

## Gov't Contracting Policies To Watch In The 2nd Half Of 2025

By **Madeline Lyskawa**

*Law360 (July 30, 2025, 5:54 PM EDT)* -- The Trump administration's planned overhaul of the Federal Acquisition Regulation and the implementation of a fee-shifting provision for unsuccessful U.S. Government Accountability Office bid protests headline a slate of policy initiatives for government contractors to watch for during the second half of this year.

Here, Law360 previews four upcoming policy changes with significant potential impacts on government contractors:

### **FAR Rewrite**

President Donald Trump directed the Office of Federal Procurement Policy in April to review and reduce the FAR — which dictates how federal contracts should be solicited and managed — so that it only includes statutory requirements and provisions "essential to sound procurement."

The FAR, which went into effect in 1984 as part of an effort to standardize acquisition requirements across the government, has ballooned over the past four decades to include more than 2,000 pages of statutory regulations and guidance documents, "evolving into an excessive and overcomplicated regulatory framework and resulting in an onerous bureaucracy," Trump said in an executive order.

Trump gave the OFPP and the Federal Acquisition Regulatory Council — which includes the U.S. Department of Defense, General Services Administration and NASA — 180 days to pare back the FAR.

Alan Chvotkin, a partner with Centre Law & Consulting, said both the government and the contractor community will "benefit from clarity about the process, transparency about the mechanisms that are going to be used, and consistency in the application of those rules to individual procurements."

"If the FAR rewrite can maintain those bedrock principles and be shorter, I'm okay with that. But coming down to only statutory requirements is not an altar that I worship at," Chvotkin said, warning that doing so could make it harder to find FAR guidance documents.

### **'Critical Item' Definition For Buy American Purposes**

Although both the first Trump administration and former President Joe Biden's administration focused on boosting domestic supply chains and industry, including through federal procurement, the key question of what constitutes a "critical item" under Buy American policies continues to be unanswered.

During the Biden administration, the FAR Council finalized a rule requiring 75% of the components in items purchased by federal agencies to be domestically sourced by 2029, up from 55%.

The rule also increased the price preference used for comparing domestic products with foreign products for "critical" domestic products deemed "likely to make a meaningful difference toward strengthening U.S. supply chains." But it didn't include a list of those critical products or their specific enhanced price preferences, leaving that issue for a separate rule.

According to Mike Wagner, a government contracts partner with Covington & Burling LLP, some obvious candidates for the critical item designation include things like semiconductors, rare earth materials and potentially even certain types of electronic parts and components that are critical to aerospace defense and weapon systems.

"But it's always difficult to predict when we're going to see the government take action, and they've got a lot of other items on their plate right now," Wagner said. "So, it remains to be seen when, or if, we'll see some further definition around 'critical item' for the purposes of the Buy American Act, so that that could remain open-ended for a while."

### **Final Cybersecurity Rules Expected For Defense Contracts**

The DOD finalized a rule in October implementing its Cybersecurity Maturity Model Certification program, which will attach one of three levels of cybersecurity requirements to nearly all defense contracts and contract solicitations.

Despite that rule going into effect in December, contractors are waiting on the agency to finalize a related Defense Federal Acquisition Regulation Supplement proposal issued in August, which sets out when and how CMMC requirements will actually be incorporated into contracts and contract solicitations, said Michael G. Gruden, a government contracts and privacy and cybersecurity partner with Crowell & Moring LLP.

"Once that clause itself is finalized, ideally in the fall, that will sort of usher in a phased implementation of contractor requirements to actually obtain their certification," Gruden said.

At the start of that implementation period, Gruden said, a majority of contractors will only need to complete a self-assessment to verify CMMC compliance, before obtaining a CMMC certification from a third-party assessor organization down the road. For select contracts, however, contractors will need to have that certification by the time the DFAR supplement is finalized, Gruden said.

Jacob Harrison, a government contracts associate with Crowell & Moring LLP, noted that the DOD has the flexibility to include certain requirements earlier in the implementation process than planned.

"If you haven't started already, don't wait," he cautioned.

### **Implementation Of Fee-Shifting Provision For GAO Protests**

Section 885 of the 2025 National Defense Authorization Act, signed into law in December, asked the U.S. Government Accountability Office to propose a process for the DOD and award winners to recoup costs and lost profits from unsuccessful bid protesters.

Regarding that mandate, Scott N. Flesch, a Miller & Chevalier Chtd. member who focuses on government contracts and national security, said that in order for the contract awardee to receive payment from the unsuccessful challenger, they would have to show that they incurred losses.

This could be difficult if the performance period of a contract shifts as a result of the protest, as often happens, he said. Similarly, if supply or labor costs increase due to a delay in performance, the awardee would have to figure out how to prove those losses, Flesch said.

"So, to the extent that the intent is to reduce litigation, that view may be short-sighted," he said. "While a pilot program may dissuade some parties from filing a protest at the outset, it may increase the scope of litigation in protests that are dismissed or denied because parties will end up fighting more about the amount of costs and whether a party is truly entitled an alleged loss of profit by an awardee or reimbursement of a cost incurred by DOD to process a protest."

The GAO warned **in a letter** sent to Congress on July 14 that a fee-shifting process could have a particular chilling effect on small businesses, which make up the majority of protesters.

### **Revocation Of SBA's 'Rule Of Two'**

The Small Business Administration proposed a rule in October aimed at expanding the "rule of two," under which a deal has to be set aside for small businesses whenever an agency determines that at least two small businesses will bid and can offer competitive pricing, quality and delivery terms.

The rule's expansion would apply to task and delivery orders made under multiple-award contracts, or MACs, which the SBA estimated could boost awards to small businesses by around \$6 billion annually.

The DOD, GSA and NASA subsequently issued a corresponding proposed rule in January, which would have required contracting officers to set aside orders placed under MACs for small businesses if the rule of two applies. However, the FAR Council withdrew that proposal in June.

Although the SBA's proposed rule remains, Jeremy D. Burkhart, a partner with Holland & Knight LLP, said he expects that it will also be withdrawn by the Trump administration.

"I think that the administration supports small businesses, but they also have this occasionally competing principle of trying to get the government the best deal. So, I anticipate that things are going to be done at the margins to reduce some of the requirements to utilize set-asides," Burkhart said.

--Editing by Marygrace Anderson.