2025 Government Contracts Year in Review

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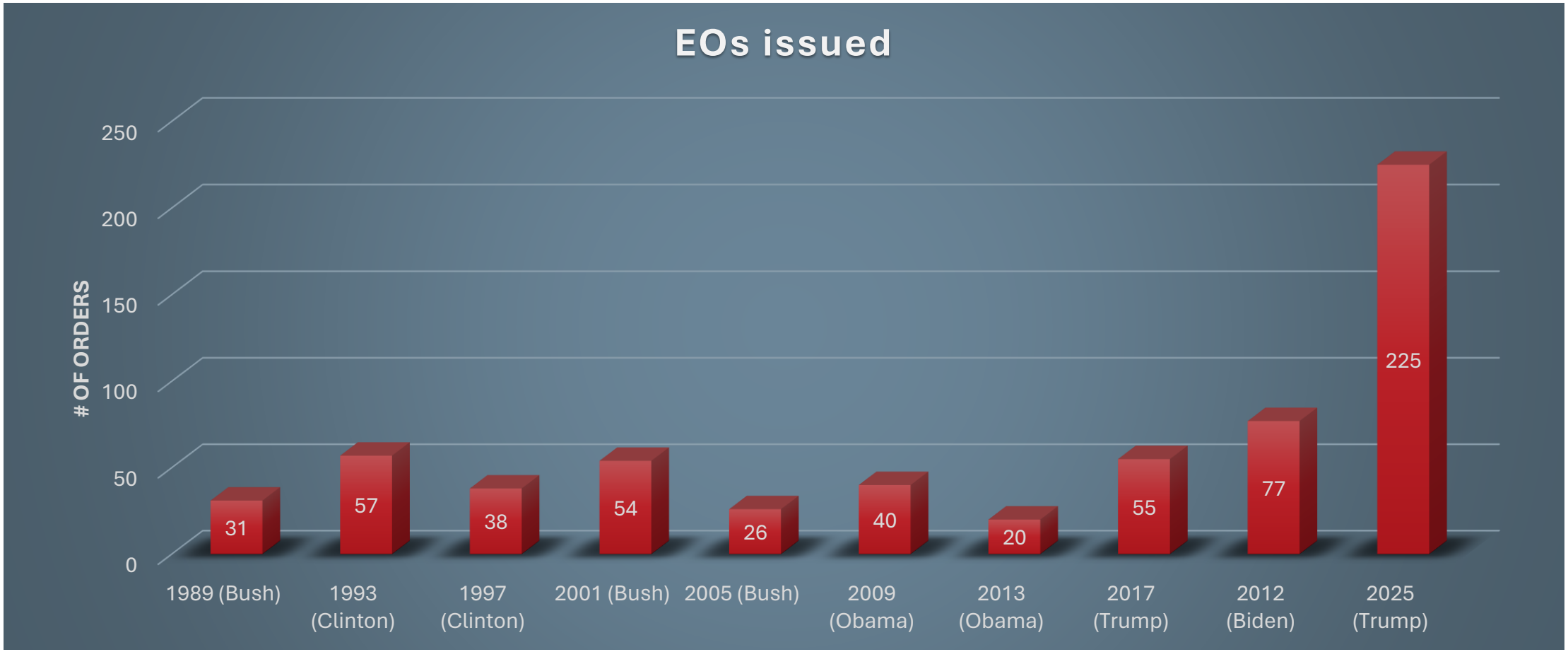
Outline

I. Laws and Regulations
   A. Executive Orders
   B. Regulations
   C. Revolutionary FAR Overhaul
   D. Cybersecurity
   E. AI Policy
   F. Contract Consolidation
   G. FY2026 NDAA
   H. Other Statutes
II. Cases
   A. Protests
   B. Other Cases

Laws and Regulations

Executive Orders

Executive Orders in Context

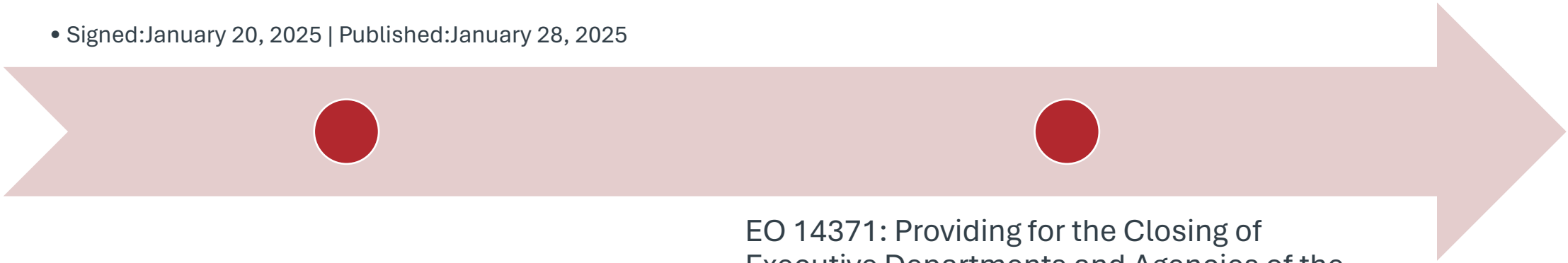


EOs issued in 2025

EOs issued in the current Administration address a wide range of issues, including many targeted at Federal Award recipients, including specific orders related to Procurement Contracts, Grants and OTAs

