# Strategic Legal Partners, LLC

*Virtual General Counsel for Modern Businesses & Federal Contractors*

**GOVCON LEGAL BULLETIN — MAY 2026**

## Critical Legal Developments Every Small Business Federal Contractor Must Know — May 2026

### From the Desk of Strategic Legal Partners:

The pace of change in federal contracting has not slowed. In the five weeks since our April bulletin, five major developments have reshaped the compliance and opportunity landscape for small business government contractors. A new Executive Order directs agencies to favor fixed-price and performance-based contracting. Tariff litigation has created ongoing uncertainty rather than final resolution — the Court of International Trade struck down the Section 122 tariffs on May 7, only for the Federal Circuit to issue an administrative stay on May 12, meaning tariff collection continues while the appeal proceeds. GSA's proposed AI clause is a procurement-risk watch item pending Refresh 32. FedRAMP 20x has moved into Phase 3, with consolidated rules expected by end of June and the submission pipeline opening in FY26 Q4. And the 8(a) program remains operative while broader post-Students for Fair Admissions litigation creates uncertainty around race-conscious contracting preferences. Our goal remains the same: keeping you informed, proactive, and protected.

### Executive Summary — Status and Contractor Action

| Development | Current Status | Contractor Action |
|---|---|---|
| **Fixed-Price EO** | Effective EO; agency implementation and contract-specific changes pending | Review cost-type contracts and strengthen pricing controls |
| **Tariffs** | Litigation stayed; Section 122 collection continues pending appeal; Section 232 metal and pharma tariffs unaffected by appeal and in full effect | Preserve notice rights; review EPA, tax, and changes clauses; assess Section 232 cost impact now |
| **GSA AI Clause** | Proposed; deferred to Refresh 32; public comment closed | Inventory AI tools, data rights, and vendor-license conflicts |
| **FedRAMP 20x** | Phase 3; Consolidated Rules expected June; FY26 Q4 submission pipeline | Prepare machine-readable security evidence |
| **8(a) / Set-Asides** | Program operative; broader constitutional and policy uncertainty building | Maintain individualized eligibility documentation; diversify pipeline |

## 1. Fixed-Price Contracting EO — Major Shift in Contract Risk for Small Businesses URGENT

**What happened:** On April 30, 2026, President Trump signed Executive Order "Promoting Efficiency, Accountability, and Performance in Federal Contracting," directing federal agencies to make fixed-price and performance-based contracts the preferred method of procurement government-wide to the maximum extent consistent with law. The EO explicitly targets cost-reimbursement contracting, citing approximately $120 billion obligated on cost-reimbursement consulting contracts in FY2024 alone as evidence of systemic cost discipline failure.

**What the EO requires:**

- Fixed-price and performance-based contracts are now the preferred approach to the maximum extent consistent with law. Agencies must justify in writing any use of non-fixed-price contract types, with approvals escalating to agency heads based on dollar thresholds.
- Within 90 days, each agency must review and seek to modify, restructure, or renegotiate its 10 largest non-fixed-price contracts by dollar value — including cost-plus consulting agreements.
- Cost-reimbursement contracts remain available for research, development, and pre-production work on major systems, but must be the exception rather than the rule.
- The EO builds on prior Administration initiatives including the FAR overhaul, GSA's review of consulting contracts, and the movement toward outcome-based contracting and performance-based payments. Contract type must still be matched to scope clarity, risk allocation, and applicable procurement law.

