



**Congressional  
Research Service**

Informing the legislative debate since 1914

---

# **Noncompetitive Federal Contract Awards: Other than Full and Open Competition**

June 10, 2026

**Congressional Research Service**

<https://crsreports.congress.gov>

R48980



## Noncompetitive Federal Contract Awards: Other than Full and Open Competition

In the context of federal procurement, Congress has long been interested in the view that increased competition among potential vendors could result in (1) lower prices, (2) higher quality goods and services, (3) increased innovation, and (4) greater public trust in government. The Competition in Contracting Act of 1984 (CICA), as amended, forms the current framework for competition in federal procurement. CICA requires that executive agencies “obtain full and open competition through the use of competitive procedures” for the procurement of all property and services unless expressly authorized by statute (10 U.S.C. §3201(a), 41 U.S.C. §3301(a)). Under CICA, “full and open competition” results when “all responsible sources are permitted to submit sealed bids or competitive proposals” (41 U.S.C. §107).

Procurement contracts are subject to CICA’s full-and-open-competition requirement unless a separate statute expressly authorizes the use of different procedures or a statutory exception applies. Non-procurement contracts, such as those resulting from agencies’ use of other transaction authority (OTA), are not subject to CICA (see, e.g., 51 U.S.C. §20113). Contracts awarded using simplified acquisition procedures; contract modifications that are within the scope of the original contract award; and orders placed under requirements, definite quantity, indefinite quantity, task order, and delivery order contracts are also not subject to the full-and-open-competition requirement (FAR §6001).

Some competitions in which only certain contractors can compete still meet CICA’s requirement for full and open competition because CICA provides for “full and open competition after exclusion of sources.” This occurs in two contexts: agencies’ “dual sourcing” initiatives and set-asides for small businesses (10 U.S.C. §3203(a)-(b), 41 U.S.C. §3303(a)-(b)).

Although CICA establishes full and open competition as the default in federal procurement, it also provides seven exceptions that agencies may invoke. These exceptions generally cover situations where either competition is infeasible or the federal government prioritizes other objectives over full and open competition. These statutory exceptions are (1) only one responsible source; (2) unusual and compelling urgency; (3) industrial mobilization, engineering, developmental or research capability, or expert services; (4) international agreement; (5) authorized or required by statute; (6) national security; and (7) the public interest (10 U.S.C. §3204(a), 41 U.S.C. §3304(a)).

Although agencies have discretion to use noncompetitive procedures in certain circumstances, CICA requires that agencies justify their actions in writing. Contracting officers are required to provide justifications of, and obtain approvals for, most noncompetitive procurements conducted in reliance on CICA exceptions (10 U.S.C. §3204(e), 41 U.S.C. §3304(e)).

Vendors excluded from bidding on federal contracts because of an agency’s actions to limit competition may challenge via the bid-protest process the agency’s method of, or rationale for, making a noncompetitive contract award (28 U.S.C. §1491, 31 U.S.C. §§3551-3557).

Article I of the Constitution provides Congress the authority to appropriate funds and conduct oversight over government contracting practices. Thus, Congress has often sought to encourage cost-effective and efficient contracting mechanisms to help the government acquire high-quality goods and services that serve taxpayers’ interests. As part of its oversight and legislative functions, Congress may consider (1) the scope of agency discretion in using CICA exceptions, (2) the frequency of agency use of bridge contracts, and (3) changes made by the second Trump Administration’s “Revolutionary FAR Overhaul” (<https://www.acquisition.gov/far-overhaul/>).

**R48980**

June 10, 2026

**Dominick A. Fiorentino**  
Analyst in Government  
Organization and  
Management

**David H. Carpenter**  
Legislative Attorney

## Contents

Introduction .....	1
Full and Open Competition .....	2
Contracts Subject to, and Exempt from, Full and Open Competition .....	3
Full and Open Competition After Exclusion of Sources .....	4
Exceptions to Full and Open Competition .....	5
Only One Responsible Source.....	6
Unusual and Compelling Urgency .....	7
Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services .....	8
International Agreement.....	9
Authorized or Required by Statute.....	9
National Security.....	10
Public Interest.....	10
Use of Exceptions to Full and Open Competition in FY2025 .....	11
Agency Justifications of Noncompetitive Contract Awards .....	12
Content of Justifications.....	12
Approval of Justifications .....	12
Public Availability of Justifications and Approvals .....	13
Bid Protests Generally .....	14
Bid Protests Involving Other than Full and Open Competition .....	16
Protest Involving the Only-One-Responsible-Source Exception.....	16
Protest Involving the Express-Statutory-Authorization Exception.....	18
Protest Involving the Unusual-and-Compelling-Urgency Exception .....	18
Issues for Congress.....	20
Agency Discretion in Using the Unusual-and-Compelling-Urgency Exception.....	20
Lack of Definition for Bridge Contracts .....	22
Potential Impacts of the Revolutionary FAR Overhaul.....	23

## Figures

Figure 1. Competitive and Noncompetitive Contract Obligations: FY2015-FY2025.....	3
Figure 2. Contract Obligations by Exception to Full and Open Competition: FY2025 .....	11
Figure 3. Contract Obligations Using the Unusual-and-Compelling-Urgency Exception: FY2016-FY2026 .....	21
Figure 4. Contract Obligations Using the Unusual-and-Compelling-Urgency Exception, by Agency: FY2016-FY2026 (Q1 and Q2).....	22

## Tables

Table 1. Approving Officials for Noncompetitive Contract Justifications .....	13
---	----

## **Contacts**

Author Information..... 24

## Introduction

In the context of federal procurement, Congress has long been interested in the view that increased competition among potential vendors results in better cost and qualitative outcomes for the government.<sup>1</sup> The federal government has encouraged competition because of its reported benefits to the government and the general public.<sup>2</sup> When multiple offerors compete for the government's business, agencies, for example, may be able to (1) acquire higher quality goods and services at lower prices than if they awarded contracts without competition, (2) reduce cost growth by promoting contract turnover, (3) increase innovation and technical capabilities among vendors, and (4) maintain public trust in government by ensuring that government contracts are awarded on the basis of merit rather than favoritism.<sup>3</sup>

Maximizing competition may involve trade-offs with other government procurement objectives. A 2024 Government Accountability Office (GAO) study found that the average lead time (the time from solicitation to contract award) for Department of Defense (DOD) procurements from FY2019 through FY2022 averaged 31 days for all competitive contracts and 322 days for high-value competitive procurements.<sup>4</sup> Such delays could impede an agency's ability to respond to national security concerns or conduct military operations. There also may be diminishing returns to the government in maximizing competition because of the cost and time associated with agencies' solicitation and evaluation of offers.<sup>5</sup> Recognizing that competition sometimes either is infeasible or is in conflict with other government goals, Congress has authorized circumstances under which agencies may limit competition.<sup>6</sup>

This report describes the requirement for full and open competition in federal procurement as well as the types of contracts subject to this requirement, as implemented in Part 6 of the Federal Acquisition Regulation (FAR).<sup>7</sup> This report also summarizes the statutory exceptions to full and

---

<sup>1</sup> U.S. Government Accountability Office (GAO), *Federal Contracting: Opportunities Exist to Increase Competition and Assess Reasons When Only One Offer Is Received*, GAO-10-833, July 2010, <https://www.gao.gov/assets/gao-10-833.pdf>.

<sup>2</sup> William S. Cohen, "The Competition in Contracting Act," *Public Contract Law Journal*, vol. 14, no. 1 (October 1983), pp. 4-5.

<sup>3</sup> Cohen, "The Competition in Contracting Act," pp. 4-5.

<sup>4</sup> GAO, *Defense Contracts: Better Monitoring Could Improve DOD's Management of Award Lead Times*, GAO-24-106528, March 2024, pp. 12-15, <https://www.gao.gov/assets/d24106528.pdf>. Pursuant to Executive Order 14347, the Department of Defense (DOD) is "using a secondary Department of War designation," and the Secretary of Defense is using "Secretary of War" as a "secondary title." Executive Order 14347 of September 5, 2025, "Restoring the United States Department of War," 90 *Federal Register* 43893, September 10, 2025, <https://www.federalregister.gov/documents/2025/09/10/2025-17508/restoring-the-united-states-department-of-war>.

<sup>5</sup> U.S. Congress, Senate Committee on Armed Services, *To Revise the Procedures for Soliciting and Evaluating Bids and Proposals for Government Contracts and Awarding Such Contracts, and for Other Purposes*, hearing on S. 338, 98<sup>th</sup> Cong., 1<sup>st</sup> sess., June 7, 9, 1983.

<sup>6</sup> U.S. Congress, House Committee on Government Operations, *Competition in Contracting Act of 1984*, report to accompany H.R. 5184, 98<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 98-1157, October 10, 1984, p. 17.

<sup>7</sup> Codified at Chapter 1 of Title 48 of the *Code of Federal Regulations*. The Trump Administration, pursuant to Executive Order 14275, has initiated a process called the "Revolutionary FAR Overhaul" to "rewrite [the FAR] in plain language, and remove most non-statutory rules" through class deviations that have been implemented on an agency-by-agency basis. General Services Administration (GSA), "Revolutionary FAR Overhaul (RFO)," <https://www.acquisition.gov/far-overhaul>. Citations to the FAR in this report are provided along with their FAR Overhaul counterparts. The report identifies cited FAR provisions that were eliminated as part of the FAR Overhaul. See also Executive Order 14275 of April 15, 2025, "Restoring Common Sense to Federal Procurement," 90 *Federal Register* 16447, April 18, 2025, <https://www.federalregister.gov/documents/2025/04/18/2025-06839/restoring-common-sense-to-federal-procurement>.

open competition, as well as the processes by which agencies must document and justify their use of these exceptions. In addition, the report discusses contract bid protests in the context of noncompetitive contract awards, followed by potential issues for Congress.

## Full and Open Competition

While Congress has passed laws encouraging competition in procurement as far back as 1809,<sup>8</sup> the Competition in Contracting Act of 1984 (CICA),<sup>9</sup> as amended, forms the current framework for competition in federal executive agency procurement. CICA requires that executive agencies “obtain full and open competition through the use of competitive procedures” for the procurement of all property and services, unless this requirement is expressly waived by statute.<sup>10</sup> CICA also provides seven exceptions to full and open competition that agencies may invoke in specific circumstances (see “Exceptions to Full and Open Competition” section).<sup>11</sup> When these exceptions are used, agencies generally must file written justifications and approvals (J&As) that explain the basis for the exception’s invocation.<sup>12</sup> These competition requirements, as well as the processes for making and documenting noncompetitive contract awards, are implemented in Part 6 of the FAR.

