

## CLIENT ALERT

### President Issues Executive Order Addressing Use of Foreign Labor in Federal Contracting and Hiring

August 5, 2020

On August 3, 2020, President Donald Trump issued an Executive Order framed as “[Aligning Federal Contracting and Hiring Practices With the Interests of American Workers](#).” The Order declares the “policy of the executive branch to create opportunities for United States workers to compete for jobs, including jobs created through Federal contracts,” and directs federal agencies to engage in two distinct reviews to assess how current practices align with that policy.

First, the Order directs the head of each federal contracting agency to review the extent to which “contractors” and “subcontractors” – undefined in the Order – utilize temporary foreign labor for contracts performed in the United States, as well as whether services previously performed in the United States are being outsourced for performance in foreign countries. Agencies are further directed to assess any effect the use of such foreign labor hiring and/or offshoring practices has on opportunities for U.S. workers, the eligibility of affected workers for Trade Adjustment Assistance, and national security interests. Finally, each agency must review its own employment policies to ensure compliance with policies requiring federal hiring of U.S. persons. Within 120 days of the Order, Agencies are required to submit a report to the Office of Management and Budget summarizing the results of this review and recommending corrective actions if necessary, timeframes for implementation of such corrective actions, as well as any Presidential actions that may be appropriate.

Second, the Order also directs the Secretaries of Labor and Homeland Security to take action, as appropriate and consistent with applicable law, to protect U.S. workers from adverse effects caused by employment of H-1B visa holders, including by requiring employers and “secondary employers” to file certifications required by the Immigration and Nationalization Act (INA) regarding the impact of hiring an H-1B visa holder. The administration has [indicated](#) that its goal is to restrict scenarios where a contractor outsources services to H-1B workers that would have otherwise been performed by US employees of the contractor; the intent would be for the outsourcing contractor, as the “secondary employer” of the workers performing the work, to also certify pursuant to the INA that the hiring of that employee has not impacted US citizen employees. This would be in addition to the certification provided by the worker’s actual employer. It is unclear whether extending the certification requirement to “secondary employers” would address this identified issue.

This Executive Order follows a series of “Buy American and Hire American” orders issued over the past years, and reflects the current administration’s consistent emphasis on domestic sourcing of supplies and services. The administration has indicated that this Executive Order is a continuation of other efforts undertaken during the COVID-19 pandemic to limit immigration and protect American workers.

Like the previous actions, the present Executive Order provides little guidance regarding how agencies should conduct the contemplated reviews, omitting both the types of data agencies should rely upon and what authorities contracting agencies should rely upon to collect additional data from federal contractors and subcontractors. Accordingly, the potential impact on operations and customer relationships for federal contractors and subcontractors remains to be seen. Crowell & Moring intends

to monitor agency implementation of this Order and continue to keep our clients updated regarding developments that may impact their business.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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