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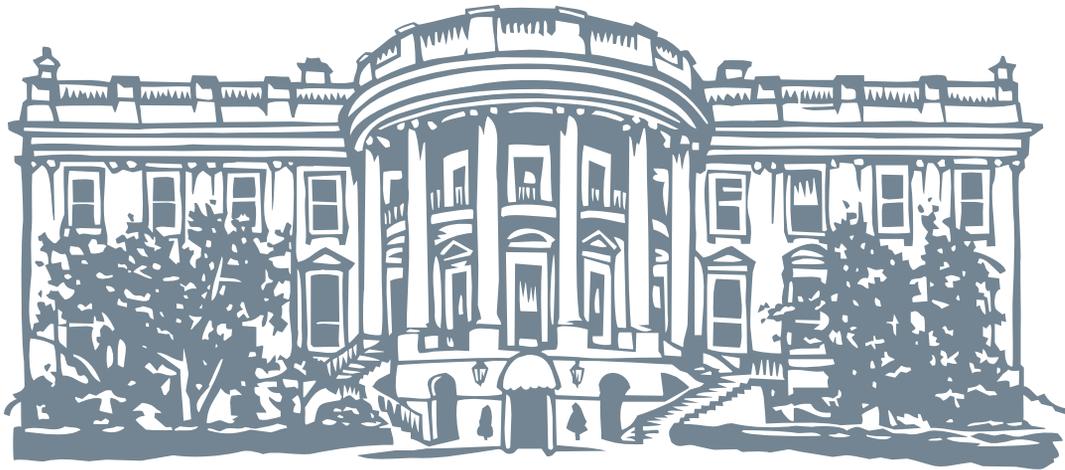
ACQUISITION AND BUDGET REFORM: WHERE IS THE TRUMP ADMINISTRATION HEADED?

Can we expect a stronger focus on government contracting and a simplified acquisition system in the future?

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Prior to President Trump's inauguration into office, the administration spoke little about its acquisition policy, but the transition and campaign websites suggested that the administration would, among other things, focus on regulatory reform (i.e., eliminating Obama-era executive orders) and increasing defense and infrastructure spending. At this juncture, the results by and large are a mixed bag for government contractors.

Regulatory Reform

Beginning with regulatory reform, the administration has issued a number of executive orders promoting regulatory streamlining and agency reform. For example, on January 30, 2017, President Trump, fulfilling one of his campaign promises, issued an executive order informing agencies that "for every one new regulation issued, at least two prior regulations "must" be identified for elimination." Similarly, on March 13, 2017, the Trump administration issued an executive order for a "comprehensive plan for reorganizing the executive branch" which, according to its text, "is intended to improve the efficiency, effectiveness, and accountability of the executive branch...." Though both of these orders seemed rather promising in terms of reducing regulatory burden and promoting efficiency in procurement, there has not been much effect on government contractors at this point.

Moreover, the administration has not rolled back as many Obama-era labor executive orders as originally anticipated by some in the contracting community. For example, though

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President Trump signed the joint resolution invalidating the "Fair Pay and Safe Workplaces" Executive Order, many other Obama-era executive orders still remain in effect. Indeed, these orders, perceived as less onerous than their "Fair Pay" counterpart, are likely to remain. In fact, there is actually an effort underway on the Hill to revive portions of the "Fair Pay and Safe Workplaces" Executive Order. Specifically, Section 830 of the Senate version of the 2018 National Defense Authorization Act (NDAA), titled "Department of Defense Contract Work Place Safety and Accountability," would require "[a] contracting officer, prior to awarding or renewing a covered contract" to consider, as part of the responsibility determination "any identified violations of the Occupational Safety and Health Act of 1970...or equivalent State laws by the offeror, and by any covered subcontractors."

Despite the lack of regulatory reform impacting government contracts (at least to date), one area where reform is still anticipated is commercial item procurements. Indeed, the administration seems to be particularly supportive of such efforts, including the House's proposal to establish a governmentwide online marketplace. Furthermore, regardless of whether the marketplace initiative is successful, other efforts underway (e.g., the Section 809 Panel and various provisions in the 2018 NDAA) suggest that some sort of

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commercial item reform will materialize during the Trump administration. We expect this will be welcome, long overdue news for many government contractors. For example, the number of contract clauses potentially applicable to commercial item procurements at the prime level has increased from 17 in 1995 to 58 in 2017 (see FAR 52.212-5(b)), and the number of potential flowdown clauses has increased from 4 to more than 20 (see FAR 52.212-5(e)). Commercial item reform is seemingly consistent with the administration's theme of regulatory simplification and efficiency.

The Section 809 Panel, which was established in Section 809 of the 2016 NDAA (amended by the 2017 NDAA) is also looking at the need for simplification of commercial item procurements. Specifically, the panel established a particular team "focused on simplifying [Department of Defense (DOD)] commercial buying practices to enable the department to have greater access to companies not currently selling to the department, and to be more adaptable and agile in its acquisition process." The Panel also established a team focused on streamlining "noncomplex acquisitions of less than \$15 million to enable [DOD] to meet its acquisition needs for smaller contracts," and another team, which is looking at ways to "[a]ttract companies interested in conducting business with [DOD] that have not previously entered the [DOD] marketplace."

Budget Priorities

Another area where the administration has had mixed results is in the area of budget. In this respect, the administration promised to invest \$550 billion in improving America's infrastructure. However, very little is visible to contractors in this area, mostly because the administration intended to fund such projects through the use of public-private partnerships, which are subject to complex rules and regulations.

By contrast, defense spending arguably has met or exceeded expectations held by major contractors at the outset of the new administration. Indeed, both the House and Senate versions of the 2018 NDAA authorize defense spending at a level higher than even what the president's budget requested. Though these amounts also exceed the caps that the Budget Control Act established, the government's desire for increased defense spending certainly is good news for defense contractors.

In sum, to this point, the administration's focus has been elsewhere than government contracts and, thus, not much has materialized in this respect. However, the administration arguably has laid the groundwork for further future reforms. Moreover, the Trump administration seems supportive of making positive changes to the acquisition system and reducing the increased regulatory burdens placed on contractors in recent years. Consequently, this moment in time presents a real opportunity for interested contractors to recommend changes to the *Federal Acquisition Regulation* and to advocate for a simplified acquisition system. **CM**

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