

Government contractor quarterly review

Providing quarterly regulatory updates to government contractor compliance professionals

PwC Government Contracts Practice—Report for Q2 government fiscal year
May 2021

Contractors used to the rapid pace of change over the past few quarters may have found some brief respite in Q2, although several notable updates did occur (pgs. 1–2). However, with the announcement of the Biden administration’s FY22 budget request and infrastructure spending plan (pg. 3), contractors across all industries should brace themselves for significant opportunities and challenges ahead.

Noteworthy regulatory updates from Q2

Topic	Key updates
FAR final rule: Maximizing Use of American-Made Goods, Products, and Materials	Implements EO 13881, <i>Maximizing Use of American-Made Goods, Products, and Materials</i> from 2019 which addresses domestic content requirements and price preferences for domestic products. Namely, “domestic” end products or construction material must now consist of 55% or more domestic content. Further, the cost of foreign iron/steel must be less than 5% of the cost of all components, barring limited exceptions. The price evaluation preference increased to 30% for small businesses and 20% for others; no change to 50% preference for DOD procurements. Changes were made to FAR Part 25 and FAR clauses 52.225-1, 52.225-3, 52.225-9, and 52.225-11.
Sec. 3610 extension	Sec. 4015 of the FY21 NDAA extends Sec. 3610 of the CARES Act until September 30, 2021. Sec. 3610 authorized federal agencies to reimburse contractors for the cost of paid leave incurred to keep contractor or subcontractor personnel in a “ready state” to the extent that the personnel were (i) unable to access a government-approved facility, and (ii) unable to telework because their jobs could not be performed remotely.
FY21 NDAA—Other notable updates	<ul style="list-style-type: none">• Sec 816: Documentation Pertaining to Commercial Item Determinations• Sec. 817: Small Purchase Threshold for Berry Amendment Sourcing• Sec. 835: Balancing Security and Innovation in Software Development and Acquisition• Sec. 883: DoD to publish list of Other Transaction consortia• Sec. 885: Disclosure of Beneficial Owners

OMB cautions agencies against use of cost-reimbursement contracts

The Office of Management and Budget (OMB) is advising federal agencies to carefully consider contract types for awards they issue. In memo M-21-11 published in January, OMB states cost-reimbursement contracts are currently over-used outside of research and development work. According to OMB, competitively awarded fixed-price contracts are the preferred contract type for minimizing risk and maximizing value for the government.

While it is too soon to tell how agencies will react to this memo, contractors should make sure they understand different types of contracts and the inherent advantages and disadvantages of each. In particular, contractors with significant cost-reimbursement contracts should understand the financial, operational, and compliance impacts if future phases or similar scopes of work are awarded on a fixed price basis.

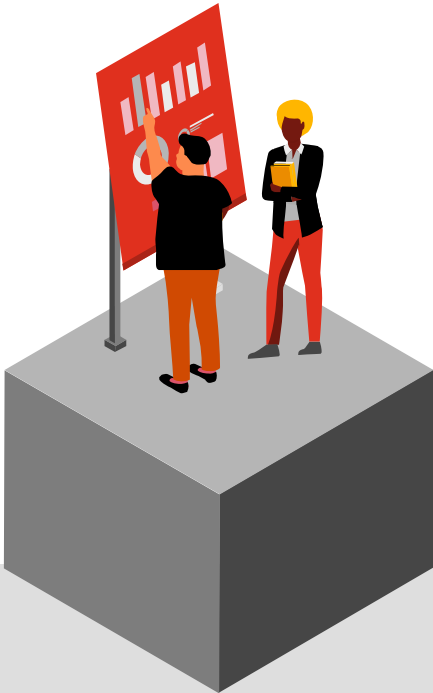
Executive Order	What does this mean?
EO 13985, Advancing Racial Equity and Support for Underserved Communities through the Federal Government	Revokes EO 13950, <i>Combating Race and Sex Stereotyping</i> , which had banned federal contractors from providing certain workplace diversity training and programs.
EO 14005, Ensuring the Future is Made in All of America by All of America’s Workers	Instructs the FAR Council to (1) consider replacing cost-of-component test with new test for determining country of origin based on value added to the product through US-based production or US job-supporting economic activity and (2) consider lifting the BAA exception for commercial item IT.
EO 14017, America’s Supply Chains	Establishes several comprehensive reviews of the country’s supply chains focusing on semiconductors and advanced packaging, high-capacity batteries, critical minerals and other identified strategic materials, and active pharmaceutical ingredients. These studies and subsequent reports will shape future supply chain policies for these industries.

Potential changes to CPARS and contractor self-assessments

Recent initiatives and statements from GSA and DHS point to potential overhauls of the Contractor Performance Assessment Reporting System (CPARS), at least for these two agencies. DHS procurement officials are exploring ways to integrate AI into contractor assessments, while GSA released a recent memo promoting contractor self-assessments as an element of CPARS.

4/13/2021 Notice of request for comments on Executive Order “America’s Supply Chains”

- E.O. 14017 directed the Secretary of Defense to submit a report within 100 days identifying risks in the supply chain for strategic and critical materials and policy recommendations to address these risks.
- This notice requests comments and information from the public to assist the DoD in preparing the report.
- In developing the report, the Secretary will consult with the heads of appropriate agencies, and will be advised by all relevant DoD components.



President Biden's Infrastructure Plan

In March, the Biden administration announced its highly anticipated infrastructure spending plan, the *American Jobs Plan* (the Plan), which invests in both the rebuild and repair of traditional infrastructure and investments in new forms of infrastructure such as renewable energy.

What is currently proposed in the American Jobs Plan?

The Plan focuses primarily on the development of physical, digital, and power infrastructure in the U.S. Specifically, the Plan cites repairs and/or net-new investments into surface roads, bridges, airports, ports, public transit, drinking water, electric grids, broadband and more. Outside of traditional infrastructure, the Plan includes investments in public housing, new and upgraded schools, electric vehicles, medical countermeasures, research and development and more.

How could this impact federal procurement?

Although much can change between now and the final version of the bill, if even passed into law, as of now the White House is stressing both the "Made in America" and labor law aspects of the Plan. More specifically, it is probable that direct funding from the Plan will require compliance with the Davis Bacon Act (DBA)—a piece of legislation requiring federal contractors and subcontractors to provide locally prevailing wages and fringe benefits. This was a requirement of the Obama administration's American Recovery & Reinvestment Act funds, and President Biden has already touted to labor leaders the inclusion of DBA requirements.

Overall, it may be too early to tell what other impacts this or other Biden Administration moves can have on federal procurement. However, it is clear that the current administration is committed to public spending, which will likely result in growing contracting and grant opportunities for both established and new contractors.



Department of Justice reports on action against COVID-19 fraud

The Department of Justice (DOJ) released a [report](#) on March 26, 2021 detailing a historic level of enforcement action related to efforts combating COVID-19 fraud.

To date, the DOJ has publicly charged 474 defendants with criminal offenses against the US Government and individuals, recovering more than \$569 million across 56 federal districts.

With six major pieces of legislation, outlining over \$5.5 trillion in government funds and the DOJ's continued emphasis of protecting the integrity of these funds, we anticipate a continued increase in enforcement activity and investigations related to COVID-19 funds. Recipients should be prepared to fully substantiate eligibility and use of funds received.

PwC is thoroughly versed in government contracting and brings extensive experience to bear when evaluating the outlook for your business. In today's challenging economic climate, government contractors face tight budgets and ever-increasing demands. We can help you navigate these often conflicting demands and create a strong plan—from strategy through execution—for your business.

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