

Gov't Contracts Policies To Watch In 2026

By **Madeline Lyskawa**

Law360 (January 2, 2026, 12:03 PM EST) -- Congress' ongoing crusade against frivolous bid protests at the U.S. Government Accountability Office and the Trump administration's implementation of the Federal Acquisition Regulation via official rulemaking headline a slate of policy initiatives for government contractors to watch for in 2026.

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

Implementation of Trump Administration's FAR Overhaul

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

As part of the administration's so-called overhaul process, the Federal Acquisition Regulatory Council has issued model deviation text for each FAR part between May and October. Some of the revisions include removing re-representation requirements under Part 19 for small businesses when they respond to orders under multiple-award contracts, as well as changes requiring agencies to procure commercial services and products to the maximum extent possible via "required use contracts" under Part 8.

While some agencies have started to adopt the new FAR provisions through issuing class deviations, Jeremy D. Burkhart, a government contracts partner with Holland & Knight LLP, said that they have mostly yet to make their way into solicitations and contracts. The formal rulemaking process implementing the revisions is set to take effect in 2026, which is when contractors will see the new provisions in solicitations and contracts, Burkhart said.

Although the new provisions emphasize vesting discretion in contracting officials with regard to guidance that is not required by statute, Burkhart said he doesn't expect longtime contracting officials to deviate much from how they're used to operating. However, that may change with newer contracting officials joining the DOD.

"As newer contracting officials come in, in the future, that's where you'll start to see some of the discretion being exercised ... and what it looks like once there's kind of been a new generation of

contracting officials that have taken over," Burkhart said.

Congress' Ongoing Bid Protest Reform Efforts

In the National Defense Authorization Act for fiscal year 2025, Congress asked the GAO to propose a fee-shifting process to recoup costs from frivolous bid protesters, based on benchmarks such as costs to the government and lost profits for the awardee.

However, the GAO told Congress in July that the U.S. Department of Defense doesn't collect enough data on bid protest costs and contractor lost profit rates to develop such benchmarks. It also said the Competition In Contracting Act, combined with the agency's bid protest regulations, already provide effective means to efficiently resolve frivolous claims.

If Congress wants to implement a fee-shifting process anyway, the GAO recommended that it consider requiring the DOD to include a contract provision allowing the agency to recoup, or otherwise withhold, profit or a fee when an incumbent contractor files a protest that is dismissed as legally or factually insufficient.

Listening to the GAO's recommendation, Congress included a provision in the 2026 NDAA directing Defense Secretary Pete Hegseth to revise the Defense Federal Acquisition Regulation Supplement to establish procedures under which a contracting officer can withhold up to 5% in payment to an incumbent when they file a bid protest at the GAO over a procurement involving the same or similar goods or services.

If the incumbent's protest is dismissed for lacking any reasonable legal or factual basis, that withheld payment should be forfeited, according to Section 875, which will likely be implemented by the DOD in 2026.

But Scott Flesch, a member with Miller & Chevalier Chtd. whose practice focuses on government contracts, said the new procedures could result in incumbent protesters filing additional challenges at the Armed Services Board of Contract Appeals and the Court of Federal Claims over the government's withholding of payment under the existing contract and subsequent forfeiture order.

"So, where it appears that Congress tried to find a middle ground in implementing statutory authority to dissuade frivolous protests may, in fact, invite additional litigation related to decisions to withhold and forfeitures," Flesch said.

Application of Various NDAA Provisions

In addition to Section 875, the more than 3,000-page 2026 NDAA includes a number of other provisions aimed at boosting competition in defense contracting, which will likely be implemented by the DOD throughout 2026.

Under Section 824, Congress directed Hegseth to issue guidance on when the Pentagon should accept a wider range of projects, such as commercial or nongovernment projects, while evaluating examples of past performance in contract proposals. Section 824 also directs Hegseth to issue guidance on how the DOD can use other methods of evaluation like demonstrations and the testing of technologies.

According to Flesch, Congress' move to broaden the types of acceptable past performance

"complements the general move afoot to make the federal procurement system more commercial-like and to consider performance by those that are in the commercial marketplace."

"I don't think there'll be much pushback here, except maybe from entrenched government contractors that want to remain in their niche and restrict potential competitors from being considered," Flesch said.

