Dear DOECAA Community:

The DOECAA Board and I are delighted to welcome you to the Fall 2026 DOECAA Conference at Hotel Washington. Special thanks to Silas DeRoma, Will Elias, and Jeanne Oselio for taking the lead in organizing our speakers and panelists! We are also fortunate to have strong engagement from our federal partners, including DOE and NNSA leadership.

Many volunteers have supported DOECAA in the lead-up to this event. Our deepest thanks to our knowledgeable speakers and panelists for sharing their time and insights with our community. We also want to recognize our CLE team, including Devon Mobley-Ritter, Matt Williams, and Marolhin Mendez, for their invaluable support, along with our colleagues at Morgan Lewis. Several DOECAA Board Members came together behind the scenes to ensure our meetings succeed, including Pam Reynolds, who served with me as our Board liaison to the conference chairs.

If you have not yet had the chance, please complete our DOECAA survey. We last surveyed you about two years ago, and since then we have kept up the pace of twice-a-year conferences, increased free content between conferences, launched new-to-the-complex breakout lunches, and restructured our Board. We have also begun exploring partnerships with external mentoring networks, such as the Legal Mentor Network to create more mentoring opportunities for DOECAA members. We would love to hear your thoughts on whether these steps are valuable and what more we can do to support you.

Last, but certainly not least, Sandra Fowler will be stepping down from the DOECAA Board this year. She has been a champion for reviving the Spring Conferences, volunteering along with Cindy Lovato-Farmer to host the first Spring Conference in nearly a decade. She also brought cheer and a willingness to roll up her sleeves in everything we do. On behalf of the Board, thank you, Sandra, for everything you've done for DOECAA.

Sincerely,

Saurabh Anand, DOECAA President

sanand3@stanford.edu; info@doecaa.org

Department of Energy Contractor Attorneys Association
2026 FALL CONFERENCE
September 10 & 11, 2026
Hotel Washington, Washington D.C.

Elevation Conference Room

Conference Co-Chairs

Silas DeRoma
General Counsel
Newport News Nuclear BWXT Los Alamos (N3B)
silas.deroma@em-la.doe.gov

William Elias
Chief Legal Officer
Sandia National Laboratories
wselias@sandia.gov

FINAL AGENDA

* CLE credit is being sought in several jurisdictions

Thursday, September 10, 2026 (Elevation Conference Room)

Time (Eastern)	Topic/Event	Speaker
9:00 am	Registration, Continental Breakfast & Networking	
9:45 am	Welcome and Opening Remarks	Saurabh Anand, Chief Counsel for SLAC & DOECAA President Will Elias, CLO, Sandia National Laboratories
10:00 am	**Session 1: Employment Law Update** *Examining three employment law challenges currently facing in-house counsel: workforce reductions in a shifting legal and economic landscape, immigration compliance amid evolving federal enforcement priorities and policy changes, and religious and disability accommodation claims arising from remote and hybrid work arrangements.*	John Sullivan, Associate General Counsel for Contractor Human Resources (DOE GC-63) Cindy Lovato-Farmer, General Counsel, Pacific Northwest National Laboratory Julia Lapis, Senior Counsel, Hartline Barger
11:15 am	Networking Break	
11:30 am	**Keynote: DOE General Counsel Perspectives**	Hon. Jonathan Brightbill, General Counsel, DOE
12:00 pm	**Lunch & Breakout Session**	
1:15 pm	**Session 2: Recent Developments in Cost & Pricing** *Exploring recent legal developments relating to cost and pricing under DOE contracts and grants, including recent case law and amendments to CAS and 2 CFR Part 200.*	Peter Terenzio, Special Counsel, Covington & Burling John Polcari, Partner, HKA Global, Inc.
2:15 pm	**Session 3: Leveraging Tech: AI, Workflow, and Matter Management** *Exploring how technology can enhance efficiency, streamline workflows, and improve matter management within the legal department.*	Maesea McCalpin, Director Analyst, Gartner, Inc. Will Elias, Chief Legal Officer, Sandia National Laboratories Pablo Prando, General Counsel, Los Alamos National Laboratory
3:00 pm	**Office of Inspector General Update**	Sarah Nelson, Assistant Inspector General for the Office of Management
3:30 pm	Networking Break	
4:00 pm	**DOECAA Business Meeting: Board Actions & Elections** *(See link to member-only page for more info)*	

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5:00 pm	**Networking Reception** *Note: Separate ticket purchase required, see www.doecaa.org*

Friday, September 11, 2026 (Elevation Conference Room)

Time (Eastern)	Item	Speaker
8:30 am	Networking & Continental Breakfast	
9:00 am	**Perspectives from NNSA General Counsel**	Lisa Daley-Mangi, General Counsel, NNSA
9:30 am	**Session 4: Legal Ethics** *This session will address issues that arise when legal functions interface with various sets of key stakeholders - boards, parent companies, leadership/management, and their organizations' DOE/NNSA customers.*	Jack Marshall, President, ProEthics Ltd.
10:30 am	Networking Break	
10:45 am	**Session 5: Modernizing Operational Directives** *This session will address how organizations can reset internal policies and procedures in view of the Modernizing Operational Directives initiative's reduction of external requirements; what processes and principles should organizations consider to maximize speed, minimize bureaucracy, and manage risks?*	Mike Pratt, General Law Senior Counsel, Managing, Sandia National Laboratories Richard Sweeney, Senior Manager, Prime Contract, Export Controls, and Policy, Sandia National Laboratories
11:45 am	Refreshment break	
12:00 pm	**Session 6: Navigating a Changing Landscape: The FAR Overhaul, Recent Executive Orders, and False Claims Act Developments** *This session will address the "revolutionary" changes to the Federal Acquisition Regulation, key executive orders impacting DOE and NNSA contractors, and significant False Claims Act developments from the past year. Attendees will learn how these shifts could reshape audit focus areas, incurred cost review considerations, and the intersection between audit findings and FCA enforcement referrals.*	Mark Meagher, Meagher GC Law LLC Phil Seckman, Partner, Dentons US LLP Alex Hastings, Partner, Morgan Lewis & Bockius LLP
1:00 pm	Closing Remarks	Saurabh Anand & Will Elias

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DEPARTMENT OF ENERGY CONTRACTOR ATTORNEYS ASSOCIATION

2026 Fall Conference Attendees

Matt Alan	BWXT
Kevin Amery	Battelle
Shade Amole*	Fermi National Accelerator Laboratory
Saurabh Anand	SLAC National Acceleratory Laboratory
Adam Andersen*	Idaho National Laboratory
Reed Andrus*	Idaho National Laboratory
Kristina Arcara	Battelle
Sam Barkley*	National Laboratory of the Rockies
Ritu Bhatnagar	SLAC National Accelerator Laboratory
David Billetdeaux	Pacific Northwest National Laboratory
Greg S Bingham	HKA Global Inc.
Jeff Blank	H2C
Robert Bracknell	Jefferson Lab
Robyn Burrows	Blank Rome LLP
Timothy Cole	Brookhaven National Laboratory
Sean J. Coletti	Idaho Environmental Coalition, LLC
Sachin Desai	Zeno Power
Michael Dobbs	US Department of Energy
Kimberly Donham	US Department of Energy
James Durant	US Department of Energy
William Elias	Sandia National Laboratories
Paul Ellison*	Fermi National Accelerator Laboratory
Matthew Ennis	Fluor Corporation
Beth Fancsali	Fermi National Accelerator Laboratory
Scott P. Fitzsimmons	Watt, Tieder, Hoffar & Fitzgerald, LLP
Stewart Forbes	Hogan Lovells Cadwalader
Sandra Fowler*	Bechtel
Bert Gawthorp	H2C
Jordan Gerken	Kansas City National Security Campus
Kurt Gerlach	Kansas City National Security Campus
Ivy Gibson	Fermi National Accelerator Laboratory

* Virtual attendee

Jonathan Van Ginhoven	Fluor
Camilla Glatt	Pacific Northwest National Laboratory
Tim Haight	Los Alamos National Laboratory
Alexandra Hall*	National Laboratory of the Rockies
John Hamner	Pacific Northwest National Laboratory
Todd Harrington	Battelle
Alexander Hastings	Morgan, Lewis & Bockius LLP
Chip Hicks	EnergySolutions, LLC
Rob Humphries	Bechtel National, Inc.
Rebecca Jackson	Sandia National Laboratories
Patrick Jensen	HKA
Kevin J Jerbi	Argonne National Laboratory
Eric Johnson*	National Laboratory of the Rockies
Reggie Jones	Fox Rothschild LLP
John Jung	Argonne National Laboratory
Ivan T Kirchev*	Argonne National Laboratory
Reed Koenig*	National Laboratory of the Rockies
Jenny Kremin*	National Laboratory of the Rockies
Nadine Lacombe	Argonne National Laboratory
Christopher Land	MITRE
Julia Lapis	Hartline Barger LLP
Therese M. Leone	Lawrence Berkeley National Laboratory
Kevin Licciardi	Princeton Plasma Physics Laboratory
Mike Ling*	Nevada National Security Site
Richard Lopatto	Lawrence Berkeley National Laboratory
Bart Lounsbury	Lawrence Livermore National Laboratory
Cindy Lovato-Farmer	Pacific Northwest National Laboratory
David Mandl	Oak Ridge National Laboratory
Aaron Marshall	Fluor Corporation
Lisa McClane*	Nevada National Security Site
Maxine McReynolds	Los Alamos National Laboratory
Mark J. Meagher	Meagher GC Law LLC
Foy Meyer	Savannah River Mission Completion, LLC
Joshua Miller	Kansas City National Security Campus
Brian Mills	Maynard Nexsen PC
Devon Mobley-Ritter*	Lawrence Livermore National Laboratory
Jane Morris	Ames Laboratory

* Virtual attendee

Donald K. Murano	Naval Nuclear Laboratory / Fluor Marine Propulsion, LLC
John Myer	Husch Blackwell
James Ouellette	Bechtel National, Inc.
Brad Page*	Central Plateau Cleanup Company
Matt Pasulka	Nevada National Security Site
Scotch Perdue	Fluor-BWXT Ports
Mike Pierce	Covington & Burling LLP
Michael R. Pillsbury	Maynard Nexsen PC
Robert Pittelkow	National Laboratory of the Rockies
Justin E Poore*	Sandia National Laboratories
Steve Porter	
Pablo Prando	Los Alamos National Laboratory
Michael Pratt	Sandia National Laboratories
Dorene Price*	Brookhaven National Laboratory
Callista Puchmeyer*	Idaho National Laboratory
Austin Raynor	General Matter
Andrea Reagan	Fluor Enterprise
Gerald Reynolds	Fluor
Kimberly Evans Ross	Idaho National Laboratory
Elizabeth Rosso*	Pacific Northwest National Laboratory
Alec L Rubenstein*	Fermi National Accelerator Laboratory
Jeff Rupert	Atkins Realis Nuclear Secured
Tamara Safarik	Los Alamos National Laboratory
Rhonda Scales	Jefferson Lab
Tiffany Schafer*	Argonne National Laboratory
Olivia Scheuer	Idaho National Laboratory
Phil Seckman	Dentons US LLP
Domenic Senger-Schenck	Strategic Petroleum Reserve
Susan Sharlow	Strategic Petroleum Reserve
Anissa Siefken*	Pacific Northwest National Laboratory
Susan Slater	Argonne National Laboratory
John Stolpa	National Laboratory of the Rockies
Christina L Tackett	Argonne National Laboratory
Jessica Thomas-Albert	Strategic Petroleum Reserve
Paul Underwood	Savannah River Mission Completion, LLC
Quentin Vaughan	Brookhaven National Laboratory
Neal Vickery*	National Laboratory of the Rockies

* Virtual attendee

Ann Wei*	RSI
Peggy Welsh	Strategic Petroleum Reserve
Paul White*	National Laboratory of the Rockies
Tyler White	PanTex Plant
Matthew F. Williams*	Lawrence Livermore National Laboratory
Scott Williamson	Williamson Law Group LLC
Brandon Wilsey	Watt, Tieder, Hoffar & Fitzgerald
Daryl Witherspoon	HMIS
Kellen Wittkop*	National Laboratory of the Rockies
Michelle Wong*	Lawrence Berkeley National Laboratory
James Xiao	Savannah River Mission Completion, LLC
Chuck Young	Y-12 National Security Complex

* Virtual attendee

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2026 DOECAA Fall Conference

SESSION 1:

Employment Law Update

Department of Energy Contractor Attorneys Association

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Employment Law Panel

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PANELISTS

Julia Lapis, Senior Counsel, Hartline Barger LLP

Cindy Lovato-Farmer, General Counsel, Pacific Northwest National Laboratory

John Sullivan, Associate General Counsel for Contractor Human Resources, Department of Energy

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TOPICS

Workforce Reductions

Immigration

Work From Home Triggering Religious and Disability Discrimination Claims

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Workforce Reductions

Key Requirements & Furloughs

Workforce Restructuring: DOE Approval vs. Notification

- Approval required when ≥100 employees are affected (voluntary and/or involuntary) in any rolling 12-month period.
- **Defense Nuclear Facilities (DNF)**: submit a General Plan (framework) and provide ≥120-day notice to DOE, employees, and local communities; Congressional notification applies.
- **Both DNFs and Non-DNFs**: submit a Specific Plan to DOE for approval when ≥100 employees are affected within 12 months.
- Self-select voluntary programs that meet policy parameters generally require DOE notification, not approval.

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Core Policy Requirements & Guardrails

- Consider self-select separation before involuntary; preserve critical skills needed for mission continuity.
- DOE policy discourages backfilling separated positions for one year; avoid external hiring to fill those roles.
- Enhanced benefits are generally unreimbursable absent Congressional reprogramming; pension-funded early retirement incentives are unallowable.
- Honor applicable CBAs and duty to bargain; use DOE release/waiver models where appropriate.
- Prime contract terms control if they conflict with internal DOE policy.

Adverse Impact Analysis & WARN

- Adverse Impact Analysis required for involuntary actions affecting ≥100 employees within a rolling 12 months.

- Programmatic discretion: Provide copy to DOE Site Counsel (to maintain privilege) for cost allowability; not required to submit to OGC.

- WARN Act: ≥60-day notice for covered mass layoffs/closings; verify state mini-WARN requirements and thresholds.

Resources & Templates for Contractors & Counsel

- DOE O 350.3, Ch. III (Reductions in Contractor Employment) and Change 1 (notification/approval updates).
- GC-63 Workforce Restructuring Guide & FAQs: Section 3161 Rehiring Preference, General/Specific Plan templates.
- DOE models: Voluntary & Involuntary releases/waivers; Adverse Impact Analysis Guidance.
- Defense Nuclear Facilities list (DNFSB) to confirm Section 3161 applicability.

Furloughs: Operating During a Lapse in Appropriations (ADA)

- Antideficiency Act limits obligations absent appropriations; exceptions: express authorization, emergency (life/property), President's duties, necessarily implied.
- Emergency exception test: (1) clear nexus to safety of life/property; (2) near-term, significant risk requiring immediate action.
- If funds remain, contractors may continue performance unless federal oversight is critical; excepted activities continue with federal oversight.
- No new obligations during a lapse; payments for excepted work accrue but are paid after funding is restored; contractors' employees lack guaranteed pay absent Congress.

Furloughs: Exemption Path & Roles

- Consultation: engage agency contacts and counsel to assess ‘critical’ oversight and Antideficiency Act exception eligibility.
- Exemption request: submit shutdown-exemption template if work qualifies; document rationale and scope.
- Minimize activities for non-excepted work and plan an orderly cessation.
- Roles: COR/FPD/Site Manager identify and justify; CO approves/denies; Agency counsel issues legal determination.
- No WARN

Immigration Compliance and Intersections with Access and Research Security Requirements

Enhanced Visa Screening & Vetting Complement Research Security Risk Management

- Increased efforts to ensure protection of U.S. assets and enhance requirements for unclassified foreign access to DOE sites, information and technologies (DOE O 142.3C).
- Expanded research security rules governing foreign affiliations, sensitive technology access, and foreign government sponsored talent programs (DOE O 486.1A).
- A foreign national can be legally authorized to work but restricted from particular research, systems, information, facilities or programs because of restrictions on access, research security requirements and/or export-control restrictions.

Changes to H-1B Visas

- Presidential Proclamation on Sept. 19, 2025, imposed $100,000 H-1B consular-processing fee, was legally challenged. Federal court in Mass. vacated policy in June and now on appeal.
- On August 24, 2026, DHS proposed through formal rule a new $103,265 fee for H-1B cap-subject petitions.
- New visa integrity fee & increased fees for Electronic Registration & premium processing.
- Interview waiver program for H-1B applicants was eliminated so most applicants now require consular interviews.
- Expansion of vetting including social media and travel history reviews.
- Stricter documentation requirements.