EO 14147: Ending the Weaponization of the Federal Government

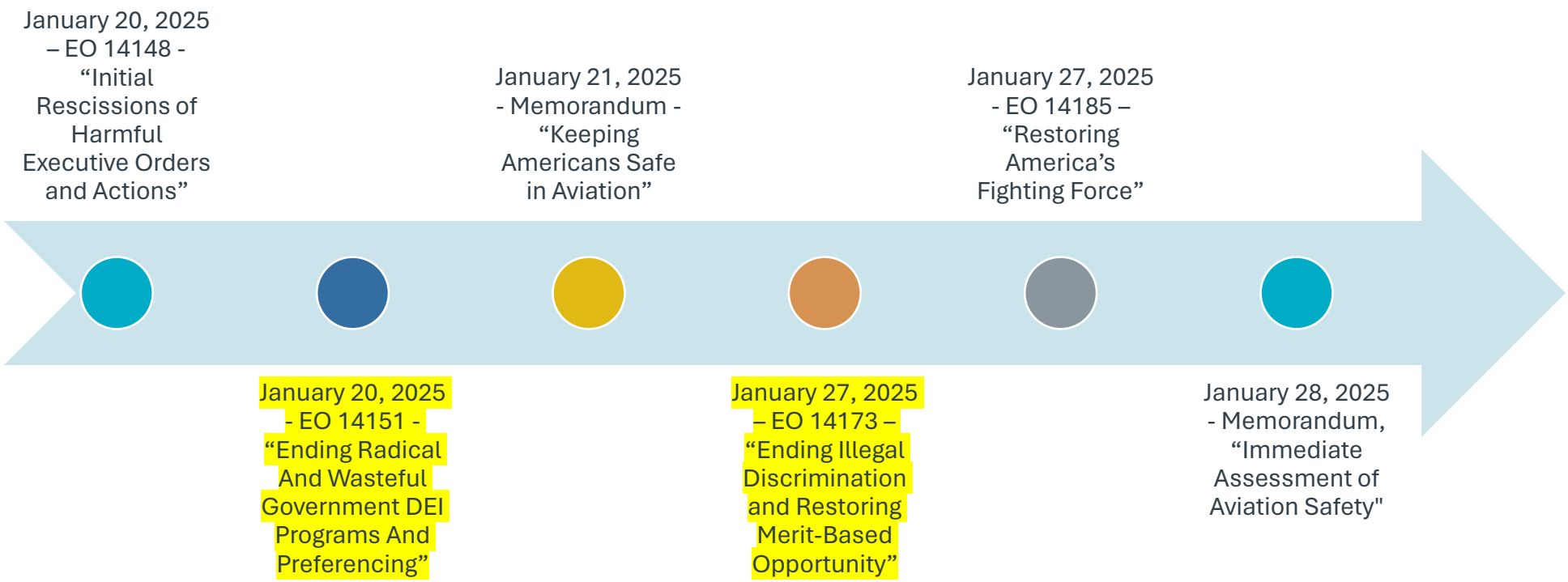
- Signed:January 20, 2025 | Published:January 28, 2025



EO 14371: Providing for the Closing of Executive Departments and Agencies of the Federal Government on December 24, 2025, and December 26, 2025

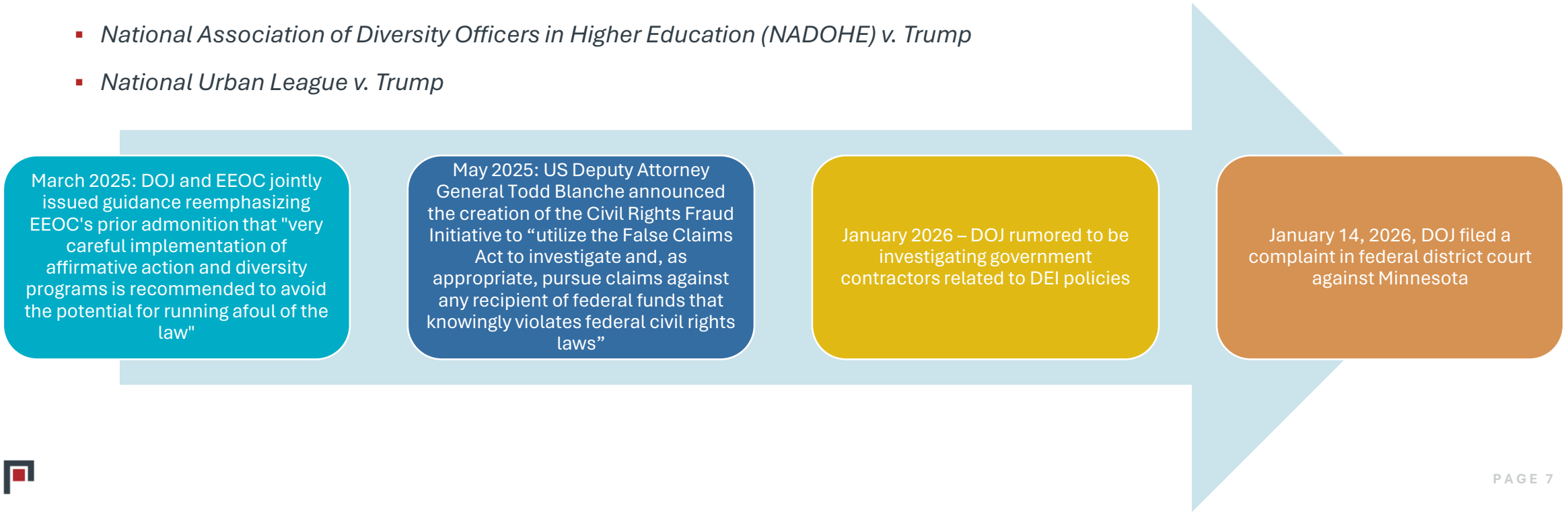
- Signed: December 18, 2025 | Published:December 23, 2025

Diversity, Equity and Inclusion (DEI) – Sample Executive Actions January 2025



DEI Initiatives – Legal Challenges & Implementation

- There are over 20 active litigation actions in federal court related to DEI issues
- A few key 2025 cases:
  - NIH DEI Grant Terminations*: National Institutes of Health v. American Public Health Association*
  - EO 14173 | EO 14151:
    - *Chicago Women in Trades v. Trump*
    - *National Association of Diversity Officers in Higher Education (NADOHE) v. Trump*
    - *National Urban League v. Trump*



EO 14169, Reevaluating and Realigning United States Foreign Aid

It is the policy of United States that no further United States foreign assistance shall be disbursed in a manner that is not fully aligned with the foreign policy of the President of the United States.

Paused foreign development assistance for assessment of programmatic efficiencies and consistency with United States foreign policy for 90 days

Required each agency to review foreign assistance programs and make determinations regarding whether to continue them

AIDS Vaccine Advocacy Coalition v. United States Department of State, Case No. 1:25-cv-0400

EO 14192, Unleashing Prosperity Through Deregulation

Issued Jan. 31, 2025

10:1 deregulation initiative - "whenever an executive department or agency (agency) publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least 10 existing regulations to be repealed."

Incremental Cost for FY 2025 is to be "significantly less than zero"

Similar to Executive Order 13771, "Reducing Regulation and Controlling Regulatory Costs," issued on February 3, 2017, which called for a 2:1 repeal of regulations

EO 14192 FY 2025 Final Accounting

In the first eight months of the Administration, agencies have far exceeded the 10 for 1 requirement

Regulations eliminated in 2025 will save about $211.8 billion in present and future regulatory costs across the government.

