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BLOG

The Supreme Court's Recent Rulings—A Boon for Government Contractors?

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The Supreme Court of the United States' recent decisions in *Loper Bright Enterprises et al. v. Raimondo*, 603 U.S. (2024) and *Corner Post v. Board of Governors, Federal Reserve System*, 603 U.S. __ (2024), may provide federal contractors with new arguments and opportunities to challenge agency regulations in litigation and bid protests.

Overturing four decades of jurisprudence, the Supreme Court in *Loper Bright* ruled that federal courts no longer must defer (or accept) an agency's interpretation of its own regulations, but instead the court may independently analyze and interpret the statute or regulation at issue to determine its meaning, scope, and effect. Because litigation against the government often turns on an agency's interpretation of a federal statute or related regulation (e.g., Federal Acquisition Regulations, SBA Regulations, Cyber Security Regulations, Agency-Specific Regulations), the Court's rejection of *Chevron* deference likely will significantly alter the litigation landscape for government contractors.

This will most likely be played out in litigation challenging agency action under the Administrative Procedure Act (APA) and in defense of False Claims Act (FCA) cases, where liability may hinge on whether the defendant complied with a particular statute or regulation. Going forward, contractors are now free to challenge the agency's (or relator's) interpretation of ambiguous regulations, notwithstanding how the agency previously has interpreted its own regulations. For bid protests, this means that the Government Accountability Office (GAO) or U.S. Court of Federal Claims need not accept or defer to the agency's interpretation of a FAR clause or VA regulation when ruling on the merits of a protest, allowing counsel to present alternate interpretations in support or defense of protest arguments.

Days after overruling *Chevron* deference, the U.S. Supreme Court issued another consequential ruling on July 1, 2024, expanding the time period in which plaintiffs can challenge agency action.

The Supreme Court's recent decision in *Corner Post Inc.* also may create new opportunities for government contractors to challenge agency regulations, even where the law in question previously had been settled following *Chevron* deference. This is because the Court in *Corner Post Inc.* extended the statute of limitations for regulatory challenges under the APA, based on when the plaintiff is injured by the final agency action in question, reasoning that the APA only permits entities to obtain judicial review of a final agency action after they have been injured, and before that date, their claims cannot accrue. Prior to *Corner Post*, plaintiffs could not challenge agency regulations unless they filed suit within six years of the regulation's publication, regardless of the date of injury. This opens the

door to new APA challenges against older regulations, including for plaintiff contractors that were not even in existence when the regulation sought to be challenged was issued.

Combined, the two recent Supreme Court cases may be a boon for government contractors, presenting new opportunities to effectively challenge unfavorable federal regulations or convince courts to interpret regulations in ways that will aid in the defense of claims against them. Contractors should consult with counsel to analyze whether particular federal regulations negatively impacting their businesses may be subject to future challenge or reinterpretation in light of these two recent Supreme Court decisions.

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Winston & Strawn's Government Contracts & Grants Practice is a nationally recognized, highly regarded group of lawyers with deep experience in handling high-value, and often contentious, government contract disputes, bid protests, and claims across a broad spectrum of industries and issues. We have a wealth of experience in counseling on the FAR and developments like the FIT Procurement Act. We help contractors navigate the FAR and agency supplements to ensure compliance and address potential issues before expensive investigations, litigation, and attendant reputational damage arise.

Please contact our Winston Government Contracts & Grants team if you have questions about this legislation or its implications for your business: Lawrence Sher, Lawrence Block, Elizabeth Leavy, William Kirkwood, and Frank DiNicola.
3 Min Read

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