What is New?

The biggest news this year's involves the Revolutionary FAR Overhaul. Title 800 in the National Defense Authorization Act (NDAA) for FY 2026 also is lengthier than normal. And as always, this year saw noteworthy decisions from GAO, COFC, and the Federal Circuit.

- **Revolutionary FAR Overhaul (RFO)**
  President Trump issued E.O. 14275 "Restoring Common Sense to Federal Procurement," directing the Administrator of the Office of Federal Procurement Policy (OFPP) and the other members of the FAR Council amend the FAR to ensure that the FAR "contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests."
  OMB issued M-25-26 "Overhauling the Federal Acquisition Regulation" setting forth the process and purpose of the FAR Overhaul, directing the FAR Council to focus on statutory roots and replacing most nonstatutory regulations with OFPP-endorsed buying guides collectively referred to as the Strategic Acquisition Guidance (SAG). Then M-25-26 sets forth a three-step process to overhaul the FAR.
  - Step one: Creating an Revolutionary FAR Oversight (RFO) website where the FAR Council posts revised versions of Parts of the FAR on a rolling basis. The public has 60 days to submit comments when a revised Part of FAR is posted on the RFO website. The FAR Council posted the last revised Parts on September 30, 2025.
  - Step two: Seeking agency deviations based upon the proposed revised FAR posted on the RFO website. Most of the agency deviations are effective until the change is in incorporated in the FAR or the deviation is rescinded.
  - Step three: The OFPP Act at 41 U.S.C.A. § 1707 requires the FAR Council publish each Part of the FAR Overhaul as proposed rule.

    To complement a streamlined FAR, OMB envisions SAGs contain "best practices for applying innovation and streamlining throughout the acquisition lifecycle and on specific categories of the most popular common spend categories." Parts deleted from the FAR have been moved to a guide. Quality guides are essential for the Overhaul to be successful, e.g., contracting officers to use the promised flexibility.

    A theme emerges from the proposed changes. The RFO suggests: 1) reorganizing each Part of the FAR based on the acquisition lifecycle, 2) streamlining coverage with plain language, and 3) moving guidance to a FAR Companion. The RFO also proposes to delete obsolete and redundant coverage. These revisions alone are an improvement, making the FAR

more approachable. Since the RFO applies these changes to each FAR Part, section 1:12 in the book highlights the other significant changes the RFO proposes.

Currently, everything the RFO proposed has been done outside of the regulatory process. As of March 2026, the FAR Council has not published any propose rule on the FAR Overhaul. Will the current RFO coverage form the basis of the proposed rules? The procurement community needs to understand the current proposals to intelligently comment on the tsunami of proposed changes that is coming. (See § § 1:6 and 1:12.)

- **The National Defense Appropriations Act (NDAA) for 2026.**
  - Section 803, Pilot Program for Financing for Covered Activities would allow with certain stipulations, financing costs to be allowable and allocable as a cost for federal contracts and subcontracts.
  - Section 805 requires DOD address perceived gaps in access to technical data and software necessary for the repair and maintenance of "covered systems." Ralph C. Nash, DIGITIZING DATA: A New Requirement, 40 Nash & Cibinic Rep. NL ¶ 10.
  - Section 866, Cybersecurity Regulatory Harmonization requires DOD (1) "harmonize the cybersecurity requirements applicable to the defense industrial base;" and (2) reduce the number of contract or agreement-specific requirements."
  - Section 875, Ability to Withhold Contract Payments During Pendency of a Bid Protest requires procedures to withhold up to 5% of payments from an incumbent contractor under an extension or bridge contract while the contractor's bid protest at the Government Accountability Office (GAO) is pending. The contractor will forfeit the withheld payments if the GAO dismisses the protest for lacking a reasonable legal or factual basis. Section 875 is designed to discourage incumbent DOD contractors from benefiting from the automatic CICA stay by filing meritless GAO bid protests.
  - Section 1802, Establishment of the Role of Portfolio Acquisition Executive creates the "portfolio acquisition executive" (PAE) as "the senior acquisition official designated by the component acquisition executive or the service acquisition executive of the military department concerned … to lead a portfolio of capabilities, with authority for plans, budgets, and execution of programs assigned to the portfolio, including life?cycle management."
  - Section 1804, Adjustments to Certain Acquisition Thresholds after June 30, 2026 raises the threshold for requiring certified cost or pricing data under the Truthful Cost or Pricing Data Act (TINA) from $2,000,000 to $10,000,000.
  - Section 1806, Matters Related to Cost Accounting Standards raises the threshold for full CAS coverage from $50 million to $100 million and increases the Contract-Specific Threshold for Modified CAS on a specific contract from $2.5 million to $35 million.
  - Section 1823, Modifications to Commercial Solutions Openings (CS0) authorizes sole-source follow-on procurements

provided the initial CSO was openly competed, and allows the follow-on contracts to be structured as Other Transaction Authority Agreements (OTAs).