J-1 Visa – Nonimmigrant Exchange Visitor

- Participants must be accepted into a State Department approved program, demonstrate program specific credentials, funding sources, English proficiency and ***intent to return home***.
- ***Duration of status rule*** eliminated effective Sept. 15, 2026. Rule allowed an individual to remain in U.S. for duration of qualified program.
- J-1s will now receive a fixed period of admission capped at 4 years.
- Period of admission stated on 1-94 governs lawful stay so tracking I-94 is important. Individual may seek extension through USCI.
- New regulations broaden visa termination grounds to include falsified information, unauthorized activity and lack of program engagement.
- J-1 holders typically have a 30-day departure grace period post program.
- Some J-1 holders, including government funded, must return to home country for two years before becoming eligible for H, L, or green card status.

Other Notable Visa Requirements

- O-1 - Temporary nonimmigrant work visa for individuals with extraordinary ability.
  - Keep evidence of extraordinary ability and project necessity.
  - Maintain detailed itineraries (if multiple worksites).
  - Ensure peer-review, recommendation letters or advisory opinions remain accurate.
- Distinctions between O-1 and EB-1A -employment-based immigration category for individuals of extraordinary ability
  - O-1 requires employer sponsorship and EB-1A does not.
  - EB-1A is pathway to lawful permanent residence/green card and O-1 is not.
  - Different qualification standards apply.
- For Employment Based Green Cards (EB 1/2/3) employers must maintain PERM recruitment documentation, prevailing wage determinations and job duty consistency and maintain audit-ready files for five years.

Enhanced Use of Discretion for Adjustment of Status Applications

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- USCIS Policy Memorandum PM-602-0199 (May 21, 2016) emphasizes use of *discretionary framework* when evaluating AOS applications – the process by which noncitizens can apply to obtain Lawful Permanent Resident status without leaving the United States.
- Reaffirmed that AOS is extraordinary relief and not a right, even when eligibility criteria are met. Does not change statutory eligibility requirements but elevated discretion to be the primary lens through which adjustments are evaluated.
- Totality of Circumstances - Positive and Negative Factors are weighed.

Positive Factors/Equities	Adverse Factors
Long term lawful U.S. presence	Visa/status violations
Close family ties in U.S. with U.S. citizens	Failure to timely depart
Consistent tax compliance	Activities at odds with admission purpose
Community involvement	

Key Changes to DOE O. 142.3C
Unclassified Foreign National Access Program

- Updated on March 31, 2026.
- Requires enhanced risk-based access reviews, tracking and documentation processes.
- Access for foreign nationals (FN) must align with their lawful immigration status. Thus, suspension of access when visas expire may be required.
- Incorporates NDAA's prohibition on admitting certain citizens or agents of Covered Foreign Nations to specified DOE facilities that directly support the NNSA mission.
- Greater integration of DOE's S&T Risk Matrix into access decisions (Non-NNSA User Facilities exempt).
- Enhanced review on nationals from a Country of Risk (COR) tied to the actual technology/information being accessed.
- FN employees of Countries or Risk, State Sponsors of Terrorism or other designated countries on DOE's Sensitive and Other Designated Countries List cannot directly supervise cleared contractor employees without a waiver.
- All FN visitors must now be processed through FNAP.

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Mitigate Potential Discrimination Concerns

- Consistently apply requirements.
- Avoid conflating nationality with security risk when identifying and communicating access restrictions.
  - Communicate restrictions based on security, export control, foreign affiliation, immigration status or project specific requirements, not nationality.
  - Title VII contains a national security affirmative defense (703(g), 42 USC 2000e-2(g)).
    - For a §703(g) defense, you need a legitimate national security requirement preferably established by federal statute or Executive Order. It is not a blanket exemption from Title VII.

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Verifying employment authorization for new hires

- Complete I-9 by proving identify and right to work.
- E-verify Compliance & Monitoring:
  - Mandatory enrollment and verification per FAR 52.222-54.
  - Remote examination is permanently available.
  - System challenges could impact processing.
  - Cannot identify identity theft or fraudulent use of valid credentials.
- Employers responsible for applying verification standards consistently & reviewing documents for authenticity.
- Need comprehensive I-9 processes, internal audits and staff training.

Challenges

- Evolving & Expanding Requirements.
- Increasing cost.
- Increased federal immigration enforcement including I-9 audits, worksite inspections, document requests and scrutiny of employer practices.
- Employee Anxiety and Workforce Stability.
  - Widely reported immigration raids have led to fear among foreign nationals and concerns over recruitment, retention & staff morale.
  - Need frequent thoughtful communication.

Actions

- Stay on top of USCIS announcements and updates.
- Stay apprised of travel bans and adjudication pauses.
- Continually monitor visa expirations and changing circumstances.
- Submit updates whenever there are address changes or changes to work or technologies, building or system access, schedule or location, immigration status or affiliation.
- Keep apprised & maintain documentation of positive & negative factors that will impact Adjustment of Status applications.
- Establish an integrated governance structure that bridges HR, Immigration SMEs, security, counter-intelligence, export control, legal and compliance functions.

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Work From Home Triggering Religious and Disability Discrimination Claims

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Why This Topic Matters

- Return-to-office mandates are colliding with accommodation law, and remote/hybrid work has become one of the most common accommodation requests.

- Both religious (Title VII) and disability (ADA) accommodation frameworks are implicated.

- Charges are rising sharply as employers order their staff back into the office.

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The Numbers

- In 2025, newly-filed federal discrimination lawsuits exceeded 20,000 for the first time.
- Employees filed 6,796 failure-to-accommodate lawsuits in 2025—an increase of about 42% over such filings in 2024.
- In FY25, employees filed 3,710 religious and 36,256 disability discrimination charges with the EEOC. These charges constituted 4.2% and 41.1%, respectively, of all charges.
- Litigation and commentary consistently point to return-to-office (RTO) enforcement as a primary driver of this increase.

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The Religious Accommodation Framework Has Changed

- Title VII requires accommodation of sincerely held religious beliefs, practices or observances unless doing so creates an undue hardship.
- *Groff* raised the undue hardship bar: an employer must show the accommodation would impose "substantial increased costs in relation to the conduct of its particular business," not merely a *de minimis* cost. *Groff v. DeJoy*, 600 U.S. 447 (2023).
- Coworker impact is relevant only if it burdens the business itself. Morale or resentment among coworkers is not, by itself, undue hardship.
- Employers must proactively consider accommodation alternatives, including ones the employee did not propose.

A Low Bar for Employees

- Fourth Circuit has held that an employee faces only a light burden in tying an accommodation request to a sincerely held religious belief. *Finn v. Humane Society of the United States*, No. 24-1416 (4th Cir. Nov. 20, 2025).
- Practical effect: employers should expect that a nominal employee explanation will satisfy the threshold showing, shifting the practical focus to the employer's undue hardship defense.
- Employers should not require employees to justify or prove the theological basis of a belief in detail before treating a request as triggering the interactive process.

Where Remote Work and Religious Accommodation Intersect

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- Religious observance is becoming a basis to demand remote work, including for employees who would otherwise be subject to RTO mandates.
- DOJ Office of Legal Counsel determined in September 2025 that federal agencies must consider “situational telework” as a reasonable religious accommodation, and OPM guidance now names telework a “low-cost solution” for religious observance, prayer and fasting.
- Dress or appearance expectations on video calls and mandatory camera-on policies during video calls (privacy / modesty-based religious objections) can be an issue.
- Same for scheduling conflicts between core remote-work hours and prayer times.

The ADA Framework for Remote Work Requests

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- Telework is only required as an accommodation when it effectively enables performance of essential job functions—not merely because an employee prefers it.
- EEOC's February 11, 2026 FAQs confirm that RTO policies *do not override ADA accommodation obligations*.
- Employers may re-evaluate and modify or rescind existing telework arrangements, but only through an individualized assessment of whether effective in-office alternatives exist.
- Blanket RTO rules that leave no room for individualized ADA analysis are risky.

How Courts Are Treating Denial of Continued Remote Work

- Denial of a request to continue working from home as a disability accommodation was not, by itself, enough to establish disability discrimination. *Ramirez v. City of New York*, No. 1:24-cv-01061, 2026 WL 18678 (S.D.N.Y. Jan. 2, 2026).
- Employers are not required to permit remote work if doing so would eliminate an essential job function. *Castelino v. Whitman, Breed, Abbott & Morgan, LLC*, 233 Conn. App. 467 (2025).
- Common thread: courts are still requiring proof that in-person presence was not actually essential, or that the individualized interactive process broke down. A denial alone does not automatically create liability.

Retaliation Risk

- Requesting either a religious or disability accommodation is protected activity under Title VII and the ADA.
- In a remote setting, retaliation can look different than in person: reduced meeting access, stripped duties, sudden micromanagement, downgraded reviews, exclusion from chat channels or increased in-office demands aimed at prompting resignation.
- These actions are just as unlawful even though they occur through software rather than face-to-face.

Risk Avoidance

- Avoid blanket RTO mandates; build in a documented, individualized assessment process for both religious and ADA accommodation requests.
- Document the interactive process, including alternatives considered and the specific essential function or cost-based justification for any denial.
- Apply the *Groff* standard correctly. Do not deny a religious accommodation based on coworker inconvenience or morale alone.
- Train managers on recognizing accommodation requests embedded in informal remote work conversations, and on avoiding retaliatory conduct in remote supervision.
- Involve counsel before rescinding a previously-granted telework accommodation.

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Questions



John Sullivan
Associate General Counsel for Contractor Human Resources, U.S. Department of Energy

John serves as the Associate General Counsel for Contractor Human Resources at the U.S. Department of Energy, where he leads contractor-side Labor and Employment matters and acts as DOE's Chief Labor Advisor. John provides counsel across DOE's contractor workforce, overseeing labor compliance and major employment-law initiatives.

His portfolio includes advising on workforce restructuring, collective bargaining, prevailing wages, contractor benefit plans, and ensuring alignment between DOE policies and federal, state, and local labor requirements. John also serves as DOE's primary legal liaison to the Department of Labor and works closely with DOE leadership to develop and implement enterprise-wide policies.

John holds both a JD and an MS in International Development Economics from Tulane University Law School and is a member of the Maryland State Bar. Before joining DOE, John served as a trial attorney at the National Labor Relations Board and worked in nonprofit and government roles, including service as a Peace Corps Volunteer in Guatemala.



Cindy Lovato-Farmer, Executive Director and General Counsel, Pacific Northwest National Laboratory

Cindy Lovato-Farmer is the Executive Director and General Counsel at Pacific Northwest National Laboratory (PNNL). In this role, Cindy leads a team of legal professionals and strategic partners providing legal guidance on a broad range of issues and proactively mitigating risk while supporting mission objectives. Cindy provides leadership and direction on legal and litigation strategies in support of PNNL's overall mission.

Prior to joining PNNL, Cindy spent a combined total of 19 years in legal and leadership positions at DOE NNSA National Laboratories. Cindy was Senior Managing General Law and Litigation Counsel at Sandia National Laboratories where she led Sandia's General Law Center, recognized in 2020 for their strategic partnership with management, strategic approach to litigation and proactive risk mitigation strategy. Prior to joining Sandia, she led the Employment Law & Litigation Group at Los Alamos National Laboratory. In these roles, Cindy has managed and directly handled a range of complex legal matters and litigation. Cindy previously was a partner at a law firm in Albuquerque, New Mexico where she handled employment law and civil rights defense litigation and appeals, following a federal judicial clerkship.

Cindy has earned an AV Preeminent peer review rating from Martindale Hubbell which denotes the highest level of professional excellence for legal expertise, communication skills and ethical standards and is in the Martindale Hubbell Bar Register of Preeminent Women Lawyers. Cindy has obtained In-house Counsel Certification from the Association of Corporate Counsel. She has been a speaker and instructor at numerous legal seminars and trainings.

JULIA LAPIS



CONTACT

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BAR & COURT ADMISSIONS

New Mexico

California

EDUCATION

New York University School of Law, JD, 1998

- Articles Editor, Review of Law and Social Change

University of California, San Diego, B.A. Political Science, 1995

SENIOR COUNSEL

Julia Lapis is a seasoned litigation attorney and leader with more than 25 years of experience handling complex litigation and advising large organizations on high-stakes matters, managing risk and regulatory compliance. She has extensive experience overseeing complex disputes, conducting internal investigations, and counseling senior leadership.

Prior to joining Hartline Barger, Julia served as Associate General Counsel at Los Alamos National Laboratory, where she led the Laboratory's Litigation and Employment Law Group. In that role, she managed a multi-jurisdictional litigation docket involving employment, labor, ERISA, intellectual property, environmental, and contract matters. She also directed investigations and litigation involving whistleblower claims and False Claims Act allegations, and advised executives on a broad range of issues in the areas of employment, labor, benefits, and immigration law. Julia also led sensitive internal investigations and represented management in administrative and regulatory proceedings.

Julia previously practiced with the Los Angeles offices of two international law firms, where she defended complex commercial and employment cases, including wage-and-hour class actions and other high-exposure claims. She also represented employers before the National Labor Relations Board and advised organizations on compliance with state and federal employment laws.

Julia has been recognized by the American Bar Association Section of Labor and Employment Law with Awards for Significant Contributions to the Advancement of the Law. She was recognized for her work in the national laboratory complex by being selected for the U.S. Department of Energy's Building Executive Leaders for Tomorrow program. Julia is a longtime contributing editor to The Developing Labor Law: The Board, The Courts, and The National Labor Relations Act (BNA Books). Her volunteer work has included leadership roles with the New Mexico Women's Bar Association Board of Directors, the State Bar of California Labor and Employment Law Section Executive Committee, and serving on the Board of Directors for Court Appointed Special Advocates, First Judicial District of New Mexico.

HARTLINE BARGER

DOECAA

2026 DOECAA Fall Conference

Keynote Address:

Jonathan Brightbill, General Counsel, U.S. Department of Energy

An official website of the United States government Here's how you know

Jonathan Brightbill

Department of Energy General Counsel



Jonathan Brightbill is General Counsel of the U.S. Department of Energy. He is a graduate of the Georgetown University Law Center and the University of Pennsylvania Wharton School of Business. Mr. Brightbill clerked for the Honorable D. Brooks Smith on the United States Court of Appeals for the Third Circuit.

As General Counsel, Mr. Brightbill is responsible for overseeing the legal operations of the Department of Energy, as well as counseling the Secretary, Deputy Secretary and senior leadership on the execution of their duties in the development of federal energy policy. His oversight portfolio includes nuclear energy regulatory reforms, electricity and gas markets, energy efficiency, civilian nuclear programs, business transactions, international negotiations, loan and grant investments, and oversight of the Department's national laboratory system.

Prior to joining DOE, Mr. Brightbill was a partner in the Washington, D.C. office of Winston & Strawn. During the first Trump administration, he served as Acting Assistant Attorney General for the Environment & Natural Resources Division of the U.S.

Department of Justice. Mr. Brightbill was previously a partner in the Washington, D.C. office of Kirkland & Ellis. Mr. Brightbill has also taught as an adjunct professor at Georgetown University Law Center.

DOECAA

2026 DOECAA Fall Conference

SESSION 2:

Recent Developments in Cost & Pricing

DOECAA

Department of Energy Contractor Attorneys Association



DOECAA

Recent Developments in Cost & Pricing

Discussion Agenda

√	**FAR and DEAR Cost Principles Update**
√	**CAS & TINA Update**
√	**2 CFR Part 200 Update**

FAR and DEAR
Cost Principles Update

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Cost Principles Update

√	**Quick Refresh**
√	**Advance Agreements After *Pratt & Whitney***
√	**Revolutionary FAR Overhaul**

Cost Principles – Quick Refresh

- **FAR Part 31 contains cost principles and procedures for:**
  - Pricing contracts/subcontracts/mods where cost analysis is performed (FAR Part 15); and
  - Allowability under cost reimbursement contracts.
- **Different subparts for different org types:**

Commercial Organizations (For-Profit)	31.2
Educational Institutions	31.3
State/Local/Tribal Governments	31.6
Nonprofit Organizations	31.7

- The three latter subparts incorporate 2 CFR Part 200 (more on that later), but certain nonprofits (including multiple DOE FFRDCs and other contractors) are considered more like commercial organizations and therefore follow FAR subpart 31.2.
- DOE supplements FAR subpart 31.2 with additional cost principles at DEAR Part 931 and M&O-specific cost principles at DEAR Part 970.