Under CICA, “full and open competition” results when “all responsible sources are permitted to submit sealed bids or competitive proposals.”<sup>13</sup> A *responsible source* is a prospective contractor who

- (1) has adequate financial resources to perform the contract or the ability to obtain those resources;
- (2) is able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and Government business commitments;
- (3) has a satisfactory performance record;
- (4) has a satisfactory record of integrity and business ethics;
- (5) has the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain the organization, experience, controls, and skills;
- (6) has the necessary production, construction, and technical equipment and facilities, or the ability to obtain the equipment and facilities; and
- (7) is otherwise qualified and eligible to receive an award under applicable laws and regulations.<sup>14</sup>

In practice, agencies have used the discretion accorded by CICA to obligate a significant proportion of federal contract spending on noncompetitive contracts.<sup>15</sup> In FY2025, of the

---

<sup>8</sup> 2 Stat. 536 (1809).

<sup>9</sup> CICA was enacted as part of the Deficit Reduction Act of 1984, P.L. 98-369, §§2701-2753, 98 Stat. 494, 1175 (1984).

<sup>10</sup> 10 U.S.C. §3201 and 41 U.S.C. §3301. Citations to CICA’s codification generally reference two titles of the *U.S. Code*: Title 10, governing procurements by defense agencies, the National Aeronautics and Space Administration (NASA), and the U.S. Coast Guard (USCG), and Title 41, governing procurements by civilian agencies.

<sup>11</sup> 10 U.S.C. §3204(a) and 41 U.S.C. §3304(a).

<sup>12</sup> 10 U.S.C. §3204(e) and 41 U.S.C. §3304(e).

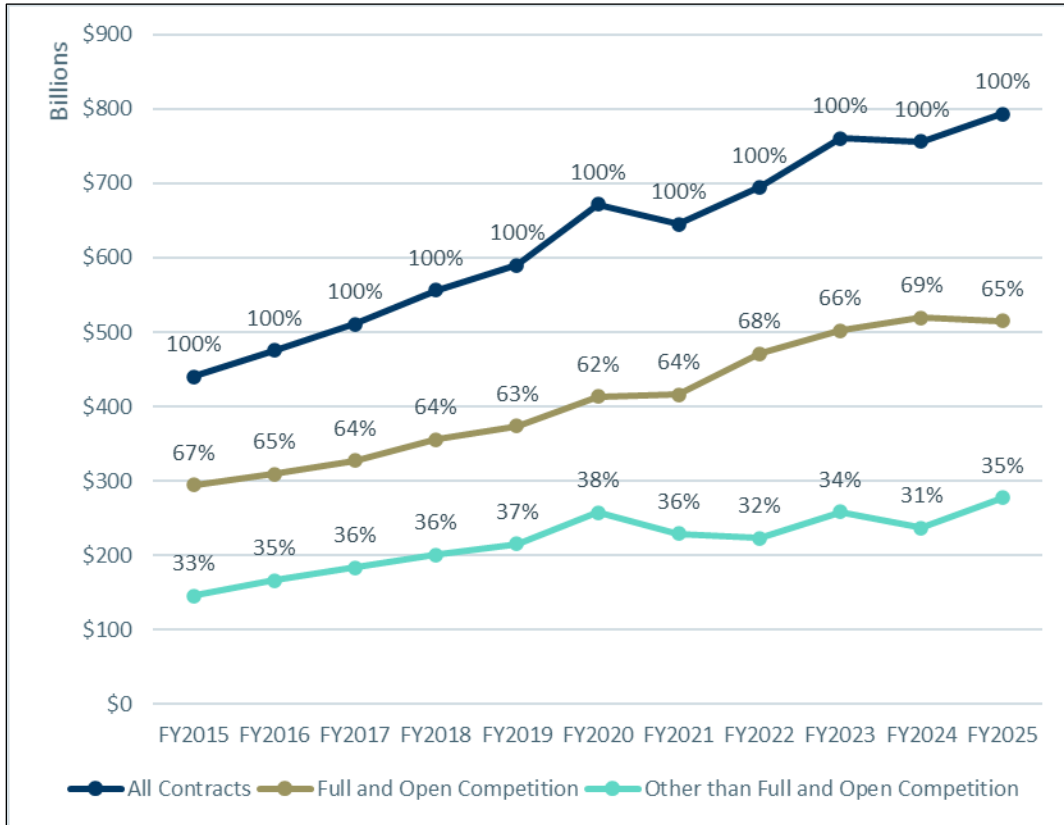
<sup>13</sup> 41 U.S.C. §107.

<sup>14</sup> 41 U.S.C. §113.

<sup>15</sup> “Obligations” are incurred when agencies enter into legally binding commitments to pay federal funds to a third party, such as awarding contracts for the provision of goods or services. 31 U.S.C. §1501.

approximately \$793 billion in total contract obligations, almost \$278 billion, or 35%, was obligated on contracts awarded through means other than full and open competition (see **Figure 1**). In the 11 fiscal years from FY2015 through FY2025, this proportion has ranged between 31% and 38% of total obligations.

**Figure 1. Competitive and Noncompetitive Contract Obligations: FY2015-FY2025**  
Billions of Nominal Dollars and Percentage of Total Procurement Obligations



**Source:** CRS analysis of contract data from the Federal Procurement Data System (FPDS) accessed via the System for Award Management (SAM.gov), October 1, 2014, through September 30, 2025.

**Notes:** “Other than full and open competition” totals were calculated by summing contract obligations where the FPDS data element “Other than Full and Open Competition” contained a value corresponding to an exception to full and open competition. “Full and open competition” totals were calculated by summing contract obligations where the FPDS data element “Other than Full and Open Competition” contained a null value.

## Contracts Subject to, and Exempt from, Full and Open Competition

Procurement contracts are subject to CICA’s full-and-open-competition requirement unless a separate statute expressly authorizes the use of different procedures or one of the exceptions within CICA applies.<sup>16</sup> CICA applies only to covered executive agency procurement contracts.<sup>17</sup> Non-procurement contracts, such as those resulting from agencies’ use of other transaction

<sup>16</sup> 10 U.S.C. §3201(a)(1) and 41 U.S.C. §3301(a)(1).

<sup>17</sup> 10 U.S.C. §3201(a) and 41 U.S.C. §3301(a).

authority (OTA), thus are not subject to CICA.<sup>18</sup> Additionally, the following contract award types have different statutorily or regulatorily imposed competition procedures and are not subject to the full-and-open-competition requirement:

- contracts awarded using simplified acquisition procedures;<sup>19</sup>
- contract modifications that are within the scope of the original contract award,<sup>20</sup> and
- orders placed under requirements, definite quantity, indefinite quantity, task order, and delivery order contracts.<sup>21</sup>

## Full and Open Competition After Exclusion of Sources

Some competitions that are not available to all contractors still meet CICA's competition requirement because CICA provides for "full and open competition *after exclusion of sources*."<sup>22</sup> "Full and open competition after exclusion of sources" occurs in two contexts: "dual sourcing" initiatives and set-asides for small businesses.<sup>23</sup>

Dual sourcing, also known as multi-sourcing, is a method of contracting that allows agencies to distribute their contracts for particular goods or services among multiple manufacturers or suppliers to ensure that their operations are not vulnerable to the performance of an individual company.<sup>24</sup> CICA allows agencies to exclude a particular source under the dual sourcing method if the agency head determines that doing so would

- (1) increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;
- (2) be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;
- (3) be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;

---

<sup>18</sup> See, for example, 10 U.S.C. §§4021-4022. For more information about "other transactions," see CRS In Focus IF12856, *Defense Primer: Other Transactions (OTs)*, by David H. Carpenter and Alexandra G. Neenan (2024).

<sup>19</sup> 10 U.S.C. §3205(c) and 41 U.S.C. §3305(c). Also see FAR §6001(a). Simplified acquisition procedures, including competition requirements, are located in FAR Part 13. These procedures generally apply to acquisitions either below the micro-purchase threshold (currently \$15,000) or below the simplified acquisition threshold (currently \$350,000, with higher thresholds in certain circumstances, and \$9,000,000 for commercial items).

<sup>20</sup> FAR §6001(b) and FAR Council, FAR Overhaul §6001(b), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_001](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_001).

<sup>21</sup> FAR §6001(d)-(f) and FAR Council, FAR Overhaul §6001(d)-(f), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_001](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_001). For more information about indefinite delivery contracts, see CRS In Focus IF12558, *Indefinite Delivery, Indefinite Quantity Contracts*, by Dominick A. Fiorentino and Alexandra G. Neenan (2024).

<sup>22</sup> 10 U.S.C. §3203 and 41 U.S.C. §3303 (emphasis added). In statute, this is referred to as "exclusion of particular source or restriction of solicitation to small business concerns."

<sup>23</sup> 10 U.S.C. §3203(a)-(b) and 41 U.S.C. §3303(a)-(b). For more information on small business set-asides, see CRS Report R47585, *An Overview of Small Business Subcontracting: In Brief*, by R. Corinne Blackford (2026).

<sup>24</sup> 10 U.S.C. §3203(a)-(b) and 41 U.S.C. §3303(a)-(b).

- (4) ensure the continuous availability of a reliable source of supplies or services;
- (5) satisfy projected needs based on a history of high demand; or
- (6) satisfy a critical need for medical, safety, or emergency supplies.<sup>25</sup>

When excluding a particular source from a procurement action using this authority, the agency must justify its decisionmaking in a determinations and findings (D&Fs) document signed by the head of the agency or designee.<sup>26</sup>

CICA also permits setting aside acquisitions for competitions limited to small businesses in general, or to specific subcategories of small businesses, by allowing “procurement of property or services ... using competitive procedures, but excluding other than small business concerns.”<sup>27</sup>

The Small Business Act<sup>28</sup> provides for such set-asides for small businesses generally, as well as women-owned, service-disabled veteran-owned, and historically underutilized business zone (HUBZone) small businesses, and small businesses owned and controlled by socially and economically disadvantaged individuals who are participating in the Business Development Program under Section 8(a) of the act.<sup>29</sup> Set-asides can also be made for local firms during major disasters or emergencies under the authority of the Stafford Act.<sup>30</sup> No separate D&F is required when limiting competitions to small businesses or when making local set-asides during a disaster.<sup>31</sup>

## Exceptions to Full and Open Competition

Although CICA establishes full and open competition as the default in federal procurement, it also provides seven exceptions that agencies may invoke in certain situations.<sup>32</sup> These exceptions cover situations where either competition is infeasible (e.g., there is only one responsible source for the good or service needed by the government) or the federal government prioritizes other objectives (e.g., rapid response to a disaster situation) more than full and open competition.<sup>33</sup> The level of specificity provided by CICA about when an agency may restrict competition varies among the seven exceptions.<sup>34</sup> Each exception accords a certain level of discretion to executive

---

<sup>25</sup> FAR §6.202(a). See also 10 U.S.C. §3203(a)-(b), 41 U.S.C. §3303(a)-(b), and FAR Council, FAR Overhaul §6.102-1(a), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_102\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_102_1).

