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# The Continued Executive Order Impacts on DOE Contracting

**Presented by:**

**Robyn Burrows**, Blank Rome LLP

**Dominique Casimir**, Blank Rome LLP

**Reggie Jones**, Fox Rothschild LLP

**Devon Mobley-Ritter**, Lawrence Livermore  
National Laboratory

DOECAA  
April 15, 2025

# Today's Speakers



**Robyn Burrows**

Blank Rome, Partner  
Government Contracts  
Washington, D.C.

[robyn.burrows@blankrome.com](mailto:robyn.burrows@blankrome.com)



**Dominique Casimir**

Blank Rome, Partner  
Government Contracts  
Washington, D.C.

[dominique.casimir@blankrome.com](mailto:dominique.casimir@blankrome.com)



**Reggie Jones**

Fox Rothschild, Partner  
Government Contracts  
Washington, D.C.

[rjones@foxrothschild.com](mailto:rjones@foxrothschild.com)



**Devon Mobley-Ritter**

Counsel  
Lawrence Livermore  
National Laboratory

[mobleyritter1@llnl.gov](mailto:mobleyritter1@llnl.gov)

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# Agenda

- DEI & Gender Ideology EOs and Litigation Update
- DOE / NNSA Implementation
- Spending Freezes
- Workforce Reduction
- Nonpayment and Terminations for Convenience
- Tariffs

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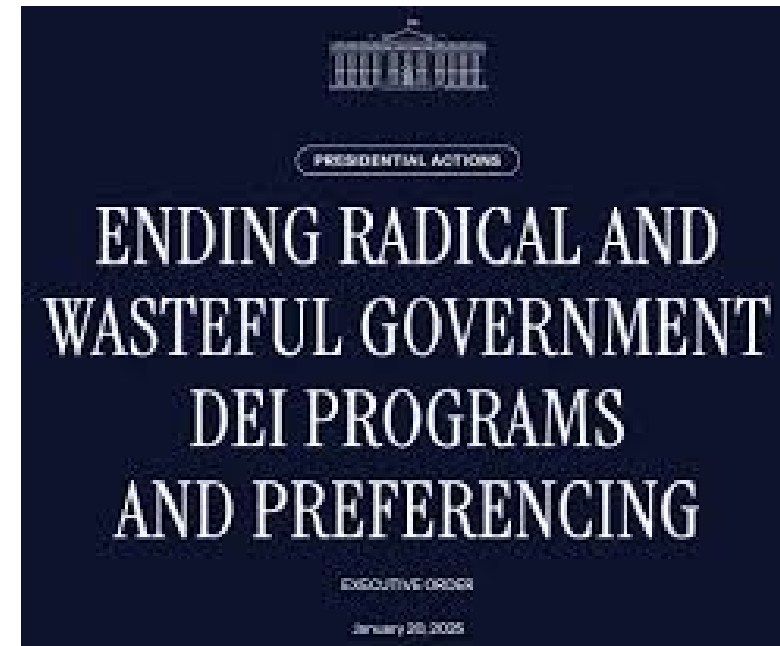
# Litigation Update: Executive Orders Related to DEI and Gender Identity

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# EO 14151: *Ending Radical And Wasteful Government DEI Programs & Preferencing*

- **Effective: January 20, 2025**
- **Applies To: Federal Agencies**
- Mandates the termination of all DEI programs and DEI-related positions within federal agencies.
- Federal agencies must provide the Office of Management & Budget director with lists of federal contractors who provide DEI training to federal employees and federal grantees who received federal funding to advance DEI or environmental justice programs.



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# EO 14173: *Ending Illegal DEI and Restoring Merit Based Opportunity*

- **Effective: January 21, 2025**
- **Applies To: Government Contractors & Private Sector Employers**
- **Ended 60 Years Of Affirmative Action Plans For Government Contractors Revoking EO 11246**
  - Requires Government Contractors & Award Recipients Comply With New Certifications
  - Directs Federal Agencies, by May 21, 2025, to submit reports identifying companies that have “egregious and discriminatory programs” and to, among other things, identify nine companies to be the subject of potential civil compliance investigations



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# Pending Litigation Related to DEI Executive Orders



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# EO 14168: *Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*

- Effective date: January 20, 2025
- Applies to: Federal agencies and employees (implications for contractors)
- Establishes as US policy that there are two sexes: male and female, determined “at conception” and states that “sexes are not changeable...”

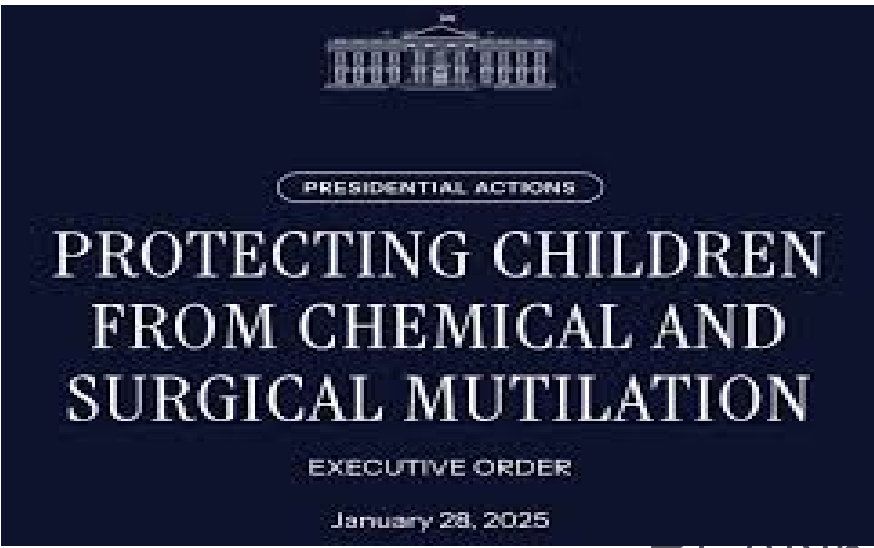


- Federal agencies must use “sex” not “gender;” must take action to comply with the EO’s two-sex only policy
- Sex-segregated spaces such as restrooms, locker rooms, etc. are to be based on biological sex rather than gender identity in federal facilities and the Attorney General is directed to issue guidance on single sex spaces in workplaces more broadly
- Federal systems and identification documents (including passports) are to recognize only “male” and “female” designations

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# Additional Gender-Related Executive Orders



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# Pending Litigation Related to Gender Executive Orders



