GOVERNMENT CONTRACTING: A BRIEF OVERVIEW OF THE FIELD

SLOANE BUTLER & KATHERINE HENTZ

Executive Summary: Due to its limited capacity, the federal government must obtain supplies, technology, and services from private companies.[1] Almost half of the federal government's discretionary spending goes towards contracts,[2] and federal contract spending increases significantly each year.[3] The government contracts for services ranging from hiring carpet cleaning services, to designing major weapons systems, to producing life-saving vaccines. Fiscal Year 2026 saw a shift in focus towards ensuring "contracts incentivize performance rather than cost inflation" by moving away from cost-reimbursement contracts to defaulting to firm-fixed-price contracts.[4] Foundational elements for the field remain rooted in the separation of powers and administrative law.

I. INTRODUCTION

A government contract is formed when a private vendor contracts with the government to provide goods or services. Congressional statutes and administrative rules govern how these contracts are awarded and managed.[5] The ability to contract is rooted in the power of Congress to dispose of government property, implying a power to obtain property and pay the debts of the United States incurred by governmental acquisition.[6] As a sovereign entity, the federal government can enter into a business contract, thus incurring a debt for services rendered.[7] Federal agencies have 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; the agency does not enjoy sovereign immunity.[8] Only Congress has the power of the purse, so an agency's power to contract has limitations pursuant to Congress's orders, including a prohibition on contracting without

---

[1] *Why Does the Federal Government Use Contractors?*, TRI-FORCE CONSULTING SERVS. INC. (Apr. 10, 2025), https://triforce-inc.com/why-federal-government-uses-contractors ("[T]he use of contractors by the federal government is driven by multiple factors, including cost-efficiency, specialized expertise, flexibility and speed.").
[2] U.S. GOV'T ACCOUNTABILITY OFF., GAO-17-244SP, CONTRACTING DATA ANALYSIS: ASSESSMENT OF GOVERNMENT-WIDE TRENDS 1 (2017).
[3] *U.S. Federal Spending Trends: How Budget Dynamics are Reshaping Policy and Strategy*, BLOOMBERG GOV'T (Oct. 7, 2025), https://about.bgov.com/insights/government-contracting/trends-in-federal-contract-spending/#historical-overview.
[4] Exec. Order No. 14402, 91 Fed. Reg. 24325 (May 5, 2026).
[5] *See e.g.* 48 C.F.R. § 1.101 (2026) (outlining the purpose of the Federal Acquisition Regulations System which codifies and publishes "uniform policies and procedures for acquisition by all executive agencies").
[6] 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 . . . ."); U.S. CONST. art. I, § 8 ("Congress shall have [p]ower . . . to pay the [d]ebts . . . .").
[7] United States v. Tingey, 30 U.S. 115, 122–23 (1831); Pacific Far East Line, Inc., ASBCA No. 7629, 63 BCA ¶ 3835.
[8] 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).

prior Congressional authorization under the Appropriations Clause.[9] 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.[10] An agency may only incur obligations that will be performed within the specific appropriations period set by Congress.[11] The Anti-Deficiency Act[12] further limits agencies by prohibiting contractual obligations in advance of, or in preparation for, Congressionally-provided appropriations.[13] Additionally, agencies can only obligate current FY funds to meet current FY needs, absent a statutory exception.[14] The Buy American Act[15] further limits contracting by generally requiring agencies to procure domestic materials and products.[16]

A. The Procurement Process

The procurement process can take many forms, one of the most common being competitive procurements.[17] In that form, once an agency decides to obtain goods or services and determines that the proposed action does not violate any limitations, the agency articulates specific needs and criteria in a solicitation.[18] Private parties then review the procurement needs and "bid" to fulfill the contract.[19] The agency then uniformly evaluates all bids to fulfill the solicitation against the announced criteria.[20] Once an agency selects a prospective contractor and awards the contract, the agency will announce the winning bid.[21] An unsuccessful bidder can request a debrief that the agency must provide[22] or dispute the

---

[9] 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 the [r]eceipts and [e]xpenditures of all public [m]oney shall be published from time to time."); United States v. Nicoll, 27 F. Cas. 149, 150 (C.C.D.N.Y. 1826) (No. 15,879).