<sup>26</sup> FAR §6.202(b) and FAR Council, FAR Overhaul §6.102-1(b), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_102\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_102_1). FAR §1.701 defines *determination and findings* (D&F) as “a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contract actions.”

<sup>27</sup> 10 U.S.C. §3203(b) and 41 U.S.C. §3303(b).

<sup>28</sup> P.L. 83-163, as amended, codified at 15 U.S.C. §§631-657u.

<sup>29</sup> 15 U.S.C. §637(a). For more information about small business set-asides, see CRS In Focus IF12852, *Federal Contract Set-Asides for Small Businesses*, by R. Corinne Blackford (2026).

<sup>30</sup> 42 U.S.C. §5150(a)(1). Also see FAR §26.2 and FAR Council, FAR Overhaul §26.2, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-26#FAR\\_Subpart\\_26\\_2](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-26#FAR_Subpart_26_2).

<sup>31</sup> FAR §§6.203-6.208 and FAR Council, FAR Overhaul §§6.102-2-6.102-3, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_102\\_2](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_102_2). The RFO provisions no longer explicitly require separate D&Fs to be provided in these circumstances.

<sup>32</sup> 41 U.S.C. §3304(a), 10 U.S.C. §3204(a), FAR §6.302; and FAR Council, FAR Overhaul §6.103, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103).

<sup>33</sup> 41 U.S.C. §3304(a), 10 U.S.C. §3204(a), FAR §6.302; and FAR Council, FAR Overhaul §6.103, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103).

<sup>34</sup> 41 U.S.C. §3304(a) and 10 U.S.C. §3204(a).

agencies in determining whether to limit competition for a particular procurement.<sup>35</sup> Each of the seven exceptions is analyzed below.

## Only One Responsible Source

The first exception to full and open competition allows agencies to limit competition and award a contract to a single entity when “the property or services needed by the executive agency are available from only one responsible source and no other type of property or services will satisfy the needs of the executive agency.”<sup>36</sup> This exception may be invoked when the agency can demonstrate that there is little or no possibility of competition because of the nature of the good or service being procured.<sup>37</sup> This exception can apply when

- an agency makes an award in response to the receipt of an unsolicited research proposal that demonstrates a “unique and innovative concept” that is “not otherwise available to the Federal Government,”<sup>38</sup>
- an agency acquires utility services (e.g., electricity) for which there is only one provider,<sup>39</sup>
- an agency acquisition requires a brand-name product or service,<sup>40</sup> or
- supplies or services<sup>41</sup> are “deemed to be only available from the original source in the case of a follow-on contract” for highly specialized services or equipment.<sup>42</sup>

An agency generally must publish a notice of the proposed use of this exception in order to provide prospective contractors the opportunity to inform the agency of their ability to perform the contract.<sup>43</sup> The agency must consider “any bids, proposals, quotations, or capability statements” that the agency receives as a result of the public notice.<sup>44</sup>

---

<sup>35</sup> 41 U.S.C. §3304(a) and 10 U.S.C. §3204(a).

<sup>36</sup> 41 U.S.C. §3304(a)(1), 10 U.S.C. §3204(a)(1), FAR §6.302-1; and FAR Council, FAR Overhaul §6.103-1, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_1). “For DoD, NASA, and the Coast Guard, this authority extends to situations where only a limited number of responsible sources can satisfy agency requirements.” FAR Council, FAR Overhaul §6.103-1(b), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_1). See also FAR §6.302-1(a)(2).

<sup>37</sup> 41 U.S.C. §3304(b), 10 U.S.C. §3204(b), FAR §6.302-1(a)(2), and FAR Council, FAR Overhaul §6.103-1(c), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_1).

<sup>38</sup> 41 U.S.C. §3304(b)(1), 10 U.S.C. §3204(b)(1), FAR §6.302-1(a)(2)(i), and FAR Council, FAR Overhaul §6.103-1(c)(1), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_1). For more information about agency evaluation and acceptance or rejection of unsolicited proposals, see FAR §15.6 and FAR Council, FAR Overhaul §15.5, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-15#FAR\\_Subpart\\_15\\_5](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-15#FAR_Subpart_15_5).

<sup>39</sup> FAR §6.302-1(b)(3). The FAR Overhaul eliminated the examples of potential uses of this exception in FAR §6.302-1(b)(3).

<sup>40</sup> FAR §6.301-1(c) and FAR Council, FAR Overhaul §6.103-1(d), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_1).

<sup>41</sup> The use of this exception for services applies only to DOD, NASA, and USCG; see 10 U.S.C. §3204(b)(B), FAR §6.302-1(2)(iii); and FAR Council, FAR Overhaul §6.103-1(c), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_1).

<sup>42</sup> 41 U.S.C. §3304(b)(2), FAR §6.302-1(a)(2)(ii); and FAR Council, FAR Overhaul §6.103-1(c)(2), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_1](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_1).

<sup>43</sup> FAR §6.302-1(d)(2). The FAR Council’s FAR Overhaul eliminated FAR §6.302-1(d)(2).

<sup>44</sup> FAR §6.302-1(d)(2). The FAR Council’s FAR Overhaul eliminated FAR §6.302-1(d)(2).

For example, the U.S. Army Corps of Engineers (USACE) made a noncompetitive contract award under this exception for the operation, maintenance, and development of the HURREVAC program, which is software “used by government emergency managers to assist their hurricane evacuation decision-making.”<sup>45</sup> The justification states that the awardee is the “only vendor with technical operational knowledge of the program, including advanced meteorological experience, critical programming, and its data feed requirements.”<sup>46</sup>

## Unusual and Compelling Urgency

Agencies may invoke the second exception to full and open competition when they can demonstrate that their need for a good or service is of unusual and compelling urgency.<sup>47</sup> An unusual and compelling urgency is defined as a situation where the “Federal Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals.”<sup>48</sup> This exception requires agencies to “request offers from as many potential sources as is practicable under the circumstances.”<sup>49</sup>

This exception is often invoked in the wake of a natural disaster or other emergency.<sup>50</sup> It is not contingent on an official declaration of a major disaster or emergency such as a presidential declaration pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act).<sup>51</sup> In addition to disaster and emergency situations, agencies also invoke this exception when unexpected events delay a follow-on contract award. To avoid a lapse in program support, the agency may make a short-term noncompetitive contract award to the incumbent contractor, often referred to as a “bridge contract,” to extend the period of performance until a new contract is awarded.<sup>52</sup>

In practice, agencies have discretion to determine whether unusual and compelling urgency exists, in part because neither statute nor the FAR further define “unusual and compelling urgency” nor restrict the use of this exception to a list of specific circumstances.

For example, the Department of Health and Human Services (HHS) made a noncompetitive contract award under this exception for the procurement of respirators to respond to the COVID-19 pandemic. HHS explained that using “a class J&A is essential to respond to urgent requests for immediate support to respond to the expanding outbreak of COVID-19 which was just declared a

---

<sup>45</sup> U.S. Army Corps of Engineers (USACE), “Justification Review Document: Other than Full and Open Competition,” September 29, 2022, <https://sam.gov/workspace/contract/opp/16dc761d0529474cbde6b27cfe6e889c/view>. A login may be required to access this justification document on SAM.gov.

<sup>46</sup> USACE, “Justification Review Document: Other than Full and Open Competition.”

<sup>47</sup> 41 U.S.C. §3304(a)(2), 10 U.S.C. §3204(a)(2), FAR §6.302-2, and FAR Council, FAR Overhaul §6.103-2, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_2](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_2).

<sup>48</sup> 41 U.S.C. §3304(a)(2), 10 U.S.C. §3204(a)(2), FAR §6.302-2, and FAR Council, FAR Overhaul §6.103-2, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_2](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_2).

<sup>49</sup> FAR §6.302-2(c) and FAR Council, FAR Overhaul §6.103-2(c), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_2](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_2).

<sup>50</sup> CRS Report R47350, *Federal Procurement: Emergency-Related Acquisition Flexibilities*, by Dominick A. Fiorentino (2023).

<sup>51</sup> 42 U.S.C. §§5121 et seq.

<sup>52</sup> GAO, *Federal Contracting: Noncompetitive Contracts Based on Urgency Need Additional Oversight*, GAO-14-304, March 2014, p. 19, <https://www.gao.gov/assets/gao-14-304.pdf>.

pandemic on March 11, 2020 and a national emergency via Presidential Proclamation on March 13, 2020.”<sup>53</sup>

Contracts awarded using this exception are subject to time limits. The terms of contracts issued as urgent and compelling may not

- exceed the time necessary for the agency to meet the unusual and compelling requirements; or
- exceed the time necessary for the agency to enter into another contract using competitive procedures; or
- exceed one year, unless the agency head determines that exceptional circumstances apply and documents this determination in the contract file.<sup>54</sup>

## **Industrial Mobilization; Engineering, Developmental, or Research Capability; or Expert Services**

The third exception to full and open competition allows agencies to award a contract to a particular source in order to

- maintain a facility, producer, or manufacturer in case of a national emergency or to achieve industrial mobilization;<sup>55</sup>
- maintain an essential engineering, research, or developmental capability provided by an educational or other nonprofit institution or federally funded research and development center;<sup>56</sup> or
- acquire expert services for any current or anticipated litigation or dispute.<sup>57</sup>

For example, DOD made a noncompetitive contract award under this exception for the repair of the USS *Mesa Verde* in Norfolk, VA. The justification stated that making a sole-source award would provide the contractor “the workload and revenue necessary to remain in business ... as a viable source of surface ship maintenance, modernization and repair in a competitive marketplace, while remaining available to meet mobilization requirements in the event of a national emergency.”<sup>58</sup>

---

<sup>53</sup> Department of Health and Human Services (HHS), “Class Justification for Other than Full and Open Competition: COVID-19 Response,” August 18, 2020, <https://sam.gov/workspace/contract/opp/4faec75bb70d4454ac8bd5df631ed7/view>.

<sup>54</sup> 41 U.S.C. §3304(c) and 10 U.S.C. §3204(c). For the Department of Homeland Security, contracts awarded in response to a natural disaster, act of terrorism, or other man-made disaster, the period of performance may not exceed 150 days. See 6 U.S.C. §794(b).

<sup>55</sup> 41 U.S.C. §3304(a)(3)(A), 10 U.S.C. §3204(a)(3)(A), FAR §6.302-3(a)(2)(i), and FAR Council, FAR Overhaul §6.103-3(b)(1), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_3](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_3). For more information about defense procurement and the defense industrial base, see CRS In Focus IF10548, *Defense Primer: U.S. Defense Industrial Base*, by Alexandra G. Neenan (2025).

<sup>56</sup> 41 U.S.C. §3304(a)(3)(B), 10 U.S.C. §3204(a)(3)(B), FAR §6.302-3(a)(2)(ii), and FAR Council, FAR Overhaul §6.103-3(b)(2), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_3](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_3).