Cost Principles – Quick Refresh (Cont.)

- DEAR varies from FAR in material ways.

Example General DEAR cost principles

- **IR&D –** Allowable only if they benefit the "DOE program." *See* DEAR 931.205-18.
- **Legal Costs –** Subject to certain additional limitations and restrictions. *See* DEAR 931.205-33 and 931.205-47.

Example DEAR M&O cost principles

- **IR&D and B&P –** Allowable under the FAR, but **unallowable** for M&O contractors. *See* DEAR 970.3102-518.
- **Home Office Expense –** Allowable under the FAR, but generally **unallowable** for M&O contractors and instead recovered through fee. *See* DEAR 970.3102-370.

FAR 31.109 - Advance Agreements

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. . . To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at subparts 31.2, 31.3, 31.6, and 31.7, contracting officers and contractors should **seek advance agreement on the treatment of special or unusual costs** . . . .

(b) Advance agreements may be negotiated either before or during a contract but should be negotiated before incurrence of the costs involved. The agreements must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration.



DEAR 970.310-9 – Advance Agreements

At any time, in accordance with the contract terms and conditions, the ***contracting officer may pursue an advance agreement*** in connection with any cost item under a contract.

Pratt & Whitney

***Secretary of Defense v. Pratt & Whitney*, 160 F.4th 1224 (Fed. Cir. 2025).**

- Latest decision in decades-long cost dispute between P&W and USG
- Decision concerned the validity and enforcement of previous settlement agreement (the "Drag Agreement") between the parties.

- ASBCA held that Drag Agreement was enforceable contract, even if it did not include all required elements of an advance agreement under FAR 31.109.

- On appeal, Federal Circuit **reversed**, holding that:
  - Drag Agreement was an advance agreement subject to requirements of FAR 31.109; and
  - it was **unenforceable**, because it did not specify a duration, and there was no evidence it was incorporated into P&W's contracts with the USG.

Implications

FAR 31.109 advance agreements that lack specified duration or that are not incorporated into contracts are unenforceable.

- Potentially material for contractors (of **all** types) that have previously signed advance agreements with DOE.
- During appeal, USG argued that "**any** agreement that seeks to predetermine the treatment of future costs does, in fact, have to comply with FAR 31.109, as no other FAR provision authorizes such contractual arrangements." *See* Case No. 23-1337, Dkt. No. 37 at 53.

The logic of the decision arguably applies to **all settlements** that a reviewing court holds to be inconsistent with the FAR.

- "Generally, a government official lacks actual authority to enter into a contract that violates the FAR. **Without specific authorization** from the agency head or his designee (and there has been no showing of such authorization here), **any deviation** from regulatory requirements is a violation of the regulations and beyond the authority of the contracting officer." *Pratt & Whitney*, 160 F.4th at 1233 (cleaned up).

Revolutionary FAR Overhaul

- Undertaken pursuant to EO entitled “Restoring Common Sense to Federal Procurement (April 15, 2025)”
- Required quick-turn rewrite of all FAR Parts
- Federal agencies (including DOE) issued deviations to implement the changes
- Changes to FAR Part 31 thus far are relatively minimal and around the edges
- But potentially more to come …

CAS & TINA Update

CAS & TINA Update

√	**Quick Refresh**
√	**CAS Updates**
√	**TINA Updates**

CAS – Quick Refresh

- **Cost Accounting Standards (CAS)** were promulgated with the intention to ensure uniformity and consistency in recording costs incurred under contracts with the Government.
- **FAR cost principles** govern **allowability** (what can be charged); CAS govern **measurement, assignment, and allocation** of costs.
- Consists of numbered standards (CAS 401, 402, etc.) in 48 CFR Part 9904.
- Administered by CAS Board.
- Apply to contractors through FAR clauses incorporated into "CAS-covered contracts"
  - Contractors that hold contracts subject to "modified" CAS must comply with CAS 401, 402, 405, and 406.
  - Contractors that hold contracts subject to "full" CAS must comply with all standards.



CAS – Quick Refresh (cont.)

- Organizations that perform on contracts subject to full CAS must submit a CAS **Disclosure Statement** for each "segment" performing on such contracts or "home offices" that allocate costs to segments performing on CAS covered contracts.
- Disclosure Statements describe accounting practices used by the segment or home office.
- Disclosure Statements are reviewed by USG for adequacy and compliance.
- Changes to a Disclosure Statement may result in a contract **price adjustment** if there is a material change in cost to the Government.

TINA – Quick Refresh

The Truthful Cost or Pricing Data Act — previously know as the Truth In Negotiations Act or "TINA" — requires contractors to **certify** to accuracy of cost or pricing data for certain types of non-exempt contracts.

- Generally applies to negotiated (FAR Part 15) contracts above specified dollar threshold.

"**Cost or pricing data**" means "all facts that, as of the date of price agreement . . . Prudent buyers and sellers would reasonably expect to affect price negotiations significantly."

Contractors that submit "**defective pricing**" liable for dollar-for-dollar adjustment to contract price.

Government has burden of proof and must establish five essential elements of defective pricing.

Implementing rules at FAR 15.403.

2026 NDAA – Section 1806

CAS Applicability Threshold Increases

- Increased threshold for "full" CAS coverage from $50 million to $100 million.
- Increased CAS coverage threshold from $2.5 million to $35 million.
  - Decoupled from TINA threshold.
  - Eliminated previous "trigger contract" mechanism.
- CAS Board issued proposed rule to implement changes on March 20, 2026.
- CAS Board issued final rule to implement changes on September 1, 2026.

CAS Applicability to Hybrid Contracts

- Exemption for commercial products/services; and/or
- Exemption for firm fixed price components based on adequate price competition without submission of certified cost or pricing data.
- CAS has historically been applied at the contract level.
- Implications to accounting systems and ICS Schedule H to identify claimed costs at the CLIN level.

2026 NDAA – Section 1806 (cont.)

Changes to CAS Board Composition

- *Five voting members*:
  - Administrator of Federal Procurement Policy (OFPP), Chairman.
  - Two representatives from federal government (DoD and GSA).
  - Two individuals from the private sector appointed by the OMB Director (senior or retired employee from a USG contractor with CAS experience and a "member of the accounting profession with substantial experience as an accountant").
- *Two nonvoting members*:
  - Appointed by the CAS Board.
  - From academia, a nonprofit organization, or a private entity with substantial experience in establishing and reporting standards in compliance with GAAP.
- Executive agency auditors (e.g., DCAA) are **ineligible** to serve on the CAS Board effective January 1, 2028.
- CAS Board moved from OFPP to OMB.

2026 NDAA – Section 1806 (cont.)

CAS Board Responsibilities

- CAS Board must review standards for conformance or elimination within 180 days and biennially thereafter.
- CAS Board's responsibility must annually review CAS disputes, and:
  - Clarify or improve CAS if misinterpretation or lack of clarity in a standard was the primary component of a dispute; and
  - Ensure that action is not taken solely for the purpose of tailoring a standard to favor a party in the dispute.
- Speed up rulemaking process by eliminating advance notice of proposed rulemaking (ANPRM).

2026 NDAA – Section 1806 (cont.)

Cost Accounting Practice Changes

- Cost recovered by the government for cost accounting practice (CAP) changes shall:
  - Exclude any contract or subcontract that is firm fixed-price or that is not price-redeterminable based on costs.
  - Limit to net increased costs paid for all changes implemented within the same fiscal year:
    - This allows for more flexibility to make organizational and/or accounting changes (as changes can be netted against each other).
    - Could potentially impact ongoing litigation in *The Boeing Company v. United States*.
- Timing: Within 180 days of NDAA enactment, OFPP/CASB to issue regulations to implement statutory requirement (final rule still not yet issued).
- Implications to October 2023 DCAA MRD.

2026 NDAA – Section 1806 (cont.)

Cost Accounting Practice Changes (cont).

- Changes to CAPC rules also affect ongoing litigation in *The Boeing Company v. United States*, No. 17-1969C, currently pending before Court of Federal Claims (COFC).
- Long running dispute concern's Boeing's challenge to FAR 30.606, which generally prohibits netting CAPCs that result in cost reductions against other CAPCS that result in increased costs to the Government.
- Case is currently pending at COFC after two trips up to the Circuit Court; in April 2026, the presiding Judge asked for briefing on the effect of Section 1806:
  - DOJ: Section 1806 "materially alters" the CAS statute but applies only **prospectively**.
  - Boeing: Section 1806 is irrelevant to the litigation.

2026 NDAA – Section 1804

Adjustment to TINA Thresholds

- 10 USC 3702(a) Requirement of certification cost or pricing data – Thresholds changed
  - Prime and subcontract entered into after June 30, 2026 ~~June 30, 2018~~, the price is expected to exceed **$10,000,000** ~~$2,000,000~~ and
  - Prime and subcontract entered into on or before June 30, 2026 ~~June 30, 2018~~, the price is expected to exceed **$2,000,000** ~~$750,000~~
    - Will result in changes to FAR 15.403-4
    - NOTE – As of October 1, 2025, the FAR threshold was $2.5M
- See DCAA August 27, 2026 memorandum for regional directors (MRD)

2027 NDAA Preview

HR 8800 (June 15, 2026)

- **801:** Portfolio Acquisition Executive (PAE) issue performance improvement notice, initiate contract restructuring
- **802:** LPTA disfavored
- **803:** Limitation on commercial products/services contract clauses
- **804:** Elimination of late COPD submission defense
- **805:** Reporting of price increases (contracts other than competitive)
- **806:** Limitation on suspension of progress payments
- **808:** Risk-Based approach to monitoring contractor business systems
- **811:** Review of defense audit agencies
- **821:** Inflation adjustment every 3 years
- **824:** Modular open systems and modifications to technical data rights
- **830:** Consumption-based procurements and associated payments
- **861:** Reform of technical data/software rights to support competition, sustainment, readiness
- **874:** Addressing backlog of DFARS open cases
- **877:** Expedited implementation of commercial acquisition reforms (NDAA FY 26, Secs. 1821-1828)
- **1818:** Report on feasibility of requiring bills of material for defense acquisition
- **1838:** Triennial review of M&A activity associated with major defense suppliers

S 4784 (June 15, 2026)

- **804:** Modifications to technical data rights
- **815:** Limitations relating to capital distributions for defense contractors
- **821:** Reporting of price increases
- **822:** Late submission of COPD as invalid defense to contract price reductions for defective COPD
- **883:** Reporting on contractor operations related to China

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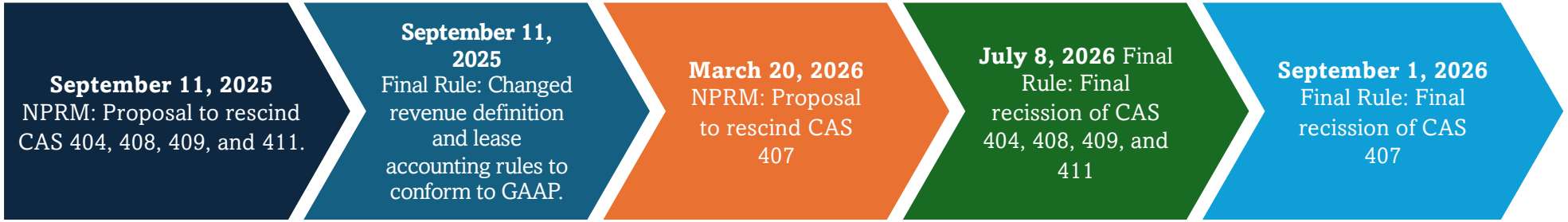
CAS Board Actions – Meeting Agendas

- **Conformance of CAS to GAAP**
- **Applicability of CAS to indefinite delivery vehicle (IDV) contracts**
- **Pension harmonization for extraordinary events**
  - Discuss an ANPRM to modify CAS 412 and 413
  - Reconcile the application of the Pension Protection Act of 2006 and the CAS adjustment of pension costs for extraordinary events (e.g., segment closing, curtailment of benefits, etc.)
- **Waivers**

- **Review of Court and Board decisions**
  - Discuss decisions by the Boards of Contract Appeals and Federal courts involving standards since the last review in 2024
  - Consider whether greater clarity in CAS could avoid such disputes
- **Statutory and Regulatory CAS thresholds**
- **Cost impact of accounting practice changes**
  - Need for additional clarity of the meaning of increased costs in the aggregate (41 U.S.C. 1503(b))
  - Handling of cost impacts for unilateral cost accounting practice changes
- ***Note*** – no references to hybrid contracts

CAS Board Actions – CAS to GAAP Conformance

- 2017 NDAA directed CAS Board to conform CAS to GAAP, thereby decreasing the burden on contractors (which would otherwise have to comply with two different accounting standards).
- In March 2019, CAS Board identified 7 standards that were most "suitable for conformance."
- In September 2025, White House issued a briefing addressing the conformance of CAS to GAAP stating that it is a part of the Administration's efforts to reduce regulatory burdens and streamline complex rules
- In 2025, CAS Board began to act:



Recent CAS Board Actions – CAS to GAAP Conformance (cont.)

Changes to Definitions

- CAS Board issued Final Rule on September 11, 2025 that:
  - *Removed* the CAS 403 operating revenue definition and will rely on the GAAP definition of revenue
  - *Removed* the term "operating" in relation to revenue in CAS 403
  - *Note* - Properly disclosed accounting changes are a required change and exempt from the cost impact process
  - *Clarified* CAS definitions to make clear that "right-of-use" leases required by GAAP to be treated as assets on the balance sheet (i.e., "operating leases") should be excluded from computing FCCOM in CAS 414 and CAS 417
  - *Changed* the definition of intangible assets in CAS 414 and CAS 417 to include right-of-use assets acquired under leases

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Recent CAS Board Actions – CAS to GAAP Conformance (cont.)

Recission of CAS Standards

- CAS Board issued Final Rule on July 8, 2026 that:
  - Deleted CAS 408 and 411 in their entirety.
  - Deleted most of CAS 404 and 409, and moved remaining requirements into CAS 405.
  - CAS Board did not identify any situations where a contractor would need to make a change to its disclosed accounting practices due to recission of CAS 404, 409, and 411.
  - Any future changes a contractor may make would not be considered "required changes" and could result in price adjustment
  - CAS Board recognized certain instances were recission of CAS 408 could result in changes in accounting practices but only with respect to immaterial timing differences; such changes will be exempt from the cost impact process
- CAS Board issued Final Rule on September 1, 2026 that:
  - Deleted most of CAS 407 and moved remaining requirements into CAS 418.
  - CAS Board did not identify any instances where eliminating CAS 407 would result in a change in a contractor's disclosed accounting practices.
  - Any future changes would be considered a unilateral cost accounting practice change.
- Note - DCAA issued MRD on August 20, 2026 to address recission of CAS 404, 408, 409, and 411

Recent CAS Board Actions – Indefinite Delivery Contracts

- CAS Board previously elicited public comments for addressing CAS coverage on IDV contracts
- Referenced case 2021-01, which identified the following six possible approaches:

✓Order-by-order

✓Maximum award value

✓Minimum award value

✓Cumulative threshold

✓Order-by-order for multiple award IDVs and maximum award value for single award IDVs

✓Order-by-order for multiple award IDVs and maximum award value for single award IDVs

Recent CAS Board Actions – Indefinite Delivery Contracts (cont.)

March 20, 2026 Notice of Proposed Rulemaking (NPRM)

- In FY 2024, obligations for orders against indefinite delivery contracts (IDCs) and other indefinite delivery vehicles reached $467 billion, or 60% of total contract obligations
- References statutory preference to award IDCs to multiple contractors, but they may be awarded to a single contractor
- States that the Section 809 Panel focused exclusively on multiple award IDCs
  - Information needed to determine whether CAS applies is generally not available until the time a task or order is placed
  - Ceiling value for any individual holder of a multiple award IDC is highly speculative

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Recent CAS Board Actions – Indefinite Delivery Contracts (cont.)

Final Rule (September 1, 2026)

- CAS applicability for multiple-award IDCs is determined at the task or delivery order level.
- CAS applicability for single-award IDCs is determined at the time of award using the ceiling value.
- Clarifies that a single-award IDC can be exempt if the entire IDC meets one of the 9903-202-1(b) exemptions.
- "The Board has concluded that, unlike multiple-award IDCs, the information required to determine CAS exemptions and consistently apply CAS to single-award IDCs is available at the time of award of the single-award IDC."