- 129 to 1: Agencies issued 646 deregulatory actions and 5 significant regulatory actions.
  - **43 to 1: Within these results, Agencies issued 218 deregulatory actions that delete, modify, or otherwise refine the Code of Federal Regulations**

EO 14332, Improving Oversight of Federal Grantmaking

Issued August 7 , 2025

Applies to Discretionary Grants (not block grants or statutorily-set grants)

Establishes a formal process for review and approval of funding announcements and grant awards to ensure they promote the Administration's policies

Preference provided to grant recipients with lower Indirect Cost Rates

Add standardized T4C clause to Uniform Guidance

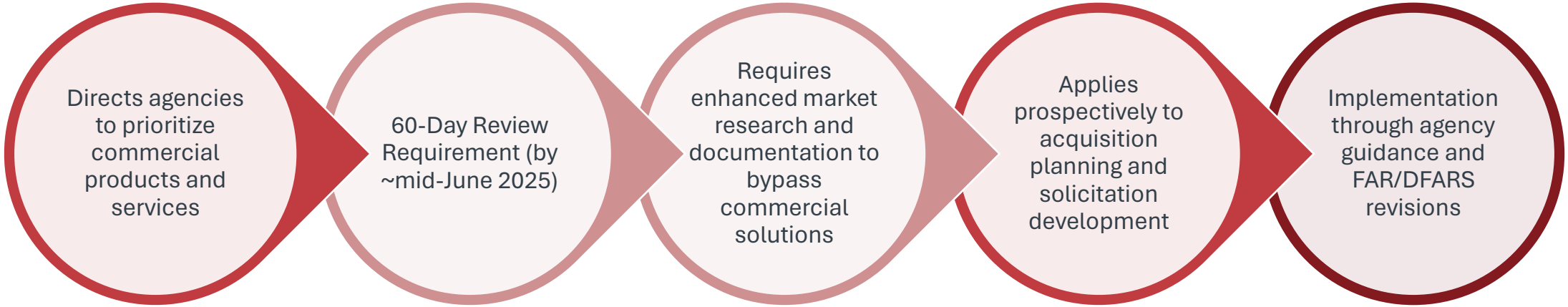
Provide greater control regarding Grant Drawdown

Prioritize awards to "Gold Standard Science" institutions (re: EO 14303)

EO 14268, Reforming Foreign Defense Sales to Improve Speed and Accountability

- On April 9, 2025, President Trump issued an Executive Order (EO) titled “Reforming Foreign Defense Sales to Improve Speed and Accountability.”
- EO aims to reform the foreign defense sales system, which encompasses U.S. sales of defense products and services to foreign governments through both Foreign Military Sales and Direct Commercial Sales.
- Lays out policy goals including (1) improving accountability and transparency in foreign defenses sale systems; (2) reducing rules and regulations for foreign defense sales and transfer cases; and (3) increasing collaboration with and revitalizing the Defense Industrial Base.
- In late 2025, the DoD moved the Defense Security Cooperation Agency and Defense Technology Security Administration under the Under Secretary for Acquisition and Sustainment.
- This change consolidates FMS and Direct Commercial Sales under a single organization responsible for end-to-end planning, contracting, and production.

EO 14271 - Ensuring Commercial, Cost-Effective Solutions



- Must avoid custom or government-unique solutions unless clearly justified.

- Agencies must review all pending solicitations, pre-solicitations, awards, and sole-source actions involving non-commercial items.
- Contracting officers must prepare written justifications showing why commercial options are not suitable, supported by market research and price analysis.

- Future non-commercial solicitations require **advance written approval** by senior procurement officials (with potential OMB involvement).

- **Within 120 days of the EO (by ~August 2025) and annually thereafter**, agencies must report to OMB on compliance and progress implementing commercial-first procurement practices.

E.O. 14265, *Modernizing Defense Acquisitions*

Directs DoD to buy faster, reduce bureaucracy, and favor commercial and innovative solutions.

- Explicit mandate to strengthen the defense industrial base by rewarding speed, execution, and innovation.

Implementation Timeline (2025)

- ~June (60 days): DoD acquisition reform plan – fewer approval layers; greater use of commercial items, OTAs, and adaptive pathways.
- ~July (90 days): Review of all Major Defense Acquisition Programs (MDAPs); programs ≥15% over cost or behind schedule at risk.
- ~Aug–Oct (120–180 days): Workforce incentives and requirements (JCIDS) streamlined to shorten timelines and reduce DoD-unique rules.

Implications for Contractors

- Increased opportunity for commercial, dual-use, and agile offerings.
- Elevated risk for slow-moving, cost-challenged, or heavily customized programs.
- Greater likelihood of program restructuring, recompetes, or terminations.

Applies across defense acquisition programs; phased implementation expected.

Program- & Sector-Specific Executive Orders

EO 14186 — *The Iron Dome for America*	EO 14269 — *Restoring America's Maritime Dominance*	EO 14307 — *Unleashing American Drone Dominance*	EO 14369 — *Ensuring American Space Superiority*
▪ Directs creation of a comprehensive U.S. homeland missile defense shield against ballistic, hypersonic, cruise missile, and aerial threats. ▪ Requires DoD to develop a reference architecture and implementation plan for a layered defense system. ▪ Emphasizes secure supply chains and allied cooperation in missile defense.	▪ Launches a government-wide effort to rebuild U.S. shipbuilding, ports, and maritime supply chains. ▪ Directs interagency strategies to address industrial capacity, workforce shortages, and investment gaps. ▪ Seeks to reduce reliance on foreign maritime capabilities and strengthen maritime national security.	▪ Establishes policy to accelerate U.S. leadership in drones and advanced air mobility. ▪ Directs regulatory streamlining to enable routine, scalable commercial and government drone operations. ▪ Prioritizes U.S.-manufactured drones for domestic use, defense procurement, and export.	▪ Sets national policy to maintain U.S. leadership in space security, exploration, and commercialization. ▪ Directs accelerated development of resilient national security space capabilities. ▪ Promotes a strong commercial space industrial base through streamlined acquisition and partnerships.
Jan. 27, 2025	*Apr. 9, 2025*	*June 6, 2025*	*Dec. 18, 2025*

Laws and Regulations

New Rules

FAR Rerepresentation of Size and Socioeconomic Status

Effective: 1/17/2025

- Revises small business size recertification requirements and task order set-aside eligibility after an M&A event.
  - Change-of-control events that trigger a size recertification may preclude access to future set-aside task orders or options on restricted MACs
- Mandates that offerors rerepresent their small business size and socioeconomic status at the time of offer when competing for set-aside task/delivery orders on multiple-award contracts (MACs) and for certain set-asides on MACs with a different socioeconomic requirement.
- Key Effective Dates
  - January 17, 2025: The rule became effective, triggering rerepresentation requirements at the order level for covered orders.
  - January 17, 2026: A delayed implementation date for the portion of the rule that would make contractors ineligible for future set-aside task orders or options on restricted MACs after a disqualifying size recertification due to merger/acquisition/sale. Until that date, contracting officers could continue to apply the pre-existing eligibility regime for those multiple-award contracts.

