No. 25-428

In the Supreme Court of the United States

PERCIPIENT.AI,

Petitioner,

v.

UNITED STATES, CACI, INC.-FEDERAL,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE FEDERAL CIRCUIT

Brief for Map Large, Inc. as Amicus Curiae in Support of Petitioner

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INTEREST OF AMICUS CURIAE*

Amicus curiae Map Large, Inc. ("MapLarge") is an American commercial software company founded 16 years ago. Its origins were not in a glamorous, venture capital-funded endeavor, but in a basement where its co-founders taught themselves how to program and build a geospatial software platform. Unlike many technology firms, MapLarge scaled its operations without venture capital, relying on commercial revenue and a Small Business Innovation Research (SBIR) contract to enter the federal market.

Amicus has persisted and succeeded in the defense and intelligence sector for over a decade, driven by a commitment to delivering superior capability to the warfighter. This hard-won experience provides *amicus* with a direct, ground-level understanding of the systemic barriers to commercial software acquisition that the Federal Acquisition Streamlining Act (FASA) was enacted to remove.

The majority of government procurement funding remains locked in acquisition processes that thwart competition by commercial product companies. As a non-traditional contractor that has successfully navigated these barriers, MapLarge has a profound interest in ensuring that FASA's enforcement mechanisms remain viable. The ability for innovators to hold the

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* Per Rule 37.2, amicus notified counsel for all parties of its intent to file this amicus brief more than 10 days before the due date. Per Rule 37.6, no counsel for a party authored this brief in whole or in part, and no person other than amicus or its counsel made a monetary contribution to its preparation or submission.

government accountable to evaluate the best available commercial technologies, as required by FASA, is critical to building the robust and innovative industrial base Congress intended.

SUMMARY OF ARGUMENT

The Federal Circuit's *en banc* decision eviscerates the primary enforcement mechanism for Congress's signature procurement reform. This interpretation neutralizes FASA's mandate, 10 U.S.C. § 3453, which requires agencies to prioritize commercial products at all stages of procurement. A majority of government procurement funding is committed to sprawling, multi-year contracts. Commercial product companies focus on delivering best-in-world products that address specific needs. They have superior solutions for narrow needs, but they often cannot—and should not—compete to serve as prime contractors for broad work scopes. As a result, the natural point for a commercial product company to compete is often after award of a prime contract, when its superior solution can be evaluated for integration within a broader system.

By limiting "interested party" status under 28 U.S.C. § 1491(b)(1) to prime contract bidders, the Federal Circuit's decision disenfranchises commercial product companies from their right to effectively compete in procurement decisions that follow the award of a prime contract, and it immunizes this entire class of post-award procurement violations from judicial review. This error frustrates the core purpose of FASA and provides a roadmap for agencies and prime con-

tractors to bypass these mandates, locking the government into costly, inefficient, and rapidly obsolete custom-development projects.

As the experience of *amicus* demonstrates, legacy acquisition practices create systemic incentives for prime contractors to reject superior commercial solutions in favor of internal "build-first" models. This "incumbent lock-in" strangles innovation, wastes taxpayer dollars, and deprives the warfighter of cutting-edge technology. Indeed, Congress has admonished the National Geospatial-Intelligence Agency (NGA)—the agency at the center of this case—for its wasteful practice of rebuilding what already exists in the commercial market, finding that it "increases the time it takes to deliver new capabilities to the warfighter... and undermines the U.S. software industrial base." H. Rept. 116-151, at 27 (2019). Indeed, the capital wasted on such redundant contracts is staggering; the $376.45 million SAFFIRE IDIQ alone could have provided Series A funding to more than 37 innovative startups.

The protest right for commercial offerors—the parties with the primary economic motive to enforce FASA's requirements—is the only catalyst capable of driving change in the face of this institutional resistance. This Court should grant certiorari to restore the plain meaning of the statute and vindicate Congress's clear intent.

ARGUMENT

I. As Amicus's Experience Demonstrates, the Federal Circuit's Rule Guarantees Incumbent Lock-In and Deprives the Government of Innovation.

The "build-first" model that the Federal Circuit's decision protects creates the very barriers that companies like *amicus*—who began as a small start-up in a basement—have struggled over a decade to overcome.

In *amicus*'s experience, agencies often abdicate acquisition and technical responsibility to major prime contractors. These primes win large, cost-reimbursement contracts with an incentive structure that rewards internal development and punishes spending on "other direct costs," such as commercial product purchases.

Consider a scenario in which a prime contractor is presented with a choice between using government funds to either: (i) purchase a commercial software product for $1 million; or (ii) initiate an internal development effort to reproduce existing commercial software products, spending multiple years and $10 million. Option (i) is better for the taxpayer and the warfighter; but Option (ii) provides more profit to the prime contractor and lower "other direct costs," which may produce a better performance rating. FASA mandates that Option (i) should be preferred; in practice, Option (ii) is the most common result. Incentives determine outcomes.

