

## Client Alert

### White House Further Looks to Federal Procurement Power to Address Climate Change

December 9, 2021

On December 8, 2021, President Biden signed an [“Executive Order on Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability,”](#) outlining a host of federal sustainability and climate change-related procurement initiatives “to achieve a carbon pollution-free electricity sector by 2035 and net-zero emissions economy-wide by no later than 2050.” Chief among these initiatives are policies to accomplish “net-zero emissions from Federal procurement, including a Buy Clean policy to promote use of construction materials with lower embodied emissions;” net-zero emissions from the federal building portfolio by 2045; 100 percent zero-emission vehicle acquisitions by 2035; and the establishment of the Buy Clean Task Force. This executive order builds on and strengthens the specific greenhouse gas reductions and energy efficiency targets established by prior administrations, particularly Executive Order 13693, “Planning for Federal Sustainability in the Next Decade,” which was issued by President Obama in 2015 but then revoked by President Trump in Executive Order 13834, “Efficient Federal Operations,” in 2018. It also marks this administration’s latest step in its march toward embedding the pursuit of climate driven policy objectives into the federal procurement regime.

Section 208 of the executive order directs all federal agencies to “pursue procurement strategies to reduce contractor emissions and embodied emissions in products acquired or used in Federal projects.” These efforts are to include, among other things, prioritizing products that can be reused, contain recycled content, are bio-based, or are energy and water efficient, and, to the maximum extent practicable, purchasing sustainable products and services. The section also directs the Council on Environmental Quality to “consider establishing Federal food procurement policies to reduce associated greenhouse gas emissions and drive sustainability in the Federal food supply chain.”

Pursuant to section 302 of this executive order, and building off of the disclosure requirements in section 5 of Executive Order 14030, “Climate-Related Financial Risk,” the General Services Administration (GSA) is directed to “track disclosure of greenhouse gas emissions, emissions reduction targets, climate risk, and other sustainability-related actions by major Federal suppliers” to help assess efforts to reduce federal supply chain emissions. This new directive tracks with other recent efforts of the Administration, which Crowell has previously discussed [here](#), towards implementing mandatory climate-related disclosures for federal contractors.

The executive order also instructs federal agencies to incorporate environmental justice considerations into their sustainability and climate adaptation plans, including incorporating recommendations from the Justice40 initiative, which seeks to ensure that “40 percent of the overall benefits flow to disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, energy, water, wastewater infrastructure, and health care.”

The newly-created Buy Clean Task Force will be tasked with providing recommendations for expanding consideration of embodied emissions and pollutants of construction materials in Federal procurement and federally funded projects to include:

- identifying and prioritizing pollutants and materials, such as concrete and steel, to be covered under a Buy Clean policy, considering the availability of relevant data, including from environmental product declarations, and consistency with existing environmental reporting requirements;
- providing recommendations to increase transparency of embodied emissions, including supplier reporting; procedures for auditing environmental product declarations and verifying accuracy of reported emissions data; and recommendations for grants, loans, technical assistance, or alternative mechanisms to support domestic manufacturers in enhancing capabilities to report and reduce embodied emissions in priority materials they produce; and
- incentivizing Federal procurement of construction materials with lower embodied emissions.

The executive order also notes that the head of an agency may exempt particular agency activities in the interest of national security, to protect intelligence sources and methods, to protect undercover law enforcement operations, and to exempt any vehicle, vessel, aircraft, or non-road equipment used in combat support, military or relief operations, or spaceflight, or by submitting a request to the President for any reason not specifically identified above. The White House [fact sheet](#) released along with the executive order highlights that as part of the government-wide goal of achieving net-zero emission by 2050, the Department of Defense is presently developing low-carbon purchasing guidelines and that GSA will begin, starting in 2022, to require federal contractors to disclose the embodied carbon of building materials for new building and major modernization contracts.

While government prime and subcontractors will be directly impacted by the sustainability, greenhouse gas emissions, and energy efficiency targets outlined in the executive order, the environmental policies embedded in the order are likely to have economywide implications that could shape the way manufacturers and service providers do business with the federal government.

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

**Paul Freeman**

Partner – New York

Phone: +1.212.895.4251

Email: [pfreeman@crowell.com](mailto:pfreeman@crowell.com)

**Byron R. Brown**

Senior Counsel – Washington, D.C.

Phone: +1.202.624.2546

Email: [bbrown@crowell.com](mailto:bbrown@crowell.com)

**Issac D. Schabes**

Associate – Washington, D.C.  
Phone: +1.202.654.6706  
Email: [ischabes@crowell.com](mailto:ischabes@crowell.com)