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Bradley Arant Boult Cummings LLP

CONSTRUCTION AND PROCUREMENT LAW NEWSLETTER

IN THIS ISSUE

WILL ARTIFICIAL INTELLIGENCE INCREASE THE PRICES OF CONSTRUCTION MATERIALS, EQUIPMENT AND LABOR?

Noah Matthews & Zachary Stewart

By now, you've likely seen news discussing how artificial intelligence (AI) is set to change the construction industry (and every other industry, for that matter). Typically, this discussion centers on improving business efficiency and cost savings. Many construction companies are predictably using AI to assist with project estimating, processing submittals and Requests for Information (RFIs), and, yes, contract review.

However, as more players in the construction industry adopt AI, it may lead to some potentially unexpected outcomes for contractors, like higher material, equipment, and labor costs. Earlier this year, several construction companies filed class-action antitrust lawsuits against the largest equipment rental providers in the United States, alleging a conspiracy to artificially inflate equipment rental prices. Specifically, the plaintiffs allege these providers illegally conspired to increase prices by sharing real-time, confidential data through the "Rouse Rental Insights" (RRI) program.

The lawsuits have been consolidated into the matter of *In re Construction Equipment Antitrust Litigation* (Case No. 1:25-cv-03487) and are pending in the United States District Court for the Northern District of Illinois.

Many large construction equipment rental providers use RRI to share pricing data from individual line items on invoices. The RRI program uses AI to aggregate pricing information and generate a recommended "RRI Price" daily for each class and category

SAFETY MOMENT FOR THE CONSTRUCTION INDUSTRY

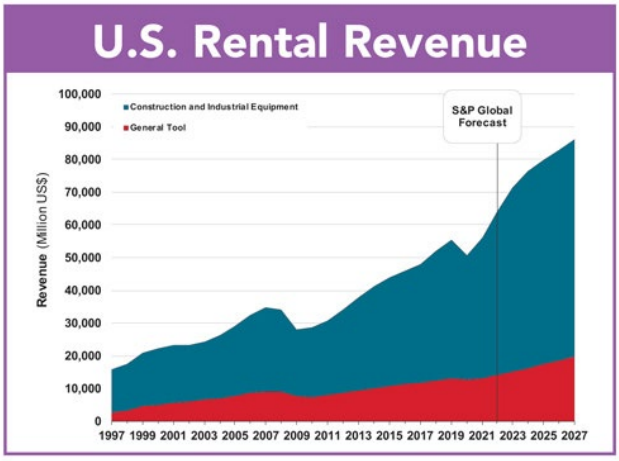
Carly Miller

Construction remains one of the most dangerous industries in the U.S., with nearly 15 worker fatalities every day—numbers the industry cannot accept as inevitable. AI offers a critical opportunity to improve safety not by replacing workers, but by augmenting them, starting with more precise, constructible designs that reduce rework, rushed schedules, and on-site improvisation. AI-driven design, robotics, and real-time monitoring can proactively eliminate hazards, automate the most dangerous tasks, and provide continuous oversight that human teams alone cannot sustain. Used thoughtfully, these technologies elevate the role of the construction worker and help ensure that safety is built into projects from the design phase forward—so more people go home safe every day.

of equipment. The RRI Price considers seasonal changes and other market fluctuations to predict the optimal rental price for a given day.

The plaintiffs in the class action contend that by sharing their confidential pricing data with the RRI pricing tool and agreeing to use the AI-driven "RRI Price," the equipment rental providers have conspired to significantly increase rental prices. The plaintiffs argue that such price increases are harmful because (1) there are relatively few large equipment rental providers; (2) buying (rather than renting) equipment is uneconomical for most contractors; and (3) increases in equipment rental rates do not significantly decrease the demand for equipment rentals.

Below is a graphic contained in the plaintiffs' complaint showing the growth in the U.S. construction equipment rental industry since 1997, which plaintiffs contend is due in part to their alleged conspiracy:



Source: S&P Global Market Intelligence, ARA Rentalytics

The class action lawsuit is ongoing, and the results may determine how AI is utilized in the construction industry going forward. If the equipment rental companies successfully defend the use of the RRI Price, other industry players could adopt similar AI pricing models, which could lead to increased prices in other segments of the construction industry.

THE "REVOLUTIONARY FAR OVERHAUL": WHAT GOVERNMENT CONTRACTORS NEED TO KNOW

Aron Beezley, Eugene Benick & Patrick Quigley

The Federal Acquisition Regulation (FAR) is often described as the "bible" of federal procurement. For decades, it has governed how agencies acquire goods and services, and how contractors compete for, win, and perform government contracts. While incremental updates are common, the federal procurement community is now bracing for the implementation of an effort describing itself as a "revolutionary FAR overhaul" — a top-to-bottom "modernization effort" that could reshape the contracting landscape.

