

No. 25-1372

In the Supreme Court of the United States

ASG SOLUTIONS CORP., DBA AMERICAN SYSTEMS
GROUP, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the Court of Appeals for the Federal Circuit correctly upheld the government's decision to terminate a contract for default.

(I)

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is available at 2025 WL 3627729. The memorandum opinion and order of the Court of Federal Claims (Pet. App. 9a-62a) is reported at 170 Fed. Cl. 485.

JURISDICTION

The judgment of the court of appeals was entered on December 15, 2025. A petition for rehearing was denied on March 3, 2026 (Pet. App. 63a-64a). The petition for a writ of certiorari was filed on June 1, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Contract Disputes Act of 1978 (CDA), 41 U.S.C. 7101 *et seq.*, provides a comprehensive process for the resolution of government-contracting disputes.

A contractor must submit a claim against the federal government relating to a contract to the contracting officer for a decision. 41 U.S.C. 7103(a)(1). The contracting officer must then issue a written decision, which must “state the reasons for the decision reached” and “inform the contractor of the contractor’s rights.” 41 U.S.C. 7103(e); see 41 U.S.C. 7103(d). The decision need not contain any “[s]pecific findings of fact.” 41 U.S.C. 7103(e). If such findings are made, they “are not binding in any subsequent proceeding.” *Ibid.*

Upon receipt of the contracting officer’s decision, a contractor may appeal to the board of contract appeals or “bring an action directly on the claim in the United States Court of Federal Claims.” 41 U.S.C. 7104(b)(1). Such an action “proceed[s] de novo,” with no deference to the contracting officer’s determinations. 41 U.S.C. 7104(b)(4). “Thus, once an action is brought following a contracting officer’s decision, the parties start in court * * * with a clean slate.” *Wilner v. United States*, 24 F.3d 1397, 1402 (Fed. Cir. 1994) (en banc).

2. On September 28, 2022, petitioner entered into a contract with the U.S. Navy “to provide engineering and program-management services to support design and construction operations at Naval Air Station Jacksonville.” Pet. App. 2a; see *id.* at 17a-18a. The contract identified an “‘anticipated staff’ of 20 professionals as the ‘base/minimum’ level of service required.” *Id.* at 12a (citation omitted). The contract provided that within five days of its award, petitioner must provide the government with a resume for each team member proposed to perform work under the contract. *Id.* at 13a-14a. The government would review the resumes and approve the proposed personnel to ensure they possessed the necessary qualifications. *Id.* at 14a. In the event that peti-

tioner did not maintain a full complement of 20 team members, the contract provided that petitioner must provide replacements within five days. *Id.* at 15a. If petitioner failed to do so, the government was entitled to a unit-price reduction in payment until the full team was in place. *Ibid.*

After petitioner was awarded the contract, “[p]roblems arose almost immediately.” Pet. App. 18a. On the date petitioner was required to submit the 20 resumes of its proposed team, it submitted only 2. *Ibid.* Over the next month, petitioner submitted 8 additional resumes. *Id.* at 18a-19a. Of the 10 individuals submitted, 4 were rejected by the government for lacking qualifications, and 4 more “declined [petitioner’s] offer, did not report to work, or quickly resigned.” *Id.* at 19a.

On November 1, 2022, the government sent petitioner a letter of concern, notifying petitioner that it was failing to meet contractual requirements by failing to provide the necessary staff. Pet. App. 20a. Petitioner responded by disputing that it was required to maintain a staff of 20. *Ibid.* Instead, petitioner asserted that the contract entitled it to “choose the precise labor and staffing mix” to perform assignments under the contract. *Ibid.* In the days that followed that exchange, petitioner submitted resumes for 4 more professionals, 3 of which the government approved, but only 1 accepted petitioner’s offer of employment. *Ibid.*

On December 5, 2022, the government issued a notice to cure the performance deficiency. Pet. App. 20a. The government asserted that petitioner’s failure to perform could justify termination of the contract for default. *Ibid.* Petitioner again took the position that the contract did not require a 20-person team. *Id.* at 21a. Petitioner submitted a few additional resumes over the next month.

