

Biden Administration Issues Sweeping Climate Change EO with Potential Effects for Contractors

January 29, 2021

WHAT: President Biden continued his flurry of initial executive actions by signing an Executive Order (EO) on Tackling the Climate Crisis at Home and Abroad. The Executive Order builds on the Biden Administration's previous climate change actions, such as submitting documentation to rejoin the Paris Agreement, and lays out the President's plans to address climate change through both foreign policy and government-wide activities within the United States. When fully implemented, the Executive Order could affect the types of purchases the Government makes and impose additional environmental responsibilities on private sector entities that do business with the Government. Given the wide range of the Executive Order, the types of affected contractors could be similarly sweeping—extending beyond traditional providers of goods and services to include industries such as communications, transportation, managed services, technology, and health care.

WHEN: The President signed the Executive Order on January 27, 2021. Although some provisions will have immediate effect, others will require implementing regulations or other activities from the relevant executive agencies.

WHAT DOES IT MEAN FOR INDUSTRY: The Executive Order, particularly Part II, focuses on implementing a government-wide approach to climate change, including by "aligning the management of Federal procurement and real property, public lands and waters, and financial programs to support robust climate action." This plan includes a Federal Clean Electricity and Vehicle Procurement Strategy, which will directly influence agency procurements by facilitating

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procurement of clean and zero-emission vehicles for federal, state and local government fleets, including the U.S. Postal Service. The Executive Order also directs the Council on Environmental Quality (CEQ) to work with the Federal Acquisition Regulatory Council (FAR Council) to develop procurement regulations “to promote increased contractor attention on reduced carbon emission and Federal sustainability.” These efforts will incorporate the recent Executive Order expanding Made in America requirements, which we detailed here.

The Executive Order also highlights the Biden Administration’s focus on sustainable infrastructure as a means of addressing climate change and spurring economic growth. In that regard, the Executive Order directs the heads of agencies to use federal funding to deploy clean energy technologies and infrastructure, and specifically instructs the Office of Management and Budget (OMB) and CEQ to ensure that federal infrastructure investment reduces climate pollution. Depending on how the Executive Order is implemented, contractors may start to see greater attention to sustainability and pollution control in federal procurements and grant opportunities. Companies may want to review their energy savings programs now to prepare for this potentially changing landscape.

A new White House Office of Domestic Climate Policy, headed by the National Climate Advisor, will oversee and coordinate the government-wide strategy across agencies. In addition, the Executive Order establishes a National Climate Task Force, members of which include the Secretaries of Defense, Transportation, Energy, and Homeland Security, as well as the GSA Administrator. The Task Force is charged with facilitating the organization, planning, and implementation of federal actions to combat climate change, with particular emphasis on the reduction of climate pollution, conservation of lands, waters, and biodiversity, and economic growth. Of note for government contractors, Task Force members are to prioritize action on climate change not only in their policy-making and budget processes, but also in contracting and procurement activities.

Some of the foreign policy initiatives in the Executive Order include participating in and pressing climate issues in international bodies such as the Major Economies Forum on Energy and Climate and the Group of Seven, developing an interagency climate finance plan to assist developing countries in implementing emissions reduction measures and protections for critical ecosystems, directing agencies to develop strategies and implementation plans for integrating climate considerations into their international work, preparing a National Intelligence Estimate on the national and economic security impacts of climate change, and instructing various agencies to regularly assess the security implications of climate change. Although these provisions will not have a direct impact on government procurement activities, agencies’ implementation measures could affect contractors in the future.

The Executive Order also reaches beyond climate change and reemphasizes the Biden Administration’s commitment to Environmental Justice (EJ). The Executive Order directs all federal agencies to make achieving EJ part of their missions by “developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities.” In pursuing this policy, the Biden Administration seeks “to secure [EJ] and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.” This desire to achieve EJ for disadvantaged communities may lead to

additional requirements and opportunities for government contractors.

Wiley's Government Contracts, Environment & Product Regulation, and Telecom, Media & Technology practices will continue to monitor this issue and provide additional alerts as agencies take related action.