<sup>57</sup> 41 U.S.C. §3304(a)(3)(C), 10 U.S.C. §3204(a)(3)(C), FAR §6.302-3(a)(2)(iii), and FAR Council, FAR Overhaul §6.103-3(b)(3), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_3](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_3).

<sup>58</sup> Department of the Navy, “Justification and Approval for the Use of Other than Full and Open Competition No. 42,894,” June 15, 2023, <https://sam.gov/workspace/contract/opp/bdb0f422f5434f049f6d54560515241d/view>.

## International Agreement

The fourth exception to full and open competition is invoked when competition is precluded either by “the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.”<sup>59</sup>

For example, DOD made a noncompetitive contract award under this exception to Boeing for a P-8A Poseidon aircraft pursuant to an agreement with the governments of Canada and Germany.<sup>60</sup>

## Authorized or Required by Statute

The fifth exception to full and open competition applies when a “statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or the agency’s need is for a brand name commercial product for authorized resale.”<sup>61</sup> The latter circumstance refers only to purchases of brand-name commercial products for resale through commissaries or other similar facilities.<sup>62</sup> It does not include purchases of brand-name commercial products for the agency’s own use, which would fall under the only-one-responsible-source exception.<sup>63</sup>

Statutorily required sources of supplies and services include

- Federal Prison Industries (FPI), also known as UNICOR, from which agencies are generally required to acquire goods and services listed on the FPI schedule;<sup>64</sup>
- qualified nonprofit agencies for the blind or other severely disabled individuals, implemented by the AbilityOne program, from which agencies are generally required to acquire goods and services on the AbilityOne Procurement List;<sup>65</sup> and
- sole-source awards for certain socioeconomic categories of small business, such as the Small Business Administration (SBA) 8(a) program.<sup>66</sup>

<sup>59</sup> FAR §6.302-4. See also 41 U.S.C. §3304(a)(4), 10 U.S.C. §3204(a)(4), and FAR Council, FAR Overhaul §6.103-4, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_4](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_4).

<sup>60</sup> DOD, “P-8A Lot 13 Production: Obligation of Additional Funds in Support of Continued Performance Under Canada Aircraft CLIN 0001 and Canada and Germany FMS-UNIQUE NRE CLIN 000,” Contract No. N0001924C0025, February 29, 2024, <https://sam.gov/workspace/contract/award/view/N0001924C0025?agencyID=9700&modNumber=P00009&transactionNumber=0&refIdvPiid=null&idvAgencyID=null&contractType=AWARD>.

<sup>61</sup> 41 U.S.C. §3304(a)(5), 10 U.S.C. §3204(a)(5), FAR §6.302-5, and FAR Council, FAR Overhaul §6.103-5, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_5](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_5).

<sup>62</sup> FAR §6.302-5(c)(3) and FAR Council, FAR Overhaul §6.103-5, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_5](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_5).

<sup>63</sup> FAR §6.302-5(c)(3) and FAR Council, FAR Overhaul §6.103-5, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_5](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_5).

<sup>64</sup> 18 U.S.C. §§4121-4128, FAR §8.6, and FAR Council, FAR Overhaul §8.3, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-8#FAR\\_Subpart\\_8\\_3](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-8#FAR_Subpart_8_3). For the FPI schedule, see <https://www.unicor.gov/ScheduleOfProducts.aspx>.

<sup>65</sup> 41 U.S.C. §§8501-8506, FAR §8.7, and FAR Council, FAR Overhaul §8.2, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-8#FAR\\_Subpart\\_8\\_2](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-8#FAR_Subpart_8_2). For the AbilityOne Procurement List, see [https://www.abilityone.gov/procurement\\_list/](https://www.abilityone.gov/procurement_list/).

<sup>66</sup> 15 U.S.C. §637, FAR §6.302-5(b), and FAR Council, FAR Overhaul §6.103-5(c)(1), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_5](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_5). For more information on sole-source awards to certain categories of small businesses, see CRS Report R48190, *SBA’s 8(a) Business Development Program: Structure and Current Issues*, by R. Corinne Blackford (2026).

For example, an agency generally must make a noncompetitive contract award to a nonprofit agency that participates in the AbilityOne program for custodial services at agency facilities because custodial services are on the AbilityOne Procurement List.<sup>67</sup>

## **National Security**

The sixth exception to full and open competition is permissible when “the disclosure of the executive agency’s needs would compromise national security.”<sup>68</sup> Competition may be limited under this exception only when the disclosure of the government’s procurement needs poses a security risk (i.e., disclosure of the solicitation itself poses a security risk), not when the acquisition itself is classified or if the performance of the contract requires access to classified information.<sup>69</sup> Additionally, when using this exception, agencies are required to “request offers from as many potential offerors as practicable.”<sup>70</sup>

For example, the Department of State (DOS) made a noncompetitive contract award under this exception for hotel accommodations in Kyiv, Ukraine.<sup>71</sup> In this situation, the DOS determined that disclosure of the government’s needs as part of full and open competition could have compromised the safety of personnel traveling during Russia’s war against Ukraine.

## **Public Interest**

The seventh exception to full and open competition allows agency heads to determine, in writing, that a noncompetitive contract award “is necessary in the public interest” and no other exceptions apply.<sup>72</sup> The authority to make this determination may not be delegated below the agency head, and the agency is required to notify Congress of this determination at least 30 days prior to the contract award.<sup>73</sup> The rationale for the invocation of the public interest must be made in a D&F that “set[s] forth enough facts and circumstances to clearly and convincingly justify the specific determination made.”<sup>74</sup> The D&F must be made on an individual rather than a class basis (i.e., each determination must apply only to a single purchase rather than a category of purchases).<sup>75</sup>

The prohibition against invoking the public interest exception on a class basis can be legislatively waived. For example, the National Defense Authorization Acts for FY2023 and FY2024 authorize DOD to invoke temporarily the public interest exception on a class basis for contracts related to

---

<sup>67</sup> 41 U.S.C. §8504, U.S. AbilityOne Commission, “Procurement List: Search Services,” <https://plims.abilityone.gov/Search-Services/> (last visited May 26, 2026).

<sup>68</sup> 41 U.S.C. §3304(a)(6), 10 U.S.C. §3204(a)(6), FAR §6.302-6, and FAR Council, FAR Overhaul §6.103-6, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_6](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_6).

<sup>69</sup> FAR §6.302-6(b) and FAR Council, FAR Overhaul §6.103-6(b), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_6](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_6).

<sup>70</sup> FAR §6.302-6(c) and FAR Council, FAR Overhaul §6.103(c), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103).

<sup>71</sup> Department of State (DOS), “Hotel Accommodations,” Contract No. 19GE5024D0010, March 7, 2024, <https://sam.gov/workspace/contract/award/view/19GE5024D0010?refIdvPiid=null&agencyID=1900&modNumber=0&contractType=IDV>.

<sup>72</sup> 41 U.S.C. §3304(a)(7), 10 U.S.C. §3204(a)(7), FAR §6.302-7, and FAR Council, FAR Overhaul §6.103-7, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_7](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_7).

<sup>73</sup> 41 U.S.C. §3304(a)(7)(B) and 10 U.S.C. §3204(a)(7)(B).

<sup>74</sup> FAR §1.704 and FAR Council, FAR Overhaul §1.504, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-1#FAR\\_1\\_504](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-1#FAR_1_504).

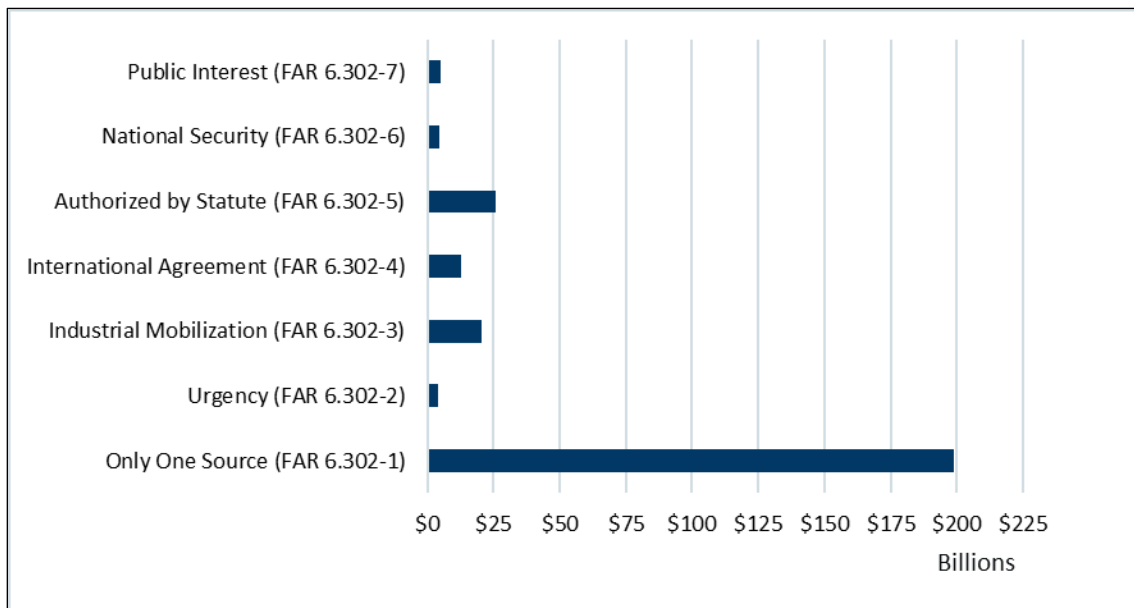
<sup>75</sup> FAR §6.302-7(c)(4) and FAR Council, FAR Overhaul §6.103-7(c)(1), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_7](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_7).

building the stocks of critical munitions and other defense articles and providing materiel and related support to the governments of Ukraine, Taiwan, and Israel through FY2028.<sup>76</sup> DOD has invoked this public interest exception when entering into covered contracts.<sup>77</sup>

## Use of Exceptions to Full and Open Competition in FY2025

In FY2025, the majority of contract obligations made using exceptions to full and open competition invoked the only-one-responsible-source exception. Of a total of almost \$271 billion in obligations on contracts under one of the seven CICA exceptions, more than \$199 billion, or 73.2%, were obligated on contracts invoking the only-one-responsible-source exception (see Figure 2).

**Figure 2. Contract Obligations by Exception to Full and Open Competition: FY2025**  
Billions of Nominal Dollars



**Source:** CRS analysis of contract data from the Federal Procurement Data System (FPDS) accessed via the System for Award Management (SAM.gov), October 1, 2024, through September 30, 2025. FY2025 was the most recently completed fiscal year as of the publication of this report.

**Notes:** Data on obligations by Competition in Contracting Act of 1984 (CICA) exception were obtained using the FPDS data element “Other than Full and Open Competition.”