Ibid. On January 20, 2023, the government issued petitioner a show-cause notice based on the continued failure to comply with the obligation to provide the requisite team. *Ibid.* Petitioner again responded by disputing that it had an obligation to provide a team of 20 professionals. *Id.* at 22a.

On April 4, 2023, the government issued a final decision terminating the contract for default. Pet. App. 23a. In describing the basis for the termination, the final decision stated that petitioner was required to provide the Navy with a team of 20 professionals, yet had provided a team of only 5 by the contract's halfway point. *Ibid.*

3. Petitioner filed suit in the United States Court of Federal Claims (CFC), challenging the government's termination for default on several grounds. Pet. App. 25a. After briefing, the CFC denied petitioner's motion for summary judgment and granted the government's cross-motion for summary judgment. *Id.* at 9a-62a.

The CFC first determined that the government's interpretation of the contract as requiring petitioner to provide a team of 20 technical experts is "the only reasonable one." Pet. App. 35a; see *id.* at 35a-45a. The CFC further rejected petitioner's contention that the contract was an unlawful personal services contract. *Id.* at 45a-54a.

The CFC next determined that the government properly terminated the contract for default. Pet. App. 54a-61a. Under longstanding Federal Circuit precedent, a termination for default requires "a reasonable belief on the part of the contracting officer that there was no reasonable likelihood that the [contractor] could perform the entire contract effort within the time remaining for contract performance." *Id.* at 55a (quoting and adding brackets to *Lisbon Contractors, Inc. v. United States*, 828 F.2d 759, 765 (Fed. Cir. 1987)). Applying

that standard, the CFC concluded that petitioner had “materially failed to perform” its contractual obligations, and that, in light of its “performance halfway through the contract term, it was reasonable for the contracting officer to determine that insufficient time remained both for [petitioner] to assemble the required team and for that team to carry out the tasks [the government] sought to assign to the team.” *Id.* at 56a.

The CFC further rejected petitioner’s contention that the government failed to consider seven factors identified in the Federal Acquisition Regulation (FAR), 48 C.F.R. 49.402-3(f), before terminating the contract for default. Pet. App. 58a-61a. The CFC explained that “the evaluation of these factors is not a prerequisite to a valid termination” under Federal Circuit precedent. *Id.* at 59a (citing *DCX, Inc. v. Perry*, 79 F.3d 132, 135 (Fed. Cir.), cert. denied, 519 U.S. 992 (1996)). Rather, whether an agency considered the factors “may aid a court in determining whether a particular termination for default reflects an abuse of the contracting officer’s discretion.” *Id.* at 60a. In this case, the CFC determined that a termination for default would not have been an abuse of discretion regardless of the factors’ applicability because petitioner had “failed to perform the contract.” *Id.* at 61a. In any event, the CFC explained that “[t]he record reflects that the contracting officer considered all seven factors.” *Id.* at 60a. In support of that conclusion, the CFC cited a document that was “signed by the contracting officer on March 17, 2023,” in which the contracting officer “outlined and discussed each factor in detail.” *Id.* at 60a-61a. The CFC rejected petitioner’s objections to the admission of that document, which was submitted by the government along with its reply brief. *Id.* at 61a n.8. The CFC noted

that the date on the document reflects that the contracting officer considered the relevant factors before the government made the decision to terminate, and that the court was relying on the document “for that point only, and not for the substance of its analysis.” *Ibid.*

