

## Insights

# WHAT GOVERNMENT CONTRACTORS CAN EXPECT DURING THE SECOND TRUMP ADMINISTRATION

Jan 22, 2025

## SUMMARY

The Trump Administration will most likely move quickly to align the federal government's priorities with the President's own. While the Administration has not detailed all of its plans for government contracting/procurement, government contractors will benefit from examining both actions taken by President Trump during his first administration and statements made by the President during the campaign and transition. Government contractors will potentially see changes made to Federal Acquisition Regulations ("FAR"), executive orders directed towards government contracting, Buy American Act/Trade Agreement Act Enforcement, and changes in spending priorities.

## POTENTIAL CHANGES TO THE FAR AND NEW EXECUTIVE ORDERS

- *Federal Minimum Wage Requirements for Government Contractors.* President Biden issued Executive Order ("EO") 14026, which increased the federal minimum wage for employees of federal government contractors to at least \$15 per hour. The EO applied to both prime contracts and certain lower-tier subcontracts. However, there is now a circuit split between the Tenth and Ninth circuits over whether EO 14026 exceeded the President's authority under the Federal Property and Administrative Services Act ("FPASA"). *Compare Bradford v. U.S. Dep't of Lab.*, 101 F.4th 707 (10th Cir. 2024) (holding that the rule implementing the EO was likely within statutory authority), *with Nebraska v. Su*, 121 F.4th 1 (9th Cir. 2024) (holding that President lacked authority to instruct agencies to carry out minimum-wage mandate). President Trump has not indicated whether he will keep the current minimum wage requirements in place or whether he will defend his authority under FPASA to issue minimum wage requirements for employees of federal government contractors. Any changes to the policy announced in President Biden's EO will likely require changes to the FAR to account for contract clauses inserted into federal contracts mandating the \$15 minimum hourly wage.
- *Climate Change.* President Biden used federal procurement policy to help advance his policy goals with respect to climate change. President Trump will likely consider scrapping a

proposed change to the FAR, which would require federal contractors to disclose their greenhouse gas emissions and climate-related financial risk and set science-based targets to reduce their greenhouse gas emissions. See FAR Case 2021–015. In addition, pursuant to several EOs issued by President Biden, the Federal Acquisition Regulatory Council published several proposed and final rules, which made revisions to FAR Part 23, which “prescribes acquisition policies and procedures supporting the Government's program to protect and improve the quality of the environment” and FAR 52.223-23, which requires the federal government to prioritize the purchase of sustainable products. President Trump may also direct his administration to reevaluate the changes made to these FAR provisions.

## BUY AMERICAN ACT AND TRADE AGREEMENTS ACT ENFORCEMENT

- *Buy American Act.* President Trump spoke repeatedly during the campaign about his intention to increase domestic manufacturing capacity. One way to accomplish this goal is to increase enforcement of Buy American Act (“BAA”) requirements in federal contracts. The BAA mandates that federal contracts contain a provision that requires necessary materials to be made in the United States. President Trump could direct the Department of Justice and offices of inspector general to increase enforcement of the BAA by using the False Claims Act. President Trump could also direct federal agencies to limit exemptions and waivers available under the BAA.
- *Trade Agreements Act.* The Trump Administration will also likely increase scrutiny of Trade Agreements Act (“TAA”) compliance. The TAA requires that the Government may only acquire U.S.-made or designated country end-products. Essentially, the TAA requires that end products from designated countries be treated equally to U.S.-made products for government-contracting purposes. It further prohibits the acquisition of end products from non-designated countries, which includes China. President Trump made trade a focus of his campaign and will likely continue to do so when his second administration begins. Government Contractors must be careful to accurately represent a product’s country-of-origin. Ignoring or disregarding incorrect information about a product’s country-of-origin — even in the absence of a specific intent to defraud the government — may lead to False Claims Act liability. It seems likely that President Trump’s Department of Justice will focus on such cases during his second term.

## INCREASED DEFENSE SPENDING, INCREASED OVERSIGHT

President Trump will begin his second term with the Republican party in control of both houses of Congress. As a result, it seems highly likely that defense spending will increase during the second Trump Administration. With an increase in spending, government contractors should expect to see an increase in solicitations issued by the Government.

However, these additional expenditures may come with increased scrutiny. Elon Musk and Vivek Ramaswamy, who will co-lead the Department of Government Efficiency (“DOGE”), have pledged to tackle waste, fraud, and abuse in government defense contracting. In a Wall Street Journal op-ed published in November 2024, the pair, citing a lack of transparency in spending by the Pentagon, have proposed “large-scale audits” of government contracts during a “temporary suspension of payments.” It remains to be seen whether DOGE will be able to make good on its promises. Nevertheless, defense contractors should be prepared for the possibility of increased oversight. Contractors should stay informed of DOGE’s activities, which Musk stated would be posted publicly online. As an advisory commission, DOGE is also potentially subject to the Federal Advisory Committee Act, which requires public hearings.

## CONCLUSION

President Trump will likely make significant changes to federal procurement policy during his second term. Government contractors should pay close attention to the Administration’s early actions to see how these changes will affect solicitation opportunities and compliance priorities.

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