[10] *See* 31 U.S.C. §§ 1301, 1341, 1511–17, 1552; U.S. GOV'T ACCOUNTABILITY OFF., PRINCIPLES OF FEDERAL APPROPRIATIONS LAW 3-9 (4th ed. 2016).

[11] PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, *supra* note 10, at 2-9 (stating that lengths range from definite—either fiscal year or multiple-year—to indefinite).

[12] 31 U.S.C. §§ 1341–42, 1517.

[13] *Id.* § 1341(a)(1)(B).

[14] For more information on exceptions to the bona fide needs rule, see generally U.S. GOV'T ACCOUNTABILITY OFF., PRINCIPLES OF FEDERAL APPROPRIATIONS LAW (3d ed. 2004). *See also* Matter of: Funding of Maint. Contract Extending Beyond Fiscal Year, B-259274, 1996 WL 276377 (Comp. Gen. May 22, 1996).

[15] 41 U.S.C. §§ 8301–8303.

[16] *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 of the Buy American Act).

[17] For a full overview of the procurement process, see L. ELAIN HALCHIN, CONG. RSCH. SERV., RS22536, OVERVIEW OF THE FEDERAL PROCUREMENT PROCESS AND RESOURCES (2023).

[18] The pre-solicitation, solicitation, later award, and sole source notices are placed on the centralized website, sam.gov, although advertisements may be placed elsewhere in addition to that posting. *See Contract Opportunities*, U.S. GEN. SERVS. ADMIN., https://sam.gov/content/opportunities (last visited Oct. 18, 2026) (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); PRINCIPLES OF FEDERAL APPROPRIATIONS, *supra* note 10 (outlining the legal principles of federal fiscal law).

[19] *Contracting Process,* U.S. CTRS. FOR DISEASE CONTROL AND PREVENTION (Sep. 4, 2024), https://www.cdc.gov/contracts/data-research.

[20] HALCHIN, *supra* note 17, at 2.

[21] *Id.*

[22] *What You Need to Know About Debriefings for Government Contracting*, JETCO SOLS.,

contract award in a "bid protest."[23] If an unsuccessful bidder protests a bid, the winning bidder must wait for the resolution of the protest to begin services on the contract.[24]

Businesses can take advantage of certain programs, Acts, and initiatives to increase the chances of winning a contract bid. For example, in 2021 with the Executive Order "Ensuring the Future of America is Made in America by All of America's Workers,"[25] the federal government launched an initiative to emphasize domestic products and services in federal procurement to strengthen the national industrial base and create more American jobs. [26] Additionally, with the 1997 Small Business Reauthorization Act, [27] the federal government aims to award 23% of its contracting money to small businesses.[28] Further, some states, such as Connecticut and New York, also offer special set-aside contracts for women- and minority-owned small businesses.[29]

B. The Dispute Process

Disputes can arise out of anything from new regulations to "broadened notions of due process."[30] Most federal agencies follow processes and authority of the Federal Property and Administrative Services Act,[31] the Office of Federal Procurement Policy Act,[32] and the Federal Acquisition Streamlining Act of 1994.[33] However, the Armed Forces and National Aeronautics and Space Administration follow the Federal Acquisition Regulation (FAR), which established the Civilian Board of Contract Appeals and the Armed Services Board of Contract Appeals.[34]

The Budget and Accounting Act of 1921[35] established the Government Accountability Office (GAO), an administrative body that authors decisions in bid protests and provides advisory opinions.[36] Unsuccessful bidders may protest awards under a request for "reconsideration" at the GAO.[37] An unfavorable GAO decision leaves a

---

https://www.jetcosolutions.com/what-you-need-to-know-about-debriefings-for-government-contracting (last visited Oct. 18, 2026).

[23] *Bid Protests*, U.S. GOV'T ACCOUNTABILITY OFF., https://www.gao.gov/legal/bid-protests (last visited Oct. 18, 2026).

[24] 48 C.F.R. § 33.103(f)(3) (2020).

[25] Exec. Order No. 14005, 86 Fed. Reg. 7475 (Jan. 28, 2021).