Final Rule

90 FR 517

Published Jan. 3, 2025

Implications for Size Status Change Post M&A

Issue	Before Jan. 17, 2025 (Old Rule)	Jan. 17, 2025 – Jan. 16, 2026 (Initial Implementation)	After Jan. 17, 2026 (Full Implementation)
Eligibility for set-aside task orders on small business MACs after M&A	Contractor that recertifies as other than small due to M&A may continue competing for set-aside task orders and options for the life of the MAC.	Contractor that recertifies as other than small may continue competing for set-aside task orders and options.	Contractor that recertifies as other than small becomes ineligible for future set-aside task orders and options on restricted small business MACs.
Order-level size/status rerepresentation	Generally not required at the task-order level (absent specific solicitation language).	Required for covered set-aside task orders, but loss of size status does not yet bar eligibility on restricted MACs.	Required, and loss of size/status is disqualifying for future set-aside task orders on restricted MACs.
M&A timing and structuring	M&A generally does not impair MAC task-order eligibility, reducing deal friction.	Strong incentive to transact before Jan. 17, 2026 to preserve near-term MAC task-order access.	Deal structures and timing must account for immediate loss of set-aside MAC task-order eligibility.
Agency small business credit	Agencies may award task orders but may not receive small business credit after size change.	Same as old rule – awards permitted but credit no longer available.	Ineligibility removes contractor from set-aside pool; agencies may not award further set-asides.

Clarification of System for Award Management Preaward Registration Requirements

90 FR 38206

FINAL RULE

FAR 52.204-7

Effective: 8/7/2025

Adopts November 2024 Interim Rule as Final

Revises solicitation provision at FAR 52.204-7(b)(1) in response to recent bid protest decisions

Updates instructions for registration in SAM and "corrects an inconsistency" involving registration timing requirements

- Phrasing of previous FAR 52.204-7(b)(1) language could be interpreted as levying a requirement for offerors to maintain a **continuous, uninterrupted**, registration during the entirety of the pre-award process:
  - *"An Offeror is required to be registered in SAM when submitting an offer or quotation, **and shall continue to be registered until time of award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement** resulting from this solicitation"*
- This language was pivotal in recent bid protest decisions at both GAO and the Court of Federal Claims, which highlighted FAR 52.204-7(b)(1) as requiring an offeror to be registered at the point of offer submission and maintain that registration through contract award
- Clarifies that the offeror must be registered **at time of offer submission and at time of contract award but NOT** at every moment in between

FAR: Improving Consistency Between Procurement and Nonprocurement Procedures on Suspension and Debarment

- Previously there were separate suspension and debarment regulatory systems: (1) FAR for procurements; and 2) Nonprocurement Common Rule (NCR) for grants, cooperative agreements, contracts of assistance, loans, and loan guarantees.
- Final rule aligns these two systems (in certain circumstances), and incorporates existing practices within the suspension and debarment systems that are not currently in the FAR.
- Includes new and refined definitions, communication procedures, and timing requirements.
- FAR Council declined to revise the FAR to make proposed debarment non-exclusionary as it is under the NCR.

Effective: 1/17/2025

Civil Monetary Penalty Inflation Adjustment

- DoD Final Rule, January 15, 2025, implements Section 865 of the FY2024 NDAA
- Final rule adjusts each of its statutory civil monetary penalties to account for inflation.
- The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), requires the head of each agency to adjust for inflation its CMP levels in effect as of November 2, 2015, under a revised methodology that was effective for 2016 and for each year thereafter.

Effective: 1/17/2025

FAR: List of Domestically Non-available Articles

- FAR Final Rule, May 12, 2025, implements requirements related to Section 9 of EO 14005.
- Revises the list of domestically nonavailable articles under the Buy American statute and implements requirements related to making future changes to the list.
- The current list of articles identified in FAR 25.104(a) is a wide-ranging mix of natural resources, compounds, materials, and other items of supply.
- The OMB Director, through the Administrator of OFPP, is now required to review the proposed nonavailability list in consultation with the Secretary of Commerce and the Made in America Director to determine whether there is a reasonable basis to conclude that materials are not mined, produced, or manufactured in the United States.

Effective: 1/17/2025

FAR: Preventing Organizational Conflicts of Interest in Federal Acquisition

- FAR Proposed Rule, January 15, 2025, to implement a statutory mandate from the "Preventing Organizational Conflicts of Interest in Federal Acquisition Act."
- The proposed rule creates a new FAR subpart 3.12, Organizational Conflicts of Interest, moving the coverage from FAR Part 9 (contractor qualifications) to FAR Part 3 (contractor business practices).
- The proposed rule expands the definition of OCI and includes other definitional updates and additional defined terms, such as "Firewall."
- The proposed rule identifies five different approaches agencies may take concerning OCI issues: (1) Avoidance; (2) Limitations on Future Contracting; (3) Mitigation; (4) Acceptance of OCI After Risk Evaluation; or (5) a combination of approaches.

Ending Procurement and Forced Use of Paper Straws

- FAR Proposed Rule, July 21, 2025, to implement EO 14208, Ending Procurement and Forced Use of Paper Straws.
- The proposed rule would add a minimum Government performance requirement for straws to be procured by agencies or provided for use in agency facilities under Government contracts.
- The proposed rule would require an offeror to represent that it (1) does not have policies promoting the use of paper straws or penalizing the use of plastic straws, (2) will not provide paper straws in performance of the contract, and (3) any straws provided by the offeror in performance of this contract will have the strength and durability of plastic straws.
- This provision is proposed to be included in the list of provisions applicable to the acquisition of commercial products and commercial services.

Withdrawn Rules

- 90 FR 1404, Pay Equity and Transparency in Federal Contracting (FAR)
- 90 FR 2663, Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk (FAR)
- 90 FR 24773, FAR Case 2023-011, Small Business Participation on Certain Multiple Award Contracts (FAR – Proposed then W/D)
- 90 FR 3761, Protests of Orders Under Certain Multiple-Award Contracts (FAR – Proposed then W/D)
- 90 FR 24774, Small Business Innovation Research and Technology Transfer Programs (FAR)
- 90 FR 33912, 8(a) Program (DFARS Case 2024-D025) (DFARS)
- 90 FR 33911, Public Access to Results of Federally Funded Research (DFARS Case 2020-D028) (DFARS)

Laws and Regulations

Revolutionary FAR Overhaul

Revolutionary FAR Overhaul – The Basics

FAR Overhaul is a top-to-bottom rewrite of the Federal Acquisition Regulation

Driven by E.O. 14275, *Restoring Common Sense to Federal Procurement* , Apr. 15, 2025

Directs the FAR Council to comprehensively overhaul the FAR to eliminate unnecessary complexity, streamline acquisition, and reduce regulatory burden on both agencies and industry.

Emphasizes commercial solutions preference, reduced duplication, and risk-based acquisition across the federal government.

Focus areas include consolidation of clauses, elimination of duplicative requirements, clearer language, and expanded use of commercial acquisition authorities.

Removing non-statutory provisions and relocating them to discretionary “buying guides”

Revolutionary FAR Overhaul – Implementation

- Incremental reissuance of individual FAR Parts, not a single rewrite.
- Agencies are implementing RFO Parts through interim FAR deviations while final FAR text is pending.
- Agencies are operating under a mixed regime: legacy FAR + new RFO Parts + agency deviations
- Near-term complexity persists due to overlapping FAR versions and agency practices.
- Interpretive uncertainty expected until case law develops.

