No. 25-428

In the Supreme Court of the United States

PERCIPIENT.AI, INC., PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

D. JOHN SAUER
Solicitor General
Counsel of Record
BRETT A. SHUMATE
Assistant Attorney General
PATRICIA M. MCCARTHY
CORINNA A. NIOSI
RETA E. BEZAK
GALINA I. FOMENKOVA
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a prospective subcontractor that is not an actual or prospective bidder or offeror for a government contract is an "interested party" that may pursue a bid-protest claim under the Tucker Act, 28 U.S.C. 1491(b)(1).

RELATED PROCEEDINGS

United States Court of Federal Claims (Fed. Cl.):

Percipient.ai, Inc. v. *United States*, No. 23-cv-28 (May 18, 2023)

United States Court of Appeals (Fed. Cir.):

Percipient.ai, Inc. v. *United States*, No. 23-1970 (Aug. 28, 2025)

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OPINIONS BELOW

The en banc opinion of the court of appeals (Pet. App. 1a-45a) is reported at 153 F.4th 1226. The vacated panel opinion (Pet. App. 50a-118a) is reported at 104 F.4th 839. The opinion of the Court of Federal Claims (Pet. App. 119a-126a) is available at 2023 WL 3563093. A previous opinion of the Court of Federal Claims (Pet. App. 129a-147a) is reported at 165 Fed. Cl. 331.

JURISDICTION

The judgment of the court of appeals was entered on August 28, 2025. The petition for a writ of certiorari was filed on October 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. For much of our Nation's history, government contracting was left to "the executive branch of Government, with adequate range of discretion free from vex-

atious and dilatory restraints at the suits of prospective or potential sellers." *Perkins* v. *Lukens Steel Co.*, 310 U.S. 113, 127 (1940). It was therefore "generally assumed that disappointed bidders lacked standing to complain of government procurement decisions." *Impresa Construzioni Geom. Domenico Garufi* v. *United States*, 238 F.3d 1324, 1331 (Fed. Cir. 2001).

But over the years, various mechanisms evolved to permit such challenges. By 1996, statutes and judicial decisions had created four main forums for private parties to challenge government-contracting decisions outside the procuring agency. See William E. Kovacic, *Procurement Reform and the Choice of Forum in Bid Protest Disputes*, 9 Admin. L.J. 461, 467 (1995).

First, before the award of a contract, "disappointed bidders" could pursue relief in the Court of Federal Claims on the theory that the government had breached "an implied contract with prospective bidders to fairly assess their bids." *Impresa*, 238 F.3d at 1331; see *id.* at 1331-1332; see, *e.g.*, *Keco Indus., Inc.* v. *United States*, 428 F.2d 1233, 1236 (Ct. Cl. 1970).

Second, after a contract was awarded, "a frustrated bidder" could sue in district court under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* *Scanwell Labs., Inc.* v. *Shaffer*, 424 F.2d 859, 861 (D.C. Cir. 1970).

Third, under the Competition in Contracting Act of 1984, Pub. L. No. 98-369, Tit. VII, 98 Stat. 1175, "an interested party" could bring "[a] protest concerning an alleged violation of a procurement statute or regulation" before the Comptroller General as head of the General Accounting Office (GAO). 31 U.S.C. 3552(a). The statute defines an "'interested party'" as "an actual or prospective bidder or offeror whose direct economic

interest would be affected by the award of the contract or by the failure to award the contract." 31 U.S.C. 3551(2)(A). And as originally enacted, the statute defined a "protest" as "a written objection * * * to a solicitation by an executive agency for bids or proposals for a proposed contract" or "a proposed award or the award of such a contract," § 2741(a), 98 Stat. 1199, although Congress later added additional categories of protests, see 31 U.S.C. 3551(1).