<sup>76</sup> See James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Title XII, Subtitle D, §1244 (P.L. 117-263, 136 Stat. 2844), and National Defense Authorization Act for Fiscal Year 2024, Title XII, Subtitle C, §1242 (P.L. 118-31, 137 Stat. 458).

<sup>77</sup> DOD, “Class Deviation—Temporary Authorizations for Covered Contracts Related to Ukraine, Taiwan, and Israel,” January 8, 2024, <https://www.acq.osd.mil/dpap/policy/policyvault/USA002760-23-DPC.pdf>.

## Agency Justifications of Noncompetitive Contract Awards

Although agencies have discretion to use noncompetitive procedures in certain circumstances, CICA requires that agencies justify their actions in writing.<sup>78</sup> In contrast to D&Fs, which are required to support a variety of procurement actions, J&As are used only when making certain noncompetitive contract awards. Contracting officers are required to provide J&As for most noncompetitive procurements conducted in reliance on one of the CICA exceptions.<sup>79</sup> Agencies may not be required to prepare J&As when using the following exceptions:

- international agreement (only DOD, the National Aeronautics and Space Administration [NASA], and the U.S. Coast Guard [USCG] may forgo a justification under the exception);<sup>80</sup>
- authorized or required by statute, with some exceptions;<sup>81</sup> and
- the public interest.<sup>82</sup>

When a J&A is required, the agency must document and approve use of the exception before the contract award, except when using the unusual-and-compelling-urgency exception.<sup>83</sup>

### Content of Justifications

Justifications of noncompetitive contract awards must include (1) a description of agency needs; (2) an identification of the statutory exception on which the agency relied and a demonstration of the reasons for using the exception that is “based on the proposed contractor’s qualifications or the nature of the procurement”; (3) “a determination that the anticipated cost will be fair and reasonable”; (4) a description of any market survey conducted or a statement of the reasons for not conducting one; (5) a listing of sources that expressed interest in the procurement in writing; and (6) “a statement of any actions the agency may take to remove or overcome a barrier to competition before a subsequent procurement.”<sup>84</sup>

### Approval of Justifications

Justifications for the use of noncompetitive procedures must be approved by either the contracting officer or a higher-ranking agency official, with the level of approval determined by the expected value of the contract. See **Table 1** for a list of the required agency approving officials by contract value threshold.

<sup>78</sup> 41 U.S.C. §3304(e)(1) and 10 U.S.C. §3204(e)(1).

<sup>79</sup> 41 U.S.C. §3304(e)(1) and 10 U.S.C. §3204(e)(1).

<sup>80</sup> FAR §6.302-4(c) and FAR Council, FAR Overhaul §6.103-4(c), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_4](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_4).

<sup>81</sup> FAR §6.302-5(c)(2) and FAR Council, FAR Overhaul §6.103-5(e), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_103\\_5](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_103_5). A written justification, for example, is required for sole-source awards made under the Small Business Administration 8(a) program.

<sup>82</sup> 41 U.S.C. §3304(e)(4)(C) and 10 U.S.C. §3204(e)(4)(C).

<sup>83</sup> 41 U.S.C. §3304(e)(3) and 10 U.S.C. §3204(e)(3).

<sup>84</sup> 41 U.S.C. §3304(e)(2) and 10 U.S.C. §3204(e)(2).

**Table I. Approving Officials for Noncompetitive Contract Justifications**

Expected Contract Value (including options)	Approving Agency Official
Up to \$900,000	Contracting officer.
Greater than \$900,000 to \$20,000,000	Advocate for competition. <sup>a</sup>
Greater than \$20,000,000 to \$90,000,000	Head of the procuring activity. May be delegated to a member of the Armed Services at the general or flag officer level or a civilian in a grade above the GS-15 (or equivalent) level.
Greater than \$20,000,000 to \$150,000,000 for DOD, NASA, and USCG	
Greater than \$90,000,000	Senior procurement executive. <sup>b</sup> Nondelegable except when the Under Secretary of Defense for Acquisition and Sustainment is acting as the senior procurement executive for DOD.
Greater than \$150,000,000 for DOD, NASA, and USCG	

**Source:** FAR §6.304.

**Notes:** DOD = Department of Defense, NASA = National Aeronautics and Space Administration, USCG = U.S. Coast Guard.

- a. An official, designated by the agency head, “responsible for challenging barriers to, and promoting full and open competition” in, the agency’s procurement activities (41 U.S.C. §1705).
- b. An official, designated by the agency head, “responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency” (41 U.S.C. §1702(c)).

## Public Availability of Justifications and Approvals

J&As are required to be made available to the public within 14 days after the contract award, with two exceptions:<sup>85</sup>

- Justifications for contracts made under the unusual-and-compelling-urgency exception must be publicly posted no later than 30 days after the contract award,<sup>86</sup> and
- justifications for brand-name products or services under the only-one-responsible-source exception must be publicly posted with the contract solicitation.<sup>87</sup>

J&As must be made publicly available on the agency website and the System for Award Management website (SAM.gov) and remain available for at least 30 days.<sup>88</sup> Contracting officers must ensure that publicly available justifications do not contain contractor proprietary information or any other information exempted from disclosure under the Freedom of Information Act (FOIA).<sup>89</sup>

<sup>85</sup> 41 U.S.C. §3304(f)(1)(A), 10 U.S.C. §3204(f)(1)(A), FAR §6.305(a), and FAR Council, FAR Overhaul §6.301(b), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_301](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_301).

<sup>86</sup> 41 U.S.C. §3304(f)(1)(B), 10 U.S.C. §3204(f)(1)(B), FAR §6.305(b), and FAR Council, FAR Overhaul §6.301(b)(1), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_301](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_301).

<sup>87</sup> FAR §6.305(c) and FAR Council, FAR Overhaul §6.301(b)(2), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_301](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_301).

<sup>88</sup> 41 U.S.C. §3304(f)(2), 10 U.S.C. §3204(f)(2), FAR §6.305(d), and FAR Council, FAR Overhaul §6.301(c), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_301](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_301). J&As are generally available beyond the 30 day statutory minimum.

<sup>89</sup> FAR §6.305(e) and FAR Council, FAR Overhaul §6.301(d), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR\\_6\\_301](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6#FAR_6_301) (continued...)

## Bid Protests Generally

In an effort to advance the transparency, fairness, and integrity of the procurement system, CICA and the FAR establish mechanisms for contractors to *protest* (i.e., object to) contract awards and solicitations for failing to comply with federal law.<sup>90</sup> What follows is a general overview of bid protests, as well as illustrative examples of protests of agency decisions to use other than full and open competition.

A bid protest is a written objection to the conduct of a government agency in acquiring supplies and services for its direct use or benefit.<sup>91</sup> Bid protests can involve allegations that an agency acted unreasonably or violated the law or a regulation in the way in which it solicited offers for a contract or awarded a contract, such as by failing to provide a reasonable justification for using an exception to full and open competition.<sup>92</sup>

Contractors and prospective contractors may file protests in three different forums: (1) the procuring agency, (2) GAO, or (3) the U.S. Court of Federal Claims (CFC).<sup>93</sup> The three forums share some common features while diverging on others. They all generally limit who may file a valid protest to an *interested party*, that is, “an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.”<sup>94</sup> The applicable legal procedures and available remedies, however, vary considerably in each forum.<sup>95</sup>

Generally, protests before the procuring agency are informal and largely provide a means by which the agency can correct errors to avoid a protest being filed with GAO or the CFC.<sup>96</sup>

---

deviation-guide/far-overhaul-part-6#FAR\_6\_301. FOIA exemptions can be found at 5 U.S.C. §552(b). For more information about FOIA, see CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Meghan M. Stuessy (2015).

<sup>90</sup> 28 U.S.C. §1491(b) (U.S. Court of Federal Claims [CFC]), 31 U.S.C. §§3551-3557 (GAO), and FAR §33.103 (contracting agency). Empowering contractors to protest procurement decisions may, however, delay agency acquisitions of goods and services.

<sup>91</sup> 31 U.S.C. §3551(1)(A)-(E).

<sup>92</sup> See footnotes 103, 104, and 105 and accompanying text.

<sup>93</sup> FAR §33.103; Executive Order 12979 of October 25, 1995, “Agency Procurement Protests,” 60 *Federal Register* 55171, October 27, 1995 (procuring agency); 31 U.S.C. §§3551-3557 (GAO); 28 U.S.C. §1491(b) (CFC).

<sup>94</sup> 28 U.S.C. §1491(b) (CFC), 31 U.S.C. §3551(2) (GAO), and FAR §33.103(d)(4) (procuring agency). See also *Bilfinger Berger AG Sede Secondaria Italiana v. United States*, 97 Fed. Cl. 96, 134-135 (2010) (CFC) (“The United States Court of Appeals for the Federal Circuit (‘Federal Circuit’) has construed the term ‘interested party’ [for purposes of bid protests] as synonymous with the term ‘interested party’ defined in the Competition in Contracting Act of 1984 (‘CICA’). ... [A] protestor [must] be (1) either a bidder or proposer that has been prevented from bidding or proposing due to some infraction other than the terms of the solicitation itself; or (2) either a bidder or proposer who would be in contention absent the unreasonable procurement decision or violation of applicable procurement regulations.” (quoting *Textron, Inc. v. United States*, 74 Fed. Cl. 277, 285 (2006), abrogated on other grounds by *SCA Hygiene Products Aktiebolag v. First Quality Baby Products, LLC*, 580 U.S. 328 (2017)). CICA’s interested-party standing requirement is “more stringent” than the minimum standing requirements of Article III of the U.S. Constitution. *Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1359 (Fed. Cir. 2009).

<sup>95</sup> See “Analysis of the Legal Distinctions Among the Forums” section of CRS Report R45080, *Government Contract Bid Protests: Analysis of Legal Processes and Recent Developments*, by David H. Carpenter (2018).

<sup>96</sup> FAR §33.103(c) (“The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests.”) and FAR Council, FAR Overhaul §33.104-1, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33#FAR\\_33\\_104](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33#FAR_33_104) (“The agency should provide for inexpensive, informal, procedurally simple, and quick resolution of protests.”). Parties may choose whether or not to file a protest with the agency before filing a protest with GAO or the CFC.