4. The court of appeals affirmed in an unpublished, per curiam opinion. Pet. App. 1a-8a. Like the CFC, the court of appeals interpreted the contract to require petitioner “to provide at least 20 professionals (or the equivalent) throughout the contract period,” and it concluded that the contract was not a personal services contract. *Id.* at 4a; see *id.* at 5a-6a. The court further determined that petitioner “had defaulted on the contract, and that the termination for default was not simply a ruse designed to enable the Navy to escape an improvident contract.” *Id.* at 7a. The court noted that petitioner had “contend[ed] in passing” that the memorandum from the contracting officer analyzing whether to terminate the contract for default was inadmissible. *Id.* at 8a n.3. The court rejected that contention, noting that the memorandum “was not considered for the truth of its contents, but only to show that the contracting officer addressed the [FAR] factors.” *Ibid.* As for the “other subsidiary issues” petitioner had raised, the court rejected each of them, noting that they did not “affect [the court’s] confidence that the Claims Court’s summary judgment order was correct.” *Id.* at 8a.

5. The court of appeals denied a petition for panel rehearing and rehearing en banc without calling for a response. Pet. App. 63a-64a.

ARGUMENT

Petitioner contends (Pet. 9-13) that the lower courts departed from Federal Circuit precedent and failed to adequately analyze whether the contracting officer con-

sidered the factors outlined in the FAR when deciding whether to terminate the contract. But the lower courts appropriately reviewed the termination in compliance with the CDA and circuit precedent. Petitioner separately contends (Pet. 13-15) that the lower courts erred by accepting the contracting officer’s decision memo into evidence. That factbound contention is meritless and does not warrant further review. The petition for a writ of certiorari should be denied.

1. The lower courts correctly upheld the government’s termination of petitioner’s contract for default. Contrary to petitioner’s contention, that holding is consistent with longstanding circuit precedent.

a. When a contractor seeks review of a decision terminating a contract for default, the government must establish that the termination for default was justified based on the facts as they existed at the time of the termination decision. See *Department of Transp. v. Eagle Peak Rock & Paving, Inc.*, 69 F.4th 1367, 1375 (Fed. Cir. 2023). Under the CDA, that inquiry “proceed[s] de novo, based on the evidentiary record * * * and not the [contracting] officer’s reasoning or findings of fact.” *Ibid.*; see 41 U.S.C. 7103(e), 7104(b)(4). Indeed, the contracting officer need not make “[s]pecific findings of fact,” and “[i]f made, specific findings of fact are not binding in any subsequent proceeding.” 41 U.S.C. 7103(e). The government “may well present testimony by the contracting officer” about the facts bearing on the termination decision, but the focus is not on the “contracting officer’s own reasoning.” *Eagle Peak*, 69 F.4th at 1375-1376.

That approach is consistent with general contracting principles. This Court has long recognized that a party to a contract (including the government) may “justify an asserted termination * * * of a contract by proving that

there was, at the time, an adequate cause, although it did not become known to him until later.” *College Point Boat Corp. v. United States*, 267 U.S. 12, 16 (1925). In general, “the subjective knowledge of the contracting officer herself is irrelevant, and the government is not required to establish that the contracting officer conducted the analysis necessary to sustain a default.” *Empire Energy Mgmt. Sys., Inc. v. Roche*, 362 F.3d 1343, 1357 (Fed. Cir. 2004).

The lower courts here properly applied the CDA’s de novo review standard and determined that adequate cause for terminating the contract for default existed at the time the contracting officer made the decision. See Pet. App. 7a, 56a. Based on the summary-judgment record before them, the courts concluded that petitioner failed to provide the 20 qualified professionals that the contract required and that petitioner had therefore defaulted on the contract. *Ibid.*

b. Petitioner nevertheless asserts (Pet. 9-13) that the lower courts were required to determine whether the contracting officer adequately assessed seven factors set out in the FAR when determining that the contract should be terminated for default. In doing so, petitioner attempts (Pet. 10) to import concepts of review of agency decisions under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* But APA review differs from the de novo review mandated by the CDA. “Judicial review under [the APA] is deferential”; a “court simply ensures that the agency has * * * reasonably considered the relevant issues and reasonably explained the decision.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). That type of review is incompatible with the CDA’s provisions and with the general con-

tracting principles it embraces. Petitioner fails to address those incompatibilities.

