



Vinson&Elkins

Navigating

U.S. Government Contracts
Developments—The First 100
Days of the Biden
Administration

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I. Introduction

Meet the Speakers



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Our Focus

In our presentation today we will focus on providing an overview of key U.S. government contracts developments during the first 100 days of the Biden administration. This presentation will include a discussion of the following key developments:

- The First 24 Hours: The “American Rescue Plan” and Executive Orders Affecting Federal Procurement
- Beyond the First 24 Hours: Policy Implementation and the “American Jobs Plan”
- Ongoing/Near-Term Developments and Regulatory Initiatives



Poll Question 1: What is the single most important issue in federal procurement that the Biden administration should focus on?

- a. The pandemic
- b. Job creation/domestic manufacturing
- c. Cybersecurity
- d. Climate change
- e. Promoting best value

II. The First 24 Hours: The “American Rescue Plan” and Executive Orders Affecting Federal Procurement

The American Rescue Plan

- Announced on Inauguration Day, January 20, 2021, and signed into law as Pub. L. No. 117-2 on March 11, 2021
- \$1.9 trillion in spending to fund multiple programs related to COVID-19 containment, vaccination, and economic relief
- Key government contracting elements include:
 - Extends through September Section 3610 of the 2020 Coronavirus Aid, Relief and Economic Security (“CARES”) Act, which allows agencies to reimburse contractors for any paid leave, including sick leave, a contractor provides to keep its employees or subcontractors in a ready state
 - Provides an additional \$1 billion for General Services Administration’s (“GSA’s”) Technology Modernization Fund for federal agency cybersecurity and IT modernization, and \$650 million for the Cybersecurity and Infrastructure Security Agency for cybersecurity risk mitigation

E.O. 13991, “Protecting the Federal Workforce and Requiring Mask-Wearing” (January 20, 2021)

- Requires on-duty or on-site federal employees or contractors, and other individuals in federal buildings or on federal lands to “wear masks, maintain physical distance, and adhere to other public health measures, as provided in CDC guidelines”
 - Establishes the Safer Federal Workforce Task Force to provide guidance to agency heads regarding the operation of the Federal Government, safety of employees, and continuity of government functions during the COVID-19 pandemic
- Task Force and Office of Management and Budget (“OMB”) issued Agency Model Safety Principles on Jan. 24, 2021, to allow agencies to build tailored COVID-19 workforce safety plans
 - Requires agencies to continue to maximize the use of telework and to provide advance notice before requiring return to work
 - Additional details on mask, social distancing, and other requirements
 - Task Force has also issued frequently asked questions regarding labor relations, leave, building operations, etc.
- Many agency Workforce Safety Plans address both employees and contractors; however, many requirements only apply to on-site contractors
- No vaccine mandate for federal employees; contractor mandates subject to state or other applicable law (e.g., medical exemptions under the ADA; religious exemptions under Title VII)

Revocation of E.O. 13950, “Combating Race and Sex Stereotyping”

- E.O. 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government” (January 20, 2021)
 - Revoked E.O. 13950, “Combating Race and Sex Stereotyping” (September 22, 2020)
 - Revoked E.O. prohibited federal contractors and subcontractors from providing certain workplace diversity training and programs
 - On December 22, 2020, the United States District Court for the Northern District of California had issued a nationwide preliminary injunction prohibiting the Office of Federal Contract Compliance Programs (“OFCCP”) from implementing, enforcing, or effectuating the portion of Executive Order 13950 relating to federal contractors
- Consistent with Section 10(b) of E.O. 13985, OFCCP has taken the following actions:
 - Rescinded the Frequently Asked Questions regarding E.O. 13950;
 - Ended the operation of a telephone hotline and email address created to collect complaints related to contractors’ alleged noncompliance with E.O. 13950;
 - Administratively closed all complaints regarding alleged noncompliance with E.O. 13950; and
 - Announced that it will not enforce any of the provisions required by the E.O. contained in government contracts or subcontracts
- Federal agencies immediately rescinded Class Deviations and clauses implementing E.O. 13950

Other Executive Orders (Cont'd)

- Biden Proclamation 10142, “Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction” (January 20, 2021)
 - Terminates the declaration of a national emergency at the southern border and declares the Biden administration’s policy that “no more American taxpayer dollars be diverted to construct a border wall”
 - Pauses work and the obligation of funds on all construction projects on the southern border wall, and directs the Secretaries of Defense and Homeland Security to develop a plan to redirect funds, which must include the consideration of terminating or repurposing contracts with private contractors constructing the wall
- Biden Executive Order 14001, “A Sustainable Public Health Supply Chain” (January 21, 2021)
 - Directs agency heads to assess and provide a report to the President of their agency’s procurement of pandemic response supplies, an account of existing or ongoing contracts for pandemic supplies, and actions that can be taken to improve the procurement of pandemic response supplies
 - Directs agency heads to review the pricing of pandemic response supplies and provide a recommendation on whether and how to direct the use of reasonable pricing clauses in Federal Government contracts, and whether to use the GSA schedules to facilitate state, local, Tribal, and territorial governments in purchasing pandemic response supplies