**Large Business Contractors**

- Cost-plus consulting agreements face highest risk of modification or renegotiation under the 90-day agency review mandate
- Overhead-heavy business models built on cost-reimbursement structures face structural disruption
- Performance-based payment and fixed-deliverable requirements will require stronger internal cost controls

**Small Business Contractors**

- Fixed-price contracts increase financial risk — if costs exceed your bid, the loss is yours
- Opportunities may shift toward smaller, well-defined task orders where pricing is more predictable
- Contractors without robust cost estimation and pricing capabilities face elevated bid risk on new solicitations

**Your Action Items — 90-Day Agency Review Clock Has Started**

- Review all active cost-reimbursement contracts for potential restructuring risk — agencies will be making modification decisions within 90 days
- Assess your pricing and cost estimation capabilities now — fixed-price contract bids require tighter cost control than cost-plus work
- For new solicitations, review contract type requirements carefully and assess whether scope is defined clearly enough to price at fixed cost without absorbing excessive risk
- If you receive a contract modification request converting your contract type, contact counsel before signing — the terms of any conversion directly affect your existing rights

## 2. Tariff Litigation — Section 122 Ruling Stayed; Contractor Pricing Rights in Flux URGENT

**What happened:** On May 7, 2026, the U.S. Court of International Trade ruled two-to-one that the Section 122 tariffs — the 10% global tariffs imposed under presidential proclamation on February 24, 2026 following the Supreme Court's February 20 IEEPA decision — are invalid. On May 12, 2026, the Federal Circuit issued an administrative stay, allowing the government to continue collecting the tariffs while the appeal proceeds. For contractors, the practical point is uncertainty: tariff exposure has not disappeared, and recovery rights remain contract-specific.

### The tariff timeline affecting contractors:

- February 20, 2026: The Supreme Court ruled 6–3 that IEEPA does not authorize the President to impose tariffs, limiting prior broad tariff authority and setting the stage for follow-on tariff litigation under alternative statutory bases.
- February 24, 2026: President Trump imposed 10% global tariffs under Section 122 as an alternative legal basis.
- April 2, 2026: New Section 232 tariffs imposed on metals — 50% on high-metal-content products, 25% on most derivative products — effective April 6, 2026. New 100% tariffs on patented pharmaceuticals announced, effective September 29, 2026.
- April 20, 2026: CBP activated Phase 1 of the IEEPA tariff refund process — contractors who paid IEEPA tariffs as allowable costs may be entitled to credit refunds to the government.
- May 7, 2026: Court of International Trade struck down the Section 122 tariffs as invalid. May 12, 2026: Federal Circuit administratively stayed the ruling while it considers the government's stay request — tariff collection continues pending appeal.

*Verification note: The tariff litigation docket is moving rapidly. The timeline above reflects reported and agency-published developments as of May 12, 2026 and should be rechecked before relying on it for pricing, claim, or refund decisions.*

For fixed-price contractors, Section 232 metal and pharmaceutical tariffs remain in effect and continue to increase material and supply costs with no automatic pass-through mechanism — and are unaffected by the Section 122 appellate proceedings. For cost-reimbursement contractors, tariff costs paid and reimbursed under prior IEEPA authority may later require crediting back to the government as refunds are processed. Both situations require contract-specific analysis rather than a one-size-fits-all approach.

#### Fixed-Price Contractors

- Section 232 metal tariffs (25–50%) directly increase material costs that you absorb — no automatic pass-through, and unaffected by the Section 122 stay
- Review contracts for Economic Price Adjustment clauses (FAR 52.216-2, 52.216-3, 52.216-4) and after-imposed tax clauses (FAR 52.229-3)
- Document all tariff-related cost increases and evaluate recovery under the contract-specific clause set before submitting an REA or claim

#### Cost-Reimbursement Contractors

- Tariff costs generally recoverable as allowable costs under FAR 31.205-41, but refund obligations may apply if IEEPA tariffs were previously reimbursed
- Review contracts for FAR 52.216-7(h)(2) — refunds of reimbursed tariff costs must be credited to the government
- Track CBP refund process milestones and assess credit liability before it becomes a contracting officer dispute

**Your Action Items — Tariff Cost Recovery Is Contract-Specific and Time-Sensitive**

- Inventory all materials affected by tariffs used in federal contract performance and document cost increases with invoices and supplier correspondence
- Review each contract for Economic Price Adjustment clauses, after-imposed tax provisions, and changes clauses — recovery rights depend on your specific contract terms, not a single FAR provision
- Preserve notice rights promptly and evaluate whether an REA or claim is supported by your contract-specific clause set — failure to provide timely notice can waive recovery rights
- If you previously received government reimbursement for IEEPA tariff costs, consult counsel on potential refund obligations before CBP's refund process triggers a contracting officer inquiry
- For new bids, include tariff risk contingencies in pricing or seek contract language that addresses post-award tariff cost allocation