Instead, petitioner contends (Pet. 9-13) that review of the contracting officer's decisionmaking process is required by the Court of Claims' pre-CDA decision in *Schlesinger v. United States*, 390 F.2d 702 (1968). That is incorrect. In *Schlesinger*, the Navy terminated a contract for 50,000 caps on grounds of default when the contractor sought a limited extension of a delivery date. See *id.* at 703-706. The court agreed that Schlesinger was technically in default at the time of the termination because he had failed to deliver 15,000 of the caps by a date specified in the contract. *Id.* at 706-707. Based on the evidence introduced at trial, however, the court determined that the Navy had in fact terminated the contract because the chairman of a congressional subcommittee had sent the Navy a letter implying that the contract should be canceled for reasons unrelated to the failure to supply the caps on time. See *id.* at 705, 708 & n.6.

The Court of Claims held that under those circumstances, the termination for default should be treated as a termination for convenience. See *Schlesinger*, 390 F.2d at 707-710. The court found that the Navy had not exercised its discretion to terminate the contract, but had "simply surrendered its power of choice" in light of congressional pressure. *Id.* at 708. The court explained that the contractor's "status of technical default served only as a useful pretext for the taking of action felt to be necessary on other grounds unrelated to the plaintiff's performance." *Id.* at 709.

The holding in *Schlesinger* has no application here. As the Federal Circuit has observed, "*Schlesinger* bars only a termination for default in which there is no considered *nexus* between the default termination and the

contractor’s performance under the contract.” *McDonnell Douglas Corp. v. United States*, 182 F.3d 1319, 1326 (1999), cert. denied, 529 U.S. 1097 (2000). In this Court, petitioner does not and could not plausibly contend that the contract here was terminated for reasons unrelated to performance. The court of appeals expressly held “that the termination for default was not simply a ruse designed to enable the Navy to escape an improvident contract.” Pet. App. 7a. And the record shows that petitioner’s continuing inability to provide a team of 20 professionals was the impetus for the termination. *Ibid.*; see *id.* at 56a. Nor were petitioner’s failures to satisfy the contract’s terms merely “technical.” *Schlesinger*, 390 F.2d at 709. Petitioner proved unable to meet the contract’s most basic term: assembling a team to carry out tasks under the contract. Where, as here, termination is premised on performance, a court may uphold the termination if the default is supported by the record evidence. *McDonnell Douglas*, 182 F.3d at 1326-1327.

This case does not, therefore, support petitioner’s contention (Pet. 13) that the Federal Circuit has “effectively eradicate[d]” its own “*Schlesinger* line of decisions.”

2. Review is also unwarranted because the record shows that the contracting officer did consider the FAR factors that petitioner invokes. Pet. App. 8a & n.3, 60a-61a; see *id.* at 79a-112a. As the CFC explained, the government submitted a document “signed by the contracting officer on March 17, 2023,” which “outline[s] and discuss[s] each factor in detail.” *Id.* at 60a-61a. Thus, even if petitioner were correct that courts must assess whether the FAR factors were considered, that conclusion would have no practical effect in this case.

To escape that fact, petitioner asserts that the lower courts (Pet. 13-15) should not have accepted into evidence the document memorializing the contracting officer's analysis on the theory that the document is inadmissible hearsay and may be fraudulent. The lower courts correctly rejected those arguments. Pet. App. 8a & n.3, 61a n.8. With respect to hearsay, the courts did not consider the substance of the document for its truth. And petitioner's complaints about the document's digital signature and formatting do not support the accusation that the government created it in an attempt to defraud the court. In any event, petitioner's objections are merely a factbound disagreement with the lower courts' evidentiary rulings, which does not warrant this Court's review. See Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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