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# DOE Implementation of DEI & Gender Ideology EOs

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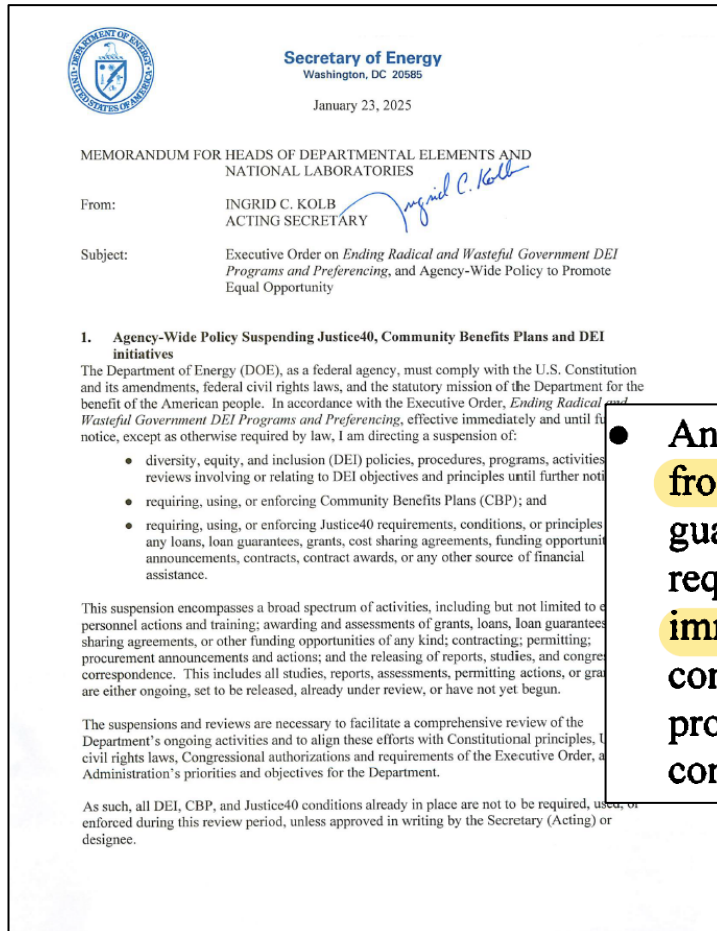
# DOE/NNSA Contracting Officer Responses to Gender Ideology EO

- **Directives to suspend activities/programs promoting gender ideology.**
  - Review outward facing media, activities, policies, etc. that may promote gender ideology and/or are inconsistent with EO.
  - Review subcontracts, Strategic Partnership Program agreements, etc.
- **NNSA forecasted additional guidance, but unlikely given pending litigation.**

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# January 23, 2025 DOE Memorandum re: DEI, Justice40, and CBPs



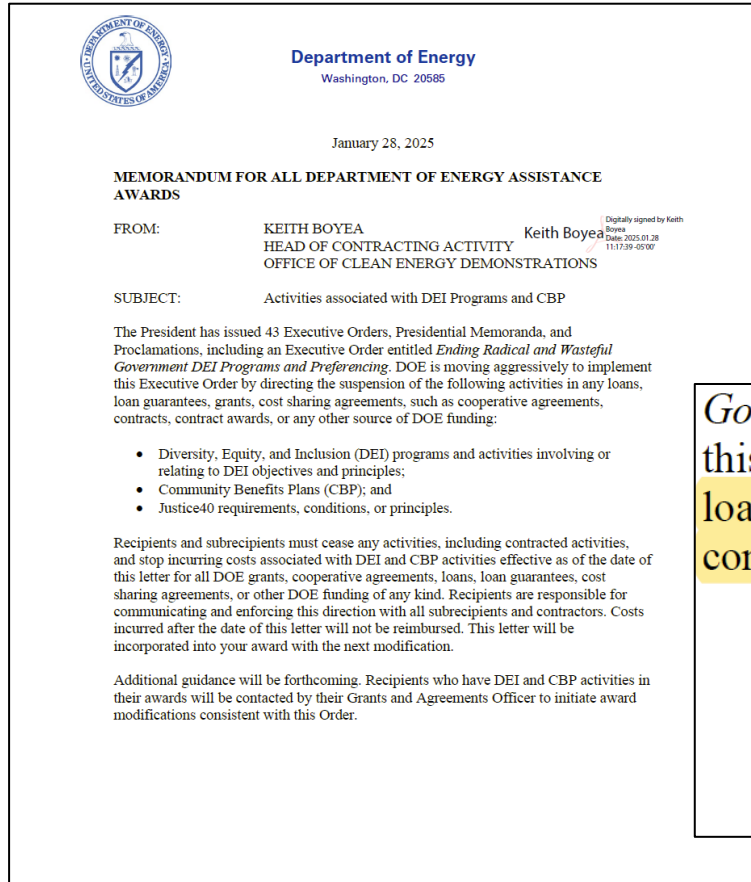
- **January 23, 2025:** Directs Heads of Departmental Elements and National Laboratories to suspend **Justice40, Community Benefits Plans, and DEI** initiatives.

- Any requirement or obligation regarding DEI, Justice40, and CBP shall be removed from all FOAs/NOFOs, grants, cost-sharing agreements, contracts, loans, loan guarantees, and any other funding awards. This applies to any and all program requirements. Contracting Officers, Grant Officers, and Loan Officials shall take immediate action to remove such requirements and obligations from all DOE contractual and financial assistance instruments. Contracting Officers will be provided with substitute language by the Senior Procurement Executive, in consultation with the Office of the General Counsel.

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# January 28, 2025 DOE Memorandum for Assistance Awards



- **January 28, 2025:** DOE's implementation of EO entitled, *Ending Radical and Wasteful Government DEI Programs and Preferencing*.

*Government DEI Programs and Preferencing*. DOE is moving aggressively to implement this Executive Order by directing the suspension of the following activities in any loans, loan guarantees, grants, cost sharing agreements, such as cooperative agreements, contracts, contract awards, or any other source of DOE funding:

- Diversity, Equity, and Inclusion (DEI) programs and activities involving or relating to DEI objectives and principles;
- Community Benefits Plans (CBP); and
- Justice40 requirements, conditions, or principles.