Recent CAS Board Actions – Threshold Changes

Notice of Proposed Rulemaking (March 20, 2026)

- Proposed rule to implement increase to full CAS coverage and Disclosure Statement thresholds
- Eliminate the CAS 9903.202-1(c)(ii) exemption for a Disclosure Statement if a segment's CAS-covered awards are less than 30% of total segment sales for the period and less than $10 million
- Change will apparently maintain nearly 99% of dollars currently subject to full CAS coverage but removes nearly 30% of the entities.
- Adjusting the $50 million thresholds based solely on inflation since the most recent increase in 2000 would raise the threshold to $92 million.

Department of War (DoW) Class Deviation (July 30, 2026)

- Implements Section 1806 of the FY 2026 NDAA
- Effective immediately
- Applies only to DoW contracts
- Will remain in effect until it's rescinded or incorporated into the FAR, DFARS, and DFARS PGI

Recent CAS Board Actions – Indefinite Delivery Contracts (cont.)

DCAA MRD (August 19, 2026)

- Referenced the July 30, 2026 class deviation
- Acknowledges the following:
  - Exemptions linked to TINA and the $7.5 million trigger contract are eliminated
  - Contracts greater than $35 million for which no other exemptions apply are CAS covered
  - $100 million full CAS coverage and Disclosure Statement applicability threshold
- Existing audits:
  - Coordinate with CFAO to determine the need to continue CAS audits
  - Need for an initial Disclosure Statement audit may change based on the date of award and the CAS Clause
- **New audits:**
  - Verify the business unit or segment is performing CAS covered contracts that require a Disclosure Statement before initiating a CAS compliance audit or accepting a Disclosure Statemen engagement

Recent CAS Board Actions – Threshold Changes (cont.)

Final Rule (September 1, 2026)

- Raises threshold for full CAS coverage and Disclosure Statement requirements from **$50 million** to **$100 million**
  - Eliminates the CAS 9903-202-1(c)(ii) exemption – see March 20, 2026 NPRM
  - Clarifies that a Disclosure Statement is required only for segments or business units that independently meet the applicable thresholds for full CAS coverage
  - Provides a mechanism for determining eligibility for modified CAS coverage for contractors / subcontractors currently subject to full CAS coverage that would not otherwise be subject to full CAS coverage at the $100 million threshold – if no unresolved CAS noncompliances
  - Does not change the CAS segment definition (i.e., related to prior CAS Board inquiries regarding the relationship of a CAS segment and Unique Entity Identifier)
- Updated statutory exemptions in 9903.201-1(b) (i.e., modified CAS coverage thresholds) to align with 2026 NDAA revisions
- CAS Board has begun reviewing contract price adjustments requirements, which will be addressed in a separate case in accordance with the FY 2026 NDAA
- Modifies three statutory CAS exemptions at 9903.201-1(b) to make them applicable to portions of contracts and subcontracts (i.e., hybrid contracts)

Recent CAS Board Actions – Waivers

Final Rule (September 1, 2026)

- Agency head waiver authority
  - CAS 9903.201-5 permitted agency heads to waive CAS on their own for contracts valued up to $15 million without seeking approval from the CAS Board (but must notify the CAS Board) if the official determines that the business unit that will perform the work:
    - Is primarily engaged in the sale of commercial items; and
    - Would not otherwise be subject to CAS
  - Final rule raises CAS waiver authority threshold from $15 million to $100 million effective October 1, 2026
  - Implements Section 820 of the FY 2017 NDAA
  - Note: July 30, 2026 class deviation increased the waiver authority threshold to $100 million for DoW contracts

Recent CAS Board Actions – Unique Entity Identifier

Notice of Proposed Rulemaking (March 20, 2026)

- "Board has reasoned that the Unique Entity Identifier (UEI) represents a covered segment"
  - CAS Board is seeking comments on:
    - Its "assumption" that each business unit has its own UEI;
    - Any entities subject to Disclosure Statement requirements that are reporting as a segment without its own UEI, and, if so, the specific circumstances that led to this determination and what UEI they used to bid on contracts.
  - CAS Board seems to be implying that a CAS segment must have its own UEI (i.e., CAS segment / business unit must be a separate legal entity)

TINA Updates

- Recent large defective pricing settlements
- May 2023 “60 Minutes” segment appears to have led to a renewed interest on Capitol Hill to seek regulatory changes to increase contractor oversight
- DCAA has been performing more defective pricing audits in recent years
  - Generally low return on investment (per annual DCAA Reports to Congress)
  - DCMA Defective Pricing Pilot Team
- Recent government / legislative action
  - Scrutiny of contractors earning “Unreasonable profit” and achieving high profit margins
  - Increased efforts to obtain other than certified cost or pricing data (Section 802 of NDAA for FY 2024 and September 26, 2024 DoD proposed rule)
  - Requirements for additional contractor disclosures (pricing strategy, margin data, etc.)
- Department of War “Feinberg Memo” (August 18, 2026)
- TINA “Lite” Guide - July 8, 2026 OUSW Memorandum

2 CFR Part 200 Update

2 CFR Part 200

√	**Quick Refresh**
√	**Proposed Rule**
√	**Changes to Indirect Cost Rates**

2 CFR Part 200 - Quick Refresh

- Educational institutions, state/local/tribal governments, and nonprofit organizations are required to comply with cost standards in 2 CFR Part 200, Subpart E and the applicable appendices
- 2 CFR Part 200 establishes a different methodology for negotiating indirect costs, as set forth in:
  - Appendix III – Indirect (F&A) Rates for Institutions of Higher Education
  - Appendix IV – Indirect (F&A) Rates for Nonprofits
- Appendix VIII is a List of Exempted Nonprofits, consisting of FFRDCs and certain other nonprofit contractors who, "because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles" and, therefore, follow FAR Subpart 31.2 instead of 2 CFR Part 200.

Proposed Rule

Notice of Proposed Rulemaking (May 29, 2026)

- OMB proposes to substantially revise multiple parts of 2 CFR Part 200.
- Proposed Rule includes multiple changes to Subpart E, including recharacterizing previously allowable costs as unallowable and new requirements for prior approval. For example:

  - 2 CFR 200.454 – costs for periodicals and for membership in professional organizations are currently allowable, but under proposed rule periodical costs are *unallowable* and membership costs are allowable only with prior approval.

  - 2 CFR 200.461 – Publication costs for electronic and print media, including fees charged by peer-reviewed publication, are currently allowable but under the proposed rule such costs will generally be *unallowable,* unless specifically authorized by statue or approved in advance.

Proposed Rule (cont.)

Notice of Proposed Rulemaking (May 29, 2026)

- OMB also proposed to remove Appendix VIII.
- Exemption to 2 CFR Part 200 would instead apply "only to nonprofit organizations that receive **90 percent or more of their Federal funding in the form of contracts** or operate a Federally Funded Research and Development Center (FFRDC)."
- In other words, under the Proposed Rule, "for all other nonprofit organizations, the cost principles in subpart E will apply. "

Changes to Indirect Cost Rates

DOE Policy Changes
During 2025, multiple federal agencies sought to supplant indirect cost rates previously negotiated under 2 CFR Part 200 with a uniform 15% indirect rate.
DOE issued a "Policy Flash" to this effect on June 30, 2025, capping the total amount of recoverable indirect costs under federal financial assistance awards at either 15% (for nonprofits and for-profits) or 10% (for states)
The Policy Flash was enjoined by court order. *See State of New York v. Department of Energy*, Case 6:25-cv-01458-MTK (D. Oregon Aug. 15, 2025).
The Policy Flash was then formally rescinded by Congress, which directed DOE to "continue to apply the indirect cost rates, including negotiated indirect cost rates, as described in section 200.414 of title 2, Code of Federal Regulations . . . to the same extent and in the same manner as was applied in fiscal year 2024." *See* Pub. L. No. 119-74, § 313, 140 Stat. 5, 89 (2026).

Changes to Indirect Cost Rates

OMB Policy Changes
Executive Order 14332, Improving Oversight of Federal Grantmaking, directed OMB to revise 2 CFR Part 200 "to appropriately limit the use of discretionary grant funds for costs related to facilities and administration."
As noted, the January 2026 Appropriations Act required federal agencies to continue to apply previously negotiated rates.
May 2026 Proposed Rule therefore did not propose to amend the indirect cost rates.
But "OMB may consider issuing a request for information on this topic in the future."

Changes to Indirect Cost Rates

Joint Associations Group on Indirect Costs
OMB Proposed Rule also referred to indirect cost model proposed by Joint Associations Group on Indirect Costs (JAG).
JAG proposal is focused exclusively on research awards.
Proposed model would shift various categories of "Essential Research Performance Support" (ERPS) costs that have previously been treated as indirect costs as direct charges, either on a dollar-for-dollar basis or on a percentage charge basis.

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Questions?

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Thank you for joining us.
We are on a break and will return at 2:15pm.



United States Court of Appeals for the Federal Circuit

SECRETARY OF DEFENSE,
Appellant

v.

PRATT & WHITNEY, A DIVISION OF RTX CORPORATION,
Cross-Appellant

2023-1337, 2023-1338

Appeals from the Armed Services Board of Contract Appeals in No. 59222, Administrative Judge David D'Alessandris, Administrative Judge Cheryl L. Scott, Administrative Judge Owen C. Wilson, Administrative Judge Richard Shackleford.

Decided: December 5, 2025

BORISLAV KUSHNIR, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for appellant. Also represented by BRIAN M. BOYNTON, PATRICIA M. MCCARTHY; ALEXANDER MARTIN HEALY, Contract Disputes Resolution Center, Defense Contract Management Agency, Hanscom Air Force Base, MA.

JEFFREY A. HALL, Bartlit Beck LLP, Chicago, IL,

argued for cross-appellant. Also represented by CINDY L. SOBEL; DHANANJAY S. MANTHRIPRAGADA, Gibson, Dunn & Crutcher LLP, Los Angeles, CA; LINDSAY MIRIAM PAULIN, Washington, DC.

Before MOORE, *Chief Judge*, DYK and CUNNINGHAM, *Circuit Judges*.

DYK, *Circuit Judge*.

Pratt & Whitney ("Pratt") builds aircraft engines, both for commercial airline customers and for the United States. This case involves cost calculations for cost-plus contracts between Pratt and the United States and specifically cost allocation between Pratt's government and private contracts. The government contends that it overpaid Pratt on the cost-plus contracts because Pratt incorrectly calculated the government's share of indirect costs (e.g., overhead). The Armed Services Board of Contract Appeals (the "Board") ruled for the government in part and for Pratt in part. The government appealed, and Pratt cross-appealed. We hold that we lack jurisdiction over the Board's decision concerning the base for allocation of overhead costs because the Board's decision in this regard was not a final decision. However, we hold that the Board's decision that there was an enforceable agreement between the parties as to the inclusion of so-called "Drag" in the overhead pool was final, and that the agreement is invalid. We therefore dismiss in part, reverse in part, and remand.

BACKGROUND

The facts underlying this case are complex but are virtually undisputed by the parties. During the relevant period, Pratt had a number of cost-plus contracts with the government as well as commercial engine contracts with private companies. Under the government contracts, the government was required to reimburse Pratt for overhead costs properly allocated to the government contracts. The

Cost Accounting Standards ("CAS") govern allocability of overhead costs. Pursuant to 48 C.F.R. § 9904.418 ("CAS 418"), a portion of the overhead pool is allocated to the government based on the proportion of material costs Pratt incurs for the government engine program as opposed to material costs associated with the commercial engine program. *See Rumsfeld v. United Techs. Corp.*, 315 F.3d 1361, 1369 (Fed. Cir. 2003).[1]

To calculate Pratt's overhead cost allocation to its government contracts, two different calculations must be undertaken. The first concerns which costs are properly included in Pratt's overhead pool. The second relates to the allocation base of the overhead pool and how much of the pool is attributed to the government engine program versus the commercial engine program under CAS 418. This calculation defines the proportion of the overhead pool for which the government is responsible. The government bears a larger burden of the indirect costs when the total size of Pratt's overhead pool increases and when the government's portion of the base increases.

The long-running controversy in this case arises from Pratt's use of unconventional agreements with its parts suppliers. Instead of simply purchasing commercial engine parts from parts suppliers, Pratt has entered into "collaboration agreements" with its suppliers under which the suppliers (the "Collaborators") are paid a percentage share of

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[1] CAS 418 is a method of allocating overhead costs. 48 C.F.R. § 9904.410 ("CAS 410") provides that "[t]he cost input base used to allocate the . . . expense pool shall include all significant elements of that cost input which represent the total activity of the business unit." *Rumsfeld*, 315 F.3d at 1369 (quoting CAS 410-50(d)). Pratt elected to use a form of total cost input accounting based on "material costs" as provided by CAS 418-50. *Id.* (citing CAS 418-50(d)(2)(iv)).

the engine program revenues in exchange for the provision of parts.

The first computation involves the question whether so-called Drag costs are properly included in the overhead pool. Drag is calculated through a fixed percentage of a Collaborator's revenue share of commercial program profits rather than a function of the actual cost of overhead incurred by Pratt.[2] In the government's view, Drag represents money that Collaborators paid to Pratt to cover the Collaborators' share of commercial program expenses, and Drag costs should be removed from the overhead pool as an already-recovered expense. In this appeal, the resolution of this question depends on the validity of an agreement between the government and Pratt.

The second, more complex computation relates to the base calculation. If the costs related to the government program are larger, then the government pays more of the overhead pool. If the costs related to the commercial program are larger, then the government pays less of the overhead pool. As we surmised in *Rumsfeld*,

> It is therefore in the government's interest to maximize the amount of material costs associated with commercial contracts in order to increase the value of the commercial program's portion of the overhead pool and inversely decrease the government's share of overhead; and it is in Pratt's interest to minimize the commercial program material costs, decrease the value of the commercial program's portion of the overhead pool and increase the government's share of overhead.

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[2] Drag represents a portion of Pratt's cost of supervising the commercial engine program that is reimbursed by the Collaborators. For simplicity, we refer to these underlying program expenses as Drag costs.

Id. at 1363–64.

For over 30 years, the parties have disputed how to calculate the cost of the commercial engine parts acquired under the collaboration agreements. Initially, Pratt treated these parts as having no direct material cost, so the cost of the parts was not factored into the calculation of the commercial contracts' share of the overhead pool. At the same time, Pratt reduced the total overhead pool by the Drag figure. In 1992, the contracting officer found that Pratt's accounting methods violated CAS 418 because Pratt did not assign a cost to the engine parts that Pratt acquired from the Collaborators for the commercial engine program. According to the contracting officer, the cost of the engine parts was equivalent to the revenue share owed to the Collaborators. In 1996, another contracting officer issued a decision incorporating the first decision and establishing quantum for the violation.

Pratt appealed these decisions to the Board, which determined that Pratt's accounting practices did not violate CAS 418. The government then appealed to this court, and we determined that Pratt's failure to account for a cost of the engine parts violated CAS 418 and caused "a substantial distortion in overhead allocation" between the commercial and government engine programs. *Id.* at 1372. We vacated the Board's decision and remanded for the Board to determine the proper method to determine the cost of the engine parts. *Id.* at 1377.

After our decision in *Rumsfeld*, on June 5, 2006, the parties reached a settlement agreement and also entered an agreement (the "Drag agreement") whereby in the future Pratt would include the parts' material cost in the overhead pool base but would no longer reduce the overhead pool by the Drag figure. The Drag agreement provided in relevant part:

> The [contracting officer determined] that Pratt's discontinuance of its prior practice of crediting

> DRAG to its overhead pools was compliant with both CAS and the Federal Acquisition Regulation [("FAR")] from January 1, 2005 to the date of this agreement. The Government will not require such credits prospectively, provided that Pratt continues to include a cost for collaboration parts in its allocation base or bases and that the "DRAG" provisions of the collaboration agreements do not materially change.

J.A. 5496.[3]

The Drag agreement did not resolve the dispute. In 2013, a new contracting officer issued a decision revisiting the issue of how to calculate the government's share of Pratt's overhead expenses. The contracting officer determined once again that Pratt's accounting practices violated CAS. One dispute concerned Pratt's use of "Manufacturing Target Cost" ("MTC") to estimate the cost of the parts. This number represented how much Pratt expected it would cost to manufacture the parts itself. The contracting officer determined that Pratt's use of an estimate of material costs of the commercial engine parts rather than the actual costs was impermissible. To measure material costs, the contracting officer instead used gross revenue share, which is the percentage of the list price Pratt owed to a Collaborator when a commercial engine was sold. In reaching this conclusion, the contracting officer referenced our decision in *Rumsfeld*, stating that we "defined the cost of collaboration material as revenue share payments," which the contracting officer apparently determined to mean gross revenue share. J.A. 5710.