- **SBA Regulations**
  The Small Business Administration (SBA) proposes modifying the 8(a) program at 13 CFR 124.103 to change eligibility standards by deleting the concept of rebuttable presumption. The proposed rule replaces the individualized narrative of personal disadvantage with a self-certification, which is accompanied by supporting evidence. SBA recognizes that its proposed test for social disadvantage is a departure from the current regulatory test for establishing social disadvantage. 91 FR 35433 (June 11, 2026), 68 GC ¶ 159. (See § 18:25.)
- **Executive Orders**
  Executive Order 14402, Promoting Efficiency, Accountability, And Performance In Federal Contracting, defaults to fixed price contracts. Agencies must justify using any non-fixed-price contract, including a cost-reimbursement contract, a time-and-material contract, a labor-hour contract, or any other non-fixed-price type of contract under Part 16 of the FAR. However, contracts responding to emergencies, major disasters, or contingency operations, and contracts that involve research and development or pre-production development of "major systems" under FAR Parts 34 and 35, are exempt from the EO. 68 GC ¶ 122. (See § 4:4.)
- **New Caselaw**
  - *New GAO Rules.*
    GAO reinterpreted 4 C.F.R. § 21.1(c)(4) and (f) to require protesters "provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action." (See § 28:2.)
    - GAO dismissed an allegation the awardee misrepresented its source of supply as not credible without further evidence. Warfighter Focused Logistics, Inc., Comp. Gen. Dec. B-423546, B-423546.2, 2025 CPD ¶ 169, 67 GC ¶ 307. (See § 28:2.)
    - GAO dismissed a protest challenging a sole source contract to provide transportation services due to a lack of proof. Navarre Corp., Comp. Gen. Dec., B-423602, 2025 CPD ¶ 197. (See § 28:2.)
    - GAO dismiss a challenge that the award "constitute[d] government waste" because the allegation did not establish a valid basis for challenging the agency's action. East Coast Flight Services, Inc., Comp. Gen. Dec., B-423977, 2026 WL 64114 (Jan. 2026). See also Ralph C. Nash, WASTE: Not A Protest Issue, 40 Nash & Cibinic Rep. NL ¶ 6 (Feb. 2026). (See § 28:2.)
  - *GAO Sanctions.*
    GAO has an inherent right to dismiss any protest and to impose sanctions against a protester, where a protester's actions undermine the integrity and effectiveness of the process,

which includes citations to non-existent authority. Raven Investigations & Security Consulting, Comp. Gen. Dec., B-423447, 2025 CPD ¶ 81, 67 GC ¶ 127. (See § 32:5)

- *Recommendations by GAO.*
  When an agency failed to implement GAO's recommendation, the Comptroller General recommended Congress "enact a private bill directing the Air Force to reimburse the protester its reasonable proposal preparation costs, a remedy that the Air Force itself proposed as part of their request to modify our recommended remedy, but which they no longer intend to perform." 68 GC¶ 25, U.S. Gov't Accountability Off., GAO-26-900695 (B-158766), GAO Bid Protest Annual Report To Congress For Fiscal Year 2025 (2025). (See § 1:16.)
- *COFC Jurisdiction.*
  The court granted a rehearing *en banc* in the *Percipient* litigation where a split Federal Circuit held that the FASA task order bar does not preclude jurisdiction when claims do not challenge the issuance of a task order. Then, the *en banc* court overturned an earlier Federal Circuit opinion about Competition in Contracting Act's (CICA) definition of the "interested party." The *en banc* court held CICA's definition of "interested party" applied to all protests brought under Administrative Dispute Resolution Act (ADRA), including protests alleging a violation of statute or regulation. The dissent argued that under the Tucker Act and prior Federal Circuit case law, "a party with an interest in any alleged violation of statute or regulation in connection with a procurement or proposed procurement" is an interested party, even if that party was not an actual or potential bidder or offeror. Percipient.ai, Inc. v. United States, CACI, Inc.-Fed., 104 F.4th 839, 853 (Fed. Cir.), reh'g en banc granted, opinion vacated sub nom. Percipient.ai, Inc. v. United States, 121 F.4th 1311 (Fed. Cir. 2024), and on reh'g en banc sub nom. Percipient.AI, Inc. v. United States, 153 F.4th 1226 (Fed. Cir. 2025), cert. denied, No. 25-428, 2026. (See § 1:17 and § 4:25.)
- *COFC Corrective Action.*
  The Federal Circuit denied a protest based upon agency corrective action, holding agencies have the inherent authority to reconsider their decisions, subject to certain limitations, which include: following procedures for reconsideration in relevant statutes, giving notice of the intent to reconsider within a reasonable time, and not abusing discretion or acting in arbitrarily or capriciously. Syneren Techs. Corp. v. United States, 166 F.4th 1040 (Fed. Cir. 2026) (See § 1:17.).
- *CICA Stay.*
  The Competition in Contracting Act's (CICA) automatic stay of performance, can be equitably tolled when, a party establishes (1) it pursued its rights diligently and (2) extraordinary circumstances prevented timely filing. Equitable tolling does not require evidence of trickery or deception. Starside Sec. & Investigation, Inc. v. United States, 177 Fed. Cl. 28 (2025), 67 GC ¶ 175. (See § 31:3.)
- *Override CICA Stay*