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# January 28, 2025 DOE Directive to M&O Contractors



Department of Energy  
Office of Science  
Washington, DC 20585

January 28, 2025

MEMORANDUM FOR OFFICE OF SCIENCE SITE MANAGERS  
AND SITE OFFICE CONTRACTING OFFICERS

FROM: JUSTON K. FONTAINE Juston K. Fontaine Digitally signed by Juston K. Fontaine  
Date: 2025.01.28 13:00:00 -0500  
DEPUTY DIRECTOR FOR OPERATIONS AND  
HEAD OF CONTRACTING ACTIVITY

SUBJECT: Executive Order on Ending Radical and Wasteful Government DEI  
Programs and Preferencing

On January 23, 2025, the Acting Secretary issued a memorandum titled, "Executive Order on Ending Radical and Wasteful Government DEI Programs and Preferencing, and Agency-Wide Policy to Promote Equal Opportunity." The Memorandum directs all Departmental Elements to disseminate the Memorandum to applicable contractors and ensure full compliance.

In accordance with the Memorandum, Office of Science site office contracting officers responsible for Management and Operating (M&O) contracts are directed to:

- Take immediate action to remove such requirements and obligations from all DOE M&O contracts. This includes Diversity, Equity, and Inclusion (DEI) policies, procedures, programs, activities, and reviews involving or relating to DEI objectives and principles.
- Suspend all DEI programs under the M&O contract, including those related to employee training, hiring, evaluation, promotion, and discipline.

This direction applies to all costs incurred under an M&O contract and the M&O's cost reimbursement subcontracts. Please coordinate with your respective National Laboratories to take immediate action to implement these changes.

If you have any questions, please contact Steven C. Jones at [steven.jones@science.doe.gov](mailto:steven.jones@science.doe.gov).

Attachment

cc:  
Harriet Kung  
Jessica Halse  
Steven Jones

- **January 28, 2025:** Memorandum for Science Site Managers and Site Office Contracting Officers.

In accordance with the Memorandum, Office of Science site office contracting officers responsible for Management and Operating (M&O) contracts are directed to:

- Take immediate action to remove such requirements and obligations from all DOE M&O contracts. This includes Diversity, Equity, and Inclusion (DEI) policies, procedures, programs, activities, and reviews involving or relating to DEI objectives and principles.
- Suspend all DEI programs under the M&O contract, including those related to employee training, hiring, evaluation, promotion, and discipline.

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# January 31, 2025 Office of Science Memo + March 11 Rescission



Department of Energy  
Office of Science  
Consolidated Service Center

9800 South Cass Avenue  
Lemont, Illinois 60439  
P.O. Box 2001  
Oak Ridge, Tennessee 37831

January 31, 2025

On January 20, 2025, the President of the United States signed an Executive Order (E.O.) titled, "Ending Radical and Wasteful Government DEI Programs and Preferencing." The order includes, in part, a requirement to terminate all Diversity, Equity and Inclusion (DEI) performance requirements for employees, contractors, or grantees.

To implement the E.O., the Department of Energy (DOE) directs the immediate suspension of the following activities in your financial assistance awards:

- Diversity, equity, and inclusion (DEI) programs and activities involving or relating to DEI objectives and principles;
- Community Benefits Plans (CBP)\*; or
- Justice40 requirements, conditions, or principles.

\* In lieu of the CBP, the Department of Energy's Office of Science required financial assistance applicants to include a Promoting Inclusive and Equitable Research (PIER) Plan in their applications for financial assistance in response to funding opportunity announcements beginning in fiscal year (FY) 2023. These PIER Plans were subsequently incorporated into resultant financial assistance awards by reference.

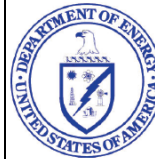
Therefore, effective immediately, you shall suspend all DEI, CBP/PIER Plans and Justice40 activities associated with all financial assistance awards issued by the U.S. Department of Energy's Office of Science (SC), Consolidated Service Center – Office of Grants and Cooperative Agreements. DOE will not enforce any award requirements related to the above activities during this suspension pending the outcome of a review of the Department's ongoing activities.

If you believe any activity listed above is required by law, or if you have any questions, please contact the undersigned Contracting Officer by e-mail at [cynthia.anderson@science.doe.gov](mailto:cynthia.anderson@science.doe.gov).

CYNTHIA  
ANDERSON

Cynthia A. Anderson  
DOE Contracting Officer

Digitally signed by CYNTHIA  
ANDERSON  
Date: 2025.01.31 10:53:58 -0800



Department of Energy  
Office of Science  
Consolidated Service Center

9800 South Cass Avenue  
Lemont, Illinois 60439

P.O. Box 2001  
Oak Ridge, Tennessee 37831

March 11, 2025

SUBJECT: RESCISSION OF NOTICE OF SUSPENSION OF DEI, CBP/PIER PLANS AND JUSTICE 40 RELATED ACTIVITIES UNDER FINANCIAL ASSISTANCE AWARDS

DOE believes that few, if any, funding agreements issued by the Office of Science are "equity-related" under section 2(b)(i) of Executive Order 14151, 90 FR 8339, entitled *Ending Radical and Wasteful Government DEI Program and Preferencing*, nonetheless, out of an abundance of caution it is rescinding the following communication effective immediately: DEI, CBP/PIER Plans and Justice40 related activities suspension letter dated, **January 31, 2025**.

However, pursuant to DOE's enforcement authority and in accordance with current administrative priorities, any Diversity, Equity, and Inclusion (DEI), Community Benefit Plan (CBP), Promoting Inclusive and Equitable Research (PIER) Plan or Justice40 activities provided for in your funding agreement(s), for the time being, are **voluntary**. DOE will compensate you for all activities undertaken pursuant to the terms of your funding agreement(s).

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# DOE/NNSA Contracting Officer Responses

- **Directives to suspend DEI-related policies, procedures, programs, etc. under M&O contracts.**
- Exceptions may be submitted to CO for Secretarial approval.
- Does not preclude DEI programs/activities *outside* of M&O contract (i.e., prohibition applies only to costs incurred under M&O contract).

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# DOE/NNSA Contracting Officer Responses, Cont'd

- Class deviation removing **DEAR 970.5226-1** from contracts.
- Removal of **DEI-related PEMP goals**.

**CLASS DEVIATION FINDINGS AND DETERMINATION  
DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR)  
970.5226-1**

2. The DEAR clause at 48 CFR 970.5226-1 requires M&O contractors to submit a “Diversity, Equity, Inclusion, and Accessibility” Plan to promote diversity to the Contracting Officer for approval within 90 days of contract award and to update such plans annually.