The contracting officer also determined that the Drag agreement was not valid and therefore was not binding on

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[3] Citations to the J.A. refer to the Joint Appendix filed by the parties. Dkt. No. 61.

the government. The contracting officer ruled that Pratt was required to remove any Drag costs from the overhead pool because those costs were reimbursed by the Collaborators. The contracting officer calculated a total debt of $210,968,414 owed to the United States.

Pratt once more appealed to the Board. The Board sustained Pratt's appeal in part, finding that the Drag agreement was a valid agreement and that Pratt was not required to eliminate Drag from the overhead pool. But the Board concluded that Pratt improperly calculated its material costs under CAS 418, rejecting Pratt's MTC method of calculating the material cost of the parts. At the same time, the Board also rejected the contracting officer's finding that gross revenue share was the proper measure of material cost. Instead, the Board determined that the proper measure was net revenue share. This was because Pratt rarely collects the full list price in its sales of commercial engines, and it deducts certain items (including Drag and certain discounts called Fleet Introductory Assistance) from the payments it ultimately sends to Collaborators. Therefore, as the Board viewed it, the total payment that Pratt actually sent to Collaborators, net revenue share, was the proper basis for determining the material cost of the collaborator parts. The Board found that net revenue share represents what Pratt "*actually pays* to its collaborators for the parts it receives." J.A. 99 (internal quotation marks omitted); *see also Rumsfeld*, 315 F.3d. at 1371 (discussing "material cost" as "the outlay for materials 'purchased'").

The Board remanded the issue of quantum to the parties; in other words, the Board remanded to have the parties agree on quantum. If the parties failed to do so, the Board would be required to determine quantum itself. *See Teller Env't Sys. v. United States*, 802 F.2d 1385, 1390 (Fed. Cir. 1986) (noting that a remand to the parties to negotiate quantum is not "a transfer, or a cessation, of the [B]oard's jurisdiction over the case" but a "direction to the

parties to negotiate . . . and to come back to the [B]oard . . . for resolution of any dispute if agreement cannot be reached"). The government appeals, and Pratt cross-appeals.

DISCUSSION

I

In every appeal, the first and fundamental question is that of jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quoting *Great S. Fire Proof Hotel Co. v. Jones*, 177 U.S. 449, 453 (1900)). This court has exclusive jurisdiction over "an appeal from a *final* decision of an agency board of contract appeals" pursuant to 41 U.S.C. § 7107(a)(1). 28 U.S.C. § 1295(a)(10) (emphasis added). The government characterizes this appeal as addressing two separate claims. The first claim addresses the calculation of Collaborator commercial part costs for the purpose of determining the government's allocation base of Pratt's overhead pool (the "CAS 418 Claim"). The second claim addresses whether Pratt is required to reduce the total overhead pool by the amount it receives in Drag payments from Collaborators (the "Drag Claim"). The government asserts that the Board's decision as to the CAS 418 Claim was a final decision, even though quantum remained to be determined. It also argues the Board's Drag Claim decision was itself a separate and final decision. The government argues that if we find we do not have jurisdiction over the CAS 418 Claim, which required a quantum calculation, we can still exercise jurisdiction over the Drag Claim, which was fully resolved by the Board.

A

Although "finality in this context is a flexible concept," *England v. Contel Advanced Sys., Inc.*, 384 F.3d 1372, 1378 (Fed. Cir. 2004), there are long-settled rules that guide our analysis. The "relevant inquiry" centers on "the contracting officer's decision, for this determines the extent of the

contractor's right of appeal and the [B]oard's jurisdiction." *Brownlee v. DynCorp*, 349 F.3d 1343, 1347 (Fed. Cir. 2003) (quoting *Dewey Elecs. Corp. v. United States*, 803 F.2d 650, 655 (Fed. Cir. 1986)). Where, as here, the contracting officer made a determination both as to liability and quantum, we have long held that a Board decision that determines only liability and does not reach quantum is not final. *See Teledyne Cont'l Motors v. United States*, 906 F.2d 1579, 1583 (Fed. Cir. 1990); *AAA Eng'g & Drafting, Inc. v. Widnall*, 129 F.3d 602, 604 (Fed. Cir. 1997); *Kinetic Builder's Inc. v. Peters*, 226 F.3d 1307, 1312–13 (Fed. Cir. 2000); *United Pac. Ins. Co. v. Roche*, 294 F.3d 1367, 1370 (Fed. Cir. 2002).

With respect to the CAS 418 Claim, the government argues that, despite the Board's remand for determination of quantum, we can exert jurisdiction over this appeal in its entirety based on our decision in *Southern California Edison Co. v. United States*, 226 F.3d 1349 (Fed. Cir. 2000) ("*SCE*"). In *SCE* we held that, when a lower court remands a case to an agency, that order is an appealable final order where the court rules on an issue of law and remands for the agency to apply that legal conclusion such that the agency's remaining task was merely ministerial. 226 F.3d at 1354–55 (citing *Sullivan v. Finkelstein*, 496 U.S. 617, 619 (1990)). There, we said that "[s]uch orders are final and appealable because they represent 'the final disposition of the proceeding respecting the Secretary's practice' and 'compel [ ] action . . ., on remand, contrary to the Secretary's prior ruling.'" *Id.* at 1355 (quoting *Travelstead v. Derwinski*, 978 F.2d 1244, 1248 (Fed. Cir. 1992) (second and third alterations in original)).

We do not find the logic of *SCE* to be applicable to the present case. *SCE* was a case that dealt with the finality of a Court of Federal Claims ("Claims Court") decision in a breach of contract action brought against the government. *Id.* at 1354. There, once the Claims Court rendered its decision, there were no further issues for the Claims Court to

resolve. This was so because the decision that we were reviewing in *SCE* originated in the Claims Court, not the agency, and we were reviewing a decision of the Claims Court that was final even though the decision was characterized as a remand to the agency and further calculation by the agency was required. That is not this case. Here, we are being asked to directly review an agency determination, the decision of the Board. The Board's decision as to the CAS 418 Claim is not final. Instead, the Board retained jurisdiction over the case when it remanded the matter to the parties to negotiate quantum. *See Teller*, 802 F.2d at 1390. If the parties are unable to settle the matter on quantum, then the Board must conduct further quantum proceedings.

The parties have not cited to any cases where we have applied *SCE* to a proceeding involving a remand from the Board, nor are we aware of any. We have consistently held a Board decision such as this one that does not resolve quantum is not a final decision for the purposes of our appellate jurisdiction. *Kinetic Builder's*, 226 F.3d at 1312–13; *United Pac. Ins. Co.*, 294 F.3d at 1370; *see also Teller*, 802 F.2d at 1389–90; *Teledyne*, 906 F.2d at 1583; *AAA Eng'g*, 129 F.3d at 604. Indeed, in *SCE*, we described and approved the holding of *Teledyne*, 226 F.3d at 1355, and the government concedes that "read in isolation," these cases suggest that the Board's decision is not final. Appellant's Br. 27. We continue to follow the long-settled rule that, where the contracting officer made a determination as to both liability and quantum, and the Board has only made a determination as to liability, the Board's decision is not final for the purposes of our appellate jurisdiction. Therefore, we do not have jurisdiction over the CAS 418 Claim.

B

The government separately argues we have jurisdiction over the Board's decision with respect to the Drag

Claim. It is established that where the contracting officer has been presented with multiple entitlement claims, "not based on a common or related set of operative facts," and some of those claims are remanded to the parties for negotiation of quantum while others are finally decided, "the Board decision on the non-remanded claims is deemed final." *Kinetic Builder's*, 226 F.3d at 1313 (citing *Dewey Elecs.*, 803 F.2d at 654); *accord Elkins v. Gober*, 229 F.3d 1369, 1373–74 (Fed. Cir. 2000). Therefore, if the CAS 418 Claim and the Drag Claim are separate claims, as the government contends, then we can assert jurisdiction over the Drag Claim even though the CAS 418 Claim was not fully resolved.

The Drag Claim concerns whether Drag costs are properly included in the overhead pool. The Board decision turned on the validity of the provisions of the Drag agreement and whether the government contracting officer had the authority to enter into the agreement. Therefore, the Drag Claim turns on factual questions unrelated to the CAS 418 Claim. *See Kinetic Builder's*, 226 F.3d at 1314–15 (finding two claims related to the same contract separate where they "do not involve proof of a common set of operative facts"). We conclude that the operative facts for these two claims are distinct and constitute separate claims.

The Board's decision on the Drag Claim is final. While a remand of the Board decision would require a calculation, the Board decision does not require a new calculation to determine the size and makeup of the overhead pool. Instead, the Board affirmed Pratt's ongoing practice of calculating the overhead pool without regard to the Drag payments. Because the Board's decision as to the Drag Claim was separate and final, not requiring a further calculation, it was appealable, and we have jurisdiction over the Board's decision on the Drag Claim.

As the parties note, this case is also similar to *Orlando Helicopter Airways v. Widnall*, 51 F.3d 258 (Fed. Cir. 1995). In *Orlando Helicopter*, we considered whether we had jurisdiction over a partial summary judgment ruling by the Board. 51 F.3d at 260. There, a contractor asserted a single claim that an investigation into the contractor initiated by the Department of Justice ("DOJ") and subsequent actions by the contracting officer had caused the contractor to incur additional costs alleged to be compensable by the government. *Id.* at 259. At summary judgment, the Board determined that the costs incurred as a result of the DOJ investigation were not compensable under the sovereign acts doctrine, but that the contractor could pursue its claims before the Board for costs incurred as a result of the contracting officer's actions. *Id.* at 260.

We determined that the Board's grant of summary judgment with regard to the DOJ investigation costs was a final decision, not requiring any further calculation, and we had jurisdiction over its appeal because it "determine[d] the rights and obligations of the parties" and was "wholly separate and distinct from any issues which may remain before the Board." *Id.* at 261. Here, the Board's decision on the Drag Claim determined rights and obligations of the parties separate and distinct from the issues presented by the CAS 418 Claim, which required a quantum computation before the decision was final, and we have jurisdiction over the Drag Claim.

II

Having established that we have jurisdiction over the Drag Claim, we now consider the merits of the government's appeal. The Board determined that the Drag agreement permitting Pratt to cease reducing the overhead pool by the Drag figure was valid and enforceable. The parties do not appear to dispute that the plain language of the Drag agreement permits Pratt to discontinue this practice. However, the government argues that the Drag agreement

was invalid and unenforceable against the government because it violated the FAR.

Whether an enforceable contract exists is a mixed question of law and fact. *See Ransom v. United States*, 900 F.2d 242, 244 (Fed. Cir. 1990). We review the Board's conclusions of law de novo. *Triple Canopy, Inc. v. Sec'y of the Air Force*, 14 F.4th 1332, 1337–38 (Fed. Cir. 2021). We may only set aside the Board's findings of fact if the Board's findings are "(A) fraudulent, arbitrary, or capricious; (B) so grossly erroneous as to necessarily imply bad faith; or (C) not supported by substantial evidence." 41 U.S.C. § 7107(b)(2).

As the Board acknowledged, "[a] Government agent must have actual authority to bind the Government to a contract." *Liberty Ammunition, Inc. v. United States*, 835 F.3d 1388, 1401 (Fed. Cir. 2016) (citing *Trauma Serv. Grp. v. United States*, 104 F.3d 1321, 1325 (Fed. Cir. 1997)); *accord Boyd v. United States*, 134 F.4th 1348, 1352 (Fed. Cir. 2025). Here, the Drag agreement was explicitly entered into "under authority of" the FAR. J.A. 5495. Generally, a government official lacks actual authority to enter into a contract that violates the FAR. *Johnson Mgmt. Grp. CFC v. Martinez*, 308 F.3d 1245, 1256 n.2 (Fed. Cir. 2002) (citing *McDonnell Douglas Corp. v. United States*, 670 F.2d 156, 159 (Cl. Ct. 1982)). Without specific authorization from the agency head or his designee (and there has been no showing of such authorization here), "any deviation from regulatory requirements is a violation of the regulations and beyond the authority of the contracting officer." *Id.* The question then is whether the Drag agreement violates the FAR.

The government argues that the Drag agreement violates the FAR because it conflicts with the FAR's requirements for advance agreements codified at 48 C.F.R. § 31.109 and it conflicts with the FAR's credits provision.

Because we agree with the government's first argument, we need not address the second.

The FAR's advance agreements provision notes that "contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs." 48 CFR § 31.109(a). This provision establishes an optional pathway for contractors and contracting officers to negotiate the future treatment of costs where "the reasonableness, the allocability and allowability . . . of certain costs may be difficult to determine" under standard FAR provisions. *Id.* However, any advance agreement reflecting a negotiated treatment of unusual costs "must be in writing, executed by both contracting parties, and incorporated into applicable current and future contracts. An advance agreement shall contain a statement of its applicability and duration." *Id.* § 31.109(b). A contracting officer is not authorized "to agree to a treatment of costs inconsistent with this part" of the FAR governing advance agreements. *Id.* § 31.109(c).

The Drag agreement here, on its face, states that it was executed under the authority of § 31.109, the advance agreements provision. The Board also correctly noted that there was no evidence that the Drag agreement was incorporated into any of Pratt's government contracts and that the Drag agreement lacks a statement of its duration. The undisputed facts establish how the Drag agreement does not comply with the FAR. The Board agreed. J.A. 90. Nonetheless, the Board concluded that the Drag agreement did not need to satisfy the FAR's requirements so long as it satisfied the general requirements for forming a contract. Pratt argues that this is permissible because contracting officers are granted broad license "to settle CAS-related disputes with contractors." Cross-Appellant's Br. 65.

We disagree. It is undeniable that the Drag agreement is an advance agreement. The Drag agreement, on its face, states that it is "entered into . . . under authority of [FAR]

31.109," the advance agreements provision. J.A. 5495. The Drag agreement is a negotiated agreement to "prospectively" agree to the treatment of costs, namely Pratt's inclusion of Drag costs in the overhead pool. J.A. 5496. We are aware of no holding that gives the contracting officer authority to disregard the FAR restrictions because a settlement agreement is involved, and the Board cites to none. To be sure, there is a strong public interest in enforcing settlements, especially in complex litigation. *See, e.g.*, *FTC v. Actavis, Inc.*, 570 U.S. 136, 154 (2013); *Baseload Energy, Inc. v. Roberts*, 619 F.3d 1357, 1361 (Fed. Cir. 2010). However, a settlement agreement is a contract, so its enforceability first turns on basic principles of contracting, such as whether there was authority to bind the parties. *See, e.g.*, *Sweeney v. U.S. Postal Serv.*, 159 F.3d 1342, 1344 (Fed. Cir. 1998) ("A settlement agreement is a contract between the parties." (citing *Mahboob v. Dep't of Navy*, 928 F.2d 1126, 1128 (Fed. Cir. 1991))); *Slattery v. Dep't of Just.*, 590 F.3d 1345, 1347 (Fed. Cir. 2010) ("A settlement agreement is a contract."); *Bell BCI Co. v. United States*, 570 F.3d 1337, 1341 (Fed. Cir. 2009) ("Because a release is contractual in nature, it is interpreted in the same manner as any other contract term or provision.").

Because the FAR was the source of the contracting officer's authority and did not authorize the agreement, the Board was required to find, as a matter of law, that the contracting officer lacked the authority to execute the Drag agreement on behalf of the government. *See Johnson Mgmt. Grp.*, 308 F.3d at 1256 n.2. Because the contracting officer lacked authority to bind the government, the Drag agreement cannot be enforced against it.[4]

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[4] Other provisions of the agreement do not relate to the Drag Claim. For example, the Board determined that a different provision operated as a waiver of the

We recognize that Pratt argues that even without the Drag agreement, it is not required to deduct Drag from the overhead pool. The government argues that Drag costs must be excluded from the overhead pool because they were reimbursed. In this respect, the government relies on the FAR's credits provision, codified at 48 C.F.R. § 31.201-5. We are skeptical a reimbursed cost could be properly included in the overhead pool, but we decline to reach this issue. Nor do we decide Pratt's argument that there has not been a showing that the Drag payments correspond to any costs included in the overhead pool. On remand, the Board will need to address and resolve these issues in the first instance.

CONCLUSION

For the foregoing reasons, we dismiss this appeal with respect to the CAS 418 Claim. With respect to the Drag Claim, we conclude that we have jurisdiction, and we reverse the Board's determination that the Drag agreement was an enforceable contract. We remand for further proceedings consistent with this opinion.

DISMISSED-IN-PART, REVERSED-IN-PART, AND REMANDED

COSTS

Costs to neither party.