Other Executive Orders (Cont'd)

- E.O. 13990, “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis” (January 20, 2021)
 - Establishes an Interagency Working Group on the Social Cost of Greenhouse Gases, which includes the “social cost of carbon” (“SCC”), “social cost of nitrous oxide” (“SCN”), and “social cost of methane” (“SCM”), to publish interim and final SCC, SCN, and SCM “which agencies shall use when monetizing the value of changes in greenhouse gas emissions resulting from regulation”
 - Directs the Working Group to provide recommendations to the President on areas of Federal Government procurement, decision-making, and budgeting where the SCC, SCN, and SCM should be applied

III. Beyond the First 24 Hours: Policy Implementation and the “American Jobs Plan”

E.O. 14008, “Tackling the Climate Crisis at Home and Abroad” (January 27, 2021)

- Places climate change at the forefront of U.S. foreign policy and national security planning
- Establishes a National Climate Task Force (“Task Force”) consisting of most agency leaders and directs Task Force members to “prioritize action on climate change...in their contracting and procurement”
- Calls for the development of a “Federal Clean Electricity and Vehicle Procurement Strategy,” a plan which shall aim to use “all available procurement authorities” to facilitate the achievement of:
 - a carbon-pollution free electricity sector by 2035; and
 - clean and zero-emission vehicles for federal, state, local, and Tribal government and U.S. Postal Service car fleets
- Requires agencies to “adhere to the requirements of the Made in America Laws in making clean energy, energy efficiency, and clean energy procurement decisions,” consistent with the Made in America E.O.
- Directs the Council on Environmental Quality (“CEQ”) Chair to assist the Federal Acquisition Regulatory (“FAR”) Council in developing regulatory amendments to promote increased contractor attention to reduced carbon emissions and federal sustainability
- Directs agencies to identify opportunities for federal funding to “spur innovation, commercialization, and deployment of clean energy technologies and infrastructure”

E.O. 14008, Tackling the Climate Crisis (Cont'd)

- Director of the OMB, in coordination with agency heads and the National Climate Advisor, must identify and prioritize clean energy investments, and submit them for President Biden's Fiscal Year ("FY") 2022 budget request
- Each agency head must submit draft climate action plan
 - Describing "the agency's climate vulnerabilities and describe the agency's plan to use the power of procurement to increase the energy and water efficiency of United States government installations, buildings, and facilities"
 - Agencies must also consider the "feasibility of using the purchasing power of the Federal Government to drive innovation and . . . seek to increase the Federal Government's resilience against supply chain disruptions"
- Requires the CEQ Chair and the OMB Director to ensure that federal infrastructure investment reduces climate pollution and requires that federal permitting decisions consider the effects of greenhouse gases and climate change
- Requires agency heads conducting infrastructure reviews to "consult from an early stage with State, local, and Tribal officials involved in permitting or authorizing proposed infrastructure projects to develop efficient timelines for decision-making that are appropriate given the complexities of proposed projects"

Potential E.O. on “Climate-Related Financial Risk”

- Draft Executive Order to combat climate-related financial risks to government and the economy, obtained by certain media outlets, is reported to direct initiatives that will reach into all corners of the Federal Government and affect possibly every sector of U.S. industry, including some initiatives that target federal contracting
- Federal suppliers may be required to publicly disclose their greenhouse gas emissions and climate risk and set science-based targets for reducing them
 - The Securities and Exchange Commission (“SEC”) is already considering whether to require such disclosures from publicly traded companies
 - This anticipated E.O. may impose a FAR clause that could require nonpublic companies not subject to SEC oversight to make disclosures
- Federal purchasing decisions may be required to take into account the social cost (e.g., future health and weather impacts) of greenhouse gas emissions
 - This could drive Executive Agency decisions on allocation of funds for programs and new initiatives
 - Unclear at this time if this concept would require consideration at the level of proposal evaluations on procurements

E.O. 14005, “Ensuring the Future Is Made in All of America by All of America's Workers” (“Made In America”) (January 25, 2021)