3. This deviation eliminates the requirement to include the “Diversity Plan” clause prescribed at 48 CFR 970.2671-2. Contracting Officers should:

It is hereby determined that a class deviation to eliminate the requirement to utilize and enforce the clause at 48 CFR 970.5226-1 is appropriate pending formal amendment of the DEAR.

## The Diversity Plan



[References: [DEAR 970.2671](#) and [970.5226-1](#)]

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# February 28, 2025 DOE Memo re: Preliminary Injunction



Department of Energy  
Washington, DC 20585

February 28, 2025

REVISED MEMORANDUM REGARDING ALL DEPARTMENT OF ENERGY FUNDING OBLIGATIONS, CONTRACTS, AND AWARDS

FROM: BRENT ALLEN, DEPUTY GENERAL COUNSEL FOR ENVIRONMENT AND LITIGATION

SUBJECT: *National Association of Diversity Officers in Higher Education et al. v. Donald J. Trump et al.*, No. 1:25-cv-00333-ABA (D. Md.)

You are hereby advised that a preliminary injunction has been entered in the case of *NADOH et al. v. Trump*, No. 1:25-cv-00333-ABA (D. Md.), ECF No. 45 (February 21, 2025). This case challenges three provisions in Executive Order 14151, *Ending Radical and Wasteful Government Programs and Preferencing*, Executive Order of January 20, 2025, 90 Fed. Reg. 8339 (Jan. 20, 2025) and Executive Order 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, Executive Order of January 21, 2025, 90 Fed. Reg. 8633 (Jan. 31, 2025).

Please read this guidance carefully and reach out to agency counsel if you have any specific questions.

### DOJ Guidance and Court Order

Please review the attached memorandum from the Department of Justice (“DOJ”) further describing the scope of the preliminary injunction and further required actions, and the attached court order. Please comply with all terms of the DOJ guidance, this memorandum, and the court order.

A couple of notes regarding retroactivity and Stop Work orders:

- The court order does not require that DOE change any prior funding agreements that were terminated or formally modified before 6:20 p.m. EST on February 21, 2025.
- Any Stop Work order in effect that was issued pursuant to or cites Executive Order 14151 or Executive Order 14173 (even if it was issued before 6:20 p.m. EST on February 21, 2025) must be rescinded.
- Any Stop Work order issued to a recipient of a funding agreement that has been flagged as being or is arguably “equity-related” must be rescinded whether or not it cites Executive Order 14151 or Executive Order 14173.
- A general Stop Work order—not issued pursuant to Executive Order 14151 or Executive Order 14173—issued to a recipient of a funding agreement that is not “equity-related” must remain in effect and the funding agreement may be modified or terminated.

Notably, the DOJ guidance also requires:

### DOJ Guidance and Court Order

Please review the attached memorandum from the Department of Justice (“DOJ”) further describing the scope of the preliminary injunction and further required actions, and the attached court order. Please comply with all terms of the DOJ guidance, this memorandum, and the court order.

- Any **non-equity-related** funding agreements that were awarded based on an application that included a Community Benefits Plan (or something similar), DEI terms, or Justice40 terms where a Stop Work Order or guidance document was issued pursuant to Executive Order 14151 or Executive Order 14173 **should not be terminated or modified** in any way. DOJ has advised that Stop Work Orders and guidance documents that direct recipients to cease any work pertaining to DEI, Community Benefit Plans (or something similar), or Justice40 requirements based on Executive Order 14151 or Executive Order 14173 must be rescinded. However, your office may make those requirements voluntary if it so chooses. If you choose this option, please add the appropriate language, below:

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# DOJ Guidance re: Preliminary Injunction of EOs 14151 & 14173

- **Termination Provision**

- DOE does not read injunction as forbidding actions taken in good faith based on “separate authority” and made wholly independent of the termination provision. Agencies must document their independent decisions.
- Must rescind stop work orders issued on basis of termination provision.

- **Certification Provision**

- Must remove certification provision from contracts/grant awards. Recipients no longer required to make certification.

- **Enforcement Provision**

- Do not bring any enforcement action in reliance on investigation provision.

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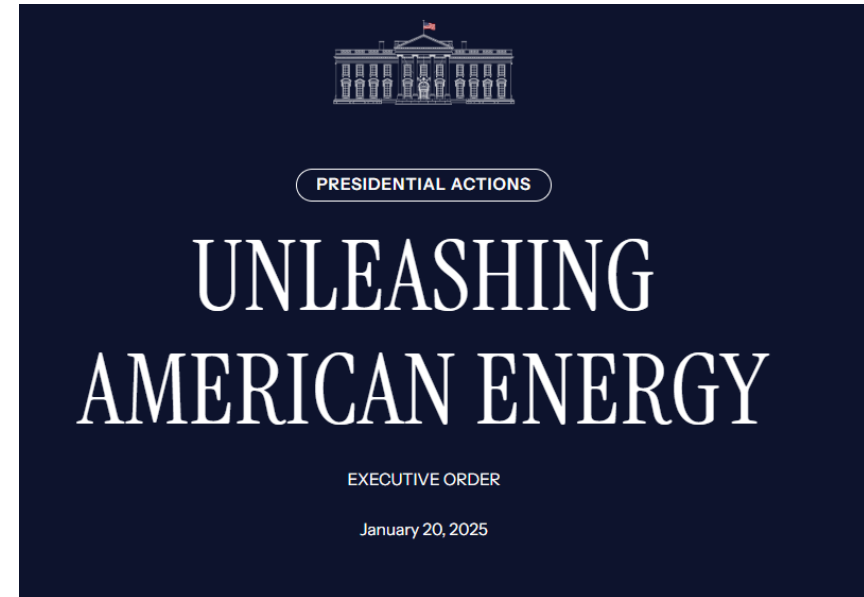
# Spending Freezes

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# EO 14154 – *Unleashing American Energy*

- **January 20, 2025:** Agencies must **pause disbursement** of funds appropriated under IRA and IIJA.
- **January 21, 2025:** OMB memo clarified that funding pause applies only to funds supporting programs, projects, or other activities related to Sec. 2 of EO.



Investment and Jobs Act (Public Law 117-58). This pause only applies to funds supporting programs, projects, or activities that may be implicated by the policy established in Section 2 of the order. This interpretation is consistent with section 7's heading ("Terminating the Green New Deal") and its reference to the "law and the policy outlined in section 2 of th[e] order."