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government's CAS 418 Claim for accounting that took place between January 1, 2005, and the date of the agreement, June 5, 2006. As we lack jurisdiction over the CAS 418 Claim, we offer no opinion as to the enforceability of this and other provisions of the agreement unrelated to the Drag Claim.

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About

Peter Terenzio advises clients regarding the regulatory requirements that govern federal contractors and grantees. He focuses on helping clients navigate the Cost Accounting Standards (CAS) and the cost principles in FAR Part 31 and 2 CFR Part 200. He also routinely advises on Other Transaction Authority (OTA) research, prototype, and production agreements.

Peter works on accounting, cost, and pricing matters, including providing day-to-day compliance advice; assisting with responses to audits and investigations and findings of potential noncompliance; and performing internal investigations of alleged violations. He also advises on other regulatory regimes, including the complicated prevailing wage rules imposed by the Davis Bacon Act (DBA) and Service Contact Act (SCA). He has particular experience with prototype OTAs issued in cutting edge fields, including quantum computing and biotechnology.

Peter also represents contractors in disputes arising under contracts and grants. He knows how to work closely with the client's subject matter experts to prepare and submit detailed requests for equitable adjustment (REAs) to secure price or schedule relief. When contract disputes cannot be resolved amicably, he has helped clients in litigation before federal courts and the Boards of Contract Appeals.

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John Polcari

Partner

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Highlights

- Widely experienced government contracts professional.
- Supports counsel in complex disputes and investigations regarding CAS and FAR compliance.
- Expertise in DFARS business system compliance and various other government acquisition compliance areas.
- Advises government contactor clients regarding applicable government regulatory requirements.
- Experienced instructor in areas concerning government regulatory compliance areas.

Expertise

John Polcari is a forensic accountant with nearly 15 years of experience. He has assisted the named expert witness on numerous occasions.

John works closely with internal and external counsel on areas of forensic accounting and litigation support concerning government contractors.

John is experienced in government contract compliance, strategy, and advisory services and his expertise includes Federal Acquisition Regulation (FAR) compliance, Cost Accounting Standards (CAS) compliance, CAS required disclosure statements, Incurred Cost Proposal (ICP) submissions, and cost impact analyses. He supports contractor negotiations related to audit findings by the Defence Contract Audit Agency (DCAA), Defence Contract Management Agency (DCMA), and General Services Administration (GSA).

Background

John is well-versed in the general design and maintenance of compliant contractor indirect cost allocation structures and he assists clients in their review, interpretation, and exclusion of unallowable costs prior to government audits. He has worked across the consulting, engineering, information technology, cybersecurity, construction, infrastructure, and healthcare sectors.

John has a bachelor’s in finance and accounting. He serves as treasurer of the Board of Contracts Appeals Bar Association, and is a member of the National Contracts Management Association and the National Defence Industry Association. He has published articles regarding various compliance issues and has undertaken numerous speaking engagements on matters related to accounting, cost and pricing.

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SESSION 3:

Leveraging Tech: AI, Workflow, and Matter Management

Maesea McCalpin

Senior Principal, Gartner

Director Analyst

Maesea McCalpin is a senior principal on Gartner's legal and compliance research team writing primarily to GC clients. Her research focuses heavily on legal and compliance technology with the aim of helping clients resolve barriers to selecting, implementing, and adopting legal tech solutions. This includes strategies for improving client digital readiness through process optimization, data readiness and change management. In addition, she writes research to help clients leverage AI in their legal and compliance workflows to enhance productivity and decision making.

Previous experience

Led a 5-member research team that produced interactive content and data on digital, transport, and energy infrastructure development in emerging markets.

Professional background

Center for Strategic & International Studies, Associate Director, 6 years



William S. Elias II

Executive Director, Chief Legal Officer & Corporate Secretary

William Elias serves as the Executive Director of the Legal Division and Chief Legal Officer for Sandia National Laboratories. Additionally, he holds the position of Corporate Secretary for National Technology and Engineering Solutions for Sandia, LLC (NTESS), a subsidiary of Honeywell International, Inc., which operates Sandia National Laboratories under contract with the U.S. Department of Energy's National Nuclear Security Administration.

Will joined NTESS in May 2017 as part of the new leadership team. Prior to this, he was the General Counsel at Argonne National Laboratory, the nation's oldest and leading multi-purpose national science laboratory.

Before his tenure at Argonne, Will served as General Counsel and Secretary of The Charles Stark Draper Laboratory, Inc., a nonprofit R&D lab in Cambridge, Massachusetts, primarily contracting with the U.S. Department of Defense, other national security agencies, and NASA. During his time at Draper, he also held a position as a Visiting Associate Professor of Law at Boston University School of Law, specializing in intellectual property and business strategy.

Will began his legal career as a judicial clerk for the Massachusetts Supreme Judicial Court and later practiced law at Ropes & Gray and Peabody & Brown. He earned his Juris Doctorate magna cum laude from Boston University School of Law and holds a Bachelor of Science degree from Tufts University.

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Office of Inspector General Update:

Sarah Nelson, Assistant Inspector General for the Office of Management

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Sarah Nelson

Sarah Nelson rejoined the Department of Energy, Office of Inspector General (DOE OIG), as the Assistant Inspector General (AIG) for the Office of Management in June 2024. As the AIG for the Office of Management, Sarah leads the agency's multidisciplinary team of budget, hiring, and information technology specialists and is responsible for providing policy, planning, financial, management, and administrative services to the Office of Inspector General.

Between 2004 and 2021, Sarah held numerous roles within DOE OIG, including as the Assistant Inspector General for Audits and Administration and Assistant Inspector General for Technology, Financial, and Analytics. Sarah established the OIG first program office responsible for providing data analytic support throughout the OIG. Most recently, Sarah spent the last two and a half years serving as the Deputy Inspector General for Innovation within the Department of Homeland Security's Office of Inspector General (DHS OIG).

Sarah received a Bachelor of Science in accounting, finance, and information technology from Tennessee Wesleyan College. She is graduate of the Office of Personnel Management Federal Executive Institute and has been recognized for numerous performance and superior accomplishment awards throughout her career with the Federal Government.

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Perspectives from NNSA General Counsel

Lisa Daley-Mangi, General Counsel, National Nuclear Security Administration

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Lisa Daley Mangi

Lisa Daley Mangi is the General Counsel for the National Nuclear Security Administration (NNSA).

As the chief legal officer for the NNSA, Ms. Mangi advises the Administrator and senior NNSA leadership on all legal matters. She also oversees and provides strategic guidance to the 32 attorneys and professional staff who represent the agency in administrative litigation and provides counsel to NNSA programs on procurement, intellectual property, national security, environmental and other legal matters.

Ms. Mangi served as the NNSA Deputy Counsel for Procurement, Intellectual Property, and Technology Transfer for NNSA from 2021 to 2025. Before she joined the Department of Energy, she was a trial attorney for the National Labor Relations Board.

Ms. Mangi is a graduate of the University of Wisconsin and the University of Maryland School of Law.



Lisa Daley Mangi

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Developed by ProEthics, Ltd. for the

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September 11, 2026 – Washington, DC

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Today's Schedule

1. Who is the client? "Bridge of Spies" Ethics

2. Be Afraid of the Dark: "Ethics Flashlights"

3. Hypothetical: "Bliss"

4. The Dark Side of AI and Other Ethics Developments

5. Wrap-Up and Concluding Discussion

Your Facilitator

Jack Marshall

Jack Marshall is the president and founder of ProEthics, Ltd., and the primary writer and editor of the ethics commentary blog, Ethics Alarms (www.ethicsalarms.com). He has taken the experience gleaned from a diverse career in law, public policy, academia and theater and applied it to the field of legal, business and organizational ethics. He has developed more than 240 ethics programs for bar associations, law firms, Fortune 500 companies, local and national government agencies, trade associations and non-profit organizations. He has worked to develop rules of professional responsibility for attorneys in emerging African democracies through the International Bar Association, and for the new judiciary of the Republic of Mongolia through USAID.

A member of the Massachusetts and DC Bars, Mr. Marshall has served on the adjunct faculty of the Washington College of Law at the American University in Washington, DC. He is a graduate of Harvard College and Georgetown University Law Center. His articles and essays on topics ranging from leadership and ethics to popular culture have appeared in numerous national and regional publications, and he has appeared on a variety of talk shows to discuss ethics and public policy, from Neil Cavuto's "Your World" to NPR's "Tell Me More." Marshall was named to the "Top 100 Thought Leaders in Trustworthy Business" (www.trustacrossamerica.com).

For 20 years he was the founding artistic director of The American Century Theater, a professional non-profit theater company dedicated to producing classic American plays. Like many who are interested in the nature of good, evil, justice, and chaos, Marshall is a lifetime fan of the Boston Red Sox.

1. The Dark Side Of "Who Is The Client?"

"Bridge of Spies" Ethics

In the 2015 Spielberg-directed film "Bridge of Spies," Tom Hanks plays Jim Donovan, an insurance lawyer asked to defend Rudolph Abel, who has been charged with espionage as a spy for the USSR. Abel is convicted and sentenced to prison, though Donovan takes the case to the Supreme Court.

When Gary Powers is shot down over Russia in the tense U2 incident, the CIA recruits Donovan to broker a trade of prisoners, Abel for Power. "Who do I represent?" he asks. "Nobody," he is told. Earlier, a CIA agent had attempted to pressure him into revealing client confidences and betraying his client Abel during the government's espionage prosecution.

Donovan goes alone to the Soviet Embassy in East Berlin, and meets Ivan Schischkin, representing the Soviets, who tells the lawyer that he wants Abel released first and Powers released several months after. Donovan insists on a simultaneous release. Donovan also wants an American student who has been charged as a spy and is being held in East Berlin to be released as well.

The CIA makes it clear that it is interested only in Powers' return, but Donovan negotiates for Pryor's return as well, playing brinksmanship with the Abel-for-Powers deal.

When Donovan attempts to finalize the two for one exchange with the East German Attorney General over the CIA agent's' protest, the East German bluntly refuses. Donovan leaves an ultimatum: the U.S. insists on both Pryor and Powers for Abel, or the entire deal will be scrapped. The bluff---if it is a bluff--- works, though the CIA's agent is furious that Donavan took the risk.

An exchange of the three prisoners is arranged to take place at the Gleinicke Bridge. Donovan meets Abel, his former client, who is eager to be released. On the other side of the bridge, Powers appears, but not Pryor. Pryor is supposedly to be released at another locale, but his status is unknown. The CIA's representative directs Donovan to send Abel across the bridge for Powers; the government doesn't care about the student, he says again. Donovan insists on confirmation that Pryor is being released. Out of gratitude, Abel agrees to wait with him.

Eventually, the student is delivered, and Powers and Abel cross the bridge.

Question 1: *Was it ethical for Donovan to take the job of negotiating the exchange?*

1. Only if Abel consented. It risked a conflict of interest with his former client.

2. Sure. It wasn't a legal representation.

3. No. Despite what the CIA agent said, Donovan would be switching sides.

4. Only if he was certain that Abel would be better off in the USSR than in a US prison.

Question 2: *Was it ethical for Donovan to refuse to complete the trade for only Abel once the CIA agent demanded that he do so?*

1. No. The CIA was the representative of his client, the U.S. government.

2. No. It was against the interest of his former client in a substantially related matter.

3. Yes, but only because Abel consented.

4. Yes. He was representing the best interests of his client.

5. I have another answer.

ABA Model Rules: 1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 1.9, 1.11, 1.16, 1.18, 2.1, 8.4

Reference: D.C. Bar Ethics Opinion 313

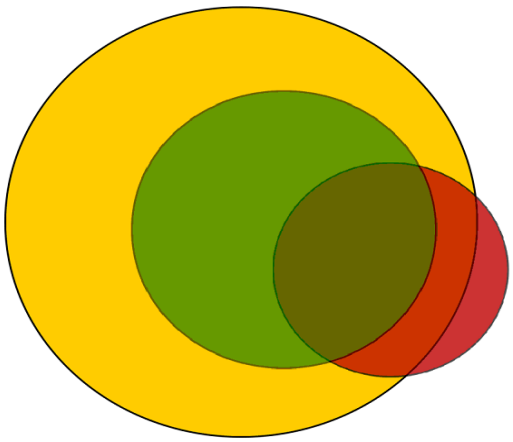
Whether a Lawyer May Continue to Represent a Client When That Lawyer Represented the Same Client in the Same Matter While Serving as a Public Officer or Employee

A former defense lawyer with the Navy Judge Advocate General's Corps may continue, in private practice, to represent in post-conviction proceedings the same criminal defendant whom he had represented as appointed counsel during the court martial. Even though his subsequent representation of the client is for the same matter in which he had participated personally and substantially while a public employee, he has not accepted "other employment" within the meaning of Rule 1.11 when he continues to represent the same client in the same matter after leaving military service.

2. Be Afraid of the Dark

Ethics Flashlights!

A. The Three Contexts of Legal Ethics Decision-Making



The Big Circle

- **Power: Often** overwhelming
- **Constituency:** Society, community, family, friends
- **Components:** Traditions, philosophies and faiths, expectations, emotions, gut reactions, and mixed ethics systems, such as
  - Absolutism
  - Reciprocity
  - Utilitarianism

The Compliance Circle

- **Power:** Variable
- **Constituency:** The legal profession
- **Components:** The Code, court opinions, legal ethics opinions, regulations, practice specific laws

The Personal Circle

- **Power:** It depends
- **Constituency:** You
- **Components**: Personal values, beliefs, principles, self-esteem, courage; also biases, emotions and conflicts

B. Pre-Unethical Conditions to Set Off Ethics Alarms

1. **Competence Alert!** You are asked to do something that is outside your expertise.

2. **Confidentiality Alert!** You have a confidence you are obligated to keep and a simultaneous duty to divulge it.

3. **Ego Alert!** Your self-esteem is invested in being perceived as successful or correct.

4. **Personal Conflict Alert!** Your personal relationships, non-ethical considerations or feelings are intertwined with your professional duties

5. Loyalty Alert! You have conflicting loyalties.

6. Courage Alert! Averting a disaster or preventing harm may require professional or personal risk.

7. Emotion Alert! You are angry, depressed, bitter, burned out or sick.

8. Ignorance Alert! You don't know the legal or regulatory context of your actions.

9. Group-think Alert! You are under pressure to change your basic values.

10. Desperation Alert! You think that you are willing to do anything to avoid a particular event or result.

3. The Dark Side of *Conflicts*

"Bliss"

Bliss Alchemy retains a Boston law firm to assist it in building a state-of-the-art research facility on property it owns in Lincoln, Massachusetts. Bliss wants firm partner Bob Bobbobbobbobboberran to handle the matter. Not only is he an expert in civic matters, he is also a well-respected, influential leader in Lincoln and active in the city's politics. Bob is a past president of the Lincoln Homeowners Association, and has appeared before the City Council many times to address other development projects in the area.

His wife is also a prominent activist in the city, she has organized many successful protests against what she sees as over-development and outside threats to the city's charm, pace and beauty.

The project requires the approval of the Lincoln City Council. Bliss retains the firm to render advice, strategic planning and assistance in the formulation of the project, and to coordinate with the city officials from whom Bliss seeks support. Bliss is certain Bob's statements and perceived opinions on city development matters will have significant influence on the city council and local citizenry.

For more than a year Bob is deeply involved in the formulation of the plan for Bliss's construction on the property, its overall strategy to secure all necessary approvals, and its efforts to obtain public support for the project, including representing Bliss in dealings with Lincoln city officials and the planning commission. Then Bob asks to leave the representation for unstated personal reasons. Bliss retains another firm for the project

Bliss's development proposal comes before the City Council a month after the representation ends. The Council and the city's planning commission review the project and hold hearings. The Council certifies the development and introduces an ordinance approving an agreement between Lincoln and Bliss.

Many citizens oppose the project, and a political action committee is formed, with the goal of putting a referendum on the ballot. Bob Bobbobbobbobboberran, no longer involved in the representation, addresses the City Council, actively opposing various political maneuvers designed to circumvent the committee's efforts.

Next, Bob and his wife Barb solicit signatures on the referendum petition from their neighbors, occasionally leaving "dear neighbor" notes which they both sign, expressing concern about the size of the project, the traffic impact, and its effect on the community, indicating that they would sign the referendum petition and urging the neighbor to do the same.

Question: *Was Bob's conduct unethical?*

1. Yes. He switched sides, which is a conflict of interest.
2. As long as he didn't use any confidences, no.
3. Maybe not, but I sure wouldn't do this.
4. Yes, he's attacking his own work.
5. The Rules don't apply to this.