Under another provision — Section 1826 — Congress directed the DOD to exempt products and services provided by nontraditional defense contractors from eight different DFARS rules, as well as FAR Part 31's cost principles and the statutory requirement to submit certified cost or pricing data. This loosening of restrictions could make a big difference for companies, large and small, that are not traditional defense contractors, Alan Chvotkin, a member with Protorae Law PLLC whose practice focuses on government contracts, said.

"Those companies that have to spend the money to comply with the rules as they exist today could be at a competitive disadvantage to those companies who can come into the marketplace and don't have to spend the money to do that," Chvotkin said — adding that in an effort to level the playing field, the government has to make sure it doesn't disadvantage companies that have had to follow the rules to date.

Additionally, although the final NDAA excluded bipartisan language from the proposed Warrior Right to Repair Act of 2025 that would have required contractors to provide technical data and materials so the military can repair its own equipment, Flesch said he has "significant confidence" the issue will be raised again well before next year's NDAA.

Rollout of Hegseth's DOD Acquisition Changes

Hegseth laid out five transformations to the DOD's procurement process during a speech at the National War College in November, including inspiring industry to become a wartime industrial base, unleashing the defense industrial base and government workforce "by incentivizing progress over process," and making new acquisition processes that are biased toward speed, flexibility and efficiency.

With this change in approach to procurement — the effects of which contractors are likely to see more of next year — Hegseth said the DOD will award companies bigger and longer contracts for proven systems, while prioritizing the purchase of commercial solutions that can meet the agency's needs faster, "even if that means bids do not meet every requirement."

Hegseth also said defense program executive offices, which are responsible for overseeing major defense acquisition programs, will be replaced by portfolio acquisition executives, or PAEs, who will be the single accountable officials for program outcomes and possess the authority to act without prior approval.

"Some of these acquisition concepts really aren't necessarily new, but there is this framework shift to kind of acquire [DOD] capabilities through a lens of this wartime footing and this wartime framework," M. Yuan Zhou, counsel at Crowell & Moring LLP whose practice focuses on government contracts, said — adding that the agency's focus is really on speed and system modularity.

Moving into 2026, Zhou said she's looking out for how the DOD will navigate fundamental challenges posed by differences in how the commercial world operates and what the government actually needs.

While Hegseth and his follow-up memo talked about how contractors must assume risk in order to partner with the DOD, Zhou said that's not how commercial purchasing works — leaving open the question of how industry will deal with that kind of risk moving forward.

Potential Final Rules on Unclassified Info, Conflicts of Interest

The FAR Council proposed a pair of long-awaited regulations in January aimed at defining controlled unclassified information, or CUI, across the government and updating rules related to conflicts of interest involving contractors. Final versions of the rules could be released in 2026.

The first of the proposed rules would amend the FAR to include the National Archives and Records Administration's CUI program, effectively implementing a governmentwide definition and set of protections for CUI. The proposed rule also introduces a standard form that would tell contractors when they're handling CUI and what CUI they can expect to handle it.

"Assuming it holds through to the final rule, that would be a big change, because we spend a lot of time with clients talking about, what is CUI, is this document CUI, is that document CUI? Because the federal government doesn't always provide very clear guidance to its contractors on what is CUI," said Jacob Harrison, a government contracts associate with Crowell & Moring LLP.

While there's been no indication the Trump administration won't move forward with finalizing the proposed rule, Harrison said contractors are looking at the proposal with a degree of skepticism in terms of how soon it could be finalized, especially given President Trump's executive order from earlier this year requiring agencies to cull 10 regulations for every new rule issued.

The second proposed rule would move existing provisions covering organizational conflicts of interest from FAR Subpart 9.5 to a new subpart in FAR Part 3, which focuses on improper business practices and personal conflicts of interest. The different types of organizational conflicts of interest, or OCI, that will continue to exist under the new regime include unequal access, impaired objectivity and biased ground rules.

The proposal also referred to a type of conflict known as an unfair competitive advantage, where a contractor hires and fails to wall off from their proposal team a government employee with access to competitively useful, nonpublic information.

Peter Eyre, a government contracts partner with Crowell & Moring LLP, said the FAR Council has yet to provide an update on when to expect the final OCI rule, but that he's watching closely for changes related to commercial relationships and activities with foreign governments — and whether that work can give rise to conflicts of interest under certain circumstances.

--Editing by Philip Shea and Kelly Duncan.