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# January 20, 2025 DOE Memorandum



The Secretary of Energy  
Washington, DC 20585

January 20, 2025

MEMORANDUM FOR HEADS OF DEPARTMENTAL ELEMENTS

FROM: INGRID C. KOLB  
ACTING SECRETARY

SUBJECT: Agency-wide Review of Program and Administrative Activities

As we navigate through this transition period for a new Administration within the Department of Energy (DOE), it is imperative to ensure a deliberate approach to the Administration's programmatic and administrative policies and priorities. To that end, effective immediately and until further notice, prior to any actions or decisions on all herein described activities, a review under varying criteria will be undertaken to ensure all such actions are consistent with current Administration policies and priorities, including budgetary priorities.<sup>1</sup> The broad spectrum of actions include but are not limited to: personnel actions; awarding of grants, loans, funding opportunities, and cost sharing agreements; contracting, procurement announcements, and actions; rulings, decisions or other actions on any applications, enforcement action, or settlements of any contested matter; submissions to the Federal Register for publication; and the publication or announcement of reports, studies, congressional correspondence, and public statements. This includes all studies or reports that are either ongoing, set to be released, are already under review, or have not yet begun.

The reviews are necessary to facilitate a comprehensive review of the Department's ongoing activities and to align these efforts with Congressional authorizations and the Administration's priorities, to ensure that resources are allocated efficiently, and that the Department's initiatives are in line with the statutory mission of DOE and the priorities of the Administration.

As discussed below, a process will be in place for the submission of requests for action by the Secretary (acting) to ensure the important work of the Department continues to serve the American people.

Scope of Actions:

1. **Personnel Actions:** All personnel actions, including appointments, promotions, and transfers, are to be halted. This includes both internal staff movements and external hiring processes, unless expressly and unambiguously authorized with the prior approval of the acting Secretary, after the date of issuance of this order.

<sup>1</sup> With respect to NNSA, nothing herein is intended to contradict 50 USC Ch. 41 but to be construed broadly consistent with the Secretary's authority thereunder, include §2402(d).

**Procurement Announcements and Actions:** Any announcements or awards regarding procurement opportunities and contracts are to be put on hold, other than for routine building operations and supplies for contracts with a value of less than \$100,000. This includes, but is not limited to, requests for proposals (RFPs), requests for quotations (RFQs), and contract negotiations. Such approvals will be made in writing by the Secretary (acting) or the Head of Departmental Element with the prior approval of the Secretary (acting).

studies or reports. Relative to studies and reports being conducted by the National Laboratories, approvals must be obtained by the Head of Departmental Element with concurrence by the Administration designee within the Departmental Element. If reports or studies are subject to statutory or other requirements, a

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# January 27, 2025 Temporary Pause on Financial Assistance




EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D. C. 20503

THE DIRECTOR

January 27, 2025

M-25-13

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Matthew J. Vaeth, Acting Director, Office of Management and Budget 

SUBJECT: Temporary Pause of Agency Grant, Loan, and Other Financial Assistance Programs

The American people elected Donald J. Trump to be President of the United States and gave him a mandate to increase the impact of every federal taxpayer dollar. In Fiscal Year 2024, of the nearly \$10 trillion that the Federal Government spent, more than \$3 trillion was Federal financial assistance, such as grants and loans. Career and political appointees in the Executive Branch have a duty to align Federal spending and action with the will of the American people as expressed through Presidential priorities. Financial assistance should be dedicated to advancing Administration priorities, focusing taxpayer dollars to advance a stronger and safer America, eliminating the financial burden of inflation for citizens, unleashing American energy and manufacturing, ending “wokeness” and the weaponization of government, promoting efficiency in government, and Making America Healthy Again. The use of Federal resources to advance Marxist equity, transgenderism, and green new deal social engineering policies is a waste of taxpayer dollars that does not improve the day-to-day lives of those we serve.

This memorandum requires Federal agencies to identify and review all Federal financial assistance<sup>1</sup> programs and supporting activities consistent with the President’s policies and requirements.<sup>2</sup> For example, during the initial days of his Administration, President Donald J. Trump issued a series of executive orders to protect the American people and safeguard valuable taxpayer resources, including *Protecting the American People Against Invasion* (Jan. 20, 2025), *Reevaluating and Realigning United States Foreign Aid* (Jan. 20, 2025), *Putting America First in International Environmental Agreements* (Jan. 20, 2025), *Unleashing American Energy* (Jan. 20, 2025), *Ending Radical and Wasteful Government DEI Programs and Preferencing* (Jan. 20,

<sup>1</sup> 2 CFR 200.1 defines Federal financial assistance to mean “[a]ssistance that recipients or subrecipients receive or administer” in various forms, but this term does not include assistance provided directly to individuals. For the purposes of this memorandum, Federal financial assistance includes: (i) all forms of assistance listed in paragraphs (1) and (2) of the definition of this term at 2 CFR 200.1; and (ii) assistance received or administered by recipients or subrecipients of any type except for assistance received directly by individuals.

<sup>2</sup> Nothing in this memo should be construed to impact Medicare or Social Security benefits.

- Agencies to identify and review all federal financial assistance programs for consistency with President’s policies and requirements.

To implement these orders, each agency must complete a comprehensive analysis of all of their Federal financial assistance programs to identify programs, projects, and activities that may be implicated by any of the President’s executive orders. In the interim, to the extent permissible under applicable law, Federal agencies **must temporarily pause** all activities related to obligation or disbursement of all Federal financial assistance, and other relevant agency activities that may be implicated by the executive orders, including, but not limited to, financial assistance for foreign aid, nongovernmental organizations, DEI, woke gender ideology, and the green new deal.

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# February 7, 2025 Memorandum re: IRA and IJA Funds



Department of Energy  
Washington, DC 20585

February 7, 2025

MEMORANDUM FOR DISTRIBUTION

FROM: CHRISTOPHER S. JOHNS *CJ*  
DEPUTY CHIEF FINANCIAL OFFICER  
OFFICE OF THE CHIEF FINANCIAL OFFICER

SUBJECT: Financial Implementing Guidance for Administration Direction

This memorandum communicates guidance received by the Office of the CFO regarding the financial implementation of the Administration direction provided in the Acting Secretarial Memorandum, "Agency-wide Review of Program and Administrative Activities," issued on January 20, 2025 (January 20 Memo). The financial implementing guidance reflects current requirements of the Acting Secretarial Memorandum and follows District Court Orders issued regarding handling of awards and obligations.

Consistent with the requirements of the January 20 Memo, actions taken by DOE during the transition period are to be reviewed to ensure that DOE initiatives are in line with the statutory mission of DOE. Therefore, financial transactions using IJA and IRA funds and new awards using base funds must be reviewed and approved by DOE policy officials.