## 3. GSA's Proposed AI Contract Clause — Sweeping New Obligations for Technology Contractors WATCH ITEM

**What happened:** GSA published draft GSAR 552.239-7001, "Basic Safeguarding of Artificial Intelligence Systems," through the MAS refresh process. GSA initially circulated the draft in connection with MAS Refresh 31, but later delayed consideration to Refresh 32 and the public comment period closed April 3, 2026. The clause is not yet final, but it signals potentially significant new obligations for any contractor providing AI capabilities to the federal government.

**What the proposed clause requires:**

- Government ownership or broad government rights in Government Data, outputs, and contract-specific custom developments generated in performance, subject to the final clause text and any negotiated data-rights provisions.
- A prohibition on contractors using government data to train or improve AI models outside the scope of the contract.
- A 72-hour cybersecurity incident reporting requirement for AI system-related incidents.
- A mandate to use only "American AI Systems" — defined in the draft as systems developed and produced in the United States, but still unclear as applied to foreign components, non-U.S. infrastructure, open-source models, and multinational providers.
- The draft appears to restrict contractor or provider-imposed discretionary refusal policies, potentially conflicting with standard commercial AI usage policies; contractors should monitor the final scope closely, particularly where safety, cybersecurity, export-control, privacy, or unlawful-use restrictions apply.
- The government retains broad integration and use rights for "any lawful purpose," subject only to a prohibition on retraining the model or altering model weights.
- Prime contractors are directly liable for downstream AI vendors' compliance, regardless of subcontractor status.

Because the clause remains proposed and was deferred to Refresh 32, contractors should treat it as a procurement-risk and contract-readiness issue rather than a current binding requirement. The most useful near-term steps are to inventory AI tools, review data-rights and IP provisions, identify non-U.S.

model dependencies, and evaluate whether commercial AI license terms conflict with the draft government requirements. Acting now positions you to adapt quickly when a final or near-final clause is released.

**Technology & AI Contractors**

- Review all IP and data-rights provisions in existing GSA Schedule contracts — the proposed clause significantly expands government use rights
- The 'American AI Systems' requirement and restrictions on discretionary output refusals may require commercial license review or renegotiation if the clause is finalized in similar form
- Prime contractors must assess downstream AI vendor compliance — direct liability flows up regardless of subcontract structure

**Small Business Cloud & IT Contractors**

- If you provide AI capabilities, AI-assisted analytics, automation, or reporting tools to the government, assess whether your offerings could fall within the final clause once issued
- Compliance costs will vary widely by system and scope — begin with a contract-specific AI inventory and vendor-license assessment before budgeting
- Monitor GSA's Refresh 32 or later implementation guidance for changes to IP rights, definitional clarity, and subcontractor liability scope

**Your Action Items — Proposed Clause | Monitor Refresh 32**

- Inventory all AI tools, platforms, and vendor-provided AI components used in federal contract performance
- Review IP ownership and data-use provisions in your GSA Schedule contract and all AI-vendor commercial licenses — the proposed clause likely conflicts with standard commercial terms
- Assess whether any of your AI tools involve non-U.S. model providers, training data, or infrastructure — the 'American AI Systems' requirement creates potential compliance risk if finalized
- Monitor GSA's Refresh 32 publication and any interim guidance for changes to the proposed clause before planning final compliance steps
- For cloud-based AI services, coordinate AI-clause readiness with FedRAMP 20x planning — the FY26 Q4 submission pipeline and the Refresh 32 timeline are likely to move in parallel

## 4. FedRAMP 20x — Phase 3 Underway; Consolidated Rules Expected June 2026 WATCH ITEM

**What happened:** FedRAMP 20x has moved beyond the pilot phase into Phase 3. FedRAMP has stated that the Consolidated Rules for 2026 — which will contain the full requirements for FedRAMP 20x — will be finalized by the end of FY26 Q3 (June 2026). The actual submission pipeline for FedRAMP 20x authorizations is expected to open in FY26 Q4 (July–September 2026), with initial availability for Class A (Pilot), Class B (Low), and Class C (Moderate) certifications.