ABA Rules of Professional Conduct: 1.2, 1.3, 1,4, 1.6, 1,7, 1.9, 1.10, 8.4

Reference:

THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK: FORMAL OPINION 1997-3

TOPIC: Lawyer's right to engage in activity or express a personal viewpoint which is not in accordance with a client's interests

QUESTION

May a lawyer publicly engage in activity or take a position (for example, as a member of a bar association) that differs from a view that would best serve the interests of one or more of his or her clients?

OPINION

... We take this opportunity to reaffirm that a lawyer may resist a client's efforts to curb expression of his or her personal views on public issues, assuming the lawyer does not reveal a confidence or take a position that would adversely affect the lawyer's specific representation of a client in a direct way. "The leaders of law in America, historically, have been men who could say no, who preserved their autonomy, who served their clients with their hearts, their skills, their advice, their advocacy and their friendship - but not with their souls or with their citizenship." Sol M. Linowitz, The Betrayed Profession 227 (1994). As the President of the American Law Institute, Charles Alan Wright, stated, "our end product is the honest conviction of disinterested people about what the law is and should be. Our only sure protection against those who would seek to sway us to serve particular interests is the independence and objectivity of our members." Id. at 3. Indeed the Council of the American Law Institute recently promulgated a new Council Rule reaffirming such independence:

To maintain the Institute's reputation for thoughtful, disinterested analysis of legal issues, members are expected to leave client interests at the door. Members should speak and vote on the basis of their personal and professional convictions and experience without regard to client interest or self-interest. It is improper under Institute principles to represent a client in Institute proceedings . . . (ALI Council Rule 9.04, quoted in The President's Letter, The ALI Reporter (American Law Institute, Philadelphia, PA), Winter 1997 at 1.)

As these respected commentators make clear, when an attorney becomes a member of the Bar, he or she is not thereby stripped of a personal viewpoint or the freedom of expression. Our legal system has long recognized that a lawyer is not required to adopt a client's viewpoint in all professional and personal activities outside the scope of the lawyer's representation of the client.

Lawyers are entitled, and in fact encouraged, to take part in the resolution of complex public questions or lobbying for or against legislation concerning the legal system. New York's Ethical Considerations make this clear:

By reason of education and experience, lawyers are especially qualified to recognize deficiencies in the legal system and to initiate corrective measures therein. Thus, they should participate in proposing and supporting legislation and programs to improve the system, without regard to the general interests or desires of clients or former clients.

EC 8-1; see also Restatement (Third) of the Law Governing Lawyers § 206, comt. e (Proposed Final Draft No. 1 1996) ("Restatement") ("Resolution of many public questions is benefited when independent legal minds are brought to bear on them."). Finally, a lawyer has a First Amendment right to freedom of expression. See id.; *Johnston v. Koppes, 850 F.2d 594, 596-97 (9th Cir. 1988)* ("[L]oyalty to a client does not require extinguishment of a lawyer's deepest convictions; and there are occasions where exercise of these convictions . . . is protected by the Constitution.").

It follows that a lawyer does not need to obtain a client's permission or consent to engage in public discourse about an issue which differs from the view of a client. In general, a lawyer may publicly take personal positions on controversial issues without regard to whether the positions are consistent with those of some or all of the lawyer's clients. Consent of the lawyer's clients is not required. Lawyers usually represent many clients, and professional detachment is one of the qualities a lawyer brings to each client. (Restatement § 206, cmt. e.) At the same time, a lawyer remains obliged to comply with the relevant provisions of the Code of Professional Responsibility concerning past and pending engagements. Therefore, a lawyer may not, in the course of discussing his or her view on a public issue, misuse or reveal a client confidence. DR 4-101(B). Nor may a lawyer publicly take a policy position adverse to a current client if taking that stance would materially and adversely affect the lawyer's representation of

the client in a pending matter. n1 DR 5-101(A) provides that a lawyer shall not accept employment in the absence of informed consent if the exercise of professional judgment will or reasonably may be affected by personal, as well as financial or business, interests

[See EC 5-1 ("Neither the lawyer's personal interest, the interests of other clients, nor desires of third persons should be permitted to dilute the lawyer's loyalty to the client."); EC 5-2 ("A lawyer should not accept proffered employment if the lawyer's personal interests or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client."); Restatement § 206, cmt. e.]

For example, it is difficult to see how a lawyer could speak publicly on one side of an issue knowing that he or she must personally argue the opposing side of that issue in front of a tribunal in a pending case. The possibility that a lawyer's publicly proclaimed personal opinion would become known to the tribunal, undermining his or her credibility and thereby jeopardizing the client representation, does warrant some curtailment on public expression of a personal viewpoint to preserve the integrity of a lawyer's advocacy. Of course, the question of whether zealous advocacy may be compromised can arise in numerous situations. A lawyer must exercise sound judgment in determining whether publicly and openly espousing his or her personal opinion would be directly deleterious to a representation of a particular client. n2 In certain cases, while client consent may not be required, it may nevertheless be desirable to give the client an opportunity to terminate the representation before the lawyer openly takes an opposing personal position on the same subject...

... the interests of the legal system are best served by encouraging lawyers to speak out about their personal convictions, even if they are not always in harmony with the interest of a client. "The good lawyer should also be able to tell private from public duty. He should be able to represent the corporation which hires him and still advocate the public interest as he sees it, either in his voting or in his private conversations or in his community leadership. He must have a sense of the right, and confidence to act on it." Lee E. Hejmanowski, An Ethical Treatment of Attorneys' Personal Conflicts of Interest, *66 S. Cal. L. Rev. 881, 895 (1993)* (quoting John P. Frank, The Legal Ethics of Louis D. Brandeis, *17 Stan. L. Rev. 683, 709 (1965))*...

CONCLUSION

As long as client confidences and zealous advocacy in a pending matter are not compromised, a lawyer is entitled to participate in bar association activities and speak publicly on issues which may be contrary to the interest of a former or current client without obtaining client consent.

4. The Dark Side of A.I. (And Other Ethics Alarms)

A. Update: the Artificial Intelligence in Law Ethics Train Wreck

- Recent developments and significance
- Alabama's Guidelines
- City Bar LEO 2026

B. The Creeping Politicizing of the Practice of Law

C. The Legal Profession's Self-Policing Collapse

D. Latest Developments

Reference:

NY City Bar Formal Opinion 2026-2: Ethical Use of AI for Recording, Transcribing, and Summarizing Non-Client Conversations

…CONCLUSION

As discussed in earlier opinions, AI technology is evolving rapidly, and attorneys must constantly educate themselves to stay abreast of these technological developments and understand the AI systems they are using. AI systems that record, transcribe, and summarize conversations can be useful tools, but attorneys must be mindful of the ethical issues that arise when AI is used for this purpose. This opinion provides a non-exhaustive list of some of the ethical issues—and potential risks—that arise when attorneys use AI to record, transcribe, and summarize conversations with people other than their clients, and the default practice should be not to use AI tools to record, transcribe or summarize conversations absent a good reason in a particular instance.

Appendix

Issues, Comments and References

How To Use This Appendix

This is designed to be an interactive CLE program, and the most valuable portion of it in the seminar is the discussion following each presentation of the hypotheticals and the class poll on possible answers. Since many of the problems posed do not involve clear ethics violations that can be quickly answered by consulting the relevant Rule, the determination of what is "the best answer" is often uncertain. It is the position of ProEthics that the ethical practice of law is most effectively encouraged by the development of ethics analysis skills rather than the rote recitation of how a Rule addresses the specific kind of fact pattern that rule was developed to address. This approach is consistent with how the ABA Model Rules Scope notes and Preface describe the purpose of the Rules themselves:

"Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service… In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. **Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules."**

This Appendix is not a substitute nor a summary of the live, interactive exploration of the issues presented, and should not be used as a substitute for active participation and consideration of the session itself. Nor can it be regarded as an accurate summary of the ethical concepts that arise from those discussions, since they had not taken place when this Appendix was prepared. In some cases, a link has been provided to a scholarly treatise, case or Legal Ethics Opinion that goes into detail regarding a controversial or unsettled legal ethics issue.

Some are perplexed by the use of questions to describe issues, asking, "How can a question be an answer?" (Most legal ethics seminars conform to a strict "What rule covers this situation and what does it say" format.) Ours do not, because

compliance with Rules and the most ethical practice of law are not the same things, and our seminars strive to assist the latter.) There are two varieties of questions that will appear below. One is a term of art: "**Who is the client?"** Any government attorney or corporate attorney knows this is not truly a question, but the accepted short-hand for a continuing source of tension in these representations. A government attorney's client can be the head of an agency, the agency itself, the government itself, or the public, and there are hundreds of treatises by scholars and legal ethics experts, as well as former government lawyers, regarding which a lawyer should regard as the client in particular situations. Needless to say, they do not agree. Thus, the purpose of this seminar is to explain the process and considerations by which a lawyer must attack these difficult situations, and that is covered in the live discussion.

The other variety of question is one that is not answered in the rules itself. These often involve ethics conflict, in which there are competing ethical mandates and rules. The "right" answer for one lawyer may not be the right answer for another, as the Scope and Preface commentary acknowledges. The purpose of this seminar is to teach the most ethical and effective ways to analyze the problem, and the purpose of the Appendix is to supplement the rest of the materials and the seminar discussion.

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SECTION 1.: The "Bridge Of Spies" Mess

Question 1 Best Answers: 1. One could argue, perhaps successfully, that the negotiation assignment was not legal representation (the CIA agent even says it isn't.) But best practice is for a lawyer hired because of his legal skills and previous representation to regard that as a representation.

Question 2 Best Answer: 1.

Issues:

- Rule 1.9 and former clients
- Government representation
- Negotiation and the practice of law.
- Consent
- Who is the client?
- Withdrawal

Comments

There is also a long example of *ex parte* communication with a judge in the film, raising the question of whether a lawyer's opportunity to lobby a judge to the benefit of a client is justifiable if the judge consents. It isn't.

Section 3 Hypothetical: *"Bliss"*

Best Answer: 1. is the best answer; 3. and 4. are probably correct; 5. is worth arguing about.

Issues

- Personal conflicts.
- The relevance of spouses to professional ethics?
- What constitutes using or communicating confidential client information to a client's detriment?
- The limits of loyalty.
- Are there special limits on the First Amendment rights of lawyers?

Comments

- The hypothetical is based on *Oasis West Realty, LLC, v. Kenneth A. Goldman, et.al.*
- The controversial case was sent back to the lower court on the confidentiality and First Amendment issues, but settled out of court.

c. References

http://www.swlaw.com/assets/pdf/news/2011/05/23/CaseStudyOasisWestRealtyVGoldman_Sherlock_WEB.pdf

DOECAA

2026 DOECAA Fall Conference

Session 5:

Modernizing Operational Directives

Sandia National Laboratories

Exceptional service in the national interest

MODERNIZING OPERATING DIRECTIVES

Sandia's Approach to Alignment

Will Elias, Mike Pratt, Richard Sweeney

Sandia National Laboratories, Legal & Prime Contract Division

September 11, 2026

U.S. DEPARTMENT of ENERGY | NNSA National Nuclear Security Administration

Sandia National Laboratories is a multimission laboratory managed and operated by National Technology & Engineering Solutions of Sandia, LLC, a wholly owned subsidiary of Honeywell International Inc., for the U.S. Department of Energy's National Nuclear Security Administration under contract DE-NA0003525.

SAND2026-26119C

SESSION OBJECTIVES

- Give an inside view of the directive modernization effort (Project Velocity / Modernizing Operating Directives)
- Share Sandia's governance, risk acceptance model, and alignment expectations
- Illustrate changes with three Order examples
- Discuss what DOE M&O counsel can do to accelerate consistent, compliant adoption

WHAT IS MODERNIZING OPERATING DIRECTIVES (MOD)?

- DOE-driven initiative to streamline and modernize Orders/Directives across the complex
- Shift from prescriptive rules toward performance-driven oversight that reduces burden while protecting mission, safety, and security
- Results: 57 Orders addressed → 46 revised, 4 deleted, 8 consolidated into 1

Guiding Principles

- Enabling greater efficiency on mission work without degrading safety, security, operations, or environmental protections.
- Reduce non-value-added tasks.
- Let the contractor establish the best organization and credential requirements with appropriate accountability and governance.
- Move away from prescriptive requirements to desired outcomes, where appropriate and allowable under United States Code and Code of Federal Regulations.
- Identify appropriate responsibilities between HQ elements, field offices, and site M&Os for risk decisions.

MOD ACTIVITIES

We are here

M&O Sprints to Develop Proposed Changes	DOE Leadership Reviewed and Developed Final Orders	Deputy Secretary of Energy Signed Revised Orders	Revised Orders Published on DOE Orders Website	M&O Prime Contracts Modified	Alignment Plan Due
Spring 2026	Summer 2026	8/5/2026	8/13/2026	~8/19/2026	~9/18/2026

Future Activities

- Approval of the alignment plan by the Contracting Officer and Field Office Manager.
- Initial target of 1-year alignment for updated requirements.
- Quarterly progress reports quantifying resources recovered (e.g. cost efficiencies, scope gains, accelerated schedules), identified conflicts between Orders and other requirements, best practices/lessons learned.
- Monthly meetings with Contracting Officer and Field Office Manager to share operational insights, synchronize alignment efforts, and address challenges.
- Quarterly NNSA senior leadership review meetings.

SANDIA'S GOVERNANCE AND ROLES

High-Level Structure

- Deputy Laboratories Director/Chief Operating Officer serves as Executive Champion
- Senior Manager of Prime Contract leads activity, serves as primary interface with NNSA/Field Office
- Established centralized Center Director core team, accountable owner for each Order, risk acceptor for Sandia
- Coordination model across four tiers: DOE Complex-wide, NNSA-wide, cross-Sandia organization, and within single Sandia organization

Balancing Perspectives When Changing Internal Processes

- Compliance representatives may be reluctant to eliminate internal requirements because they may truly believe that it remains necessary, or removal could adversely affect their organization.
- Mission/operation representatives may push for speed and want to eliminate controls that still provide appropriate value.

SANDIA'S APPROACH TO ALIGNMENT

- Conducting parallel review of all revised Orders
  - Nuclear Deterrence Mission Orders
  - ES&H and Infrastructure
  - Security
  - Other mission-supporting directives
- Maintaining tight coordination with the Sandia Field Office
  - Weekly touchpoints with Contracting Officers and assurance lead
  - "Zipper Plan" approach to ensure alignment of expectations
- Driving structured collaboration across offices of primary interest and across labs/plants/sites
- Distinguishing high-level alignment plans from Order-specific Implementation Plans
- Using a distributed, risk-informed model for internal coordination. Internal programs engage stakeholders to communicate impacts, surface conflicts, escalate challenges, and prioritize efforts.

RISK ACCEPTANCE MODEL AND ASSURANCE GUARDRAILS

Internal requirements are not removed automatically when external requirements disappear

- Retaining a control may still be necessary to preserve mission assurance, safety, or operational integrity—even when an external driver is lifted.

External requirements are not inherently “burdensome”

- Some provide valuable controls that reduce operational risk or ensure quality; each control must be evaluated on its risk and benefit, not its origin.

Begin with simplification—remove only what is no longer required and has an acceptable risk posture

- Risk posture must be questioned, examined, and right-sized for the future state of the Labs. Simplification is deliberate, not automatic.

When retaining controls above minimum requirements, document clear rationale

- Define the risk if the control were removed, ensure the control is the least burdensome effective option, and provide justification anchored in mission, safety, or business need.

RISK ACCEPTANCE MODEL AND ASSURANCE GUARDRAILS, CONTINUED

Recognize that internal controls are often embedded in systems, processes, or culture

- Removing them may require system changes, stakeholder coordination, and time—risk acceptance must consider practicality and secondary impacts.

Balance operational risk with mission speed and impact

- Avoid over-engineering for “perfection,” but also avoid removing controls that protect operations. The goal is speed with discipline, not speed versus discipline.

Follow a clear escalation path for risk decisions

- Use the structured approval ladder (Center Director → DLD → Labs Director → Parent Company (?)) based on risk level and alignment complexity, ensuring consistent and timely decision-making.

THREE ORDER EXAMPLES

- DOE O 231.1B (ES&H Reporting): proposed cancellation; essential requirements moved to other directives; modernized data approaches
  - Estimated to save about 58,392 hours annually, equivalent to 32.44 FTE, with an annual complex-wide benefit of approximately $4.96 million
- DOE O 252.1A (Technical Standards Program): cancel and consolidate into O 251.1E; align with OMB A-119; clarify contractor applicability
  - Current compliance imposes an estimated $85K annually in overhead costs at each lab.
- DOE O 470.7 (Consolidation of Security Orders): including S&S Planning, Information Security, Physical Security, Material Control & Accountability, Protective Force, and Training
  - Enables sites to focus on value-added, risk-based security measures that reduce cost and complexity, improve operations and workforce efficiency, lower security burden where appropriate.
  - An Estimated 154 FTE reduction in compliance and administrative effort, complex-wide.