[26] *Id.* at 7475–76.

[27] Small Business Reauthorization Act of 1997, Pub. L. No. 105-135, 111 Stat. 2592.

[28] *Id.* § 603(b)(1)(B), 111 Stat. at 2632.

[29] For a list of states that offer these special contracts, see *State Offices for Minority and Women Business Enterprises*, MINORITY BUS. DEV. AGENCY: U.S. DEP'T OF COM., https://www.mbda.gov/page/state-offices-minority-and-women-business-enterprises (last visited Oct. 18, 2026).

[30] *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.

[31] Pub. L. No. 81-152, 63 Stat. 377.

[32] Pub. L. No. 93-400, 88 Stat. 796.

[33] Pub. L. No. 103-355, 108 Stat. 3243.

[34] 48 C.F.R. ch. 61 (2019); 48 C.F.R. ch. 2 (2019).

[35] Pub. L. No. 67-13, 42 Stat. 20.

[36] *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. *Our History at a Glance*, U.S. GOV'T ACCOUNTABILITY OFFICE, https://www.gao.gov/about/what-gao-does/history (last visited Oct. 19, 2026).

[37] Bidders may also appeal through an applicable administrative body, such as the Armed Services Board of

disappointed bidder with two avenues: either appeal to the Board of Contract Appeals or directly file suit in the U.S. Court of Federal Claims (COFC).[38] The Tucker Act[39] granted the COFC jurisdiction over government contract disputes.[40] The COFC will review de novo procurement on appeal from a GAO finding.[41] The bidder may also file protests directly in federal district court.[42] Appealing bidders from either venue may file with the United States Court of Appeals for the Federal Circuit.[43]

Awardees with claims under an awarded contract may also bring said claims.[44] The contractor must initially exhaust administrative procedures by submitting a claim to the agency's contracting officer for a written decision.[45] The contractor may then file the claim in district court and appeal to the Federal Circuit.[46]

II. GOVERNMENT CONTRACTS AND REGULATORY REFORM

A. 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."[47] The order aims to "rapidly reform [the] antiquated defense acquisition processes, with an emphasis on speed, flexibility, and execution."[48] It directed the Secretary of Defense, within sixty days, to submit to the President a plan refining the acquisition framework of the Department of Defense (DOD).[49] The plan must prioritize commercial solutions and Other Transactions Authority agreements, centralize decision making, and eliminate redundant tasks.[50] The order also instructs the DOD to review and alter its instructions, implementation guides, manuals, and regulations to effectively minimize unnecessary regulations.[51] 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,

---

Contract Appeals, based on the jurisdiction of the agency at issue. ARMED SERVICES BOARD OF CONTRACT APPEALS, https://www.asbca.mil (last visited Oct. 19, 2026).

[38] 41 U.S.C. §§ 7104(b)(1), 7107(a)(1); 28 U.S.C. § 1491(b).

[39] Ch. 359, 24 Stat. 505 (1887).

[40] *Id.* §1.

[41] 41 U.S.C. § 7104(b)(4).

[42] 28 U.S.C. § 1491(b)(1); U.S. GEN. ACCT. OFF., BID PROTESTS: CHARACTERISTICS OF CASES FILED IN FEDERAL COURTS 5 (2000).

[43] 41 U.S.C. § 7107(a)(1)(B); 28 U.S.C. § 1295(a)(3), (10).

[44] 41 U.S.C. § 7103(a)(1).

[45] *Id.*

[46] *Id.* § 7104(b)(1).

[47] Exec. Order No. 14265, 90 Fed. Reg. 15621 (Apr. 18, 2025).

[48] *Id.*

[49] *Id.*

[50] Stephanie Barna & Peter Terenzio, *Trump Administration Issues Executive Order Aimed at Modernizing Defense Acquisitions and Spurring Innovation*, CONVINGTON: INSIDE GOVERNMENT CONTRACTS (Apr. 14, 2025), https://www.insidegovernmentcontracts.com/2025/04/trump-administration-issues-executive-order-aimed-at-modernizing-defense-acquisitions-and-spurring-innovation.