GAO protests tend to be resolved faster and less expensively than challenges before the CFC because GAO protests are subject to specific resolution timetables and less formal procedures.<sup>97</sup> Parties that file a protest with either the procuring agency or GAO generally gain the benefit of an automatic stay that bars an agency from awarding or implementing a contract while a protest is pending.<sup>98</sup>

In contrast, filing a protest with the CFC is frequently more time consuming and expensive and does not trigger an automatic stay.<sup>99</sup> Instead, unless the procuring agency voluntarily stays its contracting processes, a protestor would petition the court for a temporary restraining order or preliminary injunction. These “extraordinary and drastic remed[ies]”<sup>100</sup> can provide similar protections as an automatic stay, but the CFC issues these remedies only “in extremely limited circumstances”<sup>101</sup> where a petitioner is able to meet exacting standards. The CFC balances various factors, including whether the petitioner will likely suffer irreparable harm in the absence of such relief and whether the petitioner is likely to succeed on the merits of its claims.<sup>102</sup>

GAO and the CFC generally apply the same standard of review for bid protests, although they at times use slightly different language in doing so. The CFC has explained that, in a bid protest,

a reviewing court shall set aside the agency action if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. Although it is well-settled that procurement officials are entitled to broad discretion in the ... application of procurement regulations, the court may set aside a procuring agency’s contract if either: (1) the procurement official’s decision lacked a rational basis; or (2) the procurement procedure involved a violation of regulation or procedure.<sup>103</sup>

---

<sup>97</sup> Dave Nadler, “Top Ten Things Every Government Contractor Should Know About Bid Protests,” Association of Corporate Council, November 7, 2013, <https://www.acc.com/resource-library/top-ten-things-every-government-contractor-should-know-about-bid-protests>.

<sup>98</sup> 31 U.S.C. §3553(c) (GAO), FAR §33.103(f)(3) (contracting agency), and FAR Council, FAR Overhaul §§33.104-2 and 33.104-3, [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33#FAR\\_33\\_104](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33#FAR_33_104) (contracting agency). The procuring agency generally may only lift, or “override,” the automatic stay prior to GAO’s recommendation for a limited number of reasons, such as if “performance of the contract is in the best interests of the United States” or there are “urgent and compelling circumstances which significantly affect interests of the United States [that] will not permit waiting for the decision of [GAO].” 31 U.S.C. §3553(c)(2), (d)(3)(C). Agencies that override an automatic stay must justify the decision in writing and provide notice to GAO. GAO does not have legal authority to reverse an automatic stay override or to review the decision. GAO, *Bid Protests at GAO: A Descriptive Guide*, 10<sup>th</sup> ed., GAO-18-510SP, May 2018, p. 14 (“GAO does not review agency decisions in this regard. GAO will not consider a protest challenging an agency’s decision that the stay does not apply to the protest, or a decision to override a stay.”). The CFC, however, on a motion from an interested party, can review an agency’s decision to override the stay. See *Superior Helicopter LLC v. United States*, 78 Fed. Cl. 181, 186-87 (2007).

<sup>99</sup> Nadler, “Top Ten Things Every Government Contractor Should Know About Bid Protests.”

<sup>100</sup> *Eskridge Research Corp. v. United States*, 92 Fed. Cl. 88, 98 (2010) (quoting *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). See also *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 142 (2010) (“[A]n injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course.” (citation omitted)).

<sup>101</sup> *Banknote Corp. of Am., Inc. v. United States*, 56 Fed. Cl. 377, 380 (2003).

<sup>102</sup> *U.S. Ass’n of Imps. of Textiles & Apparel*, 413 F.3d 1344, 1346 (Fed. Cir. 2005) (“Four factors are weighed in considering a motion for a preliminary injunction: (1) immediate and irreparable injury to the movant; (2) the movant’s likelihood of success on the merits; (3) the public interest; and (4) the balance of hardship on all the parties.”); *Cont’l Servs. Grp., Inc. v. United States*, 130 Fed. Cl. 798, 800 (2017) (“On a motion for temporary injunctive relief, the court must weigh four factors: (1) immediate and irreparable injury to the movant; (2) the movant’s likelihood of success on the merits; (3) the public interest; and (4) the balance of hardship on all the parties.” (internal quotation marks omitted)).

<sup>103</sup> *Bilfinger Berger AG Sede Secondaria Italiana v. United States*, 97 Fed. Cl. 96, 132 (2010) (internal quotation marks omitted).

GAO, similarly, reviews protests to determine if an agency acted reasonably and in compliance with applicable law or regulation.<sup>104</sup> GAO has explained that it “will closely scrutinize sole-source procurements conducted under the exceptions to full and open competition ... with our review focusing on the adequacy of the rationale and conclusions set forth in the J&A.”<sup>105</sup> The CFC, thus, may set aside an agency action that is arbitrary or capricious (i.e., lacked a rational basis) or contrary to a law or regulation. GAO may sustain a bid protest where an agency’s decision is unreasonable or contrary to law or regulation.<sup>106</sup>

Protests before the CFC can result in legally binding and conclusive judicial decisions and orders.<sup>107</sup> GAO bid protest decisions, on the other hand, are not legally binding,<sup>108</sup> although agencies usually comply with GAO recommendations.<sup>109</sup> Interested parties that disagree with GAO decisions generally can still bring claims before the CFC, whereas the reverse route is typically not permitted.<sup>110</sup> CFC decisions may be appealed to the U.S. Court of Appeals for the Federal Circuit and further to the Supreme Court.<sup>111</sup>

## Bid Protests Involving Other than Full and Open Competition

Protests over an agency’s use of other than full and open competition often involve challenges to an agency’s alleged failure to comply with applicable statutory or regulatory requirements or to provide a reasoned basis for limiting competition.

### Protest Involving the Only-One-Responsible-Source Exception

For example, in *Career Services Development Corporation*, GAO assessed a protest over the Department of Labor’s (DOL’s) use of the only-one-responsible-source exception to CICA’s full-and-open-competition requirement.<sup>112</sup> The decision involved DOL’s issuance of a sole-source

---

<sup>104</sup> GAO, *Bid Protests at GAO: A Descriptive Guide*, 10<sup>th</sup> ed., GAO-18-510SP, p. 25. See also INDEMIA Nat’l Sec. Solutions, LLC, B-421418, B-421418.2, 5 (Comp. Gen. 2023); Coburn Contractors, LLC, B-408279.2, 4 (Comp. Gen. 2013).

<sup>105</sup> Sabreliner Corp., B-288030, B-288030.2, 5 (Comp. Gen. 2001).

<sup>106</sup> See footnotes 103, 104, and 105 and accompanying text.

<sup>107</sup> See CRS Report R45080, *Government Contract Bid Protests: Analysis of Legal Processes and Recent Developments*, by David H. Carpenter (2018), footnotes 80-87 and accompanying text.

<sup>108</sup> Compare 28 U.S.C. §2521(b)(3) (“The United States Court of Federal Claims shall have power to punish by fine or imprisonment ... such contempt of its authority as ... disobedience or resistance to its lawful writ, process, order, rule, decree, or command.”) with 31 U.S.C. §3554(b)(1) (GAO) (providing the Comptroller General authority to issue *recommendations*) and FAR §33.103(f) (procuring agency). See also *Pyramid Real Estate Servs., LLC v. United States*, 95 Fed. Cl. 613, 617 (2010) (“Several sources of authority enable the court to impose sanctions or remedies on a party who does not comply with its orders. The three sources of authority relevant in the context of a breach of a protective order are [Rule of the Court of Federal Claims] 16(f), which governs the breach of pretrial orders, 28 U.S.C. §2521(b)(3) (2006), which grants the court power to hold parties in civil contempt, and the court’s inherent authority to sanction a party or attorney who willfully disobeys its orders.”).

<sup>109</sup> *CMS Contract Mgmt. Servs. v. Mass. Hous. Fin. Agency*, 745 F.3d 1379, 1385 (Fed. Cir. 2014) (“An agency’s decision to disregard a GAO recommendation is exceedingly rare.”).

<sup>110</sup> 4 C.F.R. §21.11(b), FAR §33.102(e), and FAR Council, FAR Overhaul §33.103(b), [https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33#FAR\\_33\\_103](https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33#FAR_33_103). “GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court.” 4 C.F.R. §21.11(b).

<sup>111</sup> 28 U.S.C. §1295(a)(3).

<sup>112</sup> B-411346.11; B-411346.12; B-416021; B-416021.2 (Comp. Gen. May 18, 2018).

contract to the incumbent contractor, Management & Training Corporation (MTC), to operate a Job Corps Center in Kentucky.<sup>113</sup>

The Job Corps program provides residential job training and career development for at-risk students.<sup>114</sup> The centers require operations 24 hours per day, seven days per week.<sup>115</sup> DOL attempted for several years to enter into a new contract for operating the center in question but was delayed due to successful bid protests and voluntary corrective actions by the agency.<sup>116</sup> During that time, DOL issued a notice of intent to issue a sole-source bridge contract to MCT to continue to operate the center for a six-month performance period along with the possibility of a six-month extension and gave other offerors eight days to submit capability-of-performance statements.<sup>117</sup>

The day after this notice was published, DOL issued its J&A justifying its use of the only-one-responsible-source exception.<sup>118</sup> The J&A explained that the purpose for the contract was “to maintain the status quo and ensure continued operations” and the incumbent, MTC, was the only contractor capable of doing so.<sup>119</sup> DOL awarded the sole-source contract to MTC on the same day the J&A was published, which was before the eight-day window for the submission of capability statements closed.<sup>120</sup> Career Services Development Corporation (CSD) timely submitted a capability statement and filed a protest with GAO arguing, among other things, that DOL’s sole-source contract violated the FAR because the agency failed to consider CSD’s capability statement before determining that MTC was the only responsible source.<sup>121</sup> GAO sustained this part of CSD’s protest.<sup>122</sup>

GAO explained that when an agency invokes an exception to full and open competition, CICA requires the agency “to execute a written J&A with sufficient facts and rationale to support the use of the cited authority.”<sup>123</sup> The FAR requires an agency using the only-one-responsible-source exception to “provide prospective alternative sources a meaningful opportunity to demonstrate their ability to provide what the agency seeks to procure” and to consider received capability statements.<sup>124</sup>

GAO noted that DOL’s J&A had sufficiently established the need to maintain uninterrupted operations at the center, but GAO sustained the protest because the J&A failed to document that MTC was the only responsible source capable of continuing operations.<sup>125</sup> GAO determined that DOL awarded the contract to MTC before CSD timely filed its capability statement, so DOL could not have meaningfully assessed CSD’s capability to maintain the center’s operations without interruption.<sup>126</sup> As a result, GAO concluded that DOL’s issuance of the sole-source

---

<sup>113</sup> *Id.* at 2.

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

<sup>117</sup> Career Services Development Corp., B-411346.11; B-411346.12; B-416021; B-416021.2, 3.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 3–4.

<sup>120</sup> *Id.* at 4.

<sup>121</sup> *Id.*

<sup>122</sup> Career Services Development Corp., B-411346.11; B-411346.12; B-416021; B-416021.2, 1.