OCFO has developed an internal DOE workflow process to facilitate review of actions by the appropriate Administration Designee. The Administration Designee is the Senior political appointee assigned to a Departmental Element. If no appointee is assigned to a Departmental Element, the Administration Designee is the Acting Under Secretary. For Departmental Elements reporting directly to the Deputy Secretary that do not have an assigned political appointee, the Administration Designee is the Chief of Staff or his designee. For questions regarding the workflow process, please contact Tom Fields, Deputy Director for Strategic Resources, at [tom.fields@hq.doe.gov](mailto:tom.fields@hq.doe.gov) or by Teams.

Detailed financial implementing guidance will be distributed to the DOE financial management community and will be updated as needed. This memorandum expires 90 days from issuance, or when otherwise amended or cancelled.

- Approval from DOE **senior political appointee** needed before any money tied to Inflation Reduction Act and infrastructure awards go out the door.

Consistent with the requirements of the January 20 Memo, actions taken by DOE during the transition period are to be reviewed to ensure that DOE initiatives are in line with the statutory mission of DOE. Therefore, financial transactions using IJA and IRA funds and new awards using base funds must be reviewed and approved by DOE policy officials.

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# Impacts of DOE Spending Freezes on National Labs

- **February 12 hearing of House Science Committee addressed impacts of spending freeze on national labs.**
- **Argonne** – \$37M in research activities on hold, affecting 140 staff.
- **Lawrence Livermore** – \$7M frozen for grid resiliency project.
- **Los Alamos** – \$200k in current funding.
- **Idaho National** – No anticipated impacts yet.

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# Workforce Reductions

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# DOE/NNSA Employee Terminations

- **Voluntary Resignations**

- 2,600 DOE employees accepted buyouts in second round of voluntary resignation offers, more than doubling the 1,217 who accepted in first round in January.

- **Layoffs**

- 1,200-2,000 DOE employees laid off.
- 8,500 “nonessential” jobs at DOE/NNSA at risk.

- **NNSA**

- Rescindment of termination of ~300 NNSA employees.
- Currently exempt from pending RIFs.

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# Terminations

# Trump Presidential Action Tracker

- **In the nearly 3 months since 1/20/25 Inauguration, the President has:**
  - Issued 153 Executive Orders, Proclamations, and Memoranda
  - Rescinded 106 Executive Orders and Presidential Memoranda
- **Legal Challenges (as of 4/8/25)**
  - 159 lawsuits filed challenging various actions
  - Of those:
    - 42 have been Successful Challenges
    - 24 have been Unsuccessful Challenges
  - Source: [www.law360.com/trump-legal-challenges](http://www.law360.com/trump-legal-challenges)

# Terminations as a Result of EOs and DOGE

Government Contracts and Grants have been terminated on an unprecedented scale thus far in 2025.

Pace of spending retrenchment is not anticipated to slow in the near term.

Thus far, USAID contract terminations dwarf those of other agencies. USAID represents 2/3 of terminations to date.

Other top agencies impacted by the retrenchment include:

- Department of Energy
- Social Security Administration
- General Services Administration
- Department of Health & Human Services



# What Should M&O Contractors Do Today?

## Determine What's Mission Critical

- Proactively review award portfolios to identify awards at risk of termination.
  - Perform risk assessment based on EOs and current DOGE cost cutting activities.
  - Update frequently as cost cutting efforts are fast moving and unpredictable.
- Evaluate current overall business continuity and develop scenarios whereby material amounts of scope is terminated and DOE leans more heavily on the M&O contractor.
- “DOGE YOURSELF” - Look for cost optimization areas.
- Forego planned capital outlays or capital investment projects based on risk assessment.

# What Is Termination for Convenience?

- “[G]ives the Government the broad right to terminate without cause and limits the contractor's recovery to costs incurred, profit on work done, and costs of preparing the termination settlement proposal.” *Enron Fed. Sols., Inc. v. United States*, 80 Fed. Cl. 382, 406 n.21 (2008) (quoting Ralph C. Nash, Jr. & John Cibinic, Jr., *Administration of Government Contracts* at 1073 (3d ed.1995)).
- “As early as 1863, Rule 1179 of the Army Regulations provided that contracts for subsistence stores, ‘shall expressly provide for their termination at such time as the Commissary-General may direct.’” See *Nash & Cibinic at 941*.
- *Developed as a means to end the massive procurement efforts that accompanied major wars. Id.*

# What Is Termination for Convenience?

- Implemented through 8 separate T4C clauses under FAR Subpart 49.
- FAR 52.249-6 Termination (Cost Reimbursement) is expressly included in all cost reimbursement management and operating contracts, under DEAR 970.4905-1 (Terminations for Convenience of the Government & Default)
- FAR 52.249-6 Termination (Cost Reimbursement). Subsection (a) states: “The Government *may* terminate performance of work under this contract in whole, or from time to time, in part if the *Contracting Officer* determines that a termination is in the Government’s interest.”
- *Christian* Doctrine – Implied in all contracts regardless of whether it is expressly spelled out. *G.L. Christian & Associates v. United States*, 312 F.2d 418 (Ct. Cl. 1963)

# Termination for Convenience Settlement

- FAR 49.201(a): “A settlement should compensate the contractor fairly for work done and the preparations made for terminated portions of the contract, including a reasonable allowance for profit. ***Fair compensation is a matter of judgment and cannot be measure exactly.*** In a given case, various methods may be equally appropriate for arriving at fair compensation. ***The use of business judgment, as distinguished from strict accounting principles, is the heart of a settlement.***”
- FAR 49.201(b): “The primary objective is to negotiate a settlement by agreement.”