[51] Cody Brianna Fisher & Markus Gerhard Speeidel, *Deregulating Federal Procurement: Implications of Three Recent Executive Actions,* MORRISON FOERSTER LLP (Apr. 21, 2025), https://govcon.mofo.com/topics/deregulating-federal-procurement-implications-of-three-recent-executive-actions.

unable to meet key performance parameters, or misaligned with the DOD's mission.[52] 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.[53]

On April 15, 2025, President Trump issued Executive Order 14275, "Restoring Common Sense to Federal Procurement."[54] 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."[55] This executive order implements the largest change to FAR in forty years and will seriously impact government contracts.[56] FAR is a regulation that governs the acquisition of goods and services by the executive branch agencies.[57] 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.[58] 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.[59] The Revolutionary FAR Overhaul ("RFO") is implementing these changes in two phases; first, through the issuance of deviation text by FAR Part and second, through a formal notice and comment rulemaking process.[60] In continued efforts to ease the transition the FAR Council posted "FAR Companion Guides" that covers the currently overhauled FAR Parts.[61]

In response to Executive Orders 14265 and 14275, the DOD announced a similar overhaul of their Defense Federal Acquisition Supplement (DFARS) on December 18, 2025.[62] The overhaul includes two implementation phases. The first phase, beginning February 1, 2026, centers on the issuing class deviations that authorized the DOD to rapidly implement the new FAR overhaul regulations ahead of formal rulemaking.[63] The second phase, beginning June 2026, is a formal notice-and-comment rulemaking process.[64] The second phase includes the publication of new rules in three batches: the first release in June 2026,

---

[52] *Id.*
[53] David S. Black et al., *New Executive Orders Seek to Improve Acquisition in the Defense Industrial Base*, HOLLAND & KNIGHT (Apr. 11, 2025), https://www.hklaw.com/en/insights/publications/2025/04/new-executive-orders-seek-to-improve-acquisition-in-the-defense.
[54] Exec. Order No. 14275, 90 Fed. Reg. 16447 (Apr. 18, 2025).
[55] *Id.*
[56] 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*, FOLEY & LARDNER LLP (Apr. 17, 2025), https://www.foley.com/insights/publications/2025/04/far-contractors-trump-administration-streamline-federal-acquisition-regulation.
[57] DAVID H. CARPENTER, DOMINICK A. FIORENTINO & MATTHEW D. TROUT, CONG. RSCH. SERV., R42826, THE FEDERAL ACQUISITION REGULATION (FAR): ANSWERS TO FREQUENTLY ASKED QUESTIONS (2025).
[58] *Id.*
[59] Toomey & Murray, *supra* note 56.
[60] *FAR Overhaul Class Deviations*, WILEY REIN LLP (last updated Apr. 17, 2026), https://www.wiley.law/FAR-Overhaul-Class-Deviations.
[61] *Id.*
[62] *DFARS Overhaul Class Deviations*, WILEY REIN LLP (last updated Sep. 18, 2026), https://www.wiley.law/DFARS-Overhaul-Class-Deviations.
[63] *Id.*
[64] *Id.*

the second release in September 2026, and the final release in late 2026 or early 2027.[65] In accordance with Executive Orders 14265 and 14275, the content of the first two releases reflects a noticeable shift towards minimizing compliance barriers for commercial contracts and reducing non-statutory rules from procurement procedures.[66]

On April 16, 2025, President Trump issued another Executive Order, Number 14271, aimed at government contracts titled "Ensuring Commercial, Cost-Effective Solutions in Federal Contracting."[67] The order directs government agencies to "procure commercially available products and services . . . to the maximum extent practicable."[68] 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.[69] Once a review is complete, the contracting officer must submit an application requesting approval of the non-commercial product or service.[70] Because of this new application requirement for the approval of non-commercial goods, companies that primarily offer non-commercial products or services could experience delays with their contracts.[71] On the other hand, companies with commercially available products or services could benefit from the order.[72]

