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# FEDERAL CONTRACT DISPUTES IN THE POST-FAR OVERHAUL ERA



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# AGENDA

1. Current acquisition landscape
2. New dispute risks
3. Dispute avoidance strategies
4. Early and efficient dispute resolution
5. Litigation pathways

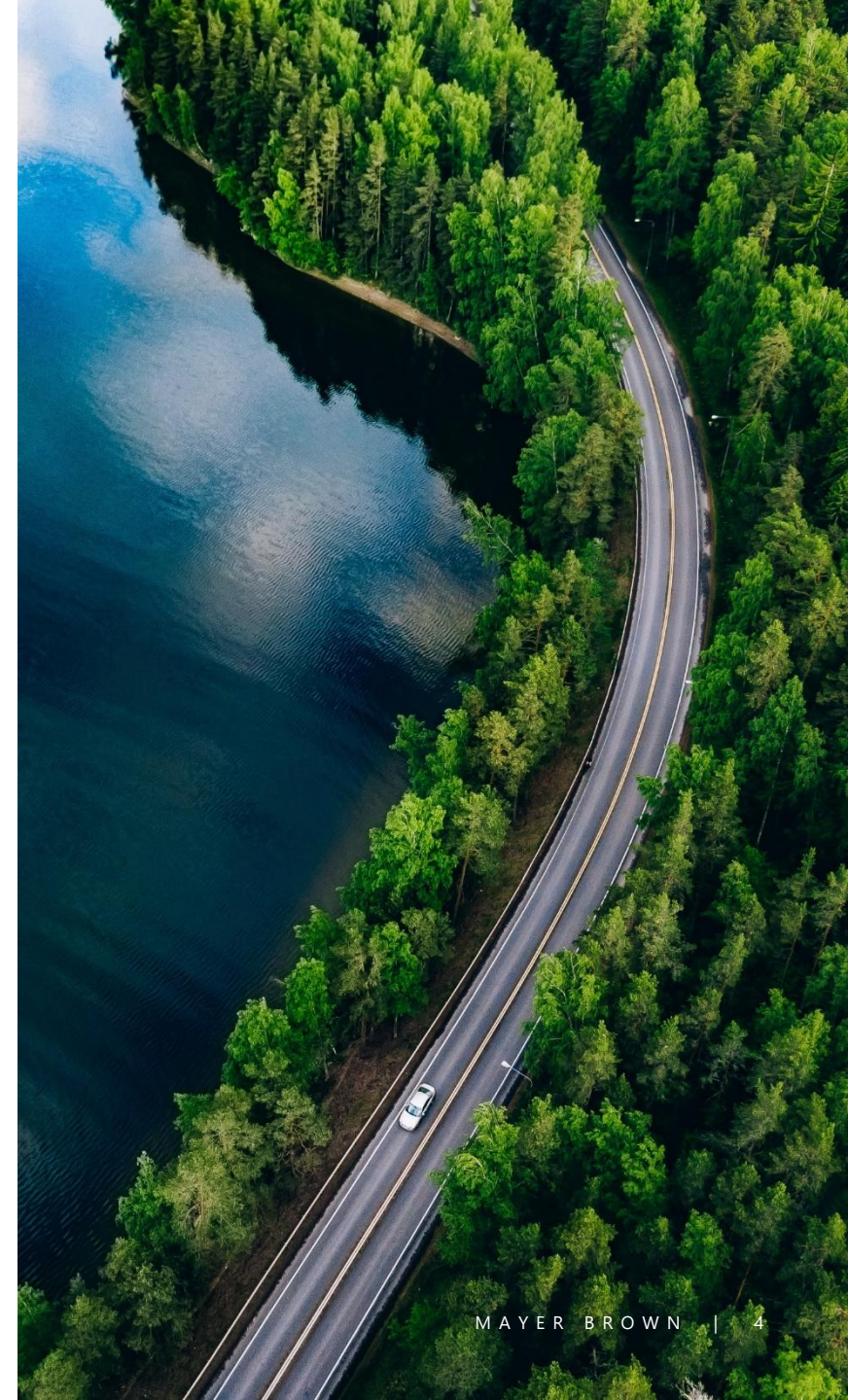
An aerial photograph showing a large, dark blue lake on the left side, bordered by a dense green forest. A paved road with yellow lane markings curves through the forest on the right side. The text '01' is centered over the lake, and 'CURRENT ACQUISITION LANDSCAPE' is centered below it. Two thin white vertical lines are positioned on either side of the text.