# Termination for Convenience Settlement

- Business judgment is great, but FAR 52.249-2(h)(i) and FAR 52.249-6(h)(5)(i) expressly state that the Cost Accounting Principles of FAR 31 apply
- 49.206-2 identifies two bases for settlement proposals:
  - Inventory Basis. 49.206-2(a) (**Preferred**)
  - Total Cost Basis. 49.206-2(b)

# Termination for Convenience – Recoverable Costs

- Costs incurred and not paid up to that portion of the Contract
  - FAR 52.249-2(g)(1); FAR 52.249-6 (h)(1)
  
- Profits on costs incurred
  - FAR 52.249-2(f)
  
- Costs of preparing the T4C Settlement Proposal – Legal, Accounting, Experts
  - FAR 52.249-2(g)(3); FAR 52.249-6 (h)(3)

# Termination for Convenience – Recoverable Costs

Indirect and Other Direct Costs	Personnel & Products Costs	Facilities & Equipment	Termination Settlement Costs
Overhead costs. G&A costs.  <b>Indirect costs that are charged as direct costs</b> (i.e., supervisory personnel, freight charges, equipment repairs, small tools, travel, telephone, office expenses, quality assurance, engineering, manufacturing management, production control, material control, purchasing, etc.).	Employee compensation that cannot be reasonably discontinued.  Severance payments when reasonably required.  Costs for items the contractor cannot use or hold without incurring a loss.	Idle facility or idle capacity costs despite unsuccessful efforts to discontinue them, up to a reasonable period of time.  Facilities capital cost of money.  Unexpired lease costs if a reasonably necessary lease for performance cannot be terminated. Any alterations to leased property.	Reasonable settlement costs. Such costs may include costs incurred internally by the contractor as part of the settlement process and costs of counsel, and costs of outside consultants. In-house personnel should keep time sheets tracking settlement related efforts.
Pre-contract costs, if necessary under the circumstances and Subcontractor claims		Loss of useful value of special tools, machinery, and equipment.	Other prep (production planning, initial arrangements).

# FAR 49.104 (Duties of Prime Contractor Upon Receipt of Notice of Termination)

- Stop work immediately on the terminated portion of the contract;
- Terminate all subcontracts;
- Advise the TCO if you cannot stop work;
- Perform the unterminated portions of the contract;
- Protect and preserve property in the contractor's possession in which the Government has or may acquire an interest and as directed by the TCO, deliver the property to the Government

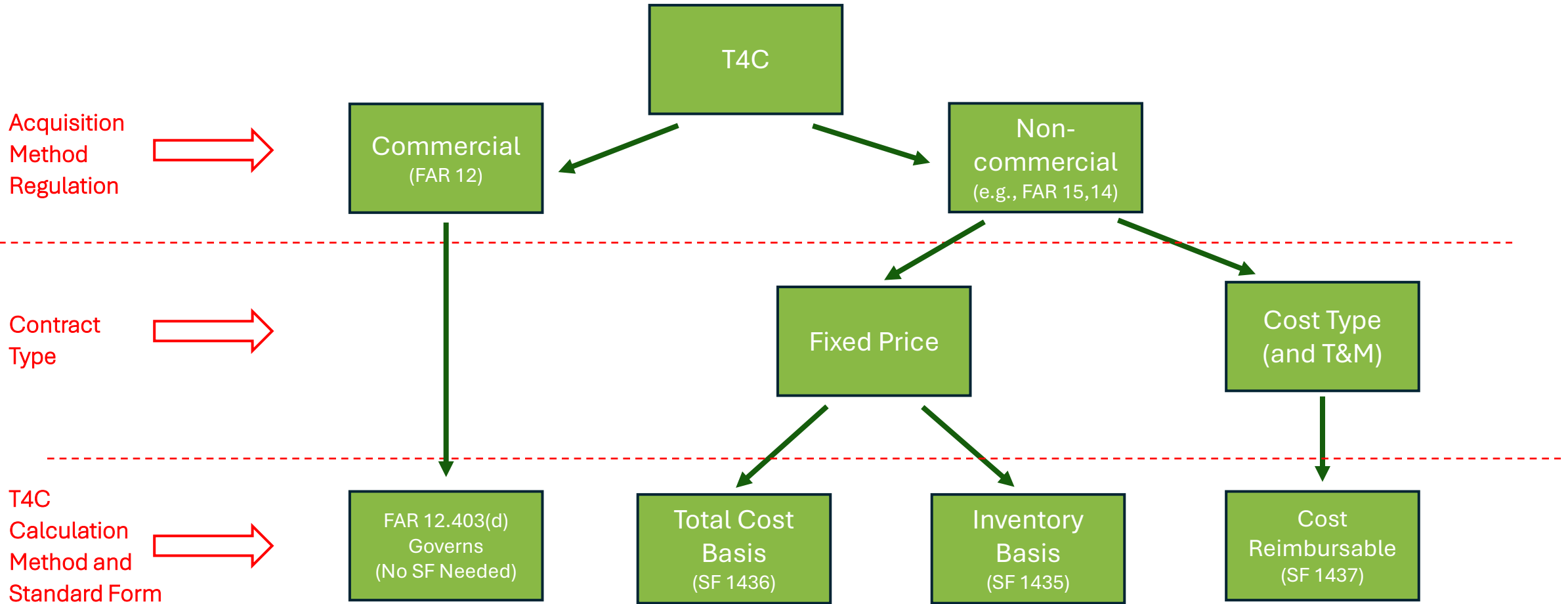
# FAR 49.104 (Duties of Prime Contractor Upon Receipt of Notice of Termination)

- Notify the TCO of any legal proceedings related to the terminated portion of the contract;
- Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;
- Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and
- Dispose of termination inventory, as directed or authorized by the TCO

# FAR 49.206-1 (Submission of Settlement Proposals)

- The contractor should promptly submit to the TCO a settlement proposal for the amount claimed because of the termination.
  
- Settlement proposals must be on the prescribed forms:
  - SF 1436 (Settlement Proposal (Total Cost Basis) & Certificate of Current Cost or Pricing Data)
  - SF 1439 (Schedule of Accounting Information)
  - SF 1440 (Application for Partial Payment)

# Termination Standard Forms



# FAR 49.104 (Duties of TCO After Issuance of Notice of Termination)

- Direct the action required of the prime contractor;
- Examine the settlement proposal and, when appropriate the settlement proposals of the subcontractors, including accounting review of the settlement proposal by DCAA/DCMA/OIG;
- Promptly negotiate settlement with the contractor and enter into a settlement agreement

# FAR 49.104 (Duties of TCO After Issuance of Notice of Termination)

- Promptly settle the contractor's settlement proposal by determination of the elements that cannot be agreed on, if unable to negotiate a complete settlement
- Issue a unilateral decision, which is appealable under the Contract Disputes Act

# Government Audits of TSPs

What the contractor should expect will be audited in a negotiated contract TSP.

- Prime contractor settlement proposals over \$2 million are required to be submitted for audit.
- Agency staff reductions will likely impact the timeliness audits.
- Audits of FAR 15 settlement proposals includes an evaluation of the contractor's accounting and termination policies, practices, and internal controls.