<sup>123</sup> *Id.* at 8.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 8–9.

contract without assessing CSD's capability statement violated the FAR.<sup>127</sup> GAO recommended that DOL consider CSD's and any other timely received capability statements to determine if there were sufficient grounds to exercise the only-one-available-source exception.<sup>128</sup> If not, then GAO determined that the agency should use competitive procedures to enter into this contract or sufficiently justify the use of a different CICA exception.<sup>129</sup>

### Protest Involving the Express-Statutory-Authorization Exception

In *EKK Investments, LLC*, GAO sustained a protest over the Defense Commissary Agency's (DeCA's) award of a sole-source contract for fresh fruits and vegetables because DeCA violated CICA and the FAR by failing to issue a J&A and failing to solicit offers from as many potential offerors as practicable.<sup>130</sup> DeCA argued that another statute provided an exception to full and open competition. The agency cited 10 U.S.C. §2484, which authorizes DOD to purchase commercial items for resale at commissaries using other than full and open competition in accordance with 10 U.S.C. §3204(a)(5).<sup>131</sup> GAO assessed the plain meaning of those two statutes and FAR Sections 6.302-5(c)(2)(i) and 6.301(d) and concluded that they "unambiguously" require DeCA to issue a J&A and solicit as many potential offerors as practicable when utilizing this exception to full and open competition.<sup>132</sup> Consequently, GAO recommended that DeCA cancel the awarded contract and either use competitive procedures to acquire the fruits and vegetables or comply with the J&A and solicitation-of-offers requirements under 10 U.S.C. §3204(a)(5).<sup>133</sup>

### Protest Involving the Unusual-and-Compelling-Urgency Exception

In *Ceres Environmental Services, Inc. v. United States*, the CFC reviewed a post-award bid protest of USACE's award of a sole-source contract for debris removal following a tornado in Kentucky based on the unusual-and-compelling-urgency exception.<sup>134</sup> The *Ceres* plaintiffs argued that USACE's award was contrary to CICA and the FAR and was arbitrary and capricious because, among other things, (1) there was not an unusual and compelling urgency because natural disasters are common and the need for debris removal is not unusual, (2) USACE did not document an injury to the government, (3) USACE failed to solicit offers from as many offerors as practicable, and (4) the contract was not limited to the period of the emergency.<sup>135</sup> The CFC rejected all of the plaintiff's arguments.<sup>136</sup>

The court explained that "plaintiffs misstate the test for FAR 6.302-2: the question is whether 'the agency's need for the supplies or services is of such an unusual and compelling urgency,' not whether debris removal following a natural disaster is an unusual service."<sup>137</sup> The court also found that the tornado was unusually strong, caused an unusual amount of damage, occurred in

<sup>127</sup> Career Services Development Corp., B-411346.11; B-411346.12; B-416021; B-416021.2, 10.

<sup>128</sup> *Id.* at 11.

<sup>129</sup> *Id.*

<sup>130</sup> B-423246 (Comp. Gen. Mar. 25, 2025).

<sup>131</sup> *Id.* at 3.

<sup>132</sup> *Id.* at 6–7.

<sup>133</sup> *Id.* at 8.

<sup>134</sup> 158 Fed. Cl. 547 (2022).

<sup>135</sup> *Id.* at 559.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* (emphasis added).

December—an unusual time for such a tornado—and left a significant amount of debris that hindered the provision of emergency services.<sup>138</sup> According to CFC, these factors reasonably established an urgent and compelling need for the debris’ removal.<sup>139</sup>

To support its second allegation—that USACE did not document an injury to the federal government—plaintiffs argued that USACE had established injury only to Kentucky residents, not injury to the United States, as is required by CICA and the FAR.<sup>140</sup> The court disagreed, however, finding that serious harm to the general public that the federal government serves constitutes a serious injury to the United States, citing case law supporting this conclusion.<sup>141</sup>

For its third allegation regarding USACE’s failure to solicit bids from as many offerors as practicable, plaintiffs argued that USACE solicited an offer only from a single contractor despite knowing that other contractors, including plaintiffs, were recently awarded similar debris removal awards.<sup>142</sup> USACE’s J&A documented that it assessed four available contracting options for debris removal: “full competition, limited competition, a sole-source award combined with a limited competition, and a sole-source award.”<sup>143</sup> USACE documented that, to use one of the first three options, it would have needed to issue a solicitation, provide potential bidders some period of time to submit offers, and then review received offers.<sup>144</sup> USACE concluded that even the most streamlined of those three options that involve some form of competition would have taken at least 30 days to complete, which it concluded was too long to wait given the grave situation on the ground in Kentucky.<sup>145</sup> USACE thus went with the only remaining option—a sole-source contract.<sup>146</sup> In the court’s view, USACE met the rational basis standard.<sup>147</sup>

Regarding the fourth allegation, the court concluded that USACE’s 100-day sole-source contract met all three of the statutory time limitations, namely that (1) the contract did “not exceed the time necessary ... to meet the unusual and compelling requirements of the work,” (2) the contract did “not exceed the time necessary ... for the agency to enter into another contract” using “competitive procedures,” and (3) the period of performance did not exceed one year.<sup>148</sup> The court explained that the urgent and compelling circumstances would persist until all of the debris had been removed because “any debris poses health and safety risks to the citizens of Graves County[, Kentucky].”<sup>149</sup> USACE’s J&A documented that entering a contract through full and open competition would take between six and nine months, well over the 100-day performance period for the sole-source contract, and that other potential contracting options were “infeasible” because

---

<sup>138</sup> *Id.*

<sup>139</sup> *Ceres Environmental Services*, 158 Fed. Cl. at 559 (citing *PMTech, Inc. v. United States*, 95 Fed. Cl. 330, 346 (2010)).

<sup>140</sup> *Id.*

<sup>141</sup> *Id.* at 559–560.

<sup>142</sup> *Id.* at 560.

<sup>143</sup> *Id.* at 561.

<sup>144</sup> *Id.*

<sup>145</sup> *Ceres Environmental Services*, 158 Fed. Cl. at 561.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 562

<sup>148</sup> *Id.* (quoting FAR §6.302-2(d)).

<sup>149</sup> *Id.*

of the delays and duplicative costs they would cause.<sup>150</sup> The 100-day sole-source contract was also less than one year.<sup>151</sup>

Finally, the court rejected the plaintiffs' argument that USACE's use of the unusual-and-compelling-urgency exception was arbitrary and capricious.<sup>152</sup> The court explained that "the rationale for the decision by [USACE] to make a sole-source award without competitive bidding to respond to [the Federal Emergency Management Agency's] request for debris removal in the wake of the tornado in Graves County was well-explained and reasonable."<sup>153</sup> For these reasons, the CFC denied the protest.<sup>154</sup>

## Issues for Congress

Congress may assess whether current law and regulations strike an appropriate balance between (1) achieving the best value for the government via full and open competition and (2) maintaining flexibility to accommodate situations where other government objectives require limiting competition. If Congress views the value of noncompetitive contract awards (\$278 billion in FY2025) as indicating that agency discretion is too broad, it may consider whether to amend CICA either to limit or to describe with greater specificity the allowable circumstances under which agencies may make noncompetitive contract awards. Additionally, the Trump Administration, pursuant to Executive Order (E.O.) 14275, "Restoring Common Sense to Federal Procurement," has initiated a process, called the "Revolutionary FAR Overhaul," of "rewriting the FAR in plain language and removing most text not required by statute or Executive Order (EO), other than that which is essential to sound procurement."<sup>155</sup> Congress may consider conducting oversight of the Administration's implementation of the Revolutionary FAR Overhaul. These issues are addressed in turn below.

## Agency Discretion in Using the Unusual-and-Compelling-Urgency Exception

Under CICA, *unusual and compelling urgency* is defined as a situation where the "Federal Government would be seriously injured unless the executive agency is permitted to limit the number of sources from which it solicits bids or proposals."<sup>156</sup> The breadth of this definition accords agencies significant discretion in determining whether an unusual and compelling situation exists that would justify the agency limiting competition.<sup>157</sup> In practice, this exception has been invoked in situations as varied as the COVID-19 public health emergency,<sup>158</sup> hurricane

---

<sup>150</sup> *Ceres Environmental Services*, 158 Fed. Cl. at 563.

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 567–568.

<sup>153</sup> *Id.* at 568.

<sup>154</sup> *Id.* at 552.

<sup>155</sup> GSA, "Revolutionary FAR Overhaul: RFO – Frequently Asked Questions," <https://www.acquisition.gov/far-overhaul/faqs>.

<sup>156</sup> 41 U.S.C. §3304(a)(2), 10 U.S.C. §3204(a)(2), and FAR §6.302-2.

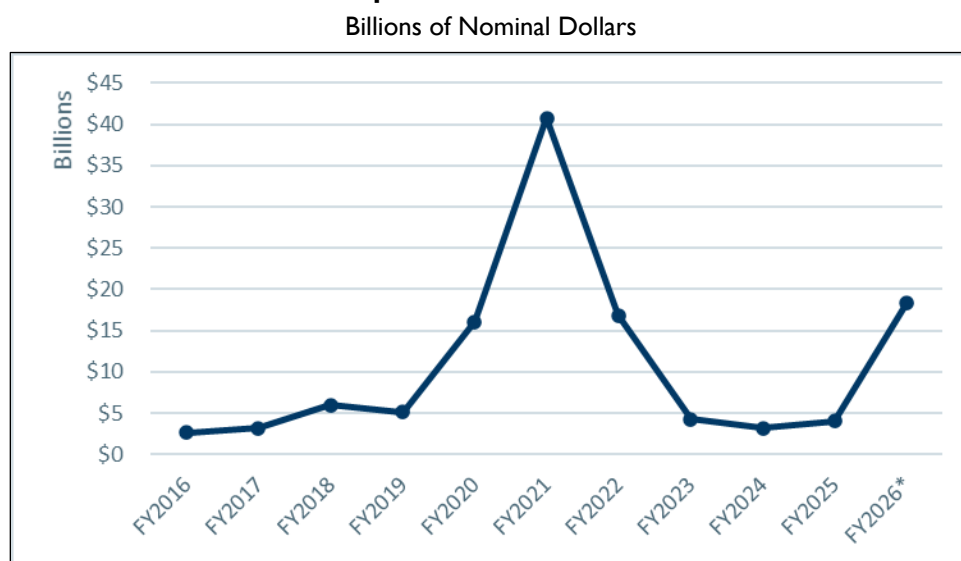
<sup>157</sup> Agency discretion is cabined by CFC and GAO bid protest reviews, which may entail an examination of whether an agency's use of the unusual-and-compelling-urgency exception is reasonable and consistent with law and regulation. See "Bid Protests Generally" section.

<sup>158</sup> DOD, "Justification & Approval for COVID-19 Flock Nasal Swab Industrial Base Expansion," August 26, 2020, <https://sam.gov/workspace/contract/opp/bec5c80279c34acdb2d2f452ee644df1/view>.

emergency response,<sup>159</sup> a presidential declaration of an emergency related to the illegal entry of aliens into the United States at the southern border,<sup>160</sup> and preparations for semiquincentennial events.<sup>161</sup> Agencies have also invoked this exception when awarding “bridge contracts” (see “Lack of Definition for Bridge Contracts” section).