01

CURRENT ACQUISITION LANDSCAPE

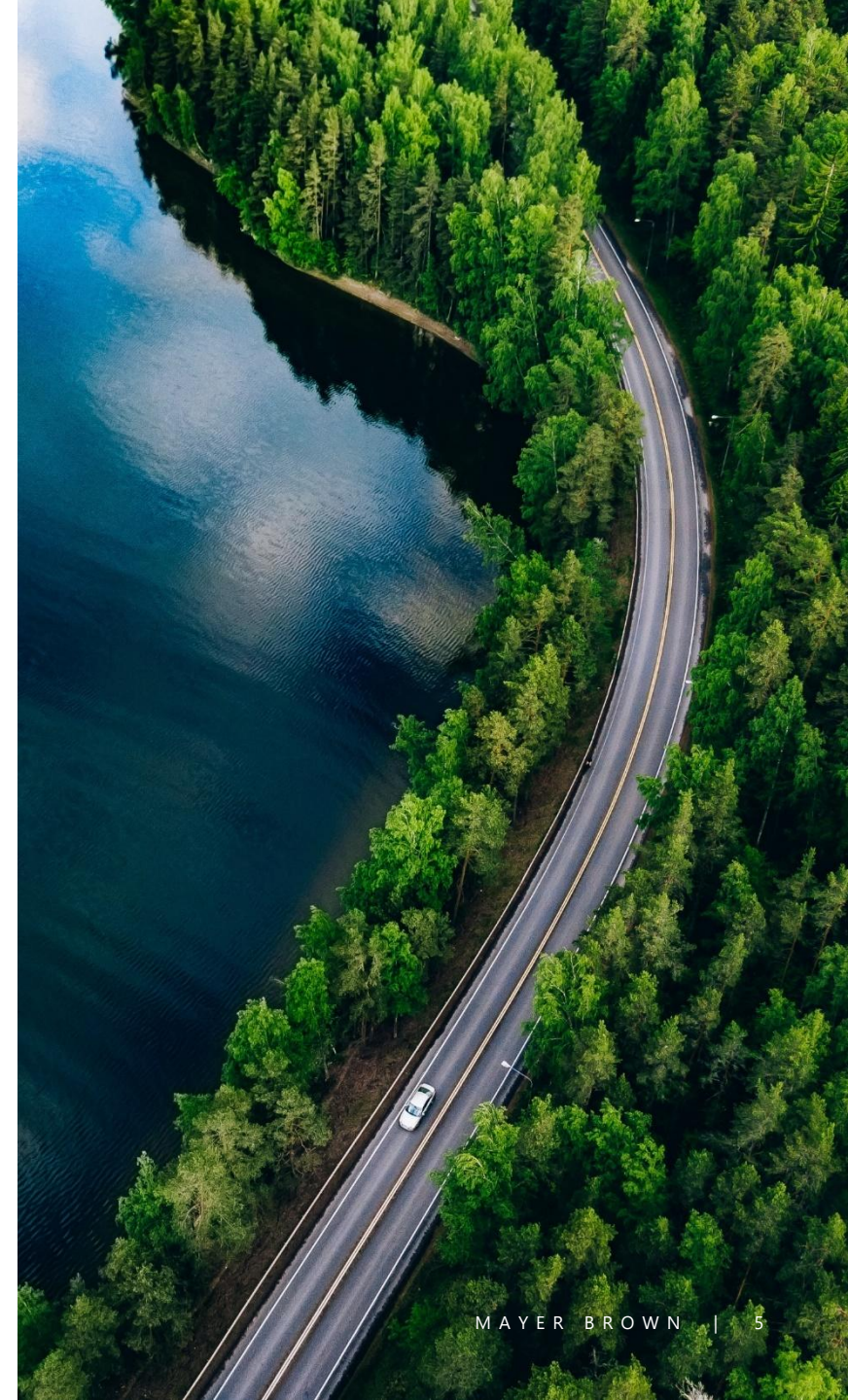
## A CONVERGENCE OF ACQUISITION REFORMS

- **FAR Overhaul**
  - Emphasis on discretion, innovation, and experimentation
  - Applies government-wide, but adoption varies so far
- **Emphasis on new acquisition models**
  - More use of OTAs and other unique approaches
  - Focus on commercial practices and “nontraditional” vendors
  - Speed over perfection; willingness to accept the “85% solution”