Revolutionary FAR Overhaul (RFO)

Restoring Common Sense to Federal Procurement

Under the President's Executive Order, ***Restoring Common Sense to Federal Procurement***, the Federal government is undertaking the first-ever comprehensive overhaul of the FAR.

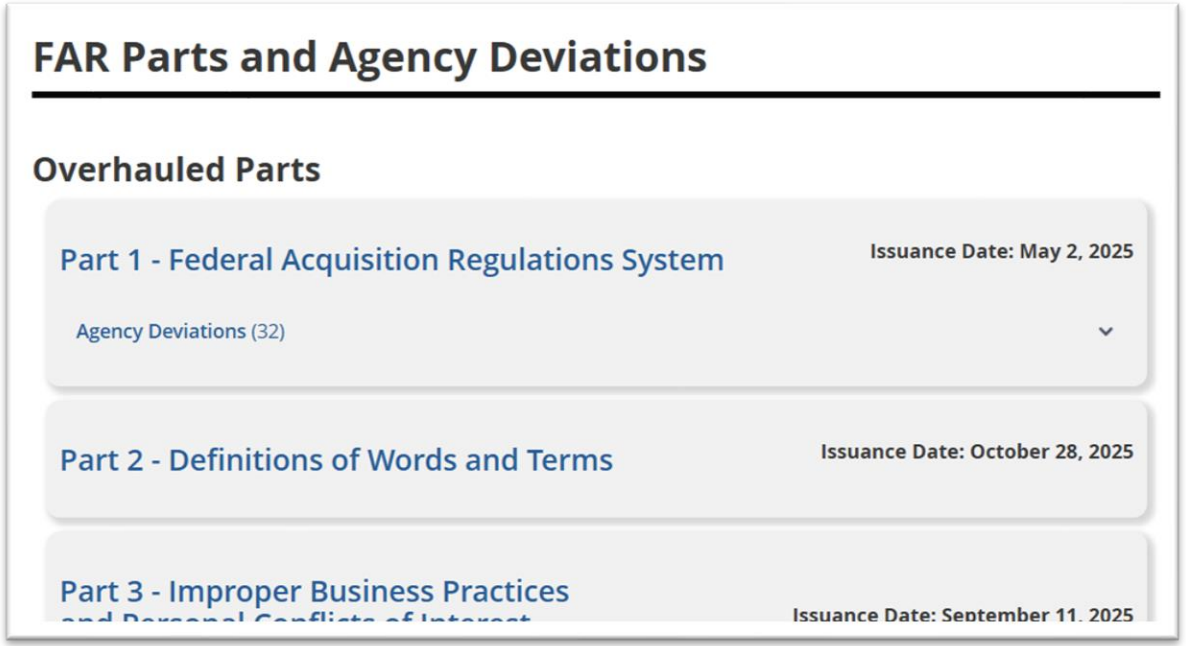
Led by the Office of Federal Procurement Policy (OFPP) and the Federal Acquisition Regulatory Council (FAR Council), this initiative will return the FAR to its statutory roots, rewrite it in plain language, and remove most non-statutory rules. In addition, non-regulatory buying guides will provide practical strategies grounded in common sense while remaining outside the FAR.

The goal is clear: faster acquisitions, greater competition, and better results.

Quick Access to Key RFO Resources

PARTS AND DEVIATIONS

Access the definitive list of overhauled parts and agency deviations



FAR Parts and Agency Deviations

Overhauled Parts

Part 1 - Federal Acquisition Regulations System — Issuance Date: May 2, 2025

Agency Deviations (32)

Part 2 - Definitions of Words and Terms — Issuance Date: October 28, 2025

Part 3 - Improper Business Practices and Personal Conflicts of Interest — Issuance Date: September 11, 2025

https://www.acquisition.gov/far-overhaul

Revolutionary FAR Overhaul

Agency Implementation & Deviation Landscape

- As of October 28, 2025 (yes, during the shutdown!), all “Overhauled Parts” of the FAR have been issued.
- FAR Council guidance instructs agencies to “issue agency-specific class deviations within 30 days after the Council’s class deviation text is released on the RFO website DoD issued class deviations to align DFARS with revised FAR Parts.”
- Each RFO Part currently has between 17 and 32 agencies that have implemented the Part via class deviation.
- Agencies are also beginning to issue associated deviations to their agency supplements.
  - DoD began issuing individual memos with deviation guidance and language for each RFO Part on Dec. 18, 2025.
  - GSA issued its Revolutionary GSAR Overhaul (“RGO”) on Jan. 15, 2026.
  - NASA and other agencies have their supplemental deviations in various stages of drafting and implementation.

Laws and Regulations

Cybersecurity

(My) Top Five Federal Cybersecurity Developments

1. DOJ Data Security Program Takes Effect
2. Cybersecurity Information Sharing Act Lapses (mostly . . .)
3. FAR Changes a Little; Could Change More
4. CMMC Goes Live (finally!)
5. DOJ Goes Full Speed on Cybersecurity Enforcement Actions

DOJ Data Security Program

- Background: January 8, 2025 DOJ Final Rule established the DSP, aka "bulk data rule," that (a) regulates transfers of U.S. bulk sensitive personal data and government-related data to countries of concern or covered persons, and (b) permits certain types of restricted transactions only if strict security, due diligence, recordkeeping, and audit requirements are also satisfied.
  - "Sensitive personal data" = "covered personal identifiers, precise geolocation data, biometric identifiers, human 'omic data, personal health data, personal financial data," or any combination of the above, though certain exceptions also apply.
  - "Government-related data" = (1) precise geolocation data for locations whose disclosure poses security risks, or (2) sensitive personal data marketed as linked/linkable to Gov employees.
  - "Countries of concern" = China, Cuba, Iran, North Korea, Russia, Venezuela; others id'd by AG.
- Phased implementation required compliance with (x) prohibitions and restrictions starting April 8, 2025 and (y) affirmative due diligence requirements starting October 6, 2025.
- Significant penalties for non-compliance, including civil and criminal fines, and potentially prison.
- DSP is about protecting national security, versus personal privacy, so DOJ approach to enforcement could also be unique. Bottom line: know your data and where it's going!