Fourth, for procurements involving automated data processing, the Competition in Contracting Act authorized bid protests before the General Services Administration Board of Contract Appeals (GSA Board), with appeals to the Federal Circuit. 40 U.S.C. 759(f) (1994); see 28 U.S.C. 1295(a)(10). For those procurements, Congress used definitions of "interested party" and "protest" that were materially similar to those that it used for protests before the GAO. Competition in Contracting Act § 2713, 98 Stat. 1183-1184 (codified as amended at 40 U.S.C. 759(f)(9)(A) and (B) (1994)). And Congress authorized the GSA Board to "review any decision by a contracting officer alleged to violate a statute or regulation" "in connection with any [covered] procurement." § 2713, 98 Stat. 1182 (codified as amended at 40 U.S.C. 759(f)(1) (1994)).

b. Perhaps unsurprisingly, that quadripartite scheme produced "an endless web of jurisdictional issues." Acquisition Law Advisory Panel, *Streamlining Defense Acquisition Laws* 1-258 (1993) (Advisory Panel Report). Congress directed the Department of Defense to establish an advisory panel to review the acquisition laws "with a view toward streamlining the defense acquisition process." National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 800(c)(1),

104 Stat. 1587. The panel recommended that the Court of Federal Claims be invested with bid-protest jurisdiction that would "parallel that of the GAO and the [GSA Board]" with "only interested parties, as defined by the Competition in Contracting Act," able to file protests. Advisory Panel Report 1-265 to 1-266.

Congress responded by enacting the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, § 12, 110 Stat. 3874, which amended the Tucker Act, 28 U.S.C. 1491(b)(1), to grant additional jurisdiction to the Court of Federal Claims. See Pet. App. 13a.[1] That statute incorporates the APA's standard of review. 28 U.S.C. 1491(b)(4) (cross-referencing 5 U.S.C. 706). But the rest of the statute mirrors the Competition in Contracting Act. Although the Administrative Dispute Resolution Act lacks a definition section, an action must be brought by "an interested party." 28 U.S.C. 1491(b)(1). Either before or after an award, an interested party may object to the same types of actions that were originally cognizable before the GAO or the GSA Board: "a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract." *Ibid.* An interested party may also object to "any alleged violation of statute or regulation in connection with a procurement or a proposed procurement," much as they could before the GSA Board. *Ibid.*

Since 2001, the Federal Circuit—which has exclusive jurisdiction over appeals from the Court of Federal Claims, 28 U.S.C. 1295(a)(3)—has repeatedly reaf-

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[1] The codified version of the Tucker Act describes district courts as having concurrent jurisdiction over such actions. 28 U.S.C. 1491(b)(1). That authority expired on January 1, 2001. Administrative Dispute Resolution Act § 12(d), 110 Stat. 3875.

firmed that "interested party" in Section 1491(b)(1) has the same meaning as in the Competition in Contracting Act: "actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract." *American Fed'n of Gov't Emps.* v. *United States*, 258 F.3d 1294, 1302 (2001) (*AFGE*), cert. denied, 534 U.S. 1113 (2002); accord, *e.g.*, *Eskridge & Assocs.* v. *United States*, 955 F.3d 1339, 1344 (Fed. Cir. 2020); *CGI Fed. Inc.* v. *United States*, 779 F.3d 1346, 1348 (Fed. Cir. 2015); *Weeks Marine, Inc.* v. *United States*, 575 F.3d 1352, 1359 (Fed. Cir. 2009); *Distributed Solutions, Inc.* v. *United States*, 539 F.3d 1340, 1344 (Fed. Cir. 2008); *Rex Serv. Corp.* v. *United States*, 448 F.3d 1305, 1307 (Fed. Cir. 2006); *Banknote Corp. of Am., Inc.* v. *United States*, 365 F.3d 1345, 1352 (Fed. Cir. 2004).

2. The National Geospatial-Intelligence Agency (NGA) is a subagency of the Department of War responsible for providing "geospatial intelligence" "in support of the national security objectives of the United States." 10 U.S.C. 442(a)(1); see 10 U.S.C. 441(a). In 2020, NGA solicited bids for a contractor to "improve its collection, interpretation, and storage of visual intelligence data" via the so-called SAFFIRE contract—the Structured Observation Management, Automation, Augmentation and Artificial Intelligence Framework for Integrated Reporting and Exploitation. Pet. App. 2a. The solicitation had two key components: a "'Structured Observation Management Enterprise Repository' * * * to store, disseminate, and regulate access to data." *Id.* at 3a (brackets and citation omitted). And a "'Computer Vision'" program that would use artificial intelligence to "train[] and use[] computers to derive geospatial intelligence data from imagery." *Ibid.* (citation omitted).

Petitioner—which claims to offer "state-of-the-art" computer-vision technology (Pet. 12)—did not bid for the contract either individually or as part of a contractor team. Pet. App. 3a.