Why an Overhaul Now?

For some time, certain policymakers, acquisition officials, and industry stakeholders have criticized the FAR for being:

- **Overly complex** – Thousands of pages of regulations can overwhelm even experienced contractors.
- **Outdated** – Some provisions reflect procurement practices from the 1980s, ill-suited to today's fast-moving tech environment.
- **Inflexible** – Agencies often struggle to adopt innovative solutions due to rigid rules.

The current change has its roots in an April 2025 Executive Order (E.O. 14275), entitled "Restoring Common Sense to Federal Procurement," which has as its stated goal the revision of the FAR "to ensure that it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests." Pursuant to that policy, the overhaul is intended to simplify processes, reduce barriers to entry for small and emerging businesses, and ensure that the federal government can access cutting-edge technology and services efficiently.

Key Changes

To date, those handling the overhaul have revised nearly all of the FAR's 53 parts. The only ones not showing revisions yet are Part 2, Definitions, and Part 52, Solicitation Provisions and Contract Clauses. Nearly all the other parts proposed for revision already have at least some agency-specific deviations that will be going into effect in the coming weeks and months, pending the implementation of the overhaul officially through rulemaking. While the details are still emerging, several areas appear to be central to the FAR reform effort:

- **Simplification and Plain Language**

  The overhaul is attempting to streamline the FAR's dense and technical language into more accessible guidance, reducing ambiguity and contractor confusion. Whether the effort succeeds without losing the essential meaning of the regulations and without inadvertently changing settled law is an open question.

- **Digital Acquisition and Emerging Technology**

  FAR Part 40, Information Security and Supply Chain Security, which currently has only one subpart that is concerned with drones, is being substantially revised to include information security topics currently housed in FAR Part 4, Administrative and Information Matters, including the TikTok, Huawei, and Kaspersky bans. While the new rules do not yet address artificial intelligence integration issues, when they are addressed, it will likely be in this section. Potentially, these changes could encourage agile procurement and data-driven IT acquisitions.

- **Sustainability and Environmental, Social and Governments (ESG) Requirements**

  FAR Part 23, currently entitled "Environment, Sustainable Acquisition, and Material Safety," which has a subpart devoted to requiring contractors to disclose greenhouse gas emissions, is being revised to a part entitled "Sustainable Acquisition, Material Safety, and Pollution Prevention," which does not mention greenhouse gases at all. Sustainability is now linked to whether a product is cost-effective over the life of the product.

- **Small Business and Socioeconomic Priorities**

  Despite the fact that some of the earliest executive orders of the current administration took the position that federal diversity, equity, and inclusion (DEI) programs were illegal, i.e., Ending Radical and Wasteful Government DEI Programs and Preferencing (E.O. 14151) and Ending Illegal Discrimination and Restoring Merit-Based Opportunity (E.O. 14173), the proposed overhaul of FAR Part 19, now called "Small Business," leaves the Historically Underutilized Business Zone (HUBZone), the Women-Owned Small Business (WOSB), and the 8(a) programs in place. Indeed, the revised section reiterates the current policy of providing "maximum practicable opportunities in its acquisitions to small business and other small business socioeconomic categories." As stated in the General Services Administration class-deviation, the goal of the reform involves streamlining the requirements and "reorganizing them to align with the actual workflow of a contracting professional." The effect of these changes may be to broaden access for small businesses, including expanding mentor-protégé arrangements, easing compliance burdens, and strengthening set-aside programs.

What Contractors Should Do Now

Although the overhaul will not happen overnight, numerous agency-specific class-deviations are in the process of going into effect, so government contractors should begin preparing *now*. For example, contractors should:

- **Monitor Proposed Rulemaking** – Participate in public comment opportunities when draft rules are released. Industry input can shape final requirements.

- **Assess Compliance Systems** – Ensure your internal compliance infrastructure is adaptable — particularly in cybersecurity, reporting, and artificial intelligence areas.

- **Invest in Training** – Procurement and compliance teams should be prepared for a steep learning curve as familiar processes are rewritten.

- **Engage with Agencies** – Proactively communicating with contracting officers about how reforms may impact performance and pricing can provide valuable insights.

- **Consult with Counsel** – Contractors should consult with experienced government contracts counsel about how to interpret, adapt to, and comply with the new rules.