The Federal Circuit granted declaratory relief holding protesters do not need to satisfy the judge-made four-factor test required for traditional equitable relief when challenging CICA overrides. Instead, the automatic stay is reimposed when a court determines the government's override is arbitrary and capricious. Life Sci. Logistics, LLC v. United States, 172 F.4th 1357 (Fed. Cir. 2026), 68 GC¶ 101.

But see, Active Deployment Sys., LLC v. United States, No. 26-510, (Fed. Cl. Apr. 15, 2026) where COFC upheld a CICA override after applying the four-factor test to determine whether the override decision was arbitrary and capricious. COFC interprets precedential opinion in Life Sci. Logistics, LLC v. United States, 172 F.4th 1357 (Fed. Cir. 2026), as retaining the four-factor test to resolve a motion for a preliminary injunction, but eliminating the four-factor test when a protester requests declaratory judgment. (See § 31:3.)

- *Discussions.*

No improper discussions occurred with the awardee about a required certification during the initial round of corrective action since neither FAR Part 16 nor the solicitation provided all offerors with an opportunity to submit final proposal revisions. Centuria Corp., Comp. Gen. Dec., B-422245.6, 2025 CPD ¶ 183. (See § 4:25.)

An agency did not improperly reopened discussions when the disappointed offeror forfeited its right to make the claim. Additionally, COFC denied a claim the agency wrongfully included an offeror with an unacceptable proposal in discussions, saying "although an unacceptable proposal is not eligible for award, unacceptability is sometimes simply a step to discussions and revisions." Red River Sci. & Tech., LLC v. United States, 176 Fed. Cl. 641, 653 (2025), 67 GC ¶ 167, Ralph C. Nash, DISCRETION RUN RAMPANT: It's There To Be Used, 39 Nash & Cibinic Rep. NL ¶ 48 (Sept. 2025). (See § 15:8.)

An agency breached its duty to provide a "fair opportunity" where the agency removed a core component of the requirement for one offeror without giving other offerors the ability to revised their proposals. Although CICA procedures do not apply to issuing orders under IDIQ contracts, FASA requires contract holders receive "a fair opportunity to be considered for issuance of task orders, including notice of a task order that includes a clear statement of the agency's requirements." Alliant Health Solutions, Inc., Comp. Gen. Dec. B-423598, et al., 2025 CPD ¶ 216, 67 GC 283. (See § 4:25.)

A parties' behavior determines whether an exchange is a clarification or discussion. GAO concluded a question whether an offeror "would be fully functional at the end of the transition-in period" was a clarification where the agency asked the offeror to confirm, not revise or modify its proposal. The fact the offeror provided more expansive response than a "yes/no" response did not convert the question to discussions where the record supported the agency's contention that it did not consider the unsolicited information. Tech Systems, Inc.,

Comp. Gen. Dec., B-423547 et al., 2025 CPD ¶191. (See § 16.7.)