In practical terms, the near-term opportunity appears strongest for eligible Low and Moderate cloud services that can produce machine-readable evidence and automated validation artifacts.

### What this means for contractors:

- The 20x program is designed to create a more standardized authorization path for eligible cloud services, with final eligibility rules, submission mechanics, and transition requirements tied to the Consolidated Rules for 2026.
- Authorization is shifting from static documentation snapshots to machine-readable security packages, automated validation, and continuous monitoring — companies with mature security automation will be better positioned when the pipeline opens.
- Some security evidence may be reusable across FedRAMP and CMMC workstreams, but the programs have different authorities, assessors, scopes, and approval processes; contractors should not assume equivalency or reciprocity until final guidance expressly confirms the relationship.
- FedRAMP remains a baseline market-access requirement for many federal cloud opportunities. Under 20x, the competitive differentiator will increasingly be the quality, completeness, and automation of continuously validated security evidence — not authorization status alone.

#### Cloud & SaaS Contractors

- Use the Phase 3 window to prepare so you are ready when the FY26 Q4 submission pipeline opens — the Consolidated Rules will define the final eligibility and submission requirements
- Legacy FedRAMP holders should monitor the Consolidated Rules for transition rules affecting existing Rev5 certifications and continuing authorization obligations
- Update proposal language carefully: distinguish between FedRAMP Certified status, 20x readiness, and planned submission — do not overstate authorization status in bids

#### Small IT & Technology Firms

- FedRAMP 20x may reduce process friction for eligible Low and Moderate cloud services, but cost, timing, and eligibility depend on the final Consolidated Rules and your security maturity
- If you provide collaboration platforms, analytics tools, or AI-assisted services through cloud infrastructure, determine whether Class B (Low) or Class C (Moderate) certification may apply when the pipeline opens
- Begin machine-readable security documentation and automated evidence collection now — the framework rewards companies already operating with continuous security monitoring

#### Your Action Items — June Rules | FY26 Q4 Submission Pipeline

- Determine whether your cloud services require FedRAMP authorization and whether Class B (Low) or Class C (Moderate) certification may apply to your offering
- Monitor the Consolidated Rules for 2026, expected by end of June — these define the final submission requirements before the pipeline opens in FY26 Q4
- Begin building machine-readable security documentation and automated evidence packages now to be submission-ready when the pipeline opens
- Assess CMMC–FedRAMP evidence alignment, but do not assume equivalency or reciprocity without final guidance from DoD
- Do not market a service as FedRAMP 20x Certified until that status is reflected through the applicable FedRAMP process and marketplace listing

## 5. 8(a) Program — Constitutional Pressure Builds; Program Remains Operative WATCH ITEM

**What happened:** The SBA's 8(a) Business Development Program remains operative, and existing certifications remain valid. A May 2026 federal lawsuit in the U.S. District Court for the District of New Jersey challenges state minority construction hiring requirements under the 14th Amendment's Equal Protection Clause — it does not challenge the SBA 8(a) program directly. The case fits a broader post-*Students for Fair Admissions v. Harvard* trend in which race- and sex-conscious government preferences face heightened constitutional scrutiny, creating uncertainty around how agencies will use set-aside tools over the longer term.

**The legal landscape for race-conscious contracting preferences:**

- Students for Fair Admissions created the legal predicate for broader challenges to race-conscious government programs, and that litigation is now working through contracting-related contexts.
- Recent DEI Executive Orders and DOJ enforcement initiatives have reduced the federal government's willingness to defend race-conscious contracting preferences, increasing legal uncertainty even where the underlying programs remain operative.
- SBA guidance emphasizes race-neutral 8(a) eligibility criteria. Participants should maintain robust, individualized evidence of social and economic disadvantage, independent of any race-based presumption.
- Tribal-owned and other 8(a) firms should monitor SBA guidance and agency buying behavior — agency risk tolerance for set-aside awards may shift even absent a court ruling.
- The practical risk is uncertainty over future awards, documentation standards, and agency use of set-aside authority — not immediate program invalidation.

