

ALERT MEMORANDUM

Executive Order on “Prioritizing the Warfighter in Defense Contracting” – Key Implications for Defense and Government Contractors

January 14, 2026

On January 7, 2026, the White House issued an Executive Order (EO) titled “Prioritizing the Warfighter in Defense Contracting,” announcing an effort to “accelerate defense procurement and revitalize the defense industrial base” by preventing “major defense contractors” from “conduct[ing] stock buy-backs or issu[ing] dividends at the expense of accelerated procurement and increased production capacity.”¹ The EO states that going forward there will be limitations on the ability of defense contractors who are “underperforming on their contracts” to pay dividends or buy-back stock, at least until such time as they are “able to produce a superior product, on time and on budget,” pursuant to their existing defense contracts. The Secretary of the U.S. Department of War (the “Secretary”) is empowered to identify underperformers and initiate remediation or enforcement.²

If you have any questions concerning this memorandum, please reach out to your regular firm contact or the following authors

NEW YORK

Lisa Vicens
+1 212 225 2524
evicens@cgsh.com

Jonathan S. Kolodner
+1 212 225 2690
jkolodner@cgsh.com

Lillian Tsu
+1 212-225-2130
ltsu@cgsh.com

Helena K. Grannis
+1 212-225-2376
hgrannis@cgsh.com

WASHINGTON D.C.

Christopher R. Kavanaugh
+1 202 974 1867
ckavanaugh@cgsh.com

Tom Bednar
+1 202 974 1836
tbednar@cgsh.com

David A. Last
+1 202 974 1650
dlast@cgsh.com

CALIFORNIA

Matthew Yelovich
+1 650 815 4152
myelovich@cgsh.com

¹ See Exec. Order, § 2, (Jan. 7, 2026), [Prioritizing the Warfighter in Defense Contracting – The White House](#) (the “Exec. Order”).

² *Id.* at § 1.



Summary of the Executive Order

The EO states that within 30 days, the Secretary will review contractors for critical weapons, supplies, and equipment and identify those that are “underperforming on their contracts, not investing their own capital into necessary production capacity, not sufficiently prioritizing United States Government contracts, or whose production speed is insufficient as determined by the Secretary,” and that have engaged in buy-backs or dividend distributions during the period of underperformance.³ Once identified, such contractors will receive notice and will have a 15-day period to submit a board-approved remediation plan.

The EO also directs the Secretary to ensure that any future contract with new or existing defense contractor (including renewals) has certain restrictions built in. Namely, every new contract must contain a provision prohibiting stock buy-backs and corporate distributions during a period of “underperformance, non-compliance with the contractor’s contract, insufficient prioritization of the contract, insufficient investment, or insufficient production speed as determined by the Secretary.” Executive incentive compensation for such contractors is also restricted, with new contracts requiring a stipulation that executive compensation will not be tied to “short-term financial metrics, such as free cash-flow or earnings per share driven by stock buy-backs” and must instead be focused on other contract performance-related metrics.⁴

There remains uncertainty regarding the scope of the EO and how broadly it will be applied. The EO itself refers only to “large contractors” and “major defense contractors.” Other parts of the EO refer to manufacturers of “critical weapons, supplies, and equipment” to the U.S. military, which may indicate that the EO’s focus is predominantly manufacturers of such items.

Enforcement Mechanism

Pursuant to the EO, once the Secretary has provided notice to a contractor deemed to be underperforming, a 15-day clock starts for negotiating a resolution. If a contractor’s proposed remediation plan is deemed insufficient, or the parties cannot resolve the concerns identified by the Secretary within the 15-day negotiation period, the Secretary may initiate immediate actions to secure remedies, including through:

- Voluntary agreements;
- Enforcement actions under the Defense Production Act (50 U.S.C. 4501 *et seq.*); or
- Contract enforcement mechanisms available within the Federal Acquisition Regulations (FAR) and Defense Federal Acquisition Regulations Supplement (DFARS).⁵

In addition, when a contractor is identified as underperforming, the Secretary, in consultation with the Secretary of State and the Secretary of Commerce, shall consider whether it is appropriate “to cease ongoing advocacy efforts or deny new advocacy cases for underperforming contractors competing for international Foreign Military⁶ or

³ *Id.* at § 3.

⁴ *Id.* at § 4 (b).

⁵ *Id.* at § 4 (a).

⁶ A Foreign Military Sale (FMS) is a U.S. government-to-government program that facilitates the sale of American-made defense articles and services to foreign countries and international organizations. *See* Defense Security Cooperation Agency, *Foreign Military Sales*, <https://www.dsca.mil/Programs/Defense-Trade-and-Arms-Transfers/Foreign-Military-Sales> (last visited Jan. 12, 2026). A Direct Commercial Sale (DCS) is a transaction where a U.S. company exports defense articles or other defense services directly to a foreign government, international organization, or foreign company, which requires a license from the U.S. State Department, unlike a FMS where the U.S. government acts as the intermediary. *See* Defense Counterintelligence and Security Agency, *International Transfers*, <https://www.dcsa.mil/Industrial-Security/International-Programs/International-Transfers/> (last visited Jan. 12, 2026); *see also* Defense Security Cooperation Agency, *A Comparison of Foreign Military Sales (FMS) Versus Direct Commercial Sales (DCS)*, <https://www.dsca.mil/Resources/Publications/Publication/Article/4049928/a-comparison-of-foreign-military-sales-fms-versus-direct-commercial-sales-dcs> (Jan. 31, 2025).

Direct Commercial Sales.”⁷ In other words, the Secretary can decide whether the Department of War will stop actively promoting or backing U.S. contractors for FMS or DCS. Unlike enforcement actions under voluntary agreements, the Defense Production Act, FAR, or DFARS, which are subject to existing rules and judicial review, ceasing advocacy efforts for foreign contracts is entirely within the control of the Executive branch, and could delay or prevent the issuance of necessary licenses and government approvals for foreign sales.