Cybersecurity Information Sharing Act (CISA)

- Background: In 2015, the CISA was enacted to "improve cybersecurity in the United States through enhanced sharing of information about cybersecurity threats."
  - Facilitated sharing of cyberthreat indicators and defensive measures by providing antitrust and FOIA exemptions and privilege protections;
  - Established privacy guardrails and authorized defensive measures; and
  - Resulted in the CISA automated indicators sharing (AIS) system to permit rapid info exchange.
- On September 30, 2025 CISA expired, along with its liability protections
  - CISA Exec Asst Dir for Cybersecurity said info sharing was "holding steady" through October.
  - BSA Sr Dir of Policy said info sharing slowed down, primarily because of the need for legal review.
- On November 12, 2025, CISA was temporarily extended through January 30, 2026, restoring both sharing mechanisms and protections.
  - In October 2025, White House National Cyber Director said Admin was "pushing for a 10-year, clean reauthorization" of CISA.
- Cyber threat information sharing is idealized but hard; for some companies it will be even harder without CISA

FAR Changes and Proposed Changes

- Background: FAR Council was busy, just not busy promulgating new cyber regulations . . .
- On August 11, 2025, GSA issued a FAR class deviation for FAR Part 40, Information Security and Supply Chain Security, that:
  - Reorganized the Part into three Subparts (.1 – Processing Supply Chain Risk Info; .2 – Security Prohibitions and Exclusions; and .3 – Safeguarding Information); and
  - Moved and consolidated requirements previously found elsewhere (e.g., prohibitions on Kaspersky Lab, ByteDance/TikTok, Chinese telecom and surveillance equipment are now in 40.2).
- On January 3, 2025, DOD, GSA, and NSA published a proposed rule, "Strengthening America's Cybersecurity Workforce" that would require contractors to adopt staffing and other procedures to align with the National Initiative for Cybersecurity Education Workforce Framework for Cybersecurity.
  - Would not apply to commercial item or service contracts, or contracts below the SAT.
- On January 15, 2025, FAR Council published a proposed rule, "Controlled Unclassified Information," that would set comprehensive requirements for handling CUI in federal solicitations and contracts.
  - Key details: CUI Standard Form; 8-hour reporting requirements; mandatory training and flowdown.
  - Proposed rule has been under development for about a decade; 93 comments received.

CMMC In Action!

- Background: CMMC framework introduced in early 2020 to standardize and enhance protection of unclassified information within the DOD supply chain → various pilot efforts began → "streamlined" CMMC 2.0 announced in late 2021 → pilots shelved → Program Final Rule issued October 2024 → DFARS Proposed Rule issued August 2024 → DFARS Final Rule issued September 2025
- CMMC Program has three basic elements (32 CFR Part 170):
  - Three-Tiered Model: Security standards increase depending on type and sensitivity of information handled; broad flowdown requirements.
  - Assessment Requirement: Self, third-party, or DOD, depending on Level.
  - Varying Implementation: Compliance as a condition of award in some cases; phased implementation in others.
- Implementation will happen over four Phases.
- Starting November 10, 2025, Level 1 mandatory self-assessment for any new solicitation or contract, or mod/option exercise, if contract is not purely for COTS and involves receipt of Federal Contract Information (FCI), which means:
  - Prime's status must be affirmed and submitted in the Supplier Performance Risk System (SPRS) at latest as of award date, and annually thereafter;
  - Prime must flow requirement to its non-COTS, FCI-handling subcontractors.
- Phases II, III, and IV will begin in November 2026, 2027, and 2028, respectively.

Cybersecurity Enforcement Actions

DOJ recovered a record $52 million via nine cybersecurity fraud settlements, including the following notable cases:

- Health Net Federal Services Inc. ($11.25 M): February settlement of allegation of false cybersecurity certifications from **2015 to 2018** under TRICARE contract.
- MORSECORP Inc. ($4.6M): March settlement following allegation of submission of false SPRS (cybersecurity assessment) score and **delay in correction**.
- Raytheon/Nightwing ($8.4M): May settlement following **acquired company's** failure to develop SSP and other cybersecurity measures for internal network.
- Aero Turbine Inc. and **Gallant Capital Partners LLC** ($1.75M): July settlement following **disclosures** of failure to comply with NIST SP 800-171 requirements, and improper sharing of CUI with a foreign entity under Air Force contract.
- Illumina Inc. (**$9.8M**): July settlement following allegation of federal sales of genomic sequencing systems with known cybersecurity vulnerabilities.
- **Georgia Tech Research Corporation** ($875K): September settlement following allegations of failure to install mandatory anti-malware tools on university research lab systems handling CUI, and submission of false SPRS score.
- Precision Machining Subcontractor ($421K): December settlement following allegations of **failure as a subcontractor** to provide adequate cybersecurity protections for technical drawings supplied to prime contractors.

Laws and Regulations

Artificial Intelligence

Developments in Federal AI Regulation

- January 24, 2025 EO "Removing Barriers to American Leadership in Artificial Intelligence" (a) revoked AI policies and directives seen as barriers to innovation; (b) mandated creation of an "Action Plan" to sustain U.S. AI leadership; and (c) required the review of existing policies, directives, and regulations for conflict with the administration's policy goals.
- February 6 Request for Information on AI Action Plan from White House Office of Science Technology and Policy received over 10,000 public comments.
- July 23 AI Action Plan contained 103 policy recommendations in three pillars: (1) accelerating AI innovation; (2) building AI infrastructure; and (3) leading in international AI diplomacy and security.
  - Contemplated withholding AI-related federal funding from states with burdensome AI regulations.
- December 11 EO "Ensuring a National Policy Framework for Artificial Intelligence" (w) established a framework for federal regulation of AI; (x) created a Litigation Task Force to challenge state laws inconsistent with federal AI policies; (y) directed federal agencies to eliminate obstacles to U.S. global competitiveness in AI; and (z) permitted restricting funding for states with "onerous AI laws."
- Attempts at federal preemption of state AI laws in the OBBB Act and NDAA were met with bipartisan resistance → outlook hazy for preemption here.

Laws and Regulations

Contract Consolidation

Contract Consolidation

March 12, 2025 - President issued Executive Order (EO) 14240, Eliminating Waste and Saving Taxpayer Dollars by Consolidating Procurement

Consolidates the procurement of common goods and services under the General Services Administration (GSA) with the goal of eliminating waste, reducing contract duplication, and allowing agencies to focus on their core missions in support of the American people

The EO also directs the Office of Management and Budget (OMB) to designate the Administrator of GSA as the executive agent for all government-wide acquisition contracts (GWACs) for information technology (IT).

Shifts toward agency-wide Best in Class (BIC) contracts for IT products and services across Government and targets “common goods and services” for consolidated procurement under GSA

Contract Consolidation – Next Steps

GSA will be coordinating with the National Aeronautics and Space Administration (NASA) and the National Institutes of Health (NIH) to assess the future management of their flagship IT GWACs, including NASA's SEWP and NIH's CIO-SP3, CIO-CS, and CIO-SP4 vehicles

GSA will work with OMB, NASA, and NIH to assess the current state of the GWACs and map a sound business strategy to meet agency mission needs

Transition of Guidance into Manuals

RFO Round 2

Laws and Regulations

FY2026 NDAA

National Defense Authorization Act for Fiscal Year 2026

- Signed into law on December 18, 2025
- Areas relevant for Federal Contractors
  - Data Rights
  - Bid Protests
  - Major Weapon Systems
  - Non-traditional Defense Contractors
  - TINA/CAS

2026 NDAA

Data Rights

- Section 805 requires DOD to inventory its existing data rights and data rights contractual requirements.
- This provision is designed to address the "right to repair" issue.
- Requires DOD to:
  1) establish a digital system for tracking, managing, and assessing “covered data” related to “covered systems” and
  2) verify contractor and subcontractor compliance with technical data contract requirements for covered systems.
- DOD is required to identify areas where covered data are insufficient in a way that negatively impacts effective operation and maintenance of a covered system in a cost-effective manner.
- This may result in more proactive actions to request data rights from contractors or to assert the data rights during a procurement or after performance has started.