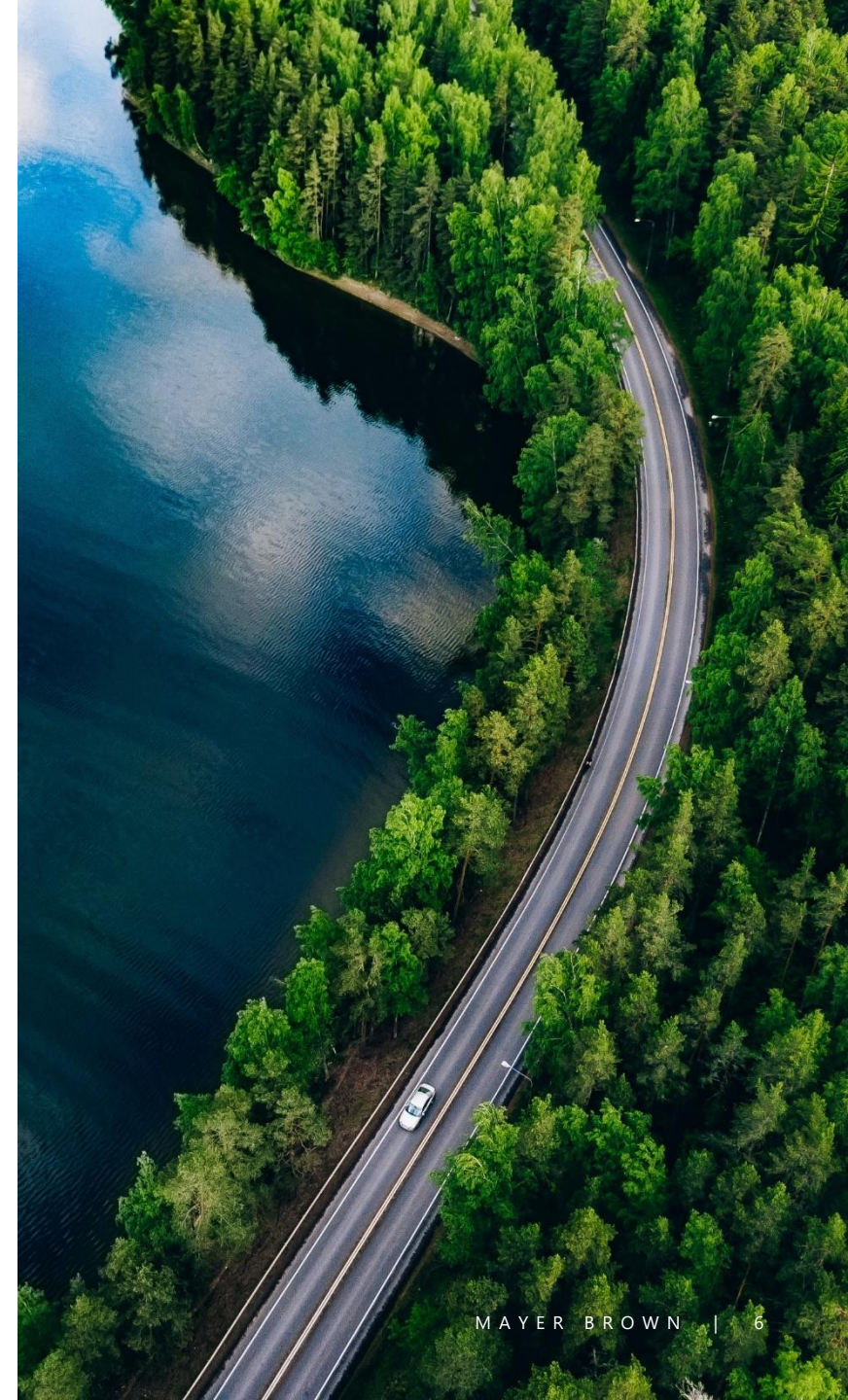
## A CONVERGENCE OF ACQUISITION REFORMS

- **Strong preference for fixed price contracts**
  - EO 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting
  - EO 14271, Ensuring Commercial, Cost-Effective Solutions in Federal Contracts
- **New tools for accountability and leverage**
  - EO 14372, Prioritizing the Warfighter in Defense Contracting
  - National security tools – supply chain risk and export controls
  - Increased use of materiality certifications
  - FAR clauses addressing magnets, semiconductors



## NEW CHALLENGES FOR INDUSTRY

- Smaller, less-experienced federal acquisition workforce
- Greater willingness by the Government to use contractual leverage throughout the acquisition lifecycle
  - Government-favorable solicitation terms
  - Requiring additional concessions for option exercise
  - Holding contractors to performance requirements (and expecting consideration for failing to meet them)
  - Termination for convenience threat
- Enforcement and accountability levers expanded
  - Use of EOs to impose new obligations
  - FCA used to enforce contractual obligations and public policy preferences
  - National security tools leveraged to negotiate terms



