

GSA Delays Rollout of AI Procurement Terms and Conditions, Extends Comment Period to April 3

March 24, 2026

WHAT: The U.S. General Services Administration (GSA), which recently issued proposed terms and conditions that would govern agencies' procurement and use of artificial intelligence (AI) systems and services purchased through the GSA Schedules program, has delayed the rollout of these proposed terms to allow more time for industry comment. As outlined below, the proposed clause includes a number of significant provisions that may be of interest to vendors who offer AI systems through the GSA Schedule, including:

- Broad intellectual property rights provisions that grant the Government "ownership" of data connected with the AI, including ownership of "enhancements" to AI systems;
- Strict requirements for "American AI Systems," including a prohibition on the incorporation of any AI components "manufactured, developed, or controlled by non-U.S. entities."
- Extensive restrictions on use, handling and processing of Government Data, including a requirement for "eyes off" data handling procedures, "data localization" requirements, and controls to ensure Government Data is "logically segregated";
- Data portability and interoperability requirements, including use of "open and standard" data formats and APIs to prevent "vendor lock-in";
- Incident reporting requirements ranging from one hour to 72 hours, as well as other reporting and disclosure requirements regarding use and performance of AI systems; and

Authors

Tracye Winfrey Howard
Partner
202.719.7452
twhoward@wiley.law

Kevin J. Maynard
Partner
202.719.3143
kmaynard@wiley.law

Kathleen E. Scott
Partner
202.719.7577
kscott@wiley.law

W. Benjamin Phillips, III
Associate
202.719.4376
bphillips@wiley.law

Practice Areas

Artificial Intelligence (AI)
Government Contractors & Grantees
Government Contracts
Government Contracts
Privacy, Cyber & Data Governance

- Requirements for “unbiased” AI systems, consistent with earlier Executive Orders (EOs) regarding federal agencies’ use of AI.

Almost as noteworthy is what is *not included* in GSA’s proposed AI Clause: any reference to vendors’ standard commercial terms and conditions. While GSA Schedules typically include vendors’ standard commercial license agreements similar terms of use – consistent with the rules governing federal agencies’ procurement of commercial products and services through the GSA Schedule – the proposed AI Clause as currently drafted includes no reference to vendors’ standard commercial terms.

WHEN: The proposed AI Clause was published on March 6, 2026, as part of an advance notice of the upcoming GSA Schedule Refresh 31. While GSA originally set a comment deadline for March 20, it announced on March 19 that it was extending the comment deadline in response to industry requests, and that the AI Clause will not be included in Refresh 31. Accordingly, comments are due by April 3, 2026. Once finalized, the new AI Clause will be implemented in a new GSAR clause 552.239-7001, “Basic Safeguarding of Artificial Intelligence Systems” (AI Clause), which will be incorporated into the Schedule via a later Refresh.

WHAT IT MEANS FOR INDUSTRY: GSA’s proposed AI Clause is being issued pursuant to the guidance provided in OMB Memo M-25-22, *Driving Efficient Acquisition of Artificial Intelligence in Government*, which among other things directed agencies to include certain terms and conditions in contracts for AI systems and services (see our prior alert here). Consistent with OMB’s guidance, GSA’s proposed AI Clause includes the following provisions governing agencies’ procurement of AI systems and services:

- **Covered AI Systems.** Under an accompanying GSAR rule issued by GSA, the proposed AI Clause is to be included in any solicitation or contract for “Artificial Intelligence capabilities,” which is not defined. However, the proposed AI Clause itself incorporates the definition of “AI System” from the Advancing American AI Act (40 U.S.C. § 11301, Note), which broadly defines an AI System as “any data system, software, application, tool, or utility that operates in whole or in part using dynamic or static machine learning algorithms or other forms of artificial intelligence,” where (1) the system is used “primarily for the purpose of researching, developing, or implementing” AI technology, or (2) an AI capability “is integrated into another system or agency business process, operational activity, or technology system.” Despite its broad scope, the definition excludes “any common commercial product within which artificial intelligence is embedded, such as a word processor or map navigation system.”
- **Requirement For “American AI Systems.”** Products and services sold through the GSA Schedule are generally subject to the Trade Agreements Act (TAA), which allows contractors to offer products and services from designated countries that have entered into a free trade agreement with the United States. In addition, information technology (IT) products that qualify as “commercial” are, by statute, exempt from the Buy American Act (BAA). Notwithstanding these existing requirements, GSA’s proposed AI Clause includes a requirement to use only “American AI Systems,” as well as an express prohibition on “use of foreign AI systems in the performance of this contract, including any AI components manufactured, developed, or controlled by non-U.S. entities.” The term “American AI Systems” is not defined in the GSA AI Clause, and the guidance in OMB Memo M-25-22 states only that “it is the policy

of the United States to buy American and to maximize the use of AI products and services that are developed and produced in the United States.”