- Intended to maximize the use of goods, products, and materials produced in, and services offered in, the United States
- Centralizes and formalizes the “Made in America” waiver processes by creating a Made in America Office within the OMB
 - Before an agency grants a waiver, it must provide the Made in America Director with a description of the proposed waiver and a detailed justification for the use of foreign goods, products, or materials
 - Establishes a process for the Made in America Director to disagree with a proposed waiver and inform the head of the agency proposing the waiver—conflicts between the two are to be resolved by OMB’s Office of Information and Regulatory Affairs (“OIRA”)
- Instructs GSA to develop a public website that shall include information on all proposed waivers and justifications, and whether those waivers have been granted
- On April 27, 2021, President Biden appointed Celeste Drake as the first Made in America Director
 - Drake was formerly Trade and Globalization Policy Specialist at the AFL-CIO

E.O. 14005, Made In America (Cont'd)

- The Made in America E.O. targets refinements to the FAR rubric for determining what constitutes a domestic end product and a domestic construction material under the Buy American Act of 1933
- Instructs the FAR Council to consider proposing for notice and public comment amendments to:
 - Replace the “component test” in FAR Part 25 with a test under which domestic content is measured by the **value that is added** to the product through U.S.-based production or U.S. job-supporting economic activity;
 - Increase the numerical thresholds for required domestic content; and
 - Increase the price preferences for domestic end products and domestic construction materials.
- FAR Case Rule 2021-008 – proposed rule currently being drafted
- Potential significant ramifications for contractors to ensure compliance with the applicable FAR provisions in their contracts, e.g.—
 - Now: Under the current regulations, for an end product to qualify as a domestic end product, it must be “manufactured in the United States” and the “cost of the components mined, produced, or manufactured in the United States” must exceed “55 percent of the cost of all its components” (see FAR § 25.003)
 - Future: Products manufactured from non-U.S. components or raw materials may need significant value-adding to U.S.-based manufacturing or other U.S. job-supporting economic activity to qualify as a domestic end product

FAR Case 2019–016, Maximizing Use of American-Made Goods, Products and Materials

- Final Rule issued January 19, 2021 but effective January 21, 2021
- Implemented Trump E.O. 13881, “Maximizing Use of American-Made Goods, Products, and Materials” (July 15, 2019) to strengthen enforcement of Buy American Act
- Increased domestic content requirements for “domestic construction material” or “domestic end product”:
 - for iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products must be less than 5 percent of the cost of all components in the product; or
 - for all other end products, the cost of the components mined, produced, or manufactured in the United States must exceed 55 percent of the cost of all the components
- Increases the price preference for domestic end products and construction material for non-Department of Defense (“DoD”) procurements from 6% to 20% for large businesses and from 12% to 30% for small businesses
 - Preference for DoD supply procurements remains 50%
- Changes apply to all solicitations issued on or after February 22, 2021 and resultant contracts
- So far, Biden administration has left this rule in place

E.O. 14017, “America's Supply Chains” (February 24, 2021)

- Intended to create more resilient American supply chains to revitalize and rebuild domestic manufacturing capacity
- Directs agency heads, in coordination with the Assistant to the President for National Security Affairs (“APNSA”) and the Assistant to the President for Economic Policy (“APEP”), to conduct a 100-day supply chain review and assess the supply chain risks in:
 - Semiconductor manufacturing and advanced packaging supply chains;
 - High-capacity batteries, including electric-vehicle batteries;
 - Critical minerals and other identified strategic materials, including rare earth elements; and
 - Pharmaceuticals and active pharmaceutical ingredients
- Directs agency heads to conduct a one-year supply chain assessment of six sectors: (i) defense; (ii) public health and biological preparedness; (iii) information and communications technology; (iv) energy; (v) transportation; (vi) agriculture and food products
- The APNSA and APEP must make recommendations on how to ensure that the government’s supply chain policy supports small businesses and prevents monopolization, and whether federal incentives and amendments to federal procurement regulations “may be necessary to attract and retain investments in critical goods and materials and other essential goods and materials”

E.O. 14026, “Increasing The Minimum Wage For Federal Contractors” (April 27, 2021)

- Increases the minimum wage for Federal Government contractors and subcontractors from \$10.95 per hour to \$15.00 per hour
 - Wage will be increased annually by the Department of Labor (“DOL”) each year beginning on January 1, 2023
 - The \$15 minimum wage also extends to federal contract workers with disabilities and tipped workers
 - The new E.O. builds on and expands E.O. 13658, which raised the minimum wage from \$7.25 to \$10.10 in 2014
- Implications of the new wage:
 - Applies to new Federal Government contracts entered into on or after January 30, 2022, where wages of workers under that contract are governed by the Fair Labor Standards Act, the Service Contract Labor Standards (formerly known as the Service Contract Act of 1965 (“SCA”)) or the Construction Wage Rate Requirements statute (formerly known as the Davis-Bacon Act (“DBA”)), and performed in whole or in part in the United States
 - E.O. leaves it to implementing regulations to define covered subcontracts; however, regulations implementing E.O. 13658 applied to all subcontracts, regardless of dollar value, subject to the SCA or DBA
 - E.O. does not apply to grants, which may limit application to spending under the American Jobs Plan depending on how that money is spent
 - Solicitations must incorporate the new minimum wage if the associated contract will be entered into after January 30, 2022

