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Gov't Contracts Cases To Watch In 2026

By **Madeline Lyskawa**

Law360 (January 2, 2026, 12:03 PM EST) -- The U.S. Supreme Court is poised to answer whether government contractors can immediately appeal denials of immunity, while also deciding whether to tackle the question of who qualifies as an interested party capable of lodging a bid protest.

Here, Law360 previews key disputes government contractors should have on their radar in 2026.

Justices to Weigh Contractor Immunity

The U.S. Supreme Court heard oral arguments in two cases dealing with government contractors in November, mulling whether a veteran's state tort claims against Fluor Corp. are preempted by federal law and whether GEO Group Inc. can appeal a ruling that it is not immune to claims that the private prison operator forced immigrant detainees to clean a detention facility.

Fluor has urged the justices to affirm a Fourth Circuit ruling that veteran Winston Hencely's South Carolina injury claims — which seek to hold Fluor liable for injuries he sustained after an Afghan national hired by a subcontractor carried out a suicide bombing at Bagram Airfield in Afghanistan — were preempted by the combatant activities exception to the Federal Tort Claims Act.

However, during oral arguments on Nov. 3, the justices appeared divided on whether to shelter Fluor and other U.S. military contractors engaged in combatant activities from liability for state-based injury claims. Justice Neil M. Gorsuch said the contractor is asking the justices "to decide how important is it for the military to have contractors not fearful of liability versus how important is it for the military to have contractors who don't injure military members."

In the second appeal before the justices, GEO has asked the Supreme Court to overturn the Tenth Circuit's ruling that it can't immediately appeal a district court order denying GEO's attempt to claim immunity from a class action brought by immigrant detainees under the high court's 1940 decision in Yearsley v. W.A. Ross Construction.

But the justices during oral arguments on Nov. 10 appeared skeptical of adopting GEO's interpretation of Yearsley as offering immunity to government contractors facing lawsuits, Daniel L. Russell Jr., of counsel with Covington & Burling LLP whose practice focuses on government contracts, said.

"Several of the justices pointed out during the argument that the Yearsley decision itself doesn't mention immunity. They also questioned whether the nature of the defense, as described in Yearsley

and subsequent decisions, is more appropriately viewed as a defense to liability again versus an immunity from suit," Russell, who is representing Fluor in the other appeal, said.

"If the majority of the court believes Yearsley is a defense to liability, then I think they're going to rule that there is no right to an immediate appeal, and based on the questioning, that seems to be the way that the court is leaning," Russell said.

The cases are The GEO Group Inc. v. Alejandro Menocal et al., case number 24-758, and Winston Tyler Hencely v. Fluor Corporation et al., case number 24-924, both in the Supreme Court of the United States.

Supreme Court Asked to Review 'Interested Party' Ruling

The en banc Federal Circuit issued a ruling in August affirming the U.S. Court of Federal Claims' dismissal of Percipient.ai's lawsuit alleging the National Geospatial-Intelligence Agency violated the government's mandate to prioritize commercial products when the agency contracted with CACI Inc.-Federal to develop a computer vision system.

In the majority opinion, the judges held that Percipient — which argued it should have been able to offer its commercial computer vision system as a subcontractor — was not an "interested party" capable of challenging the underlying procurement because it never bid on the initial solicitation.

Percipient filed a petition at the U.S. Supreme Court in October, arguing the en banc decision violates a provision under which Congress gave the Court of Federal Claims jurisdiction over protests lodged by an interested party to a solicitation or contract award, or any alleged violation of statute or regulation in connection with a procurement.

While the Federal Circuit has long held that in order to challenge a solicitation or contract award, an interested party must bid or plan to bid on the procurement, Percipient said the en banc decision "nonsensically extended that limitation" to claims brought under the third prong.

Aron C. Beezley, co-leader of Bradley Arant Boult Cummings LLP's government contracts practice group, said if the en banc decision gets reviewed by the Supreme Court, it will be "very noteworthy" — regardless of what the justices say. Historically, however, the Supreme Court has not taken a great interest in government contracts cases, putting Percipient at a disadvantage, Beezley said.

The case is Percipient.ai Inc. v. U.S. et al., case number 23-1970, in the U.S. Court of Appeals for the Federal Circuit.