In January 2021, NGA awarded the SAFFIRE contract to respondent CACI, Inc.-Federal and simultaneously issued a task order requiring CACI to deliver computer-vision systems. Pet. App. 3a. That task order had a performance period of up to five years at NGA's option and will expire on January 30, 2026. C.A. App. 860, 865. After the contract had been awarded, petitioner asked CACI to evaluate its Mirage product as a potential tool to fulfill the computer-vision task order. Pet. App. 4a. CACI did so but concluded that Mirage was inferior to technology that NGA was already using. C.A. App. 967.

3. In January 2023—two years into the SAFFIRE contract—petitioner sued in the Court of Federal Claims, alleging that NGA had not complied with a statutory mandate obligating federal agencies to "acquire commercial services, commercial products, or nondevelopmental items" "to the maximum extent practicable." Pet. App. 4a (quoting 10 U.S.C. 3453(b)(1)). Petitioner alleged that NGA had not adequately ensured that CACI was preferring commercial products in fulfilling the computer-vision task order. *Id.* at 123a-124a. CACI successfully intervened as a defendant. See *id.* at 5a.

The government and CACI filed motions to dismiss, which the Court of Federal Claims initially denied. Pet. App. 129a-147a. As relevant here, the court concluded that petitioner is an "interested party" with statutory standing to bring a bid-protest claim under the Tucker Act. *Id.* at 138a (quoting 28 U.S.C. 1491(b)(1)). The court recognized that Federal Circuit precedent "limit[ed]

claims 'to actual or prospective bidders' who have a 'direct economic interest' in the award of the contract." *Ibid.* (quoting *AFGE*, 258 F.3d at 1302). But the court concluded that the actual-or-prospective-bidder requirement should not apply to claims alleging a violation of 10 U.S.C. 3453, lest that statute become "illusory." Pet. App. 140a.

On reconsideration, however, the Court of Federal Claims granted the motions to dismiss. Pet. App. 119a-126a. The court did not revisit its earlier statutory-standing analysis. See *ibid.* Instead, the court concluded that it lacked subject-matter jurisdiction because petitioner's bid protest violates a separate statutory bar on most claims "in connection with the issuance or proposed issuance of a task or delivery order." *Id.* at 124a (quoting 10 U.S.C. 3406(f)(1)).

4. A divided panel of the court of appeals reversed. Pet. App. 50a-118a. The panel majority disagreed with the Court of Federal Claims that petitioner's claim is "in connection with the issuance or proposed issuance of a task or delivery order." *Id.* at 58a (quoting 10 U.S.C. 3406(f)(1)); see *id.* at 58a-67a.

More pertinent here, however, the panel agreed with the lower court that petitioner is an "interested party" entitled to bring a bid-protest claim under the Tucker Act. Pet. App. 69a. The panel acknowledged that circuit precedent limited statutory standing "to disappointed bidders and offerors." *Id.* at 74a (discussing *AFGE*, *supra*). But in the majority's view, that precedent does not apply when a plaintiff "solely" alleges a "'violation of statute or regulation in connection with a procurement or a proposed procurement.'" *Id.* at 75a (quoting 28 U.S.C. 1491(b)(1)). "[I]n the context of this case involving alleged violations of 10 U.S.C. § 3453

without challenging the contract," the majority held, "an interested party includes an offeror of commercial or nondevelopmental services or items whose direct economic interest would be affected by the alleged violation of the statute." Pet. App. 83a.

Judge Clevenger dissented. Pet. App. 86a-118a. He admonished the majority for "refus[ing] to follow" circuit precedent and opined that, even writing on a blank slate, he would not have "interpret[ed] 'interested party' to include potential subcontractors" given the term's longstanding meaning in federal-procurement law. *Id.* at 101a, 105a.

5. On the government's motion, the court of appeals granted rehearing en banc and vacated the panel decision in full. Pet. App. 47a.