- **Intellectual Property Rights.** Under existing rules governing the procurement of “commercial” products and services through the GSA Schedule, the Government typically acquires only the rights in intellectual property customarily provided under the contractor’s standard commercial license agreement, to the extent consistent with federal law. Consistent with these rules, GSA Schedules typically incorporate the contractor’s applicable commercial end-user license agreement (EULA) or terms of use, as well as a standard clause addressing provisions that are inconsistent with federal law. However, GSA’s proposed AI Clause includes no reference to the contractor’s commercial license or terms of use and instead includes an extremely broad intellectual property rights provision. Under this provision, the Government retains “full ownership of, and will own” all Government Data and “Custom Developments” developed under the contract, as well as any “feedback” provided by the Government with respect to the AI System. While “Custom Developments” is broadly defined, it does exclude “background intellectual property” that existed prior to the contract or developed independently by the contractor.
- **Use, Handling, and Processing of Government Data.** GSA’s proposed AI Clause includes a number of restrictions on the use, handling, and processing of “Government Data,” which is broadly defined to include all “Data Inputs” submitted by or created for the Government, as well as all “Data Outputs” generated in performance of the contract. These restrictions include broad prohibitions on the contractor using Government Data for any purpose other than the performance of the contract – including prohibitions on using Government Data to train, fine-tune or improve the AI system. In addition, contractors are required to implement “eyes off” data handling procedures that restrict human review of Government Data except as necessary to perform the contract; “data localization” requirements to restrict the transmission or storage of Government Data outside of the “agreed upon premises”; and technical and organizational controls to ensure Government Data is “logically segregated” from other data.
- **Data Portability and Interoperability.** OMB Memo M-25-22 included requirements for agencies to implement terms and conditions to prevent “vendor lock in.” Consistent with this direction, GSA’s AI Clause requires use of “open and standard” data formats and APIs; prohibits use of “proprietary technologies” that require additional licensing or create “vendor dependencies”; and requires the contractor to provide tools to enable exporting of Government Data to a separate system.
- **Incident Reporting.** Under the AI Clause, contractors are required to report cybersecurity incidents to the Cybersecurity and Infrastructure Security Agency (CISA) within 72 hours after discovery of a suspected or confirmed incident, as well as daily status updates. To the extent the AI system is already covered by FedRAMP incident reporting requirements (which generally require cloud service providers to report incidents within one hour), the FedRAMP procedures will apply.
- **Unbiased AI Principles.** Consistent with OMB guidance and Executive Orders, the GSA AI Clause requires the contractor to ensure that the AI System uses “Unbiased AI Principles” that are “neutral,” “nonpartisan,” and do not apply “ideological dogmas such as Diversity, Equity, Inclusion.”

- **Service Provider Compliance.** The clause requires that contractors using AI from a service provider, defined as “an entity that directly or indirectly provides, operates, or licenses an AI system but is not a party to the contract,” ensure the service provider’s adherence to the clause.
- **Disclosure Requirements.** GSA’s AI Clause includes a number of disclosure requirements, including a requirement to disclose within 30 days of award (or earlier if requested) all AI systems used in performance of the contract, and whether the AI system has been modified or configured to comply with any non-U.S. federal government or commercial compliance or regulatory framework. In addition, contractors are required to notify the Government within seven days of any change that “materially increases output bias or decreases safety guardrails or behavioral constraints impacting lawful usage or the performance or truthfulness of outputs.”

GSA’s proposed AI Clause would impose significant compliance requirements on contractors that are either directly providing AI systems to the Government or using AI systems in the performance of a government contract. Given the growing use of AI systems in everyday business operations, contractors need to be aware of how the integration of AI systems into their operations can create compliance obligations under GSA’s proposed AI Clause. Contractors that hold a GSA Schedule contract or are seeking to obtain a Schedule contract to offer AI systems or services should review GSA’s proposed AI Clause and consider submitting comments on the proposed clause.