-in-government-contracting>.

<sup>85</sup> BUTZEL, *New Executive Order Seeks to Prioritize Commercial Items in Federal Procurement* (Apr. 29, 2025), <https://www.butzel.com/alert-new-executive-order-seeks-to-prioritize-commercial-items-in-federal-procurement>.

<sup>86</sup> *Oak Grove Techs. LLC v. United States*, 116 F.4th 1364 (Fed. Cir. 2024).

<sup>87</sup> *Id.* at 1370.

<sup>88</sup> *Id.* at 1371.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 1372.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 1373.

<sup>95</sup> *Id.*

proceeding with its contract with F3EA.<sup>96</sup> The court also sanctioned the government under Rule 11 for failing to file certain documents with the court over the course of litigation.<sup>97</sup> The Government and F3EA appealed.<sup>98</sup>

The United States Court of Appeals reversed, holding that “(1) Oak Grove waived its argument that the Army was required to hold discussions, (2) F3EA was not required to include a teaming agreement in its proposal, and (3) the Army's investigation into RM's alleged misconduct did not render its contract award arbitrary and capricious.”<sup>99</sup> The Court explained that Oak Grove waived its argument about mandatory discussions by failing to raise the issue before the close of the bid process.<sup>100</sup> On the second argument, the court explained that a proposal becomes unawardable only when it fails to conform to a material term or condition.<sup>101</sup> FE3A's teaming agreement was not material because the solicitation did not require a teaming agreement, and the Army did not evaluate teaming agreements during the bid process.<sup>102</sup> In discussing the Army's investigation, the court emphasized that FAR grants agencies considerable discretion in their internal investigations.<sup>103</sup> The court noted that the Army's investigation into Oak Grove's concerns was extensive and that although a more thorough investigation could have been justified, the agency, not a reviewing court, decides the appropriate steps.<sup>104</sup> The court did, however, uphold the discovery sanctions imposed on the government, ruling that the government failed to produce documents that belonged in the administrative record.<sup>105</sup>

This decision offers several lessons that contractors and agencies are likely to consider. First, if a solicitation for a bid over \$100 million states that an agency reserves the right not to conduct discussions, the offeror needs to object before the offeror's proposal is submitted.<sup>106</sup> The offeror cannot delay until after submission, even if the solicitation violates DFARS 215305(c)(1).<sup>107</sup> Second, the court's holding that the Solicitation's teaming agreement provisions were not material requirements prompts contractors to carefully evaluate arguments that a term or condition is material.<sup>108</sup> Third, Oak Grove highlighted the importance

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<sup>96</sup> *Id.* at 1374.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.* at 1384.

<sup>99</sup> *Id.* at 1385.

<sup>100</sup> *Id.* at 1378.

<sup>101</sup> *Id.* at 1379.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 1380.

<sup>104</sup> *Id.* at 1381.

<sup>105</sup> *Id.* at 1384.

<sup>106</sup> *Id.* at 1379.

<sup>107</sup> James A. Tucker, *Bid Protest Spotlight: Debriefing, Timelines, Documentation* (Oct. 4, 2024), [https://govcon.mofo.com/topics/bid-protest-spotlight-debriefings-timeliness-documentation?\\_gl=1\\*\\_zdliZ5\\*\\_ga\\*MTk2NDkwMzg2OS4xNzU3MTI5Mjg5\\*\\_ga\\_3HVRG7GH76\\*cZE3NTkwOTY4OTUkbzIkZzAkDDE3NTkwOTY5MDAkajU1JGwwJGgw](https://govcon.mofo.com/topics/bid-protest-spotlight-debriefings-timeliness-documentation?_gl=1*_zdliZ5*_ga*MTk2NDkwMzg2OS4xNzU3MTI5Mjg5*_ga_3HVRG7GH76*cZE3NTkwOTY4OTUkbzIkZzAkDDE3NTkwOTY5MDAkajU1JGwwJGgw). DFARS 215.306(c)(1).

<sup>108</sup> Craig Smith, Brian Walsh, & Jonathan C. Clark, *Bid Protest Lessons Learned From Oak Grove Technologies*, (Oct. 2024), <https://www.wiley.law/newsletter-Bid-Protest-Lessons-Learned-from-Oak-Grove-Technologies>.

of deferring to agency investigations, a standard which remains uncertain in the post-*Loper Bright* era.<sup>109</sup> Finally, the court’s affirmation of the sanction award may encourage protestors to pursue sanctions when the government improperly withholds material documents.<sup>110</sup>