The en banc court of appeals affirmed the dismissal of the complaint, holding that petitioner is not an "interested party" entitled to sue under Section 1491(b)(1). Pet. App. 1a-35a. The court explained that "the term 'interested party' had a specific understood meaning in the procurements sphere at the time that § 1491(b) was drafted." *Id.* at 20a. By using that "term of art" in Section 1491(b), Congress brought "the old soil with it." *Id.* at 19a (quoting *George* v. *McDonough*, 596 U.S. 740, 746 (2022)). The court thus reaffirmed its "settled interpretation" that bid-protest claims under the Tucker Act may be brought only by "actual or prospective bidders or offerors whose direct economic interest would be affected," and not by prospective subcontractors. *Id.* at 16a-17a; see *id.* at 22a-24a.

The en banc court of appeals rejected petitioner's contrary proposal to adopt a "different meaning" of "'interested party'" only when a party alleges a violation of a statute or regulation not in connection with a

solicitation or award. Pet. App. 17a. As the court explained, Section 1491(b)(1) references "one singular interested party," which cannot "mean different things in the same sentence." *Id.* at 17a-18a.

Judge Stoll (the author of the panel opinion) dissented, along with three other judges. Pet. App. 36a-45a. In her view, anyone with a "direct economic interest that would be affected by the challenged § 1491(b)(1) action" is an "interested party" under Section 1491(b)(1). *Id.* at 42a (citations and brackets omitted).

ARGUMENT

Petitioner contends (Pet. 22-37) that the Federal Circuit erred in concluding that petitioner is not an "interested party" with statutory standing to sue under the Tucker Act, 28 U.S.C. 1491(b)(1). That contention does not warrant this Court's review. The court of appeals' decision is correct and reaffirms Federal Circuit precedent that has governed bid protests for decades. Regardless, this case will almost certainly become moot in January 2026 when the task order in which petitioner seeks to participate will expire.

1. The court of appeals correctly held that petitioner is not an "interested party" with statutory standing under Section 1491(b)(1).

a. "Where Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it." *George* v. *McDonough*, 596 U.S. 740, 746 (2022) (citation and internal quotation marks omitted). Contrary to petitioner's suggestion, that rule is not limited to "common-law" terms (Pet. 29), but applies to any legal term of art, see *George*, 596 U.S. at 746 (looking to "robust regulatory backdrop" defining term in veterans-benefits context).

Here, the old soil is the bid-protest regime that provided the backdrop for Congress's 1996 amendments to the Tucker Act. See pp. 1-4, *supra*. In the Competition in Contracting Act, Congress had twice defined "interested party" as "an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract," §§ 2713, 2741(a), 98 Stat. 1184, 1199—which is the same definition that the Federal Circuit applied below and has used since 2001. See Pet. App. 2a; *American Fed'n of Gov't Emps.* v. *United States*, 258 F.3d 1294, 1302 (2001) (*AFGE*), cert. denied, 534 U.S. 1113 (2002); pp. 4-5, *supra*. Even before the 1996 amendments, the Federal Circuit had interpreted that definition of "interested party" to exclude prospective subcontractors like petitioner. See *MCI Telecomm. Corp.* v. *United States*, 878 F.2d 362, 364-365 (1989).

Under the Competition in Contracting Act, that term of art was used in provisions that authorized review of the same subject matter as Section 1491(b)(1). In proceedings before the GSA Board, an interested party could bring a "protest" "to a solicitation by a Federal agency for bids or proposal for a proposed contract" or "to a proposed award or the award of such a contract." Competition in Contracting Act § 2713, 98 Stat. 1183-1184. An interested party could also challenge "any decision by a contracting officer alleged to violate a statute or regulation" "in connection with any procurement." § 2713, 98 Stat. 1182. Similarly, the GAO could resolve an "objection" "concerning an alleged violation of a procurement statute or regulation" "by an interested party to a solicitation by an executive agency for bids or proposals for a proposed contract" or "to a proposed award or the award of such a contract." § 2741(a),

98 Stat. 1199. Those provisions closely parallel Section 1491(b)(1), which now allows an "interested party" to "object[] to a solicitation by a Federal agency for bids or proposals for a proposed contract or to a proposed award or the award of a contract or any alleged violation of statute or regulation in connection with a procurement or a proposed procurement."