**8(a) Program Participants**

- Your 8(a) set-aside status is not immediately affected — the SBA program remains operative, and existing certifications are valid
- Monitor litigation developments and SBA guidance — the broader constitutional environment could affect agency willingness to use set-aside tools even without a court order
- Diversify your pipeline through non-set-aside opportunities and teaming arrangements that are not dependent exclusively on 8(a) status

**HUBZone, SDVOSB & WOSB Firms**

- Other set-aside programs face different and generally less immediate constitutional pressure, but the broader contracting environment remains unsettled
- SBA's domestic supply-chain scaling initiative may create growth opportunities for small manufacturers — comments due May 18, 2026
- Review teaming partner vetting practices in light of SDVOSB M&A guidance — a conference is scheduled for June 2, 2026

**Your Action Items**

- 8(a) participants: complete your next SBA annual review and update your business plan proactively — program continuity depends on maintaining certification compliance regardless of external legal challenges
- Do not restructure your business in anticipation of the New Jersey case — it does not directly challenge SBA 8(a), and outcomes remain uncertain and likely years away

- Strengthen your individualized evidence of social and economic disadvantage independent of any race-based presumption, in anticipation of heightened agency or SBA scrutiny
- Respond to the SBA's May 1, 2026 Request for Information on domestic supply chain scaling if your business operates in manufacturing, critical components, or specialized capabilities — this is an early policy and funding-priority signal
- Contact Strategic Legal Partners if you receive any agency inquiry about your small business certification status or program eligibility

## Why This Matters for Our Clients

The May 2026 developments share a common thread: the federal government is shifting risk onto contractors as legal and regulatory complexity increases. Fixed-price contracting can transfer cost risk to you. Tariff volatility may hit material costs before recovery rights are resolved. The proposed AI clause could push liability through your supply chain if finalized in similar form. FedRAMP 20x is moving toward operational reality, but the final rules and submission pipeline still set the timeline. Set-aside programs remain operative while litigation and policy uncertainty continue to build pressure.

The contractors who will thrive in this environment are those who understand the legal landscape, move proactively before deadlines arrive, and have counsel who can translate regulatory change into practical strategy. That is exactly what Strategic Legal Partners provides — not periodic legal advice when a crisis arrives, but continuous embedded guidance that keeps you ahead of what is coming.

***Integrated Legal Strategy. Real Partnership. Predictable Cost.***

**Sources Reviewed / Verification Note**

- Executive Order, "Promoting Efficiency, Accountability, and Performance in Federal Contracting," Apr. 30, 2026.
- Supreme Court IEEPA ruling (Feb. 20, 2026); Section 122 tariff proclamation (Feb. 24, 2026); Section 232 metal and pharmaceutical tariff proclamations (Apr. 2, 2026); Court of International Trade ruling (May 7, 2026); Federal Circuit administrative stay (May 12, 2026). Tariff litigation docket posture should be rechecked before any claim, pricing, or refund action.
- GSA MAS Refresh 31/32 notices and draft GSAR 552.239-7001, "Basic Safeguarding of Artificial Intelligence Systems."
- FedRAMP 20x Phase 3 guidance, including Consolidated Rules timing (end of June 2026), FY26 Q4 pipeline timing, and initial Class A/B/C availability.
- SBA 8(a) guidance and SBA domestic-supply-chain scaling RFI; New Jersey construction-preference litigation treated as broader constitutional-risk context, not a direct SBA 8(a) challenge.

### Schedule Your Strategy Call

These developments require proactive action — not a wait-and-see approach. As your Virtual General Counsel, Strategic Legal Partners is ready to assess your specific exposure and guide your next steps.

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