## Contract data and supporting files that will be examined as part of a TSP audit:

Price Proposal	Cost Estimates	Bills of Material	Production schedules and Records	Shipping Documents	Purchase Orders
Cost and Profit Forecasts	Audited Financial Statements	Tax Returns	Contract Reporting	Communication with Govt Tech Resources	Managerial Information

# TSP Preparation Best Practices

- Ensure Costs Are Reasonable
- Reject Impractical Proof Requirements
- Claim All Allowable Costs
- Charge Indirect Costs Directly
- Avoid Loss Adjustments
- Submit A Timely Proposal
- Obtain Professional Assistance

# Tariffs

# “America First” Trade Policy – Tariffs

- Address “unfair and unbalanced trade”
- Reduce the trade deficit
- Bring back manufacturing and manufacturing jobs to the US
- Address national security concerns
- Raise tax revenue
- Foreign policy (e.g., Venezuela oil tariff)



# Targeted Countries – So Far



- China
- Mexico
- Canada
- April 2, “Liberation Day”:
  - Universal baseline tariffs of 10% effective April 5;
  - Reciprocal tariffs targeting 56 countries + EU;
    - Paused for 90 days as of April 9...
    - Except for China

# Targeted Countries – So Far



- China
- Mexico
- Canada
- April 2, “Liberation Day”:
  - Universal baseline tariffs of 10% effective April 5;
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    - Paused for 90 days as of April 9...
    - Except for China

# Reciprocal Tariffs (Announced April 2)

**Universal baseline tariffs:** 10% (effective April 5)

**Reciprocal tariffs:** Varying rates for 57 countries (effective April 9)

<i>Country</i>	<i>Tariff Rate</i>	<i>Country</i>	<i>Tariff Rate</i>	<i>Country</i>	<i>Tariff Rate</i>
Algeria	30%	Iraq	39%	Nigeria	14%
Angola	32%	Israel	17%	North Macedonia	33%
Bangladesh	37%	Japan	24%	Norway	15%
Bosnia and Herzegovina	35%	Jordan	20%	Pakistan	29%
Botswana	37%	Kazakhstan	27%	Philippines	17%
Brunei	24%	Laos	48%	Serbia	37%
Cambodia	49%	Lesotho	50%	South Africa	30%
Cameroon	11%	Libya	31%	South Korea	25%
Chad	13%	Liechtenstein	37%	Sri Lanka	44%
China	34%	Madagascar	47%	Switzerland	31%
Côte d'Ivoire	21%	Malawi	17%	Syria	41%
Democratic Republic of the Congo	11%	Malaysia	24%	Taiwan	32%
Equatorial Guinea	13%	Mauritius	40%	Thailand	36%
European Union	20%	Moldova	31%	Tunisia	28%
Falkland Islands	41%	Mozambique	16%	Vanuatu	22%
Fiji	32%	Myanmar (Burma)	44%	Venezuela	15%
Guyana	38%	Namibia	21%	Vietnam	46%
India	26%	Nauru	30%	Zambia	17%
Indonesia	32%	Nicaragua	18%	Zimbabwe	18%

# The International Emergency Economic Powers Act (IEEPA) – The Fentanyl Wars

- IEEPA grants the President authority to regulate economic transactions in response to a national emergency stemming from an “unusual and extraordinary threat originating outside the United States. The President has stated that the Fentanyl Crisis meets this definition.
- IEEPA has never been used before to justify imposition of tariffs. Possible Constitution Challenge. Under our Constitution, Congress has authority for imposing tariffs, not the Executive Branch. The President argues that Congress has ceded authority under IEEPA.

Countries targeted by IEEPA are Canada, Mexico and China.

- **The President imposed a 20% tariff on all products from China** due to the alleged failure to curb the sustained influx of synthetic opioids, including fentanyl. These are effective now.
- **Duties against Canada and Mexico were announced.** They were delayed, then reinstated, then qualified again. The current status is:
  - **All goods that qualify for preferential treatment under the United States-Mexico-Canada (USMCA) will not be subject to IEEPA tariffs** at the time of entry from March 7, 2025 through April 2, 2025.
  - All products that do not meet the USMCA requirements will remain subject to the IEEPA tariffs from March 4, 2025.

# The US-Mexico-Canada Agreement (USMCA)

## Advantage: Avoid 25% Tariff under IEEPA

USMCA is now of greater interest to many companies who did not worry previously about whether a good qualified for duty-free status. To avoid the 25% IEEPPA tariffs for products coming from Mexico and Canada:

- **Make sure you know the rules.**
  - To qualify, the product must meet USMCA country of origin. (In general, a significant portion of materials must come from North America or certain manufacturing operations must occur in North America)
  - Rules are specific to different industries (for example, automakers must ensure that 75% of a vehicle's content by value originates in North America);
  - Just because you can mark the product "made in Canada," doesn't mean it's eligible for USMCA duty-free treatment (for example, flooring panels manufactured in China and further processed in Canada have a country of origin of China for duty-purposes, but are considered a product of Canada for marking purposes). It's complicated!

# Tariff Scorecard – Where Are We Today?

China – Section 301 of the Trade Act of 1974 duties of 25% or 7.5%

China – 10% Universal Baseline+ 125% IEEPA on all products, no exclusions

Canada – 25% IEEPA tariffs on non-USMCA products (energy 10%, potash 10%)

Mexico – 25% IEEPA tariffs on non-USMCA products (potash 10%)

**All countries** – 25% Section 232 of the Trade Expansion Act of 1962's Steel and Aluminum tariffs and “derivative” products. Exception to Section 232 duties if derivative made abroad from steel that was “melted and poured” in the U.S. or aluminum that was “smelted and cast” in the U.S.

Duties are Cumulative (Stacked). Many products from China are now subject to a whopping 175% duty (25% for Section 301, 25% for Section 232, 125% for IEEPA)

# Questions?



**Robyn Burrows**

Blank Rome, Partner  
Government Contracts  
Washington, D.C.

[robyn.burrows@blankrome.com](mailto:robyn.burrows@blankrome.com)



**Dominique Casimir**

Blank Rome, Partner  
Government Contracts  
Washington, D.C.

[dominique.casimir@blankrome.com](mailto:dominique.casimir@blankrome.com)



**Reggie Jones**

Fox Rothschild, Partner  
Government Contracts  
Washington, D.C.

[rjones@foxrothschild.com](mailto:rjones@foxrothschild.com)



**Devon Mobley-Ritter**

Counsel  
Lawrence Livermore  
National Laboratory

[mobleyritter1@llnl.gov](mailto:mobleyritter1@llnl.gov)

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