The EO also directs the Chairman of the Securities and Exchange Commission (SEC) to consider adopting amended regulations governing stock buy-backs under SEC Rule 10b-18⁸ that would prohibit use of the safe harbor for defense contractors of the type identified by the Secretary.⁹

Mandatory Provisions for Future Contracts

Within 60 days of the EO, the Secretary is directed to incorporate new mandatory clauses into future contracts with any new or existing defense contractor, including renewals, that will:

- Prohibit buy-backs and corporate distributions during periods of underperformance, non-compliance, insufficient prioritization, insufficient investment, or insufficient production speed;
- Link executive incentive compensation to on-time delivery, increased production, and necessary facilitation of investments and operating improvements; and
- Authorize the Secretary to cap executive base salaries at current levels (with inflation adjustments) for underperforming contractors for a sufficient period to scrutinize incentive compensation.¹⁰

Potential Impact on Government Contractors

Defense Contractors

The EO allows the Secretary to prevent non-compliant defense contractors from conducting stock buy-backs or issuing dividends preventing stock buy-backs, after providing proper notice and a 15-day negotiation period.

- Under the EO, the Secretary can find a defense contractor to be non-compliant if, when such contractor engages in buy-backs or distributions, they are “underperforming on their contracts, not investing their own capital into necessary production capacity, not sufficiently prioritizing United States Government contracts, or [where their] production speed is insufficient as determined by the Secretary.”¹¹

Moreover, any new, future contracts will purportedly require restructuring executive compensation programs to focus on operational metrics rather than financial performance, and will permit the Secretary to cap executive base salaries for underperformance. While the EO itself does not specify a dollar figure, President Trump posted on social media that “no Executive should be allowed to make in excess of \$5 Million Dollars” unless their companies invest in additional production capacity.¹²

Foreign Contractors

Foreign companies holding U.S. government defense contracts may also be implicated by the EO. The Secretary, in consultation with State and Commerce, may cease advocacy for underperforming contractors seeking international Foreign Military or Direct Commercial Sales, which

⁷ Exec. Order at § 4 (c).

⁸ Rule 10b-18 provides a “safe harbor” for companies buying back their own stock when certain procedures are followed, protecting them from accusations of market manipulation by setting conditions for the manner, time, price, and volume of purchases. 17 C.F.R. § 240.10b-18 (2025).

⁹ Exec. Order at Sec. 4 (c)–(d).

¹⁰ *Id.* at § 4 (b).

¹¹ *Id.* at § 3 (a).

¹² Donald J. Trump (@realDonaldTrump), Truth Social (Jan. 7, 2026), <https://truthtsocial.com/@realDonaldTrump/posts/115855>

could affect both U.S. and foreign firms competing in the global defense marketplace.

Foreign contractors that are publicly traded in the U.S. and hold significant U.S. defense contracts may also face similar restrictions on capital distributions if considered to fall within the scope of the EO and designated as underperforming.

Key Takeaways for Existing Contracts

In light of the EO, defense contractors should consider taking the following steps:

- **Document Government Communications:** Companies should carefully document any communications with the government about project progress or performance issues. Companies may wish to try to collect past communications now to preserve the record if underperformance is later declared. If the government challenges the pace or quality of work, the record will be of vital importance.
- **Review Disclosures and Other Public Statements:** Companies should be mindful that their public statements in quarterly reports, earnings calls, and investor presentations about such defense projects—as well as whether such projects are being prioritized over other investor returns—may be scrutinized as well.
- **Review Subcontractor Agreements And Supply Chain Performance:** Prime contractors should engage with critical subcontractors and suppliers to ensure alignment on production timelines and capacity investments. Subcontractors should review their own performance metrics and be prepared to identify and address any areas of underperformance that may come under scrutiny.

Planning Considerations for Future Contracts

Contractors negotiating new awards should consider a privileged briefing to the Board of Directors regarding the potential benefits (e.g., revenue stability and growth, credibility, increased market access) and costs (e.g., increased government scrutiny which could lead to restrictions on buy-backs, corporate distributions and executive

incentive compensation) of agreeing to future contracts or renewals.

Finally, because the EO directs the SEC to consider adopting amended regulations governing stock buy-backs under Rule 10b-18, companies should vigilantly monitor potential developments concerning Rule 10b-18, as denial of the safe harbor for identified underperformers could have broader securities law implications.

Conclusion

While some of the language and scope of the EO remains undefined and vests tremendous discretion in the Secretary, the EO signals a prioritization by the administration of production speed, on-time delivery, and capacity expansion for defense contractors. The EO is an attempt to align incentives and enforcement toward that end. The framework contemplates rapid identification and remediation timelines, expanded use of procurement remedies, and forthcoming contract clauses that will constrain shareholder distributions and reshape executive compensation. Whether the administration will provide additional guidance through formal rulemaking or instead proceed through individual enforcement measures remains to be seen.

Defense contractors should prepare for intensified scrutiny by assessing their exposure and considering remediation, particularly in light of the 15-day resolution window they may face if identified by the Secretary as underperforming in the initial 30-day review period. Moreover, contractors, both primary and secondary, should carefully consider the costs and benefits of future contracts, which will be required to include clauses relating to operational performance, executive compensation, and buy-back programs as contemplated by the EO and could have trickle-down effects on subcontractor agreements and the supply chain.

Should the administration take steps to cancel or block the award of high-value contracts, or to penalize capital allocation decisions, affected companies will need to evaluate how to resolve such determinations and whether to challenge such actions and the EO in court.

...
CLEARY GOTTLIEB