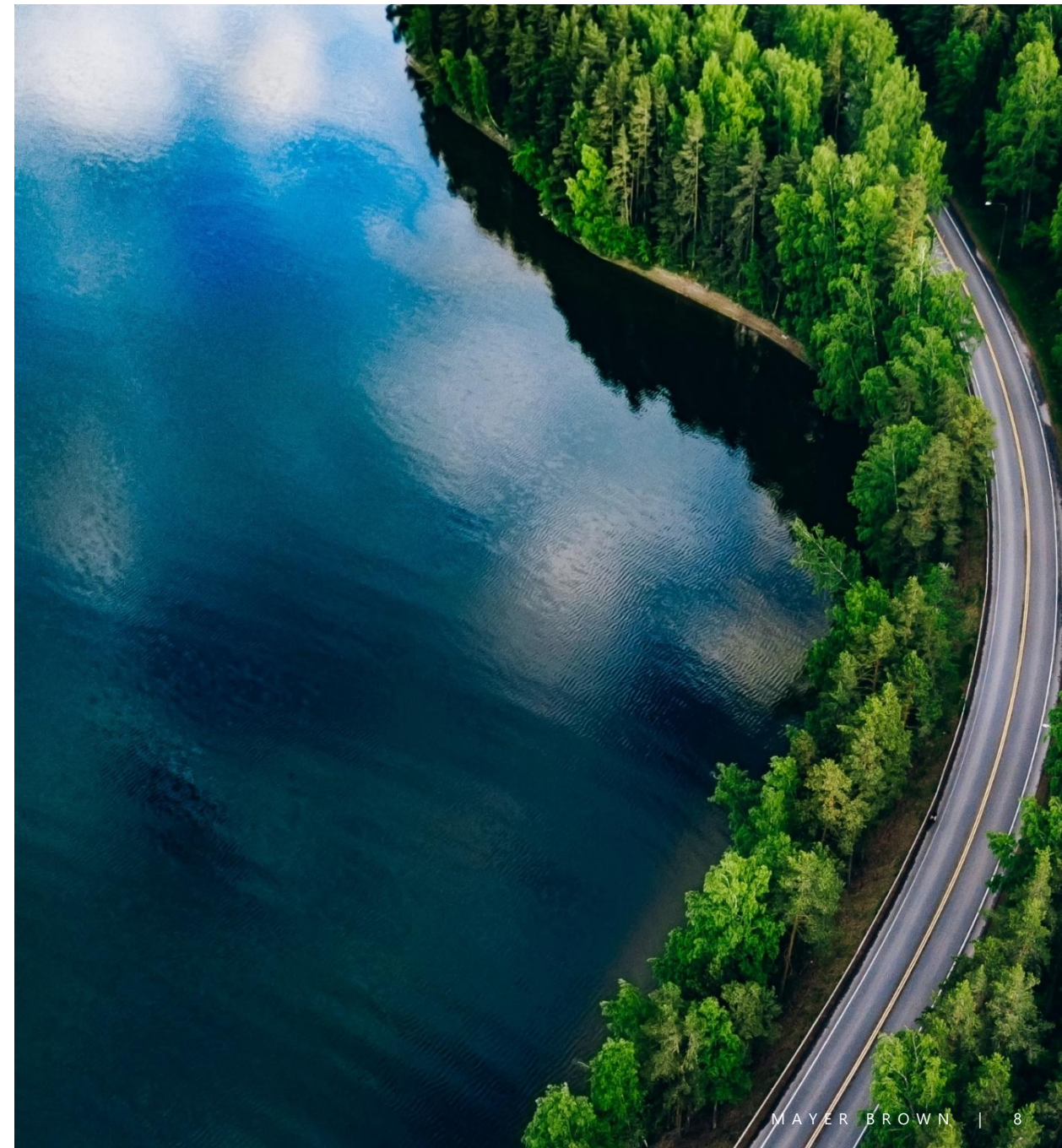
An aerial photograph showing a large, dark blue lake on the left side, which reflects the sky. On the right side, a paved road with yellow and white lane markings curves through a dense, green forest. The overall scene is serene and natural. Two thin white vertical lines are positioned on either side of the central text.