Looking Ahead

The revolutionary FAR overhaul promises to be the among the most significant procurement reform in decades. For federal contractors, this is not simply a regulatory update — it is a paradigm shift. Those who adapt early, stay engaged, and build flexible compliance systems will be well-positioned to thrive under the new regime.

IS YOUR SUBCONTRACTOR AN INDEPENDENT CONTRACTOR OR AN EMPLOYEE? THE ANSWER MAY NOT BE AS SIMPLE AS YOU THINK

John Mark Goodman & Anne Yuengert

Most construction contracts include a provision stating that the contractor or subcontractor is an independent contractor and not an employee of the owner or contractor. That should settle the matter, right? Wrong. Depending on the context and jurisdiction, such contractual provisions may mean little or nothing at all.

Check State Laws

In 2024, the Minnesota Legislature passed a law that contains 14 mandatory requirements for a construction contractor to qualify as an independent contractor under the state labor laws. Among other requirements, the contractor must:

- Have federal and state tax ID numbers;
- Receive and retain Form 1099s;
- Have certain types of unemployment and workers' compensation insurance;
- Have control over the means of performing the work;
- Have a written contract that is fully executed no later than 30 days after work commences; and
- Submit written invoices.

Contractors in Minnesota who do not satisfy all these and other requirements are considered employees. The state may assess fines of up to $10,000 per violation against those who misclassify their contractors and subcontractors as independent contractors.

In *Minnesota ABC v. Blissenbach*, the Minnesota Chapter of the Associated Builders and Contractors (ABC) challenged the new law in federal court arguing that it was unconstitutional. ABC alleged several common practices that the law arguably proscribes, including not executing written subcontracts within 30 days of beginning work and paying subcontractors without receiving an invoice. The district court rejected ABC's constitutional challenge, and just last week, the Eighth Circuit Court of Appeals affirmed. The Eighth Circuit held that the law was not unconstitutionally vague and did not violate the Excessive Fines Clause of the U.S. Constitution. As a result, the law remains in effect and may be enforced by the Minnesota Department of Labor and attorney general.

Takeaways

The *Blissenbach* decision is a good reminder to consult state law regarding the classification of independent contractors for purposes of complying with state employment laws.

BRADLEY LAWYER ACTIVITIES AND NEWS

For the 6th time since 2018, Bradley's Construction Practice Group received the "***Law Firm of the Year***" award, earning recognition as the U.S. "**Law Firm of the Year" for Litigation – Construction** in the 2026 edition of *Best Law Firms*.

Bradley was previously named the "Law Firm of the Year" in Litigation – Construction in 2023 by *Best Law Firms* and was honored for Construction Law in 2018, 2020, 2022 and 2025. These awards are presented annually to a single firm in each practice area on a national scale based on client reviews, attorney feedback, firm size and presence, prior honors, and the number of lawyers recognized in the relevant practice areas, as well as supporting information provided by firms.

The firm earned Tier 1 metropolitan rankings for Litigation – Construction in Atlanta, Birmingham, Charlotte, Houston, Jackson, Nashville, Tampa, and Washington, D.C. in the 2026 edition of *Best Law Firms*. Overall, the firm earned 35 national rankings and 273 metropolitan rankings.

The 2025 edition of *Chambers USA* has ranked a total of 168 attorneys and 56 practice areas from Bradley. This includes seven of the firm's practice areas that are ranked nationally, as well as 14 attorneys who earned nationwide rankings.

Bradley is pleased to announce that Chambers and Partners has ranked nationally Bradley's Construction and Government Contracts practice areas.

WHO DO YOU WORK FOR? TEXAS SUPREME COURT EXPANDS CONTRACTOR IMMUNITY ON ROADWAY PROJECTS

Joe Mack Curry II and John Mark Goodman

When injuries occur on public roadways, plaintiffs often look beyond the immediate parties and sue the engineers and contractors who designed or built the roadway. Many states have statutes that attempt to shield those parties from liability. Whether immunity attaches in a given case is often a matter of statutory interpretation. For example, in Texas, contractors who construct or repair a highway, road, or street for the Texas Department of Transportation are immune from liability for personal injuries provided that the contractor complied with contract documents material to the condition that caused the injury (see Tex. Civ. Prac. & Rem. § 97.002). This seems straightforward enough, but what if the contractor was hired by a county to work on a road that will be maintained by the Texas Department of Transportation?