Contract obligations under the unusual-and-compelling-urgency exception increased rapidly beginning in FY2020 and peaked at \$40.8 billion in FY2021, which reflected COVID-19 pandemic emergency spending (see **Figure 3**). By FY2023, obligations using this exception returned to the pre-COVID baseline of approximately \$3 to \$5 billion each year. Obligations for contracts awarded under this exception have recently increased significantly from \$4.0 billion in all of FY2025 to \$18.4 billion in just the first half of FY2026 (also see **Figure 3**).<sup>162</sup>

**Figure 3. Contract Obligations Using the Unusual-and-Compelling-Urgency Exception: FY2016-FY2026**



**Source:** CRS analysis of contract data from the Federal Procurement Data System (FPDS) accessed via the System for Award Management (SAM.gov), October 1, 2015, through March 31, 2026.

**Notes:** \*Only the first two quarters of FY2026 have elapsed at the time of this report’s publication. Data on obligations were obtained using the FPDS data element “Other than Full and Open Competition” and filtering by the “Urgency” exception to full and open competition.

Disaggregating these increases by agency shows that DOD and HHS were responsible for the majority of the increase in spending using the unusual-and-compelling-urgency exception during the COVID-19 public health emergency from FY2020 to FY2022 (see **Figure 4**). The increase in the use of this exception in the first half of FY2026 was driven almost entirely by the Department of Homeland Security (DHS), during which it obligated 92% (\$16.9 billion of \$18.4 billion) of

<sup>159</sup> Federal Emergency Management Agency, “J&A - Identity Verification and Authentication Services,” November 3, 2022, <https://sam.gov/opp/d9e1709e366b46cb94092c44d464fe4e/view>.

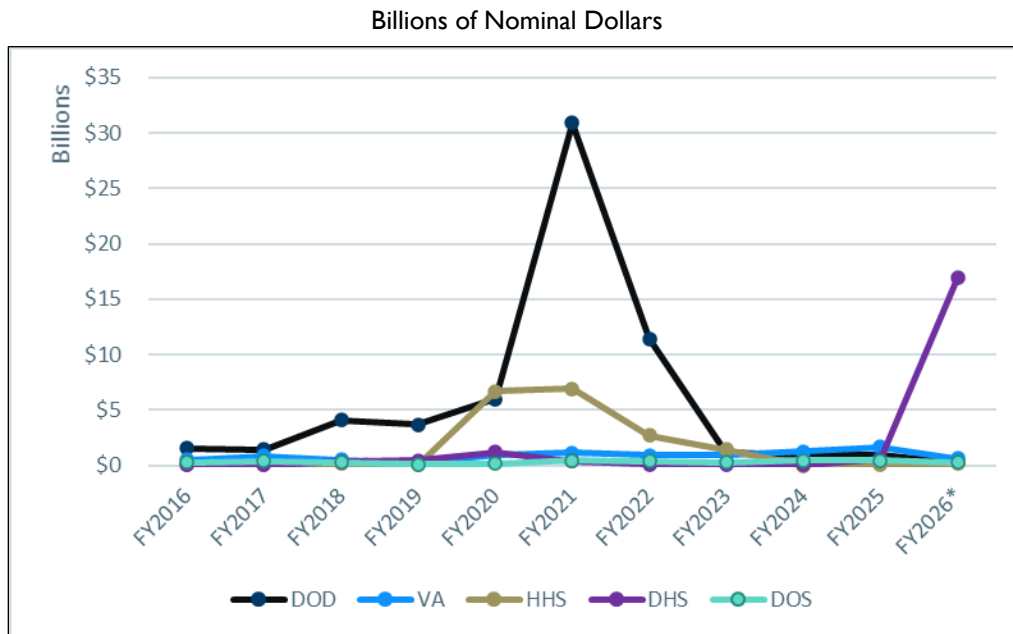
<sup>160</sup> Department of Homeland Security, “DHS Justification and Approval for Other than Full and Open Competition-Media Buying, Production and Advertising Campaign Development Services,” March 7, 2025.

<sup>161</sup> Department of the Interior, “Sole Source Justification: Construction Services, NAMA 291052 Pool Lining,” March 31, 2026, <https://sam.gov/workspace/contract/opp/b533eb6dcdf24f25b900828720a8b3fa/view>.

<sup>162</sup> Only data for the first two quarters of FY2026 were available at the time of this report’s publication.

the spending. By comparison, DHS obligated \$585.5 million on noncompetitive contracts using this exception during the full FY2025 (also see **Figure 4**).

**Figure 4. Contract Obligations Using the Unusual-and-Compelling-Urgency Exception, by Agency: FY2016-FY2026 (Q1 and Q2)**



**Source:** CRS analysis of contract data from the Federal Procurement Data System (FPDS) accessed via the System for Award Management (SAM.gov), October 1, 2015, through March 31, 2026.

**Notes:** \*Only the first two quarters (Qs) of FY2026 have elapsed at the time of this report’s publication. The top five agencies using this exception over the past 10 years are the Department of Defense (DOD), Department of Veterans Affairs (VA), Department of Health and Human Services (HHS), Department of Homeland Security (DHS), and Department of State (DOS.) Data on obligations were obtained using the FPDS data element “Other than Full and Open Competition,” filtering by the “Urgency” exception to full and open competition, and disaggregating by contracting department name. Q = quarter.

Previous Congresses have expressed concern that the increased use of this exception by agencies such as DHS, and the resulting lack of competition, might prevent an agency from “getting the best return on its investment.”<sup>163</sup> Given the current trajectory of increased contract spending using this exception, Congress may consider amending CICA to specify circumstances warranting unusual and compelling urgency or limit the same, such as during an officially declared disaster or emergency situation. Reducing agency discretion in invoking this exception could impede rapid agency response to future urgent situations unforeseen by Congress. Thus, Congress might consider keeping things as they are.

## Lack of Definition for Bridge Contracts

Agencies have also invoked the unusual-and-compelling-urgency exception to full and open competition when unexpected events delay the agency’s ability to make a follow-on contract award. To avoid a lapse in program support, agencies may make a short-term, noncompetitive

<sup>163</sup> U.S. Congress, House Committee on Homeland Security, *Legislative and Oversight Activities of the Committee on Homeland Security: 116<sup>th</sup> Congress, 116<sup>th</sup> Cong., 2<sup>nd</sup> sess., H.Rept. 116-720, January 2, 2021, p. 154.*

contract award to the incumbent contractor, often referred to as a “bridge contract,” to extend the period of performance until a new contract is awarded.

The term *bridge contract* is not defined in either statute or the FAR, and, as a result, CRS cannot systematically identify bridge contracts using agency contract data. GAO has found that agencies lack the data to sufficiently manage their use of bridge contracts.<sup>164</sup> GAO identified bridge contracts that were awarded as follow-on contracts to previously awarded bridge contracts, resulting in combined periods of performance spanning multiple years.<sup>165</sup> While bridge contracts might be justified by unforeseen issues resulting in the delay of a follow-on contract, GAO found that, in many cases, delays were either foreseeable or preventable and were the result of poor agency planning or an inexperienced or understaffed agency acquisition workforce.<sup>166</sup>

Congress may consider amending CICA to (1) define bridge contracts, (2) limit their use to specific circumstances, or (3) restrict their maximum length of performance. Other policy options include requiring agencies to report data on their use of bridge contracts or requiring agencies to improve their acquisition planning to reduce their reliance on bridge contracts. Alternatively, restricting agency use of bridge contracts could result in service disruptions. For this reason, Congress may choose to retain current agency flexibility.

## Potential Impacts of the Revolutionary FAR Overhaul

Congress may also consider the appropriate degree of oversight of government acquisition processes in light of an E.O. issued by the Trump Administration. On April 15, 2025, President Trump issued E.O. 14275, “Restoring Common Sense to Federal Procurement.”<sup>167</sup> The E.O. calls for “removing undue barriers, such as unnecessary regulations, while simultaneously allowing for the expansion of the national and defense industrial bases.” Section 4 of the E.O. requires the administrator of the Office of Federal Public Procurement Policy (OFPP), with other members of the Federal Acquisition Regulatory Council (FAR Council), to “amend the FAR to ensure that it 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.” This effort of amending the FAR has been branded by OFPP and the General Services Administration (GSA) as the “Revolutionary FAR Overhaul.”<sup>168</sup>

Until final rules are published, the OFPP administrator and the FAR Council have issued FAR deviations and interim guidance on a rolling basis.<sup>169</sup> On June 25, 2025, the FAR Council issued agency deviations for Part 6 of the FAR, which implements CICA competition requirements.<sup>170</sup> The Part 6 deviation, while reorganizing and shortening sections, did not result in substantive changes from the existing Part 6 of the FAR. This is likely because the exceptions to full and open competition as well as the process for documenting and approving justifications are statutorily

<sup>164</sup> GAO, *Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, GAO-16-15, October 2015, <https://www.gao.gov/assets/gao-16-15.pdf>.

<sup>165</sup> GAO, *Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, p. 12.

<sup>166</sup> GAO, *Defining and Tracking Bridge Contracts Would Help Agencies Manage Their Use*, pp. 21-25.

<sup>167</sup> Executive Order 14275, “Restoring Common Sense to Federal Procurement.”

<sup>168</sup> GSA, “Revolutionary FAR Overhaul,” <https://www.acquisition.gov/far-overhaul>.

<sup>169</sup> GSA, “Revolutionary FAR Overhaul: FAR Parts and Agency Deviations,” <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide>. For more information about FAR deviations and the process for amending the FAR, see CRS Report R42826, *The Federal Acquisition Regulation (FAR): Answers to Frequently Asked Questions*, by David H. Carpenter, Matthew D. Trout, and Dominick A. Fiorentino (2025).

<sup>170</sup> GSA, “FAR Part Deviation Guidance: Part 6 Competition Requirements,” <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-6>.

defined. Congress may consider continued oversight of the rulemaking process as the FAR Council seeks to finalize its changes. As of the date of publication of this report, the FAR Council and the Office of Management and Budget’s Office of Information and Regulatory Affairs are reviewing the proposed changes.<sup>171</sup> After these reviews are completed, the proposed changes are expected to be published in the *Federal Register* and made available for public comment.<sup>172</sup>

## Author Information

Dominick A. Fiorentino  
Analyst in Government Organization and  
Management

David H. Carpenter  
Legislative Attorney

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.

---

<sup>171</sup> DOD, Defense Acquisition Regulations System (DARS), “Open FAR Cases as of 5/22/2026,” <https://www.acq.osd.mil/dpap/dars/opencases/farcasenum/far.pdf>, p. 3. The Part 6 update has been assigned the case number 2026-002.

<sup>172</sup> 41 U.S.C. §1707.