02

NEW DISPUTES RISKS

## POTENTIAL DISPUTE SCENARIOS

- Scope disputes from underdefined solicitation requirements
- Disputes over appropriate use of contract vehicles
- Supply-chain compliance disputes as source restrictions evolve and become more constrained
- Performance disputes when requirements are not achieved
- Disputes over intellectual property rights
- Termination disputes as options are renegotiated and convenience terminations increase





## CASE STUDIES

### *Ambiguous Specifications (Korte Construction Co., CAFC No. 2024-2232, Apr. 9, 2026)*

- Army design-build contract at Tinker AFB; RFP spec called for extending “base wide chilled water” piping to the hangar, though no such system existed.
- Army later deleted the chilled water work by unilateral modification and took a \$494K credit.
- Korte claimed the work was impossible and the drawings were too ambiguous to require it.
- Federal Circuit affirmed for the Army: the spec and drawings unambiguously required the work, impossibility was no excuse, and Korte's pre-bid knowledge of the ambiguity triggered a duty to inquire—so it owed the refund.



## CASE STUDIES

### *Government Rights in Commercial Data (FlightSafety International Inc. v. Secretary of the Air Force, CAFC No. 2023-1700, Feb. 28, 2025)*

- Subcontractor placed restrictive markings on commercial operation, maintenance, installation, and training (OMIT) data
  - Markings required written authorization from subcontractor before technical data was reproduced, distributed or disclosed to others
  - Data developed commercially and at private expense
- Government challenged the restrictions
  - DFARS 252.227-7015(c) grants the Government unrestricted rights in OMIT data
- Federal Circuit sided with the Government
  - Challenges to restrictive markings not limited to challenging the source of funding



## CASE STUDIES

### *USAID Mass Terminations (Danziger et al. v. United States, Fed. Cl. No. 25-1241 Apr. 10, 2026)*

- DOGE terminated hundreds of USAID contracts
- Class action pending in the Court of Federal Claims arguing that the mass terminations were a breach of contract
  - Improper termination for convenience executed in bad faith and/or an abuse of discretion
- Court denied the Government's motion to dismiss
  - Adequately pled bad faith by relying on public statements of administration officials
  - Case proceeding through fact discovery



## CASE STUDIES

### *Anthropic Supply-Chain Designation*

- First-ever supply-chain risk designation of a U.S. company (Dept. of War, March 2026) under 10 U.S.C. § 3252 and FASCSA (41 U.S.C. § 4713)
- Triggered parallel litigation, FAR 52.204-30 reporting duties, flow-down obligations, and equitable-adjustment claims for transition costs
- Split rulings: N.D. Cal. enjoined the § 3252 designation (Mar. 26, 2026); D.C. Circuit denied a stay of the FASCSA designation, heard merits May 19, 2026



## CASE STUDIES

### *FCA Enforcement as a “Disputes Amplifier”*

- DEI: IBM \$17M settlement (Apr. 10, 2026) — first under DOJ’s Civil Rights Fraud Initiative;
  - New anti-DEI clause FAR 52.222-90 with FCA materiality recital
- Cybersecurity: record \$6.8B in FY2025 FCA recoveries; \$52M across nine cyber settlements; 1,297 qui tam suits; CMMC live as of Nov. 10, 2025
  - Liability flows from misrepresentations, not breach
- Immigration: Two settlements in 2025 for shipyard contractors
  - \$1M and \$4M respectively
  - Employing unauthorized workers in the United States in violation of E-Verify requirements