In his continued reform efforts, President Trump issued Executive Order 14402, "Promoting Efficiency, Accountability, and Performance in Federal Contracting."[73] The Executive Order targeted the use of "cost-reimbursement" models, which are contracts that provide for payment of allowable incurred costs and establish an estimate total cost and ceiling the contractor may not exceed.[74] The order targets this type of contract, stating the necessity of cost-reimbursement contracts is limited and attempting to ensure that contracts emphasize "incentive performance" over cost-inflation.[75] The Executive Order dictated that firm-fixed-price (FFP) contracts will be the default contracting model over cost-reimbursement.[76] This reflects the Administration's deep interest in cost-cutting and tightening the budget to the detriment of businesses who favor more flexible contracting

---

[65] *Id.*
[66] Nick Wakeman, *FAR Overhaul Targets Commercial Buying and Negotiations in Newest Rewrite*, WASH. TECH. (Sep. 18, 2026), https://www.washingtontechnology.com/contracts/2026/09/far-overhaul-targets-commercial-buying-and-negotiations-newest-rewrite/416084/?oref=wt-homepage-river.
[67] Exec. Order No. 14271, 90 Fed. Reg. 16433 (Apr. 18, 2025).
[68] *Id.*
[69] *Id.*
[70] *Id.*
[71] Mitchell D. Dolman & Adam A. Bartolanzo, *New Executive Order Calls for Maximizing Cost-Effective Commercial Solutions in Government Contracting*, MILES & STOCKBRIDGE (Apr. 23, 2025), https://www.mslaw.com/mslaw-blog/new-executive-order-calls-for-maximizing-cost-effective-commercial-solutions-in-government-contracting.
[72] Beth S. Gotthelf, Derek Mullins & Kristina Pedersen, *New Executive Order Seeks to Prioritize Commercial Items in Federal Procurement*, BUTZEL LONG (Apr. 29, 2025), https://www.butzel.com/alert-new-executive-order-seeks-to-prioritize-commercial-items-in-federal-procurement.
[73] Exec. Order No. 14402, 91 Fed. Reg. 24325 (May 5, 2026).
[74] *Id.*; Bret S. Wacker, Ronald D. Sullivan, J. Chris White, Gabrielle Long & Colleen Jarrot, *New Executive Order mandates Fixed-Price Federal Contracts: What Contractors Need to Know*, CLARK HILL (May 20, 2026) https://www.clarkhill.com/news-events/news/federal-contracting-executive-order-fixed-price-2026.
[75] 91 Fed. Reg. 24325
[76] *Id.*

structures.[77] Now, a contracting officer must explain their decision to use a non-fixed price contract and get approved contracts valued above a certain agency dependent value.[78] Additionally, the Administration, by mandating the FFP model, has shifted the financial and performance risk away from the government onto the contractor.[79]

Further, the Trump Administration has aggressively targeted diversity, equity, and inclusion (DEI) efforts in government contracting, looking to eliminate racial discrimination by ending "DEI activities."[80] On April 30, 2026, President Trump issued Executive Order 14398, "Addressing DEI Discrimination By Federal Contractors."[81] The Order targets "racially discriminatory DEI activities" such as disparate treatment based on race in employment, contracting, program participation, and allocations of entity resources.[82] Program participation specifically targets any membership or participation in training, mentoring, or leadership programs and education opportunities.[83] The Order also directs federal contractors not to engage in "DEI activities," threatening debarment and contract termination over noncompliance.[84]

III. GOVERNMENT CONTRACTS IN THE NEWS

A. 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.*,[85] on whether a government statute permitted an agency's action.[86] Under *Chevron*, courts gave agencies deference in interpreting the construction of statutes.[87] In *Loper Bright Enterprises v. Raimondo*,[88] the Court concluded that courts would exercise independent judgment to determine whether an agency's action accords with the statute.[89] To determine the best interpretation of a statute, courts must now turn to precedent set in *Skidmore v. Swift & Co.*,[90] which allows them to value an agency's informed interpretation of a statute without necessarily it being the controlling interpretation.[91] It is uncertain how courts should give "respect" to the "informed decision