2026 NDAA

Bid Protests

- Section 875 directs the Secretary to revise the DFARS to establish procedures for a contracting officer to withhold payment of up to 5% of the total amount to be paid to an incumbent contractor who files a protest at the GAO that extends performance via a bridge contract or contract extension.
- Designed to deter frivolous bid protests at the U.S. Government Accountability Office (GAO) in order to get an extension of the incumbent contract or award of a bridge contract, due to the automatic stay of performance on the protested contract.
- If the protest is dismissed due to lack of any reasonable legal or factual basis, the incumbent contractor will forfeit the withheld payment.
- Protesters may have other options, including filing a protest with the agency or at the U.S. Court of Federal Claims.
- These new procedures are supposed to be implemented within 180 days of the 2026 NDAA's enactment.

2026 NDAA

Major Weapon Systems

- Section 1803 requires that every major weapon system have a designated product support manager responsible for sustainment, planning and readiness outcomes.
- Mandates regular sustainment reviews and congressional reporting.
- Designed to ensure weapon systems meet readiness objectives, with corrective action plans required when systems fail to achieve availability targets.

FY2026 NDAA – Cost, Pricing and Accounting

§1804 — Adjustments to Acquisition Thresholds

- Raises the **threshold for certified cost or pricing data** (TINA) from about **$2.5 M to $10 M** for prime contracts and subcontracts awarded after **June 30, 2026**, reducing when formal certified pricing applies.
- Increases certain **competition and approval thresholds** (e.g., sole-source approval levels), streamlining procurement oversight for mid-range awards.
- **Implications**: Lowers compliance burden for small/innovative contractors and reduces audit/price-data risk, but contracting officers will still scrutinize price reasonableness where appropriate.

§1806 — Matters Related to Cost Accounting Standards (CAS)

- **Raises the threshold for full CAS coverage** from **$50 M to $100 M** in net CAS-covered awards in a cost accounting period.
- Increases the contract-level CAS applicability trigger from about **$2.5 M to $35 M**, narrowing the population of contracts subject to CAS.
- **Implications**: Reduces the number of contracts and business units subject to costly CAS compliance, easing entry hurdles and administrative burden for mid-size and emerging contractors; CAS exceptions (e.g., commercial items, firm-fixed-price) remain important.
- Regulatory implementation required by OFPP and CAS Board.

FY2026 NDAA – NDC Reforms

§ 1826 provides broad and unprecedented compliance relief for Nontraditional Defense Contractors ("NDCs").

Covered contractors are exempt from:	Certified cost or pricing data requirements under 10 U.S.C. § 3702;
	FAR Part 31 cost principles and procedures; and
	The full suite of DFARS business system requirements, including accounting, estimating, purchasing, earned value management, property management, and material management systems.

A nontraditional defense contractor is defined in 10 U.S.C. § 3014 as an entity that has not performed a DoD contract or subcontract within the previous year that is subject to full CAS coverage.

Additional FY2026 NDAA Commercial Reforms

§824: Increasing Competition in Defense Contracting

- Requires DoD to issue guidance expanding how past performance is evaluated so that commercial and non-government performance are considered.
- Aims to broaden the competitive base by allowing evaluation beyond traditional past performance.
- Seeks to foster greater competition, particularly for requirements with limited precedent.

§1821: Modifications to Relationship of Certain Laws to Commercial Procurement & §1824: Limitation on Required Flowdown of Contract Clauses

- Statutory clarity to support commercial-first acquisition policies.
- Authorizes the Secretary of Defense to limit mandatory flowdown of contract clauses in subcontracts for commercial products and services.
- Reduces unnecessary compliance burdens on commercial subcontractors

§1822: Modifications to Commercial Products and Commercial Services

- Directs DoD to ensure contracting officers use commercial products, commercial services, and nondevelopmental items to the maximum extent practicable.
- Requires written, senior-level justification based on market research before acquiring non-commercial solutions.

BIOSECURE

Signed into law as part of the 2026 NDAA

Prohibits US Government agencies from

- Buying or obtaining biotechnology equipment or services provided by a Biotechnology Company of Concern ("BCC");
- Entering into, extending, or renewing a contract with any entity using biotechnology equipment or services provided by a BCC to perform a government contract; or
- Expending loan or grant funds for biotechnology equipment or services provided by a BCC (direct or indirect)

"Biotechnology equipment or service" means any equipment, instrument, apparatus, machine, or device used in the research, development, production, analysis, detection, or provision of information relating to biological material

BIOSECURE

BCC to be defined:

- Department of War 1260H list of “Chinese military companies
- Director of OMB to publish a list by December 18, 2026 based on recommendations – updated annually

BCC Requirements:

- Subject to the administrative governance structure, direction, and control of, or operate on behalf of, the government of a foreign adversary;
- Involved in the manufacturing, distribution, provision, or procurement of a biotechnology equipment or service; and
- Pose a US national security risk by sharing multiomic data with a foreign adversary’s government, or by collecting such data without express informed consent

Laws and Regulations

Other Topics

SBIR/STTR – Expiration and Reauthorization Status

Statutory authority for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs expired on September 30, 2025.

Agencies such as NIH, DHS, and NSF have paused new solicitations and cannot issue new SBIR/STTR Phase I/II awards until reauthorization is enacted

- Existing awards may continue under current contracts where permitted.
- Phase III awards may proceed with non-SBIR funds.

Congress is negotiating multiple possible vehicles to revive the programs (standalone extension, budget/CR attachment, or reauthorization bills).

Cases

Protests

FY 25 GAO Annual Report to Congress

- In FY 2025 there were 1688 new protests filed, a 6% decrease from FY 24.
- With the exception of a sharp 22% spike in protests in FY 23, the trend has been a decrease in protests each year starting in FY 21.
- GAO's sustain rate was 14% - which is also consistent with the previous four years except FY 23.
- The "Effectiveness Rate" – which tracks protests that were either sustained or subject to agency corrective action – was 52%.
- ADR was used in 14% of protests and only 3 protests included hearings.

When Do You Have to be Registered in SAM.gov?

***UNICA-BPA JV, LLC*, B-422580.3 and FAR 52.204-7**

- The Department of Homeland Security eliminated the protester from the competition after finding that it was not registered in SAM.gov at the time of initial proposal submission.
- The protester argued that it was registered at the time it submitted its final proposal revision ("FPR"), which met the requirement under FAR 52.204-7 to be registered "when submitting an offer."
- GAO sustained the protest, finding that a FPR extinguishes the previous proposal(s), and therefore constitutes the submission of the offer for FAR 52.204-7 purposes.
- GAO agreed with the agency's contention that it could have eliminated the protester following submission of its initial offer for failing to meet the SAM registration requirement. However, having not done so, it could no longer eliminate the protester once it became compliant in submitting its FPR.

