CLIENT ALERTS & INSIGHTS

Government Contracting Under the Trump 47 Administration

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The transportation sector has long served a vital function in service of the U.S. government at home and abroad. Examples of private industry's role in the workings of government include civil functions such as hauling U.S. mail and defense functions such as relocating servicemembers and their possessions. The Trump Administration is demonstrating a new course in many ways that will affect government contracting. This article explores those directional changes and the value in strategically developing a business response.

Emerging Trump Administration Policy. The White House is signaling priorities and policies by both breaking new ground and revoking policies of the prior presidential administrations. Simply put, there is a fundamental change in course as to what satisfactorily promotes efficiency for government contracting.

The New Ground. The most impactful development of the new Administration has been the emergence of the Department of Government Efficiency (DOGE). As part of the implementation of the DOGE structure, the Administration issued a variety of Executive Orders that we expect will directly impact the supply of existing and new contracting opportunities. Of note is Executive Order (EO)14222, Implementing the President's "Department of Government Efficiency" Cost Efficiency Initiative. This EO directs federal agency heads to review all existing covered contracts and grants to determine whether they should be terminated, modified, or negotiated to reduce overall federal spending. EO 14222 directs federal agencies to complete a comprehensive review of their contracting policies, procedures, and personnel within 30 days. During that review process, agencies cannot issue or approve new contracting officer warrants unless the agency head deems it necessary. Prior to entering into any new contracts, each agency head must, in consultation with the agency's DOGE team lead, issue guidance on signing new contracts or modifying existing contracts to promote government efficiency, adding to the administrative burden of granting new contracts.

Elimination of Prior Policies. Elimination of prior policies is the broadest data set available for direction on government contracting. Four Biden-era Executive Orders with relatively broad implications for government contracting have been revoked to date:

1. Advancing Economy, Efficiency, and Effectiveness in Federal Contracting by Promoting Pay Equity and Transparency (Executive Order 14069 dated March 15, 2022; Recission on January 20, 2025).

   This EO set out to promote economy, efficiency, and effectiveness in federal procurement by enhancing pay equity and transparency for job applicants and employees of federal contractors and subcontractors. Specifically, the Biden Administration issued this EO in conjunction with the Office of Personnel Management's similar rule and directed the Federal Acquisition Regulatory Council to consider limiting or prohibiting federal contractors and subcontractors from seeking and considering information about a job applicant's and employee's existing or past compensation when making employment decisions. Revocation of this EO halts the direction to prevent such federal contractor and subcontractor hiring practices.

2. Nondisplacement of Qualified Workers Under Service Contracts (Executive Order 14055 dated November 18, 2021; Recission on January 20, 2025).

   This EO required that agencies, to the extent permitted by law, ensure that service contracts and subcontracts that succeed a contract for performance of the same or similar work contain clauses that require federal contractors and subcontractors to offer rights of first refusal to employees performing work under a government contract.

3. Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Executive Order 14091 dated February 16, 2023; Recission on January 20, 2025).

   This far-reaching EO set out to enhance Agencies' commitment to equity-advancing initiatives, including particular investment in historically underserved federal contractor groups, such as in rural communities. Notably, this EO established Agency Equity Teams charged with implementing the prior Administration's equity initiatives and increased the government-wide goal for federal procurement dollars awarded to small-business concerns owned and controlled by socially and economically disadvantaged individuals (known as Small Disadvantaged Businesses or SDBs) to 15 percent for Fiscal Year 2025. Revocation of this EO practically reduces the small-business concern set-aside requirement to the statutorily required five (5) percent.

4. Increasing Minimum Wage for Federal Contractors (Executive Order 14026 dated April 27, 2021; Recission on March 14, 2025).

   This EO raised the minimum wage required of federal contractors and subcontractors to workers performing work on or in connection with covered federal contracts to $15.00 per hour. The Department of Labor under the prior Administration subsequently proposed to increase the minimum wage to $17.75, beginning on January 1, 2025. Revocation of this EO effectively requires federal contractors and subcontractors to comply with general federal minimum wage law.

The Biden Administration used these Orders to advance the themes of set-asides, such as those for minority-owned businesses and women-owned businesses, requiring retention of certain workers under the Service Contract Act, and instituting an increased minimum wage for contractors. In

setting his own course, many more executive actions already issued by President Trump may be impactful, depending on the particular contracts or agencies served by transportation services providers.

The Cautious Road Ahead and an FCPA Case-In-Point

At this time, the Trump Administration's recissions are merely indicative of what may come. It is too quick for business leaders to file bid protests, assume contracts will not be renewed, or decrease pay for workers. Among other reasons for pause, executive action may not itself eliminate final rules enforceable by the respective regulatory agencies even if the risk of enforcement by the Trump Administration is low.

The Trump Administration's approach to Foreign Corrupt Practices Act (FCPA) enforcement is a single data point for new terrain that the Administration will cover, and a visualization of how change is best met with cautious strategy. The FCPA, found at 15 U.S.C. 78dd-1 *et seq.*, in essence prohibits bribing foreign government officials by giving anything of value. President Trump ordered a pause on enforcement of the FCPA so that the Attorney General may review enforcement policy and develop guidelines before enforcement commences once again. The rationale for this pause in enforcement is that the White House viewed historic enforcement as inconsistent and disadvantaging United States businesses abroad.

Caution is required for the immediate next steps by businesses working with foreign governments or requiring foreign government approvals. There are four simple reasons to avoid a reactionary response: (1) the FCPA itself remains an act of Congress; (2) the only change is a review of enforcement policy by the Department of Justice (DOJ); (3) the new enforcement policy of the Trump Administration remains to be seen; and (4) the FCPA has a lengthy five-plus-year statute of limitations. Viewing this change as permitting risky government interactions risks a future Presidential Administration's prosecution or, if the Trump Administration were to change perspective, its DOJ could nonetheless prosecute.

The very best advice in these changing times is that it remains "good business" to stay knowledgeable and strategic, but not reactionary, in running your business.

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