- *Unequal Discussions Permitted by solicitation.*
  An agency did not conduct unequal discussion where solicitation provided for separate discussions for proposed betterments, and the agency conducted an extra round of discussions in accordance with the solicitation. Karna, LLC File, Comp. Gen. Dec., B-424039 et al., 2026 WL 621546 (Feb., 2026). (See § 16.19.)
- *Unequal Discussions during corrective action.*
  An agency was not required to reopen discussions during corrective action to address a fault the protester failed to raise in the initial protest. Also, discussions do not required agencies inform an offeror its price is too high when the contracting officer does not consider the price excessive or unreasonable. The Mission Essential Group, LLC, Comp. Gen. Dec., B-421745.4, 2025 CPD ¶ 78, 67 GC ¶ 105. (See § 34.2.)
- *Reasonableness of the Record.*
  GAO sustained a challenge where the record contained heavily redacted documents that provided little to no information to determine the reasonableness of the agency's evaluation. GAO determined an evaluator's declaration involved post hoc arguments or analyses, which receive a lesser weight than the contemporaneous record. Tiger Natural Gas, Inc. Comp. Gen. Dec., B-423744, et al., 2025 WL 3655168 68 GC¶ 15. (See § 10:21.)
- *Award.*
  Active Deployment Sys., LLC v. United States, 178 Fed. Cl. 556 (2025), 42 GC ¶ 300 (solicitation language that "five (5) or more" would be awarded was unambiguous and plain, supporting the ultimate award of 42 contracts). (See § 6:23.)
- *Organizational Conflicts of Interests (OCI) or Violations by Former Employees.*
  The court denied Plaintiff's request to set aside it's disqualification. A rational basis does not requires evidence that an actual Organizational Conflict Interest (OCI) exists; the appearance of an OCI is sufficient. "Hard facts" showed 1) a potential OCI might result from improper retention, 2) the potential use of protected information, and 3) misrepresentations to the agency. Marathon Targets, Inc. v. United States, 175 Fed. Cl. 725 (2025) (See § 3:64.)
  An OCI based upon the awardee's prior work providing acquisition-support existed where the agency failed to explain: 1) what the contracting officer considered; 2) what factors formed the basis of the OCI determination; or 3) how the mitigation affected other potential conflicts such as contract administration and other subsequent activities like task order negotiations. Castro & Co., LLC, Comp. Gen. Dec. B-423689, 2025 CPD ¶ 230, 67 GC ¶ 315. (See § 18:36.)
  No an unfair competitive advantage by hiring former Government employees occurred where the protester failed to show how non-public information that was more than four years

old, remained competitively useful for a different solicitation. This decision signals no OCI exists when former employees leaves the agency before the planning of the second solicitation. Peraton Inc., Comp. Gen. Comp. B-423639 et al, 2025 CPD ¶ 223, 67 GC ¶ 301. (See 3:79.)

- *Commercial.*
  COFC denied a pre-award protest alleging the agency violated a preference to commercial products and services where the agency's requirement was more comprehensive than the protester could fulfill. IntelliBridge, LLC v. United States, 174 Fed. Cl. 793 (2025), reconsideration denied, No. 24-1204, 2025 WL 2231985 (Fed. Cl. Apr. 16, 2025). Also see, Ralph C. Nash, POSTSCRIPT II: MANDATORY CONSIDERATION OF COMMMERCIAL PRODUCTS, 39 Nash & Cibinic Rep. NL ¶ 28 (June 2025). (See § 24:2.)
- *OTA jurisdiction.*
  Acknowledging the Federal Circuit had not settled the COFC's jurisdiction over OTAs, the court held 28 U.S.C. § 1491(b)(1) limits OTA jurisdiction to 1) the decision to use prototype OTA authority initiating the prototype stage of a program, 2) compliance with OTA statutes and regulations, and 3) other generally applicable laws. No jurisdiction existed to hear allegations about the agency's actions conducting a prototype OTA; however, the court would have jurisdiction when the prototyping phase ended and the agency decided to proceed with a proposed procurement. Telesto Grp., LLC v. United States, 176 Fed. Cl. 711 (2025), 67 GC ¶ 149. (See § 25:14.)
- *Trade Agreements Act.*
  COFC overturned an award a to non-Trade Agreements Act (TAA) company where an agency ignored an offer from a TAA compliant country, finding 1) the TAA applies to all procurements except when the Buy American Act preference applies, 2) a nonmanufacturing waiver permits awarding a contract to a business that did not make the drug domestically, 3) although a nonavailability waiver allows an agency to obtain supplies from a foreign country, a nonavailability a waiver does not overrule the TAA. Davinci Co., LLC v. United States, 178 Fed. Cl. 63 (2025). (See § 11:9.)