WHAT DOE M&O COUNSEL CAN HELP WITH

- Resolve directive conflicts and trace applicability
  - Map revised/canceled Orders to CRDs, Supplemental Directives, and governing statutes/regulations; publish a traceability matrix (Order/CRD → Prime Contract → policy/procedure) so SMEs don't miss residual obligations.
- Standardize the "~1 year" alignment expectation
  - Interpret intent; define what "aligned" means; establish acceptable rationale for >1-year timelines and when escalation is required.
- Draft and negotiate clean contract language
  - Use footnotes for implementation-plan exceptions, coordinated with Field Office counsel.
- Codify reporting and evidence
  - Supply templates and definitions to quantify resources recovered, identify conflicts, and capture lessons learned; align cadence and content for quarterly reports.
- Advise on risk-informed control decisions
  - Ensure documentation when retaining controls above minimums; confirm the least-burdensome effective control.
- Train SMEs on residual legal drivers
  - Where requirements migrate from Orders to other directives or statutes, guide identification and flow-down into internal documents.

NEXT STEPS & DISCUSSION

- Finalize Sandia Alignment Plan and submit to NNSA for approval
- Continue monthly SFO sync and quarterly reporting
- Execute against more detailed plans for each program
- Expand and leverage cross-lab integration and alignment
- Open Q&A



Michael L. Pratt

Senior Managing Counsel and Treaty Compliance Officer

Mike Pratt serves as Senior Managing Counsel for National Technology and Engineering Solutions of Sandia, LLC, a wholly owned subsidiary of Honeywell International, Inc., which manages and operates Sandia National Laboratories for the United States Department of Energy National Nuclear Security Administration. Mike has been at Sandia since 2021, previously serving as Senior Procurement Counsel.

Since 2024, Mike has led the Regulatory and Contract Law Center, which provides advice on corporate matters, security, privacy, environmental, safety and health, contracts, and infrastructure.

Prior to joining Sandia, Mike worked at Los Alamos National Laboratory as a business law attorney and at NASA's Johnson Space Center as a general law and procurement attorney.

Mike began his legal career as an active-duty U.S. Army Judge Advocate and currently serves as a Colonel in the United States Army Reserve.

Mike has a bachelor's degree from Texas Tech University, Juris Doctorate and Master of Public Affairs degrees from the University of Texas at Austin and a Master's Degree in Strategic Studies from the United States Army War College.

Mike is licensed to practice in New Mexico and Texas and is a member of the American Bar Association, the Judge Advocates Association, and the Department of Energy Contractor Attorneys Association.

Mike and his wife Carissa have three sons, an 80lb rescue dog named Sam, and are both volunteer leaders with the Boy Scouts of America.

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Richard Sweeney

Senior Manager, Prime Contract and Export Control

Richard Sweeney is a senior leader at Sandia National Laboratories with nearly two decades of experience in management, strategy development, assurance, and project, program, and portfolio leadership in complex research and development environments. He is known for building trust-based relationships, translating strategic intent into actionable plans, and leading high-performing teams in fast-paced, ambiguous settings.

Since December 2022, Richard has served as Senior Manager of Prime Contract and Export Control, where he leads the organization responsible for administering the Sandia Prime Contract and oversees key institutional functions including Organizational Conflict of Interest, FOIA, Export Controls, and the Labs Policy System. In this role, he helps ensure Sandia meets critical contractual, regulatory, and policy requirements in support of mission delivery.

Previously, Richard served as Manager of MESA Sustainment Operations, leading matrixed teams focused on sustaining Sandia's Microsystems Engineering, Sciences and Applications capabilities through integrated planning, funding strategy, and operational alignment. Before that, he managed Labs' Assurance and Reporting, where he led Sandia's quality and contractor assurance program, supported enterprise performance evaluation, and advanced institutional transparency for senior leadership, the NTESS Board of Managers, and NNSA oversight.

Earlier in his career, Richard held executive strategy and mission support roles, including serving as acting Chief of Staff for the Deputy Labs Director and Executive Vice President of Mission Support. He also managed major national security and infrastructure-related program portfolios supporting the Department of Homeland Security, Department of Energy, and other federal agencies.

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DOECAA

2026 DOECAA Fall Conference

Session 6:

Navigating a Changing Landscape: The FAR Overhaul, Recent Executive Orders, and False Claims Act Developments

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Navigating a Changing Landscape:

The Revolutionary FAR Overhaul, Recent Executive Orders, and False Claims Act Developments

Agenda

The Revolutionary FAR Overhaul and Implementation Challenges

Notable Executive Orders Affecting Federal Procurement in a Department of Energy Context

Civil False Claims Act and Mandatory Disclosure

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The Revolutionary FAR Overhaul (RFO) and Implementation Challenges

The RFO

- The RFO was started through EO 14275 “Restoring Common Sense to Federal Procurement” – April 15, 2025
  - The EO mandated that the FAR “should contain only provisions required by statute or essential to sound procurement”
  - OMB Memorandum M-25-26 – May 2, 2025, which organized the RFO around two phases:
    - Phase 1 -
      - FAR Council to issue model deviation guidance, part-by-part
      - Agencies adopt the deviations through their own class deviations
    - Phase 2 –
      - Formal rulemaking
- Current Status
  - Phase 1 is essentially complete
  - Phase 2 is in process (four proposed rules have been published)

The “Revolution” before the RFO

- Before the RFO, DOE had undertaken its own significant effort to comprehensively revise the DEAR
- This culminated with a final rule issued November 14, 2024 (89 Fed. Reg. 89720)
  - Comments made regarding the comprehensive revisions were submitted by the national labs – referencing their own Revolutionary Working Groups
  - Significant national laboratory contractor team efforts were already invested to provide input to DOE for the comprehensive DEAR rewrite
- The final rule removed FAR-duplicative content, focused on plain language revisions, renumbered provisions, and added standardized clauses

The RFO and the DEAR

Understanding the Impact of the RFO on the DEAR

- DOE is implementing the RFO part-by-part through:
  - Review of the FAR class deviations reflecting the FAR Council's model text; and
  - Parallel DEAR class deviations aligning DOE-specific regulations and clauses
  - ** The deviations can be located as policy flashes on DOE's Office of Management website
- Until final regulations are issued, the deviations govern DOE acquisitions
- PF 2025-65 warns that DEAR numbering will not always correspond to the recognized RFO FAR during the transition; contracting officers must use DOE's crosswalk and current deviation text
  - The crosswalk is not readily available to non-DOE personnel

The RFO and the DEAR

Practical Consequences

- Each solicitation and contract should be checked for:
  - Applicable class deviations and effective dates;
  - The version of the incorporated provisions and clauses;
  - Subsequent deviation supplements or corrections; and
  - Whether an existing contract was modified to adopt the new text
- The volume of changes is massive and—whether considered "revolutionary" or not—contracting officers and industry are struggling to marshal the resources necessary to meaningfully track the updates and comment on proposed rules
  - Since 2025, DOE has issued 52 deviations implementing the FAR deviations and 23 deviations affecting the DEAR because of the overhaul

The RFO and the DEAR

Practical Consequences

- Implications of the FAR Companion
  - Raises questions regarding enforceability, consistency, and bid protests
- Ripple effects on purchasing systems and flow downs
  - Changes to the standard FAR clause numbering and DEAR clauses will impact all DOE contractor flow downs, potentially impacting solicitations and contract awards
  - Changes will also impact DOE contractor purchasing system policies and procedures, and other business systems that implement and refer back to FAR and DEAR clauses
  - Interim changes to FAR and DEAR clauses in existing contracts that are accepted may need to be flowed down to subcontractors, potentially implicating changes and REAs

Notable Executive Orders Affecting Federal Procurement in a Department of Energy Context

Executive Order 14398

Addressing DEI Discrimination by Federal Contractors

- Signed on March 26, 2026, EO 14398 seeks to promote economy and efficiency in Federal contracting by preventing racial discrimination
- This was the second EO President Trump signed about diversity, equity, and inclusion (DEI) in federal contracting
  - Previously, EO 14173 was signed on January 31, 2025, to require all contracts or grant awards to include:
    - A term requiring the contractual counterparty or grant recipient to agree that it is compliant with all applicable Federal anti-discrimination laws
    - A term requiring the counterparty or recipient to certify that it does not operate any programs promoting DEI that violate applicable Federal anti-discrimination laws
  - This created a link between violations of federal anti-discrimination laws and potential liability under the False Claims Act

Executive Order 14398 (Cont.)

Addressing DEI Discrimination by Federal Contractors

- EO 14398 now defines "racially discriminatory DEI activities''
  - These activities include "disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources"
- EO 14398 also requires inclusion of a clause in all contracts and subcontracts (FAR 52.222-90) that:
  - Requires the contractor/subcontractor to certify that they will not engage in racially discriminatory DEI activities
  - Requires reporting of conduct that may violate the clause
  - Permits termination in the event of non-compliance
  - Permits the contractor/subcontractor to be deemed ineligible for future Government contracts
  - Explicitly states that compliance with the clause is material to the Government's payment decision, for purposes of the FCA

Executive Order 14402

Promoting Efficiency, Accountability, and Performance

- Signed on April 30, 2026, EO 14402 – applies to all executive branch departments and agencies
  - Establishes fixed-price contracting as the default and preferred method of procurement across the executive branch
  - Any use of a non-fixed-price contract requires:
    - Contracting officer justification in writing to the agency head;
    - Agency head must approve if the contract value exceeds $10 million for both DOE and NNSA
  - Requires the agency head review and seek to modify, restructure, or renegotiate its 10 largest non-fixed-price contracts by dollar value
  - Agency heads must report semi-annually to OMB the number, value, and justifications for approved non-fixed-price contracts

Executive Order 14271

Ensuring Commercial, Cost-Effective Solutions in Federal Contracts

- Signed on April 15, 2025, EO 14271 seeks to promote economy and efficiency in Federal contracting by maximizing the use of commercially available products and services
- The EO reinforces the existing commercial-acquisition preference established by the Federal Acquisition Streamlining Act of 1994
- It directs agencies to prioritize commercial solutions over Government-unique or custom-developed alternatives
- For proposed noncommercial procurements, COs must provide the agency's Senior Procurement Executive with:
  - The specific reason a noncommercial solution is required
  - Supporting market research and price analysis
  - The rationale for pursuing a Government-unique custom-developed, or otherwise noncommercial solution
- Overall impact: heightened justification and oversight of noncommercial acquisitions

DOE Policy Flash (PF) 2025-67 (AL 2025-05)

Implementation of EO14271 - Ensuring Commercial, Cost-Effective Solutions in Contracts

- Published September 18, 2025, the PF directs DOE and NNSA contracting officials to prioritize commercial products and services including commercially available solutions that can be modified to meet DOE requirements
  - Applies to solicitations, new contracts, and scope or requirements changing modifications above the simplified acquisition threshold, including M&O contracts, by excluding construction
  - Excludes acquisitions at or below the simplified acquisition threshold, existing contracts and orders, leasing, SBIR procurements, and FSS orders
- Requires program and acquisition personnel to conduct market research that considers whether DOE's requirements could reasonably be modified to use a commercial solution
- Requires consideration of total cost ownership and lifecycle costs when comparing commercial and noncommercial approaches
- A proposed noncommercial procurement must include:
  - The proposed scope of work
  - The rationale for a Government-unique or custom-developed solutions
  - Detailed market research and price analysis demonstrating why a satisfactory commercial alternative is unavailable

Impact on Primes & Subcontractors

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DOE Primes

- Greater emphasis on performance-based requirements and commercial solutions
- Increased need for early market engagement and commerciality support
- Additional justification and potential schedule impacts for custom solutions
- Reassessment of sourcing and procurement strategies
- Raises past concerns over risks associated with fixed price contracts

Prime-Subcontractor Relationship

- Broader opportunities for commercial suppliers
- Potentially fewer clause-flowdowns, CAS, and certified cost-or-pricing (TINA) data requirements
- Potential tension between commercial terms and DOE-specific security, quality, and data-rights requirements
- Added potential risk from challenged commerciality determinations

Executive Order 14363

Launching the Genesis Mission

- Signed on November 24, 2025, EO 14363 announces a national effort to accelerate the application of AI
- Requires the Secretary of Energy to:
  - identify Federal computing, storage, and networking resources available through industry partners
  - establish mechanisms for agency collaboration with external partners in possessing advanced AI, data, or computing capabilities
  - establish clear policies for ownership, licensing, trade-secret protections, and commercialization of intellectual property related to AI-directed experiments
- Seeks to promote funding opportunities for agencies to incentivize private sector participation in AI-driven scientific research

Executive Order 14365

Ensuring a National Policy Framework for Artificial Intelligence

- Signed on December 11, 2025, EO 14365 intends to establish a nationwide AI framework
- Requires the Attorney General to create an AI Litigation Task Force to challenge state AI laws which are inconsistent with national policy
- Requires agencies to review their discretionary grant programs to determine whether grants may be conditioned on states agreeing not enact or enforce laws that conflict with this national policy

Civil False Claims Act and Mandatory Disclosure

False Claims Act Enforcement

Government Contracting Developments

- Record FCA recoveries in 2025 signal continued scrutiny of government contracting
- DEI and cybersecurity are becoming express FCA considerations
- Multiple sophisticated entities have entered double-digit million-dollar settlements with DOJ to resolve DEI-related FCA allegations while other DEI-related investigations remain ongoing
- DOJ's Civil Cyber Fraud Initiative has remained active and a primary focus area of DOJ's broader FCA agenda
- Contractors regularly interface with the elements that underlie DOJ's enforcement efforts in these key areas such as through certifications, self-assessments, and mandatory reporting

DEI-Related FCA Exposure

FAR 52.222-90 Certifications and Materiality

- FAR 52.222-90 requires contractors and covered subcontractors not to engage in "racially discriminatory DEI activities"
- The clause requires compliance certifications, access to records, and reporting of certain subcontractor conduct and related litigation
- Compliance is expressly material to the Government's payment decision for FCA purposes
- The clause applies above the $15,000 micro-purchase threshold, including commercial products and services
- Noncompliance also may lead to termination, suspension, or debarment

DEI-Related Disclosure Considerations

Practical Steps for National Laboratory Contractors

- Review actual practices, not only written policies
- Focus on hiring, promotion, training, mentoring, supplier engagement, and resource allocation
- Confirm that each certification is supported by current facts and documentation
- Escalate and investigate allegations involving contract or subcontract performance
- Preserve records and assess reporting or mandatory disclosure obligations before new certifications or contract modifications

Cybersecurity-Related FCA Exposure

CMMC Phase II Suspension

- On July 13, 2026, DoW paused the November 2026 CMMC Phase II transition and all later implementation milestones
- Although DoW suspended CMMC Phase II third-party assessments the underlying cybersecurity duties are unchanged
- FAR 52.204-21, DFARS 252.204-7012, NIST SP 800-171, and incident reporting remain in effect
- Level 1 and Level 2 self-assessments and affirmations remain the primary compliance mechanism. Inaccurate self-assessments or unsupported affirmations may create FCA exposure
- As highlighted, DOJ's Civil Cyber-Fraud Initiative remains active and recovered over $52 million in 2025

Cybersecurity Disclosure Considerations

Practical Steps for National Laboratory Contractors

- Continue remediation, system security plans, SPRS updates, and incident reporting
- Validate the evidence supporting self-assessments and affirmations
- Review contracts for suspended C3PAO or DIBCAC terms and seek written modifications
- Track subcontractor flowdowns and preserve the handling record
- Escalate deficiencies that may affect representations, reports, or payment requests
- Assess contractual reporting and mandatory disclosure obligations with counsel

Meagher GC Law, LLC
A Government Contracts Law Practice

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Mark Meagher is the founder and member of Meagher GC Law, LLC. Mark previously worked for several different large government contract law firms in both Washington, D.C. and Denver, Colorado. He is a specialist in DOE and NNSA-related contract issues, with over 30 years of experience of working with contractors in the DOE/NNSA complex to resolve contract and liability issues. This includes extensive counseling on contract changes, allowability of costs and other contract compliance matters. Mark also has provided extensive support to DOE/NNSA contractors responding to federal government investigations. He is a member of the Washington, D.C. and Colorado bars and a graduate of Yale University and Albany Law School, where he was the editor-in-chief of the Albany Law Review.

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