This issue was addressed in a decision released last week by the Supreme Court of Texas in *Third Coast Services, LLC v. Castaneda*, No. 23-0848, 2025 WL 3558839 (Tex. Dec. 12, 2025). In that case, the decedent was killed in a fatal automobile accident at an intersection under construction. The decedent's family sued the general contractor and one subcontractor (collectively "the contractors") responsible for building the roadway and installing traffic lights. The general contractor had a contract with the county, not the state, however the Texas Department of Transportation (TxDOT) had agreed to assume responsibility for the roadway's operation and maintenance once construction was complete. The contractors raised an affirmative defense under a Texas state statute that precludes liability for contractors who constructed or repaired a highway, road, or street "for" TxDOT. The lower courts found that the contractors worked for the county — not TxDOT — therefore falling outside of the statute's protection. The Texas Supreme Court disagreed.

Focusing on the statute's plain language, the court held that the term "for" is not limited to construction projects where TxDOT directly hired the contractor. The court emphasized that the ordinary meaning of "for" (based on dictionaries from around the statute's enactment) was that the result of an identified activity would be received, owned, or used by the person the activity is "for." With that in mind, the court found the work of the contractors was "for" TxDOT, because TxDOT agreed that it would bear responsibility for the operation and maintenance of the roads once completed. Accordingly, the court held that the statutory protection applied, and the lower courts erred in denying the contractors' affirmative defense.

The case is a nice win for roadway contractors in Texas and a good reminder that who you work for matters. A copy of the court's decision is available here.

GEORGIA TECH SETTLES FALSE CLAIMS ACT ALLEGATIONS OVER CYBERSECURITY FAILURES

Aron Beezley and Nathaniel Greeson

The Department of Justice recently announced that Georgia Tech Research Corporation (GTRC) has agreed to pay $875,000 to resolve allegations that it violated the False Claims Act by failing to meet required cybersecurity standards in connection with contracts with the U.S. Air Force and the Defense Advanced Research Projects Agency (DARPA).

In light of this development, government contractors would be well advised to review their cybersecurity programs, ensure the accuracy of their self-assessments, and

The firm's Government Contracts Practice Group was also elevated from the nationwide "**Highly Regarded**" table into "**The Elite**" table.

Fourteen Bradley attorneys received *national rankings*, including **Aron Beezley** in Government Contracts and Government Contracts: Bid Protests.

Bradley's Construction Group is ranked among the top firms in Alabama, Washington, D.C., Florida, Georgia, Mississippi, North Carolina, Tennessee, and Texas

The following 19 attorneys have been ranked in their respective states: **Jim Archibald, David Owen, David Pugh, Mabry Rogers, Aron Beezley, Lee-Ann Brown, Doug Patin, Bob Symon, Ben Dachepalli, Ron Espinal, Tim Ford, Debbie Cazan, John Spangler, Ralph Germany, Ryan Beaver, David Taylor, Bryan Thomas, Ian Faria, and Jon Paul Hoelscher.**

Aron Beezley, co-leader of the firm's nationally ranked Government Contracts Practice Group, has been named a 2025 *Law360* MVP of the Year winner in the Government Contracts category. Aron was also recognized as an MVP for Government Contracts in 2022.

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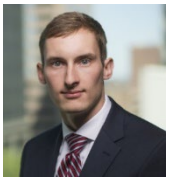
Carly Miller
Editor
Birmingham, Alabama
camiller@bradley.com
205.521.8350



Kyle M. Doiron
Editor
Nashville, Tennessee
kdoiron@bradley.com
615.252.3594

prepare for heightened oversight under the Cybersecurity Maturity Model Certification (CMMC) program.

Alleged Failures and Misrepresentations

GTRC manages sponsored research agreements on behalf of the Georgia Institute of Technology (Georgia Tech), including research contracts with the U.S. Department of Defense (DoD). According to the government, GTRC and Georgia Tech failed to implement critical cybersecurity controls while conducting sensitive cyber-defense research, misrepresented their compliance posture, and submitted false information to DoD regarding their cybersecurity readiness.

Specifically, the government alleged that until December 2021, GTRC and Georgia Tech:

- Failed to install, update, or run required anti-virus or anti-malware tools on desktops, laptops, servers, and networks at Georgia Tech's Astrolavos Lab.
- Did not have a system security plan in place until at least February 2020, despite contractual requirements to maintain one.
- Submitted a false cybersecurity assessment score of 98 in December 2020, representing that the university had a campus-wide IT system compliant with DoD standards. In reality, the score was based on a "fictitious" or "virtual" environment and did not reflect actual systems used to process covered defense information.

According to the government, these alleged misrepresentations were material because providing an accurate cybersecurity assessment score was a condition of the contract award for GTRC's DoD contracts.