[77] See Wacker et al., *supra* note 74.
[78] Seth Cowell, Mark Bass, Mark R. Fitzgerald & Michael McGinley, *Fixing the Federal Acquisition System: Firm-Fixed-Price Contracting the New Norm*, WILSON SONSINI (May 15, 2026). https://www.wsgr.com/en/insights/fixing-the-federal-acquisition-system-firm-fixed-price-contracting-the-new-norm.html.
[79] See Wacker et al., supra note 74.
[80] Meredith Gregston & Dawn Stern, *New Executive Order on DEI Discrimination by Federal Contractors: Key Considerations*, DLA PIPER GENIE (Apr. 2, 2026).
[81] Exec. Order No. 14398, 91 Fed. Reg. 16147 (Mar. 31, 2026).
[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] 467 U.S. 837 (1984).
[86] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412–13 (2024).
[87] Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).
[88] 603 U.S. 369 (2024).
[89] *Id.* at 413.
[90] 323 U.S. 134 (1944).
[91] *Loper Bright*, 603 U.S. at 476 (Kagan, J., dissenting) ("[T]he majority makes clear that what is usually called *Skidmore* deference continues to apply.").

judgment of the Executive Branch" and how this differs from courts deferring to agencies for permissible interpretations of the law.[92]

This decision could mean less regulatory whiplash for government contractors. Specifically, the regulation of government contractors by the Federal Acquisition Regulatory (FAR) Council could be revised.[93] 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.[94] Agencies may also take steps to avoid litigation by not putting forward rules to interpret statutes, which could mean that ambiguous statutory clauses end up in government contracts.[95] Consequently, government contractors may be in a position to interpret these terms without the benefit of the agency. Thus, the regulatory environment post-*Loper Bright* is one of uncertainty.

The Federal Circuit has long held that courts lean on commercial contract principles to interpret contractual ambiguities.[96] 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.[97] Consequently, courts post-*Loper Bright* might be looking more to the Federal Circuit's application of traditional contract interpretation to contractual ambiguities.[98]

Since *Loper Bright*, courts have not refrained from rejecting agency interpretations of statutes. In *QED Group LLC v. United States*,[99] the Court of Federal Claims ruled that it did not have to consider whether it had to defer to the General Service Administration's (GSA) interpretation of a statutory provision concerning waivers from the Director of National Intelligence (DNI).[100] QED Group had received a waiver from the DNI to support a USAID contract in Egypt, as required by the FY2019 National Defense Authorization Act[101] (NDAA) for companies who use Chinese-produced telecommunications equipment or services.[102] As part of the waiver requirements, QED Group disclosed in their proposal to GSA that it was using Chinese equipment, which led GSA to exclude QED Group from further competition.[103] When QED Group protested its disqualification, the court found that GSA made an erroneous

---

[92] *See id.*
[93] 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.
[94] 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 & Dry Dock Co. v. Garrett, 6 F.3d 1547, 1552 (Fed. Cir. 1993).
[95] Black, *supra* note 93.
[96] 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 (citing Turner Const. Co. v. United States, 367 F.3d 1319, 1321 (Fed. Cir. 2004)).
[97] *Id.*
[98] *Id.*
[99] 175 Fed. Cl. 349 (2025).
[100] *Id.* at 358.
[101] Pub. L. No. 115-232, 132 Stat. 1636.
[102] *QED Grp.*, 175 Fed. Cl. at 354–355.
[103] *Id.*

interpretation of the statutory waiver requirement when it excluded QED Group.[104] The government argued that GSA should receive deference in interpreting waiver rules and provisions since it has a large role in government contracting, but the court held that the majority of rules concerning DNI waivers were found in the statute, not the FAR, and therefore not subject to GSA's deference.[105] This decision signals that while agency deference is still preferred for FAR interpretation, an agency's understanding of statutory provisions can certainly be challenged in court.

B. Inflation's Impact and National Defense Authorization

For twelve months ending in August 2025, the annual inflation rate was 2.9%.[106] Additionally, the Consumer Price Index reported an across-the-board increase of 0.4%, which could contribute to additional issues in the government contracting space by causing unanticipated increases in operating costs for government contractors.[107] 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.[108]

On December 23, 2022, President Biden signed the FY2023 National Defense Authorization[109] (NDAA) into law, providing potential relief for government contractors collaborating with the DOD.[110] 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.[111] 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.[112] This authority also extends to subcontracts,[113] allowing prime contractors to request contract amendments when covered subcontractors' costs rise due to inflation.[114] The authority was expected to end on December 31, 2023, but was extended by section 824.[115] Section 824 extended the inflation relief program until December 31, 2024, and allowed DOD contractors to adjust FFP contracts with economic price adjustment consistent with FAR Parts 16.203-1 and 16.203-2.[116] Section 826 is titled