Contrary to petitioner's assertion (Pet. 29-30), the Competition in Contracting Act, like Section 1491(b)(1), covered claims alleging violations of statutes and rules. Indeed, Section 1491(b)(1)'s language—"an interested party" may challenge "any alleged violation of statute or regulation in connection with a procurement or a proposed procurement"—is nearly identical to the Competition in Contracting Act's provisions for the GSA Board: "[A]n interested party" may challenge "any decision by a contracting officer alleged to violate a statute or regulation" "in connection with any procurement." § 2713, 98 Stat. 1182. By transporting the substantive provisions of the Competition in Contracting Act—including the key term "interested party"—almost wholesale into Section 1491(b)(1), Congress naturally incorporated the settled understanding of that term.

Were further confirmation needed, the Federal Circuit's consistent interpretation of Section 1491(b)(1) provides it. The Federal Circuit has held since 2001 that only actual or prospective bidders or offerors may bring suit under Section 1491(b)(1). *AFGE*, 258 F.3d at 1302. In the subsequent two-and-a-half decades, the Federal Circuit has reaffirmed that holding in at least a half-dozen published opinions. See pp. 4-5, *supra*. Meanwhile, Congress has amended Section 1491(b) on multiple occasions without touching the "interested party" language. *E.g.*, Consolidated Appropriations Act,

2008, Pub. L. No. 110-161, Div. D, § 739(c)(2), 121 Stat. 2031; National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 861, 125 Stat. 1521. Because "Congress has left the Federal Circuit's interpretation of" the statutory language "untouched" despite repeated amendments to the surrounding section, any "recalibration" of that interpretation belongs to Congress. *Microsoft Corp.* v. *i4i Ltd. P'ship*, 564 U.S. 91, 113-114 (2011).

b. Petitioner dismisses (Pet. 26) the court of appeals' analysis as favoring "legislative history" over the "plain text." But giving legal terms of art their specialized meaning is a standard method of text-based statutory interpretation, not a byword for legislative history. See Antonin Scalia & Bryan A. Garner, *Reading Law* 73-77 (2012). To be sure, the legislative history confirms that Congress intentionally limited statutory standing to actual or prospective bidders or offerors. See Pet. App. 14a-15a; *AFGE*, 258 F.3d at 1299-1302. And other failed legislative proposals demonstrate that Congress considered and declined to enact proposals to permit subcontractors like petitioner to sue under the Competition in Contracting Act. Pet. App. 21a-23a. But nothing in the above analysis depends on any of that history. The link between Section 1491(b)(1) and its predecessor statute is self-evident from their parallel text.

In any event, petitioner's appeal to textualism is curious since petitioner does not endorse an ordinary-meaning interpretation of "interested party." Petitioner instead defines (Pet. 27) an "interested party" as a party with "a 'direct economic interest' in the agency action it is challenging." That definition comes not from a dictionary, but from the same place the court of appeals looked: the Competition in Contracting Act. See

§§ 2713, 2741(a), 98 Stat. 1184, 1199 (requiring a "direct economic interest"). Petitioner just takes the half of the definition it likes ("direct economic interest") and discards the half that it does not ("actual or prospective bidder or offeror"). *Ibid.* But excising half of a term-of-art definition is not a valid mode of statutory interpretation.

Petitioner then offers a different term-of-art theory, suggesting that "interested party" in Section 1491(b)(1) is equivalent to "person . . . aggrieved" under the APA, because Senator Levin described the 1996 amendments as capturing "the full range of bid protest cases" previously reviewed in district court under the APA. Pet. 6, 30 (quoting 28 U.S.C. 1491(b)(1); 5 U.S.C. 702; and 142 Cong. Rec. 26,646 (1996)) (emphasis omitted). Even assuming that district courts before 1996 would have heard bid-protest claims by prospective subcontractors like petitioner, but see Pet. App. 32a-33a, petitioner cannot "make a term-of-art argument without the term of art." *Medical Marijuana, Inc.* v. *Horn*, 604 U.S. 593, 603 (2025). Section 1491(b)(1) conspicuously omits the APA's "person * * * aggrieved" language, which appears in 5 U.S.C. 702, even though Congress elsewhere incorporated the APA's standards of review from 5 U.S.C. 706. See 28 U.S.C. 1491(b)(4). Congress instead borrowed the "interested party" formulation from the Competition in Contracting Act, which had a settled meaning in the federal-procurement context. That meaning—not the APA—governs here.