OTAs at the Court of Federal Claims Part 1

***Raytheon Co. v. U.S.,* case number 1:24-cv-01824**

- Raytheon filed a Court of Federal Claims bid protest, challenging the decision of the Missile Defense Agency ("MDA") to proceed with Northrop Grumman and not Raytheon in a missile interceptor program.
- The MDA moved to dismiss for lack of jurisdiction, arguing that the Tucker Act and the COFC's OTA precedent did not permit a protest because the OT was solely for the development phase of the program.
- The judge in Raytheon noted the Court's ongoing refinement of its jurisdiction over OT protests and the inherent uncertainty that will exist until Congress or the Federal Circuit provides clarity.
- In attempting to synthesize the Court's precedent, the judge articulated that jurisdiction would apply where the OT is "intended to provide the government with a direct benefit in the form of products or services."
- On that basis, the judge in Raytheon found jurisdiction.

OTAs at the Court of Federal Claims Part 2

***Tolesto v. U.S.,* case number 1:24-cv-01784**

- Telesto filed a COFC bid protest, challenging the Army's evaluation decisions during the prototype phase of an OTA.
- The judge in Telesto found that the Court lacked jurisdiction under the Tucker Act because the prototype phase actions did not have a direct link to a follow-on procurement of goods or services.
- The Telesto judge ruled that the Court's OT jurisdiction only applies when the prototype phase is complete and the agency decides to move forward with the follow-on production contract.
- While it is possible to distinguish the Raytheon and Telesto decisions on the facts of their particular programs at-issue, the approaches of the judges appear inconsistent and will continue the ongoing uncertainty regarding the Court's jurisdiction where a follow-on production contract is likely but not yet solicited.

Who is an "Interested Party" at the COFC?

***Percipient.ai Inc. v. U.S.*, case number 23-1970**

- Percipient.ai brought a COFC protest of the National Geospatial-Intelligence Agency's issuance of a task order to CACI for development of a computer vision system. The Plaintiff, which has already-developed commercial vision software, alleged that NGA violated 10 U.S.C. § 3453, which requires DOD to use commercial products and services "to the maximum extent practicable."
- Percipient did not actually bid on the task order at issue. At the Court, it argued that it was not protesting the issuance of the task order to CACI, but instead the higher-level procurement decision to violate 10 U.S.C. § 3453 by not using a commercially developed technology.
- The Court initially ruled that it had jurisdiction to hear the challenge under § 3453, even though Percipient did not submit a proposal. However, the following month it vacated that decision and dismissed the protest under the bar on task order protests at the Court. The Court found that the decision not to utilize commercial products could not be separated from the issuance of the task order.

Who is an “Interested Party” at the COFC?

Percipient.ai Inc. v. U.S., case number 23-1970 (CONT’D)

- In 2024, a panel at the Court of Appeals for the Federal Circuit rule 2-1 that the task order bar did not prevent Percipient’s protest because it was alleging that NGA’s broader procurement approach violated the statute.
- Sitting en banc, the Federal Circuit reversed the panel’s decision 7-4, finding that Percipient was not an interested party to bring the protest.
- Percipient did not bid on the contract that was awarded and could have been no more than a subcontractor because it lacked capability to perform the entire contract.
- On those facts, the Federal Circuit determined that Percipient was not an “actual or perspective bidder,” as is required under the Tucker Act.

Other Cases

The Supreme Court Rules on Grant Challenge Jurisdiction

***Dept. of Education v. California*, case number 24A910; *National Institutes of Health v. American Public Health Association*, case number 25A103**

- In the absence of a 'Grant Disputes Act' it has been unclear whether challenges to agency actions in connections with federal grants should be subject to the exclusive jurisdiction of the COFC or whether they can also be brought in Federal District Court under the Administrative Procedures Act.
- In *Department of Education v. California*, the Supreme Court vacated a temporary restraining order preventing the Department of Education from terminating funding under two grant programs. The *per curiam* opinion stated that the District Court that issued the TRO likely lacked jurisdiction under the APA and the proper forum to challenge a grant termination is likely the COFC, which has authority to decide cases where money is sought from the government.

The Supreme Court Rules on Grant Challenge Jurisdiction (Cont'd)

***Dept. of Education v. California*, case number 24A910; *National Institutes of Health v. American Public Health Association*, case number 25A103**

- In *National Institutes of Health v. American Public Health Association*, the Supreme Court reached a different result. The Court overturned a Massachusetts district court's injunction preventing NIH's termination of several grants, but left in place the court's ruling that the policy determinations underlying the terminations were arbitrary and capricious under the APA.
- The net of these decisions is that challenges to grant terminations must be brought at the COFC while challenges to agency policies impacting decisions on grants must be brought in district court under the APA.
- Writing for the 5-4 majority, Justice Amy Coney Barrett explained that the challenges to agency policies impacting grant terminations and the challenges to the terminations themselves are separate and that a finding that the policy was arbitrary and capricious does not necessarily make the termination improper.

Challenge to Technical Data Restrictions for a Commercial Product

***FlightSafety International Inc. v. Air Force*, case number 23-1700**

- In 2023, the ASBCA determined that the Air Force could challenge FlightSafety's restrictive markings on technical data that was developed at private expense. FlightSafety delivered the data in question as a subcontractor.
- DFARS 252.227-7037 permits an agency to challenge a contractor's restrictive markings. However, it also creates a presumption that use or release restrictions are valid for commercial products or services developed at private expense.
- On appeal, the Federal Circuit affirmed the ASBCA, finding that the specific type of technical data – operation, maintenance, installation, or training ("OMIT") – cannot be restricted.
- In summary, the Federal Circuit has confirmed that technical data developed solely at private expense will not be protected by DFARS 252.227-7037 if there is a separate basis to challenge restrictive markings.

False Claims Act *Qui Tam* Provisions Under Attack:

***U.S. ex rel. Zafirov v. Florida Medical Associates, LLC,* No. 24-13581 (11th Cir. 2025)**

- In December, the 11th Circuit heard oral arguments regarding the constitutionality of the FCA's *qui tam* provisions. The case is on appeal from a 2024 decision of the U.S. District Court for the Middle District of Florida, dismissing a case after the government declined to intervene.
- The District Court found that the FCA's *qui tam* provisions are unconstitutional because they violate the Constitution's Article II Appointments clause by permitting an individual to exercise significant executive authority without the required appointment process.
- The 11th Circuit challenge is part of a growing trend of judges questioning the constitutionality of the *qui tam* provisions.
- If the challenge is successful in the 11th Circuit, *qui tam* cases will not be viable in Florida, Georgia, and Alabama if the government does not intervene.

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