## V. *Impact of the Reversal of Chevron Deference*

On June 28, 2024, the Supreme Court overruled its decision in *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, to evaluate whether a government statute permitted an agency’s action.<sup>111</sup> Under *Chevron*, the agency had the deference to interpret the construction of the statute.<sup>112</sup> In *Loper Bright Enterprises v. Raimondo*, the Court concluded that the courts would exercise independent judgment to determine an agency’s action and whether it accords with the statute.<sup>113</sup> Courts now must turn to the precedent set in *Skidmore v. Swift & Co.* to determine the best interpretation of a statute where they can value an agency’s informed decision of statute without it necessarily being the controlling interpretation.<sup>114</sup> Yet it is uncertain how courts should give “respect” to the “informed decision judgment of the Executive Branch” and how that is unlike the courts deferring to the agency for permissible interpretations of the law.

This decision could mean less regulatory whiplash for government contractors. Government contractors would litigiously challenge agency decisions more frequently to interpret statutes as they would. Specifically, the regulation of government contractors by the Federal Acquisition Regulatory (FAR) Council could be revised.<sup>115</sup> The Federal Circuit has long held that the FAR was entitled to *Chevron* deference to fill in the gaps in statutes that impose restrictions on government contractors.<sup>116</sup> Agencies may also take steps to avoid litigation by not putting forward rules to interpret statutes, which could mean that ambiguous clauses from statutes end up in government contracts.<sup>117</sup> Consequently, government contractors may be in a position to interpret these terms without the benefit of the agency. The regulatory environment post-*Loper Bright* may be one of uncertainty.

The Federal Circuit has long held that commercial contract principles are leaned on to

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<sup>109</sup> Aron C. Beezley, Nathaniel J. Greeson & Patrick R. Quigley, *The 5 Most Important Bid Protest Decisions of 2024* (Jan. 29, 2025), <https://www.bradley.com/insights/publications/2025/01/the-5-most-important-bid-protest-decisions-of-2024>.

<sup>110</sup> *Id.*

<sup>111</sup> *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024).

<sup>112</sup> *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984).

<sup>113</sup> *Loper Bright*, 144 S. Ct. at 2273.

<sup>114</sup> *Id.* at 2262–63, 2309 (Kagan, J., dissenting) (“[T]he majority makes clear that what is usually called *Skidmore* deference continues to apply.”).

<sup>115</sup> Eric S. Crusius & David S. Black, *The Impact of Chevron Reversal on Government Contracting*, HOLLAND & KNIGHT (July 11, 2024), <https://www.hklaw.com/en/insights/publications/2024/07/the-impact-of-chevron-reversal-on-government-contracting>.

<sup>116</sup> *Brownlee v. DynCorp.*, 349 F.3d 1343, 1354 (Fed. Cir. 2003) (citing *Info. Tech. & Applications Corp. v. United States*, 316 F.3d 1312, 1321–22 (Fed. Cir. 2003)); *Newport News Shipbuilding and Dry Dock Co. v. Garrett*, 6 F.3d 1547, 1552 (Fed. Cir. 1993).

<sup>117</sup> Crusius & Black, *supra* note 115.

interpret contractual ambiguities.<sup>118</sup> Specifically, the Federal Circuit applies the rule of “contra proferentem,” which means that if a rule can be understood to have two meanings, the court would defer to the meaning argued by the government contractor rather than the government.<sup>119</sup> Consequently, post-*Loper Bright* courts might be looking more towards how the Federal Circuit has applied traditional contract interpretations to contractual ambiguities. The decision in *Loper Bright* may not affect government contracts in the short term, but only time will tell how government contracts in the long term could be affected when federal statutes are interpreted by the courts.

## VI. *Inflation’s Impact*

For twelve months ending in August 2025, the annual inflation rate was 2.9 percent.<sup>120</sup> Additionally, the Consumer Price Index reported an across-the-board increase of 0.4 percent, which could contribute to additional issues in the government contracting space by causing unanticipated increases in operating costs for government contractors.<sup>121</sup> However, despite this recent decline from record highs, there has been incredible volatility, causing a continuation of the inflation-related problems facing government contracts since 2021.<sup>122</sup>

On December 23, 2022, President Biden signed the FY2023 National Defense Authorization (NDAA) into law, providing potential relief for government contractors collaborating with the Department of Defense (DOD).<sup>123</sup> Section 822, titled “Modification of Contracts to Provide Extraordinary Relief Due to Inflation Impacts,” of FY2023 empowers the DOD to amend or modify eligible contracts if economic inflation alone causes the prime contractor's cost to exceed the contract price.<sup>124</sup> This gives the Secretary of Defense the authority to adjust the price of a firm-fixed-price (FFP) contract when inflation drives the actual cost above the contracted amount.<sup>125</sup> This authority also extends to subcontracts,<sup>126</sup> allowing prime contractors to request contract amendments when covered subcontractors’ costs rise due to inflation.<sup>127</sup> The authority was expected to end on December 31, 2023, but

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<sup>118</sup> Sandeep N. Nandivada, *The End of Chevron Deference: What It Means for Government Contractors*, MORRISON FOERSTER (July 3, 2024), <https://govcon.mofo.com/topics/the-end-of-chevron-deference-what-it-means-for-government-contractors>.