Petitioner also suggests (Pet. 25-26) that the court of appeals' decision would prevent any suit "solely under prong three" of Section 1491(b)(1) (*i.e.*, any suit alleging a violation of a statute or regulation in connection with a procurement). But that is incorrect. As an initial mat-

ter, petitioner artificially "divide[s] the statute into three 'prongs'" when in reality Congress wrote "a single, unbroken, and undivided sentence." Pet. App. 18a. But even accepting petitioner's premise that Congress created three separate claims, "many cases show that the so[-]called 'third prong' has independent force." *Id.* at 25a; see *id.* at 26a-28a (collecting cases). For example, a bid protest where no solicitation was issued can be brought only under that portion of the statute. *Id.* at 26a-27a. Petitioner's capacious understanding of "interested party" is therefore not necessary to give independent force to all of Section 1491(b)(1).

Petitioner's expansive definition of "interested party," however, would carry significant consequences for federal-procurement law. If any economically interested prospective subcontractor could challenge any alleged lapse in the agency's supervision of the prime contractor's compliance with statutes and regulations, many aspects of contract performance would seemingly be open to challenge. Federal contracts incorporate numerous obligations from preferences for domestic over foreign supplies, 41 U.S.C. 8302, to preferences for hiring veterans, 38 U.S.C. 4212. Petitioner's theory would suggest that, even when the government is satisfied with the prime contractor's compliance, private litigants could sue to enforce any perceived violation. Such additional litigation would not promote the "efficiency" of federal procurement (Pet. 23) but instead disrupt the government's ability to obtain and enforce its contracts.

That result would also allow prospective subcontractors to bypass the Contract Disputes Act of 1978, 41 U.S.C. 7101 *et seq.* That statute is supposed to provide the "comprehensive statutory system of legal and administrative remedies in resolving government contract

claims" and does not allow even *actual* subcontractors to bring suit because they lack privity with the government. *Winter* v. *FloorPro, Inc.*, 570 F.3d 1367, 1369 (Fed. Cir. 2009) (citation omitted); see *id.* at 1371. The court of appeals correctly rejected an interpretation that would risk such destabilizing effects for federal-procurement law.

2. This case does not satisfy the traditional criteria for this Court's review.

a. As petitioner recognizes (Pet. 37), bid-protest appeals fall within the exclusive jurisdiction of the Federal Circuit, so no circuit conflict does or could exist on the question presented. Petitioner suggests (Pet. 22) that the Federal Circuit's decision to rehear this case en banc demonstrates its inherent "importan[ce]." But this Court routinely declines to review decisions of the en banc Federal Circuit. *E.g.*, *EcoFactor, Inc.* v. *Google, LLC*, 2025 WL 2949599 (2025) (No. 25-341); *Procopio* v. *Wilkie*, 140 S. Ct. 2738 (2020) (No. 19-819); *Parkinson* v. *Department of Justice*, 585 U.S. 1003 (2018) (No. 17-1098); *Samsung Elecs. Co.* v. *Apple Inc.*, 583 U.S. 963 (2017) (No. 16-1102); *Limelight Networks, Inc.* v. *Akamai Techs., Inc.*, 578 U.S. 922 (2016) (No. 15-993).

That course is particularly appropriate here where en banc review was necessitated by an intracircuit conflict. As the government explained in seeking rehearing, the panel decision was irreconcilable with long-standing Federal Circuit precedent. Pet. for Reh'g 2-8; accord Pet. App. 105a (Clevenger, J., dissenting) (highlighting "the majority's refusal to follow *AFGE*"). The en banc court's intervention was therefore required to restore uniformity to the Federal Circuit's precedents. Now that the en banc court has resolved that intracircuit conflict, *this* Court's intervention is unwarranted.

b. Petitioner's other principal argument about the importance of the question presented is its claim (Pet. 21) that the decision below will "eviscerate[]" 10 U.S.C. 3453, which requires agencies to prefer commercial products and services "to the maximum extent practicable," 10 U.S.C. 3453(a) and (b). But a statute is not "eviscerate[d]" just because a particular party lacks a private right of action. Cf. *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357, 384-385 (2025). The statute principally charges "[t]he head of an agency" with ensuring compliance by "procurement officials in that agency." 10 U.S.C. 3453(b). And the statute directs "[t]he Secretary of Defense" to provide "mandatory training" to ensure compliance by military and civilian personnel. 10 U.S.C. 3453(e). Accordingly, the SAFFIRE contract incorporates a Federal Acquisition Regulation clause obligating CACI to prefer commercial products to the maximum extent practicable. C.A. App. 797; see Federal Acquisition Regulation (FAR), 48 C.F.R. 52.244-6(b). Nothing in that framework suggests that Congress saw private enforcement actions by prospective subcontractors as the only way to ensure compliance with the commercial-preference provision.