Once awarded the contract, the prime contractor controls the technical approach and typically initiates a multi-year, labor-intensive build plan using its internal developers, bypassing existing commercial solutions. Market research requirements, if performed at all, are often fulfilled by minimal engagement designed to justify a pre-determined "no."

This "build-first" model creates severe incumbent lock-in. During the development cycle, primes profit by allocating their existing labor pool to reinvent the wheel, wasting taxpayer dollars to create lower-performing, late-arriving versions of products that already exist in the commercial market. This institutional bias consumes budgets with labor costs, leaving few dollars for new capabilities and consigns the government to expensive developmental efforts that result in the very "obsolete technology" FASA was enacted to prevent.

The opportunity cost of this "obsolete technology" is staggering. The $376.45 million SAFFIRE IDIQ awarded to a single incumbent is a sum that would be transformative for the commercial innovators FASA was designed to foster. In the current market, the median Series A funding round for a technology startup is approximately $10 million. The capital allocated for this single contract—which Congress's own report suggests will lead to a costly, delayed, and redundant solution—could have funded more than 37 innovative Series A startups, infusing the defense industrial base with new competitors and new ideas.

The protest right established in § 1491(b)(1) is the essential catalyst to break this cycle.

Commercial product companies focus on delivering best-in-world products that address specific needs. They have superior solutions for narrow needs, but they often cannot—and should not—compete to serve as prime contractors for broad work scopes. As a result, the natural point for a commercial product company to compete is often after a broad contract has been awarded to a traditional prime contractor. At this point, commercial product companies can present their technologies for integration within a broader system.

The problem, as Petitioner found, is that the government may refuse to evaluate commercial products during the program execution phase, in blatant violation of FASA. By limiting "interested party" status under 28 U.S.C. § 1491(b)(1) to prime contract awardees, the Federal Circuit's *en banc* decision eliminates the mechanism to enforce FASA at the moment where it is most needed—during program execution when commercial products can be evaluated for adoption and integration. This is not an "edge case" violation. It is the primary mode of failure for commercial product procurement.

In order for FASA to achieve its clear Congressional intent, 28 U.S.C. § 1491(b)(1) must be interpreted in accordance with its plain meaning, allowing commercial product companies to hold the government accountable for commercial product evaluation

during the program execution phase and after the prime contract has been awarded.

II. The Federal Circuit's Decision Is Incompatible with the Plain Text and Structure of 28 U.S.C. § 1491(b)(1).

The Federal Circuit's *en banc* decision drastically curtailed the broad waiver of sovereign immunity contained within the third prong of 28 U.S.C. § 1491(b)(1). This statute grants the Court of Federal Claims jurisdiction over actions by an "interested party objecting to... **any** alleged violation of statute or regulation in connection with a procurement or a proposed procurement." 28 U.S.C. § 1491(b)(1) (emphasis added).

This third prong is deliberately "sweeping" and freestanding, designed to cover procurement-related legal challenges independent of specific solicitations or contract awards. By limiting the definition of "interested party" solely to actual or prospective bidders on the *prime contract*, the Federal Circuit adopted a position that is irreconcilable with the plain text.

This reading effectively neutralizes the third prong and creates an enforcement vacuum. The core error lies in ignoring that an interested party for a prong-three violation is any entity with a "direct economic interest" in the alleged violation. Commercial vendors, who often cannot bid on sprawling prime contracts, are thus rendered ineligible to protest the specific statutory violations that directly injure them.

III. The Decision Below Frustrates Decades of Bipartisan Congressional Reform Mandating Commercial Item Preference.

This disastrous narrowing fundamentally frustrates the purpose of FASA, which Congress enacted to mandate reliance on commercial products "to the maximum extent practicable." 10 U.S.C. § 3453(b)(1).

Congress has repeatedly and recently expressed frustration with agencies' failure to follow this mandate. In 2019, the House Intelligence Committee issued a report highlighting its concern to the NGA—the very agency involved in this case—against this precise conduct:

> The Committee is concerned that NGA is developing software solutions that are otherwise available for purchase on the commercial market. This practice most always increases the time it takes to deliver new capabilities to the warfighter; increases the overall cost of the solution... and undermines the U.S. software industrial base.

H. Rept. 116-151, at 27 (2019).

Less than two years after this direct Congressional instruction, NGA awarded the $376.45 million SAFFIRE IDIQ to CACI.

FASA's requirements extend far beyond the initial solicitation. The law requires agencies to "ensure" that prime contractors incorporate commercial components, 10 U.S.C. § 3453(b)(2), and mandates that

primes conduct market research to fulfill this preference, 10 U.S.C. § 3453(c)(5). These post-award obligations target the precise market failure where primes are incentivized to launch their own costly development efforts.

The Federal Circuit's rule rewards this misbehavior. It allows agencies to immunize FASA violations from judicial scrutiny simply by postponing commercial evaluation until *after* the prime contract is awarded. By holding that companies like Petitioner are not "interested parties," the court ensures that the entities most incentivized to enforce the law are denied the right to sue.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

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