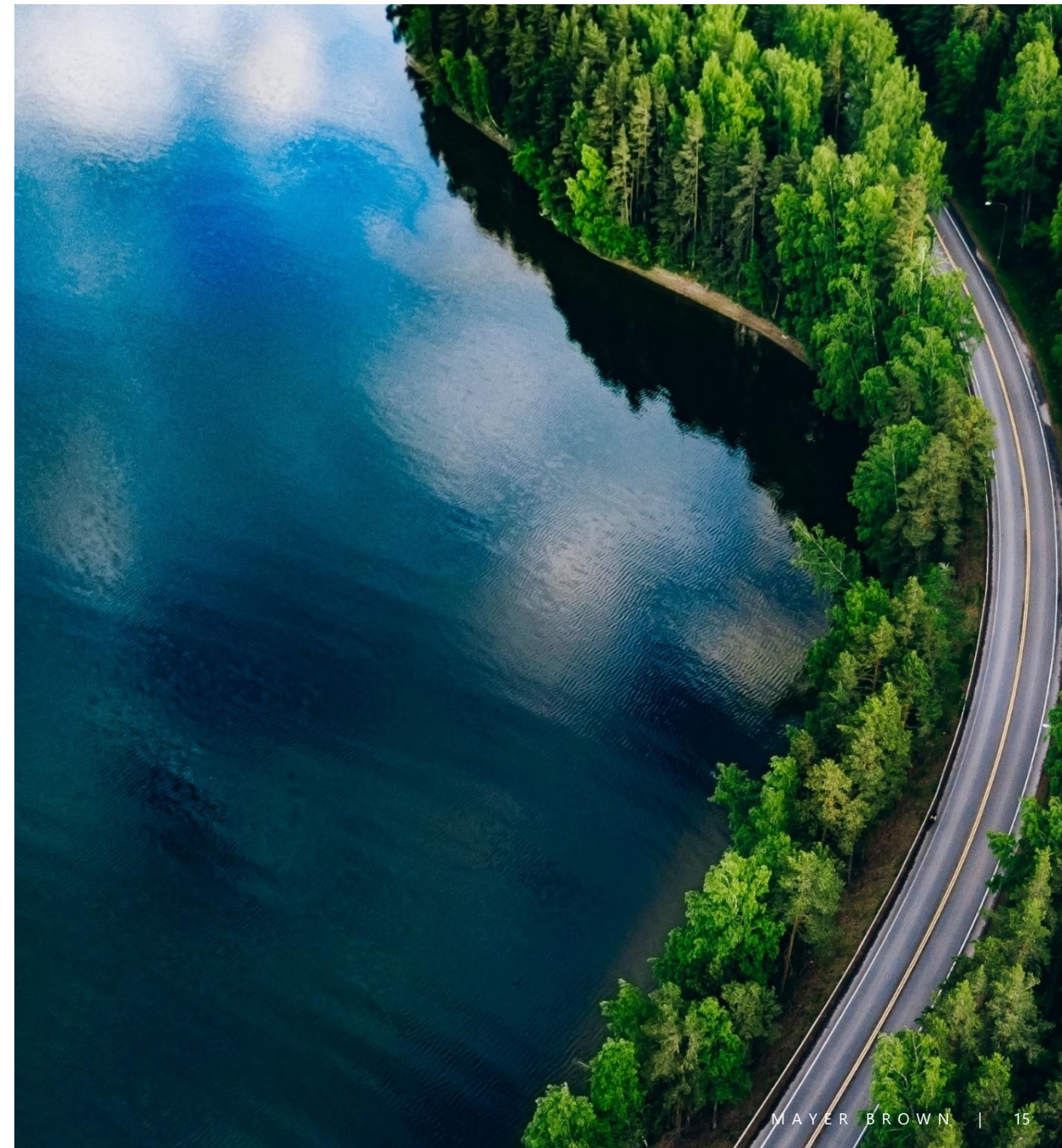
An aerial photograph showing a dark blue lake on the left and a winding asphalt road on the right, both surrounded by a dense green forest. The road curves from the top right towards the bottom right. The lake's surface reflects the sky and the surrounding trees.

# 03

## DISPUTE AVOIDANCE STRATEGIES

## FRONT-END DISCIPLINE

- Shape the requirements early
  - FAR rewrite encourages discretion and innovation, giving more room to influence procurement structure and terms to avoid traditional dispute traps
- Fixed-price best practices
  - Scrutinize assumptions, acceptance criteria, and performance metrics before proposal submission
  - Price uncertainty intelligently
  - Advocate for cost-reimbursement or T&M where warranted
- IP terms and assertions





## BEST PRACTICES DURING DISPUTE

### ***Proactive communication***

Raise issues early; follow-up in writing; memorialize phone/virtual conversations

### ***Make it easy for the contracting officer***

Document costs, negotiations, and schedule impact contemporaneously to facilitate equitable adjustments

### ***Compliance documentation***

Preserve good-faith effort evidence for new requirements (DEI/cyber); "memo-to-file" rationales for program changes

### ***Internal compliance culture***

Robust internal reporting channels reduce the incentive for employees to become qui tam relators