Regardless, the Federal Circuit has consistently used the same definition of "interested party" for 24 years, see pp. 4-5, *supra*, and petitioner does not suggest that the commercial-preference provision has lain dormant in the meantime. As Judge Clevenger observed, Federal Circuit "precedent already confirms that prospective bidders are capable of enforcing compliance with § 3453." Pet. App. 110a.

Petitioner's lead "case demonstrat[ing] the importance of granting the petition" (Pet. 36) proves as much. In *Palantir USG, Inc.* v. *United States*, 904 F.3d 980 (Fed.

Cir. 2018), Palantir successfully sued the Army for allegedly failing to consider commercially available products like Palantir's. *Id.* at 990-995. Palantir could bring that suit because it filed a pre-award bid protest challenging the Army's failure to limit the contract to commercial products. *Id.* at 988. Here, petitioner could have challenged the SAFFIRE solicitation for not splitting the computer-vision component into its own procurement. Or petitioner could have bid for the SAFFIRE contract by touting its "state-of-the-art technology and expertise" in computer vision (Pet. 12) while teaming with another contractor that could address the database-management portion of the contract. See FAR Subpt. 9.6 ("Contractor Team Arrangements"). Petitioner's failure to bring a viable claim does not demonstrate any broader barrier to enforcing the commercial-preference provision. And even if there were no other party that could bring such a claim, "the assumption that if these plaintiffs lack standing to sue, no one would have standing, is not a reason to find standing." *FDA* v. *Alliance for Hippocratic Med.*, 602 U.S. 367, 396 (2024) (citation and internal quotation marks omitted).

3. In any event, this case is an unsuitable vehicle to address the question presented because the case will almost certainly become moot in January 2026.

Petitioner alleges that CACI failed to consider adequately petitioner's product in fulfilling NGA's task order for computer vision as part of the SAFFIRE contract. See Pet. App. 125a. But that task order will expire on January 30, 2026, C.A. App. 860, 865, at which point the present dispute will become moot.[2] "[I]f an

[2] The computer-vision task order incorporates a Federal Acquisition Regulation clause that would have permitted NGA to extend the performance period by up to six months, C.A. Supp. App. 1531,

event occurs while a case is pending on appeal that makes it impossible for the court to grant 'any effectual relief whatever' to a prevailing party, the appeal must be dismissed." *Church of Scientology of Cal.* v. *United States*, 506 U.S. 9, 12 (1992) (citation omitted). The Court would therefore be unable to reach the question presented under its typical schedule. At minimum, the need to resolve an antecedent jurisdictional question counsels against this Court's review.[3]

Even were the case for some reason not moot as a formal matter, the limited practical relief that petitioner could obtain makes certiorari unwarranted. In its complaint, petitioner principally sought an injunction directing "an appropriate evaluation of the practicability of incorporating Mirage to meet the SAFFIRE requirements for a [computer-vision] system." Compl. 66. Once the relevant task order is completed in January 2026, any such evaluation would have no practical effect. Petitioner cannot belatedly participate in a task order that has concluded.

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but that option had to be exercised at least 60 days before the task order's expiration, *ibid.*—*i.e.*, by December 1, 2025. NGA did not exercise that option and has no plans otherwise to extend the computer-vision task order beyond January 30, 2026.

[3] The mootness exception for cases that are capable of repetition yet evading review does not apply. That exception requires that "the challenged action is in its duration too short to be fully litigated prior to cessation or expiration." *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162, 170 (2016) (brackets and citation omitted). But the computer-vision task order was ultimately in effect for five years, C.A. App. 865—which should have been more than enough time for full litigation. Petitioner, however, waited nearly two years before filing suit. See Compl. (Jan. 9, 2023).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
BRETT A. SHUMATE
Assistant Attorney General
PATRICIA M. MCCARTHY
CORINNA A. NIOSI
RETA E. BEZAK
GALINA I. FOMENKOVA
Attorneys

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