

Will the Administration's New Federal Contracting Executive Orders Result in More Efficient Procurement?

APRIL 18, 2025

On April 15, 2025, President Trump issued two Executive Orders directed at streamlining government procurement.

In the first Executive Order, "*Restoring Common Sense to Federal Procurement*,"^[1] the President directs the Office of Federal Public Procurement Policy (OFPPP) to reform the Federal Acquisition Regulation (FAR) to eliminate all requirements that are not mandated by statute or are otherwise necessary to support "simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests." The FAR, which has grown to over 2,000 pages since its inception over 40 years ago, is often criticized for being overly complex and burdensome. The Administration's stated objective for this EO is to reduce barriers and make federal procurement more efficient and cost-effective. The EO directs OFPPP, in coordination with the FAR Council and agency heads, to amend the FAR within 180 days. Agencies will be required to align their supplemental regulations with the reformed FAR. The EO directs the OFPPP Administrator to consider whether any FAR provisions not mandated by statute should expire after four years. In response to the EO, the FAR Council will propose eliminating FAR clauses that were based on previous Executive Orders but not tied to any statutory requirement.

While this undoubtedly will result in a significant re-write of, and reductions to, the FAR, the effect may be limited, as many FAR clauses implement statutory requirements. First, Title 41 of the U.S. Code provides for the Federal Procurement Policy, and includes a statutory basis for many of the FAR provisions and procurement requirements.

^[2] Many other FAR provisions are required by other statutes. For example, FAR 52.225-1 implements the Buy American Act, which requires federal agencies to procure domestic materials and products. FAR 52.222-6 implements the Davis Bacon Act for all federally funded construction projects. FAR 52.222-41 implements the Service Contract Act. FAR 52.203-11 implements the Byrd Anti-Lobbying Amendment. FAR 3.104 implements the Procurement Integrity Act. These are just a few examples of FAR requirements that are required by statute, and therefore should remain, in substance, in the FAR.

Contractors will not be immediately impacted by the FAR revisions as the changes likely will not automatically be applicable to existing contracts. Once finalized, the new FAR changes will be incorporated into new solicitations and contracts issued after the FAR is actually revised. Agencies will then determine whether to revise existing contracts to remove or revise specific FAR clauses. Typically, agencies make such modifications on contracts that have at least six months left within the period of performance.

The second EO, *Ensuring Commercial, Cost-Effective Solutions in Federal Contracts*,^[3] is designed to promote the procurement of commercial products and services, when available. This EO requires agencies to prioritize the procurement of existing commercially available products and services, as required by the Federal Acquisition Streamlining Act of 1994 (FASA), rather than non-commercial, custom-built products or services. The EO is premised on the assertion that agencies have historically disregarded FASA by allowing the procurement of more expensive custom-built solutions when better and more cost-effective commercial products and services are available.

The EO seeks to strengthen federal agency compliance with FASA by directing agency contracting officers (COs) to review all open solicitations for non-commercial products or services, and seek consolidated approval for the purchase of non-commercial products or services. To establish grounds for a non-commercial buy, COs will need to provide their agency's market research and price analysis. In addition, COs will be required to seek approval for all future non-commercial procurements, which also will be based on market research and price analyses. The EO, however, does not provide a timeline for such approvals. The agency approval authority may, but is not required to, seek input from the Director of the Office of Management and Budget.^[4]

As FASA is already the law, the EO does not materially change agencies' legal requirements with respect to the purchase of non-commercial products and services. While it would seem that the Administration's stated goal of sourcing more commercial products and services may be helped by the EO, the Administration will need to take care not to slow down the procurement process by adding additional layers of approval required to procure non-commercial products and services. Agencies, when implementing policies to comply with this EO, would be well-served to add internal deadlines for the review and approval of any non-commercial solutions.

While reducing FAR requirements could result in some efficiencies, adding additional layers of approval for all non-commercial purchases likely will result in short-term and potentially long-term procurement delays, which ultimately may lead to a less-efficient procurement process.

Contractor takeaways:

- Contractors will need to look out for updated solicitations and contract modifications for updated FAR provisions after the FAR updates are finalized.
- Suppliers of commercial products and services are likely to see an increase in contract awards.
- Contractors relying on non-commercial products and services may wish to consider opportunities to evolve product and service offerings to include commercial alternatives.
- There may be increased bid protests related to the failure to purchase commercial items—resulting in additional procurement delays.
- Requiring approval for all future non-commercial procurement will result in additional procurement delays.

[1] See *also* the [Fact Sheet](#) published by the Administration for this Executive Order.

[2] See, e.g., 41 U.S.C. Chapters 33 (Planning and Solicitation); 35 (Truthful Cost or Pricing Data); 37 (Awarding of Contracts), and others.

[3] See *also* the [Fact Sheet](#) published by the Administration for this Executive Order.

[4] The Director of the Office of Management and Budget will review and assess the validity of each such proposal with OFPPP and will "recommend" whether or not proposals should be approved or denied.

4 Min Read

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