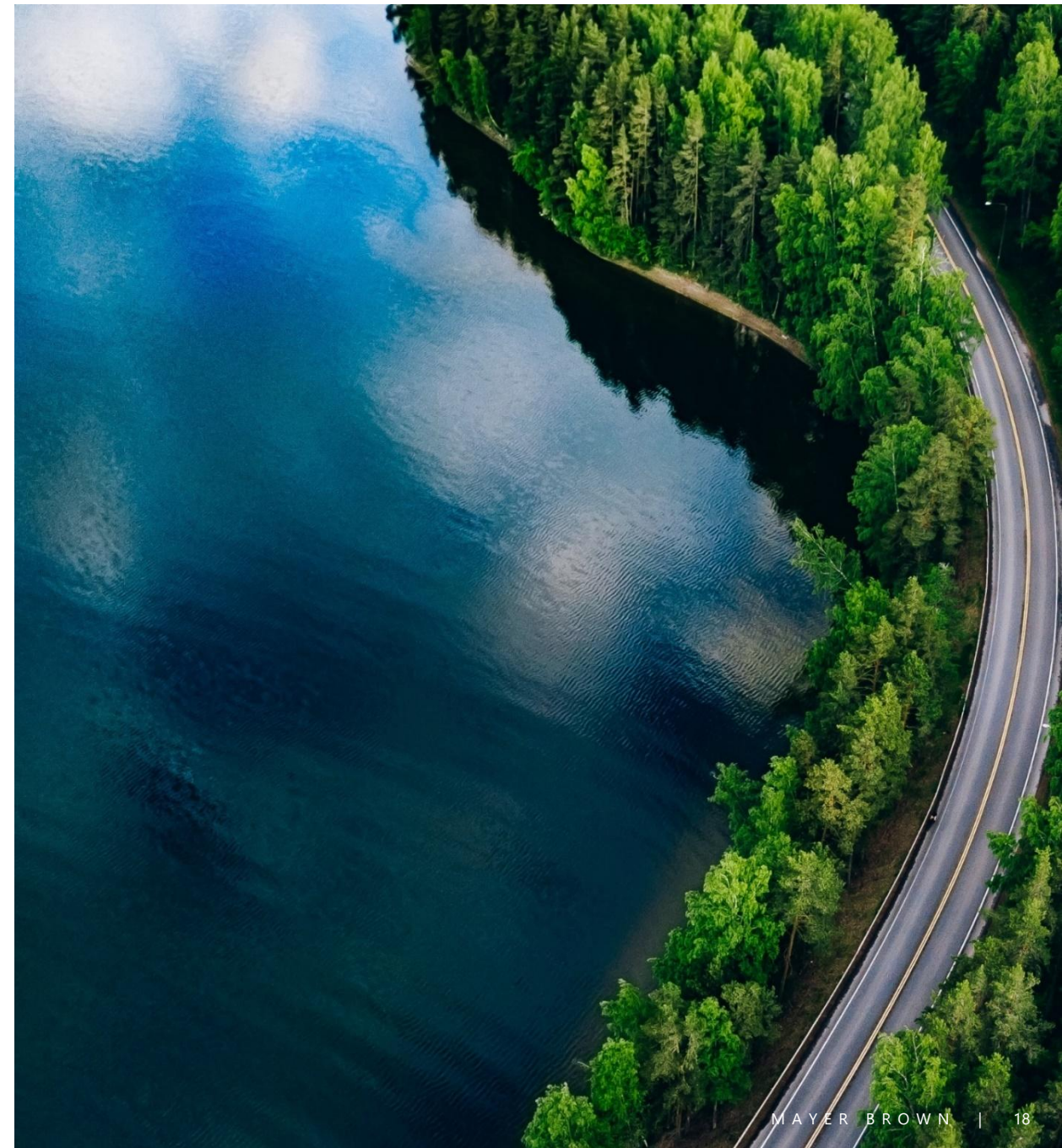
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04