11th Circ. Could Strike Down FCA Whistleblower Provision

The Eleventh Circuit heard oral arguments in December in an appeal of a first-of-its-kind ruling from the Middle District of Florida that declared the qui tam provisions of the False Claims Act unconstitutional, finding they allow self-appointed whistleblowers to usurp executive power by proceeding as a plaintiff on behalf of the government when the government declines to intervene in the litigation.

"The judges played their cards pretty close to the chest. This was not an argument where it was very clear that one side was going to win versus the other," Lyndsay A. Gorton, a government contracts

partner at Crowell & Moring LLP, said.

In a brisk hearing that offered few clues to the court's thinking, U.S. Circuit Judge Robert J. Luck said historical records suggest President George Washington and other founders didn't consider qui tam litigation obviously at odds with the executive powers outlined in the Constitution. At the same time, however, the panel members also grappled with a 2023 opinion by Justice Clarence Thomas in which he raised "serious constitutional questions" about the qui tam system.

Should the Eleventh Circuit end up affirming the district court's decision and reject whistleblowers' ability to pursue FCA cases in which the government declines to intervene, Michael Granston, chair of Covington & Burling LLP's False Claims Act practice, said that avenue of litigation would be eliminated.

"Some of these cases have resulted over the last several years in some very large verdicts, and so that alone is a reason why I think people would view a decision that no longer allows relators to pursue declined cases as a significant change to the False Claims Act landscape," Granston said.

Regardless of the outcome, however, Gorton said everyone expects this question to make its way to the Supreme Court at some point, particularly because Thomas' dissent has caused a "renewed fervor" for these constitutionality arguments.

The case is United States ex. rel. Zafirov v. Florida Medical Associates LLC et al., case number 24-13581 in the U.S. Court of Appeals for the Eleventh Circuit.

Fed. Circ. Could Toughen Judicial Review of CICA Stay Overrides

The Federal Circuit heard oral arguments in December in a case brought by Life Science Logistics LLC challenging the U.S. General Service Administration's decision to override an automatic pause on contract performance afforded by the Competition in Contracting Act amid a bid protest at the U.S. Government Accountability Office.

The government argued the panel should unravel a Court of Federal Claims decision holding the GSA's reason for overriding the CICA stay was arbitrary and capricious, saying the judge should have employed a more heightened standard of review when making the decision.

But the Federal Circuit expressed doubt in response to the government's claim, with U.S. Circuit Judge Kimberly A. Moore questioning whether requiring judges to consider equitable factors, such as the protester's likelihood of success and potential harms incurred, would enable the government to carry out a stay override in a completely nefarious and frivolous way.

If the Federal Circuit rules for the government, Kara L. Daniels, a government contracts and national security partner at Arnold & Porter Kaye Scholer LLP, said, "this would be a very big change" that "kind of flips the statutory stay on its head," under which Congress says protesters get an automatic stay of 100 days if they file a timely protest at the GAO.

If the government wants to override the stay under the statute, they must show that doing so is either in the best interest of the United States, or that there's a compelling urgency to do so.

"If you're requiring the contractor to then basically meet the injunctive relief factors in order to find that the override is unlawful, then you're basically requiring the contractor to show that there should have

been a stay in the first place, which kind of runs counter to the whole purpose of the statutory scheme," Daniels said.

The case is Life Science Logistics LLC v. U.S., case number 24-1522, in the U.S. Court of Appeals for the Federal Circuit.

Fed. Circ. to Consider Limits to Mid-Protest Agency Corrective Action

The Federal Circuit heard oral arguments in September in an appeal brought by an IT consulting firm accusing the U.S. Department of Commerce of reevaluating proposals for a $1.5 billion information technology deal amid ongoing bid protests without first seeking permission from the Court of Federal Claims.

CAN Softtech Inc. told the panel the agency took corrective action by reassessing proposals and making new award decisions before requesting a voluntary remand or dismissal of the bid protest. That move goes against the Supreme Court's 2020 decision in Homeland Security v. Regents of the University of California, which held the Administrative Procedure Act doesn't allow federal agencies to issue a new decision supporting their actions in the heat of litigation, CAN Softtech said.

But U.S. Circuit Judge Todd M. Hughes was quick to cut off CAN Softtech's attorney at the start of oral arguments, saying the Regents ruling doesn't apply because Commerce merely canceled the awards at issue, which the agency was well within its rights to do.

The case is Syneren Technologies Corp. et al. v. U.S., case number 24-1369, in the U.S. Court of Appeals for the Federal Circuit.

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