DOJ and DoD Emphasize Contractor Cybersecurity Obligations

As part of the announced settlement, senior government officials emphasized the critical importance of cybersecurity compliance in DoD contracts:

- Assistant Attorney General Brett A. Shumate stated that contractors who fail to meet cybersecurity standards "leave sensitive government information vulnerable to malicious actors and cyber threats."
- U.S. Attorney Theodore S. Hertzberg for the Northern District of Georgia warned that defense contractors "who fail to implement required cybersecurity controls, provide false information to the government, and otherwise fail to fulfill their cybersecurity obligations will be held accountable."
- Stacy Bostjanick, Chief Defense Industrial Base Cybersecurity for DoD, noted that this case should remind contractors to prioritize compliance with NIST SP 800-171 and the CMMC program.

***Qui Tam* Whistleblowers Receive Share of Recovery**

The settlement resolves claims brought under the False Claims Act's *qui tam* provisions by Christopher Craig and Kyle Koza, former members of Georgia Tech's cybersecurity team. The United States intervened in the lawsuit and filed its own complaint in August 2024. Under the settlement, the relators will receive $201,250 as their share of the recovery.

Key Takeaways for Government Contractors

This settlement underscores several important points for government contractors and subcontractors to consider:

- **Cybersecurity can be a contractual obligation** – Not meeting requirements under NIST SP 800-171 or misrepresenting compliance can lead to False Claims Act liability, among other things.
- **Assessment scores matter** – Submitting inaccurate or misleading cybersecurity scores, even at a summary level, may expose contractors to government enforcement actions.
- **Whistleblowers are watching** – Employees with knowledge of cybersecurity deficiencies may bring False Claims Act suits, and DOJ has shown its willingness to intervene in these cases.
- **CMMC is the next step** – DoD's CMMC program will further strengthen assessment and certification requirements, increasing potential liability for contractors that fail to comply.

Conclusion

As enforcement actions like this one make clear, cybersecurity is no longer just an IT issue — it is a core compliance and contract performance obligation. Accordingly, federal contractors should review their cybersecurity programs, ensure the accuracy of their self-assessments, and prepare for heightened oversight under CMMC.

BRADLEY LAWYER ACTIVITIES AND NEWS CONTINUED…

422 Bradley Attorneys Listed in 2026 The Best Lawyers In America and Best Lawyers: Ones To Watch In America

Bradley is pleased to announce that 422 of the firm's attorneys are recognized in the 2026 Best Lawyers lists. The following individuals have been recognized by Best Lawyers in America in the area of Construction Law for 2026**: Jim Archibald (*Lawyer of the Year - AL*), Debbie Cazan, John Spangler, Axel Bolvig, John Mark Goodman, David Owen, David Pugh, Mabry Rogers, Chris Selman, Ryan Beaver, Monica Dozier, Avery Simmons, Barry Brooks, Jared Caplan, Jim Collura, Ian Faria, Jon Paul Hoelscher, Ralph Germany, David Taylor, Bryan Thomas, Ben Dachepalli, Eric Frechtel, Mike Koplan, Doug Patin,** and **Bob Symon.**

The following individuals have been recognized by Best Lawyers in America in the area of Litigation - Construction for 2026: **David Pugh (*Lawyer of the Year - AL*), Tim Ford (*Lawyer of the Year – FL*), Bob Symon (Lawyer of the Year – DC), Debbie Cazan, John Spangler, Jim Archibald, Axel Bolvig, John Mark Goodman, David Owen, Mabry Rogers, Chris Selman, Ryan Beaver, Barry Brooks, Jim Collura, Ian Faria, Paul Hoelscher, Ben Dachepalli, Mike Koplan, Doug Patin,** and **Bob Symon.**

Mason Rollins, Alex Thrasher, Andy Bell, Jessica Bozell, Charlie Sharman, Petar Angelov, Kyle Doiron, Gabby Spiro, Ron Espinal, Chris Odgers, Lee-Ann Brown, Erik Coon, Sabah Petrov have been recognized as *Best Lawyers: Ones to Watch* for 2026.

We're proud to share that our Houston office has been named to the *Houston Chronicle's* list of Top Workplaces 2025—a recognition that reflects the positive culture and engagement fostered by our employees, based on their own feedback.

Alex Thrasher was admitted as an associate fellow of the Construction Lawyers Society of America (CLSA).

The University of Alabama awarded **David Pugh** the 2025-2026 Distinguished Departmental Fellow Award, in recognition of his excellence in engineering, professional achievement, and commitment to the advancement of the department's educational mission.

David Taylor's article "The Top Five Mistakes Construction Lawyers Make – And How to Avoid Them" was published in ABA's Under Construction Magazine, Fall 2025 issue.