EARLY AND EFFICIENT DISPUTE RESOLUTION

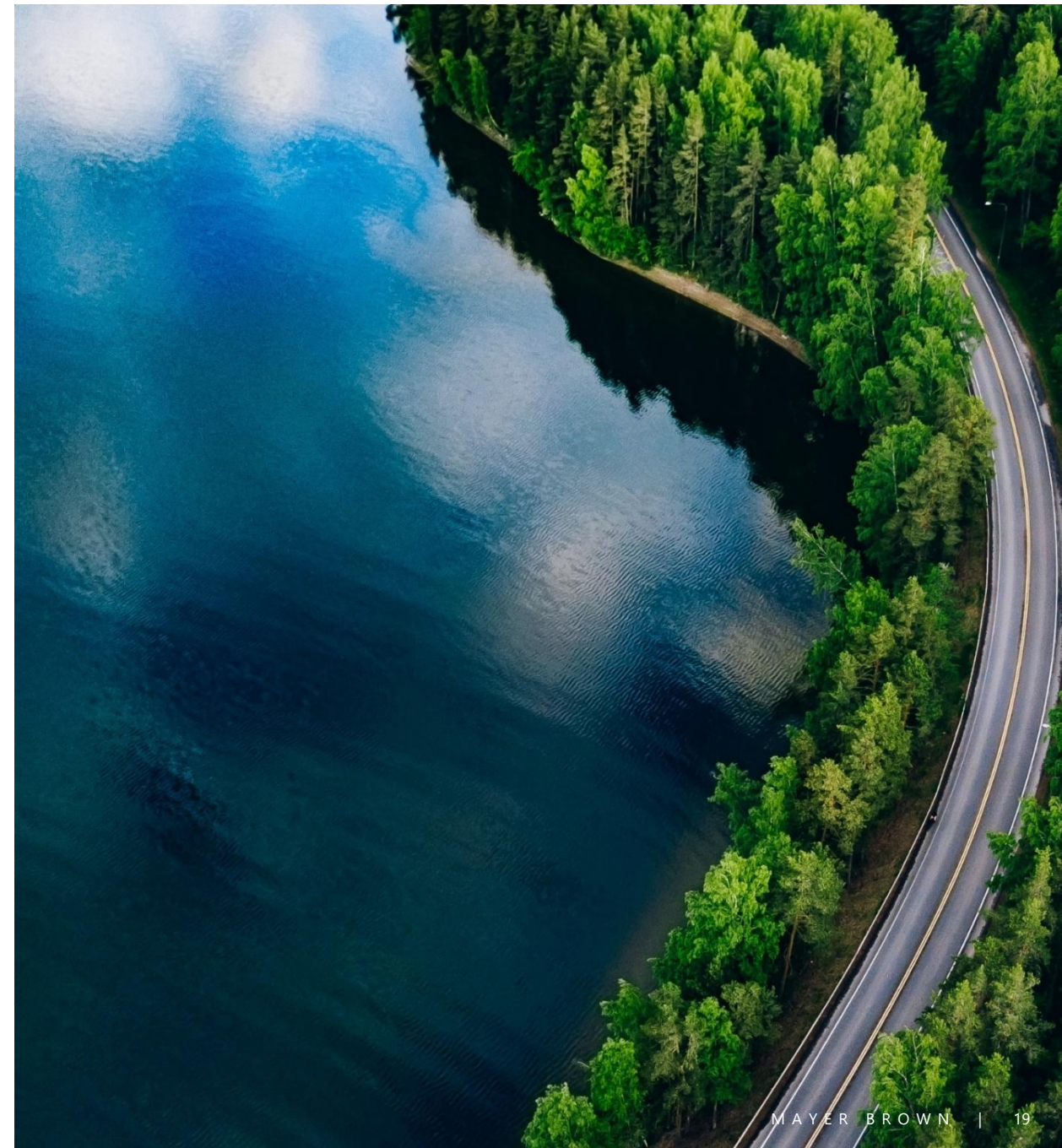
# RESOLVE EARLY, CHOOSE THE RIGHT TOOL

- REA vs. Certified CDA Claim
  - REAs preserve customer relationships but may delay resolution in a hard-line payment environment
    - A certified claim puts the agency on the clock to act
  - REAs allow recovery of legal expenses and certain costs (e.g., employee time preparing them) not available in claims
    - But in practice, these are frequently the first chips given away during negotiations
  - Some agencies process REAs faster for funding modifications
    - A certified claim, if appealed, may give the agency access to additional funds via the Judgment Fund



# ALTERNATIVE DISPUTE RESOLUTION

- Both Boards maintain voluntary, highly regarded ADR programs
- Sitting administrative judges typically serve as the neutral (at no cost)
  - The parties can request specific judges
- Available at every stage of a dispute
- Must be jointly requested
- Flexible menu of approaches
  - Facilitative or evaluative mediation
  - Mini-trial
  - Summary binding decision



An aerial photograph showing a dark blue lake on the left and a winding asphalt road on the right, surrounded by a dense green forest. The text '05' is centered over the lake, and 'LITIGATION PATHWAYS' is centered below it. Two thin white vertical lines are positioned on either side of the text.

05

LITIGATION PATHWAYS

## FORUM DIFFERENCES

Issue	Court of Federal Claims	Boards of Contract Appeals
<b>CDA appeal deadline</b>	1 year from contracting officer's final decision.	90 days from contracting officer's final decision.
<b>Government counsel</b>	DOJ represents the government.	Agency counsel represents the government.
<b>Docket &amp; institutional focus</b>	Broader, eclectic docket: contracts, bid protests, takings, tax, pay, and other monetary claims.	Primarily government contracts disputes under the CDA.
<b>Types of claims commonly litigated</b>	Useful for novel claims against the United States.	Useful for specialized CDA contract-performance disputes.
<b>Fraud-related allegations</b>	More expansive jurisdiction over fraud-related counterclaims and defenses.	More limited jurisdiction; generally no affirmative fraud claims.

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An aerial photograph showing a calm lake on the left and a winding road on the right, both surrounded by a dense forest of tall, green trees. The sky is reflected in the water.

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