---

[104] *Id.* at 358.
[105] *Id.*
[106] *See Current U.S. Inflation Rates: 2000–2026,* U.S. INFLATION CALCULATOR, https://www.usinflationcalculator.com/inflation/current-inflation-rates (last visited Oct. 19, 2026).
[107] *See Consumer Price Index Summary*, U.S. BUREAU OF LAB. STAT., https://www.bls.gov/news.release/cpi.nr0.htm (Sep. 11, 2025 at 08:30 ET).
[108] *See Current U.S. Inflation Rates: 2000–2026,* U.S. INFLATION CALCULATOR, *https://www.usinflationcalculator.com/inflation/current-inflation-rates* (last visited Oct. 19, 2026).
[109] Pub. L. No. 117-263, 136 Stat. 2395.
[110] *Id.* § 822, 136 Stat. at 2710.
[111] 50 U.S.C. § 1431(b)-(c)(1).
[112] *Id.* § 1431(c)(2).
[113] *Id.*
[114] *See* Lyka, *FY23 NDAA: Inflation Relief for DOD Contractors*, PETER WITTS (Mar. 20, 2023), https://wittscpa.com/fy23-ndaa-inflation-relief-for-DOD-contractors.
[115] *See* National Defense Authorization Act for Fiscal Year 2024, Pub. L. No. 118-31, § 824, 137 Stat. 136, 332 (2023).
[116] *Id.*; § 826(a), 137 Stat. at 335.

"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.[117] 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 FY2025 NDAA into law.[118] The NDAA authorized $895.2 billion in funding for the DOD, a $9 billion increase from the previous year.[119] 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.[120]

On December 9, 2025, President Trump signed the FY 2026 National Defense Authorization Act[121] into law, which significantly changed the defense acquisition process to streamline acquisitions and reduce bureaucratic hurdles that cause undue and potentially detrimental delay.[122] Notably, section 811 repealed 75 sections of prior NDAAs concerning reporting mandates, pilot programs, and additional requirements and limitations to reduce administrative complexity.[123] Section 812 also aims to enhance efficiency in defense acquisition by changing acquisition criteria to require "best value" rather than "full and open competition."[124] In relation to section 812, section 1801 emphasizes realigning the defense acquisition system away from lowest-price source selection and towards rapid procurement that prioritizes lifecycle and sustainment costs.[125] Overall, the FY2026 NDAA made extensive changes to acquisition and procurement policy, signaling an era of increased legislative activity concerning acquisition reform.[126]

---

[117] § 826, 137 Stat. at 335.
[118] Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159, 138 Stat. 1773 (2024).
[119] 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.
[120] *Id.*
[121] Pub. L. No. 119-60, 139 Stat. 718 (2025).
[122] Donald J. Trump, *Statement by the President*, THE WHITE HOUSE (Dec. 18, 2025), https://www.whitehouse.gov/briefings-statements/2025/12/statement-by-the-president-7598/; *FY26 NDAA: Next Steps and Conferencing,* BROWNSTEIN HYATT FARBER SCHRECK, LLP (Sep. 24, 2025), https://www.bhfs.com/insight/fy26-ndaa-next-steps-and-conferencing.
[123] National Defense Authorization Act for Fiscal Year 2026, Pub. L. No. 119-60, § 811, 139 Stat. 718, 948 (2023); Melissa P. Prusock, et al., *Comprehensive Review of the Fiscal Year 2026 National Defense Authorization Act's Substantial Impact on Federal Procurement Law***,** GREENBERG TRAURIG (Feb. 2026), https://www.gtlaw.com/en/insights/2026/2/fy2026ndaa/fy-2026-ndaa-the-substantial-impact-of-the-fiscal-year-2026-national-defense-authorization-act-on-federal-procurement-law.
[124] Prusock et al., *supra* note 123.
[125] *Id.*
[126] *Id.*