<sup>119</sup> *Id.*

<sup>120</sup> See *Current U.S. Inflation Rates: 2000–2025*, U.S. INFLATION CALCULATOR, <https://www.usinflationcalculator.com/inflation/current-inflation-rates> (last visited Oct. 2, 2025).

<sup>121</sup> See *Consumer Price Index Summary*, BUREAU OF LABOR STATISTICS, <https://www.bls.gov/news.release/cpi.nr0.htm> (Sep. 11, 2025 at 08:30 ET).

<sup>122</sup> See *Current U.S. Inflation Rates: 2000–2025*, U.S. INFLATION CALCULATOR, <https://www.usinflationcalculator.com/inflation/current-inflation-rates> (last visited Oct. 2, 2025).

<sup>123</sup> H.R. 7776, 107th Cong. (2022).

<sup>124</sup> 50 U.S.C. § 1431(b)-(c)(1).

<sup>125</sup> 50 U.S.C. § 1431(c)(2).

<sup>126</sup> *Id.*

<sup>127</sup> See Lyka, *FY23 NDAA: Inflation Relief for DOD Contractors*, PETER WITTS (Mar. 20, 2023), <https://wittscpa.com/fy23-ndaa-inflation-relief-for-DOD-contractors>.

was extended with Section 824.<sup>128</sup> Section 824 extends the inflation relief program until December 31, 2024, and allows DOD contractors to adjust FFP contracts with economic price adjustment consistent with FAR Part 16.203-1 and 16.203-2 (Section 826).<sup>129</sup> Section 826 is titled “Modification of Contracts and Options To Provide Economic Price Adjustments” and empowers agencies to use the contracts adjusted with economic price adjustments when there is concern over stability in labor market conditions.<sup>130</sup> Overall, increasing prices and inflation have exacted a toll on every sector of the economy, including federal contractors, but the government continues to seek solutions.

On December 23, 2024, President Biden signed the FY 2025 NDAA into law.<sup>131</sup> The NDAA authorized \$895.2 billion in funding for the DoD, which was a \$9 billion increase from the previous year.<sup>132</sup> Notable updates include section 815, which requires officers to utilize historical data to determine whether the costs of a subcontract, purchase order, or modification to those costs are reasonable, and section 881, which requires an amendment to the FAR as to whether a waiver granted for a conflict of interest must include written justification and delegation limits.<sup>133</sup>

The FY 2026 National Defense Authorization Act is expected to be finalized before the December recess, though that goal is likely to be affected by the current government shutdown.<sup>134</sup> Both the House and Senate Armed Services Committees have passed their versions of the bill, and the House approved its version on September 10, 2025.<sup>135</sup> However, the Senate did not pass its version before the current shutdown.<sup>136</sup> The FY 2026 NDAA focused on implementing significant changes to the defense acquisition process to hopefully streamline acquisitions and reduce bureaucratic hurdles that cause undue and potentially detrimental delay. While these changes could prove helpful to the efficient procurement of necessary defense goods and services, the impact of the current government shutdown makes the timeline for their ultimate implementation uncertain.

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<sup>128</sup> See National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, 137 Stat. 136 (Dec. 22, 2023).

<sup>129</sup> *Id.*

<sup>130</sup> H.R. 2670, 118th Cong. (2023).

<sup>131</sup> H.R. 5009, 118<sup>th</sup> Cong. (2023).

<sup>132</sup> Chandra Brown, August Gweon, Stephanie Barna, Darby Rourick, Krissy Chapman & Alexandra Bruer, *President Biden Signs National Defense Authorization Act for Fiscal Year 2025* (Jan. 2, 2025), <https://www.insidegovernmentcontracts.com/2025/01/president-biden-signs-the-national-defense-authorization-act-for-fiscal-year-2025/#:~:text=On%20December%2023%2C%202024%2C%20President,and%20Veterans%20Affairs%2C%20among%20others.>

<sup>133</sup> *Id.*

<sup>134</sup> BROWNSTEIN, *FY26 NDAA: Next Steps and Conferencing* (Sep. 24, 2025), <https://www.bhfs.com/insight/fy26-ndaa-next-steps-and-conferencing>.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*