E.O. 14026, Federal Contractor Minimum Wage Increase (Cont'd)

- For existing contracts, agencies must implement the increased minimum wage if the parties extend, renew, **or exercise an option** under the contract after January 30, 2022
 - Application to option exercises is a notable difference from E.O. 13658, which did not apply to the unilateral exercise of a pre-negotiated option to renew an existing contract
- E.O. directs DOL to issue implementing regulations by November 24, 2021, and requires the FAR Council to amend the FAR within 60 days of the issuance of the DOL regulations
 - Except for requirement that minimum wage requirement be included in options, 29 C.F.R. part 10 and FAR subpart 22.19, which were promulgated to implement E.O. 13658, can likely implement the new E.O. without substantial revision
 - The new E.O. does not mandate a price adjustment for incorporation of the higher wage requirement into existing contracts; however, we believe that basic principles of contract law require a price adjustment
 - Providing for a price adjustment will also be important as a practical matter to avoid situations where contractors pay similarly situated employees different amounts based on the contract they support
 - Existing price adjustment mechanism for annual wage adjustments should continue to operate as is

E.O. 14026, Federal Contractor Minimum Wage Increase (Cont'd)

- Based on the E.O., the enforcement provisions of the wage requirements and remedies for violations are expected to remain the same
- False Claims Act (“FCA”) claims might be asserted based on false statements regarding the payment of the new wage
 - The E.O. mandates that contracts specify that, “as a condition of payment,” prime and subcontractors must pay the minimum wage
 - The FCA defines “material” as “having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.” 31 U.S.C. § 3729(b)(4)

Infrastructure Spending and Investments

- On March 31, 2021, President Biden announced the “American Jobs Plan,” a \$2 trillion infrastructure plan. The plan is “an investment in America that will create millions of good jobs, rebuild our country’s infrastructure” and aims to:
 - Fix and upgrade U.S. highways, bridges, ports, airports, transit systems and waterways;
 - Revitalize manufacturing, secure U.S. supply chains, and invest in research and development;
 - Make significant investments in areas outside of traditional infrastructure, including the electric grid, high-speed broadband and digital infrastructure, housing, schools, federal buildings, and commercial buildings
- The plan aims to use the federal procurement process to “jumpstart” clean energy manufacturing in the United States and asks Congress to make a \$46 billion investment in the federal buying power
 - Investment will focus on enabling manufacture of electric vehicles, charging ports and electric heat pumps, as well as critical technologies such as advanced nuclear reactors and fuel
- The plan also asks Congress to “include a commitment to increasing American jobs through Buy America and Ship American provisions”
 - Contractors can expect domestic content requirements similar to those put in place by the 2009 American Recovery and Reinvestment Act

Poll Question 2: Which Executive Order will have the most impact on federal contracting?

- a. Climate Change
- b. Made in America
- c. Supply Chains
- d. Minimum Wage
- e. I haven't had enough time to think about it

IV. Ongoing/Near-Term Developments and Regulatory Initiatives

Fiscal Year 2022 Budget Materials

- On April 9, 2021, OMB submitted to Congress the Biden administration's discretionary funding request for FY 2022 (the complete President's Budget submission is delayed)
 - Proposed \$769 billion in non-defense discretionary funding (16% increase over FY 2021)
 - Proposed \$753 billion in national defense programs (1.7% increase over FY 2021)
- Request for discretionary funding echoes many of the policy goals discussed previously, such as:
 - Boosting domestic manufacturing capabilities
 - Increases in funding for manufacturing programs at National Institute of Standards and Technology ("NIST") to establish two new Manufacturing Innovation Institutes
 - Promoting clean energy and technology to fight climate change
 - Funding for the purchase of electric vehicles and charging infrastructure in budgets of 18 agencies
 - Expanding opportunities for small businesses
 - Funding to support additional staffing capacity for Small Business Administration's government contracting programs
 - Empowering and protecting workers
 - Increases in funding for Department of Labor to enforce equal opportunity obligations of federal contractors

Afghanistan Draw-Down

- On April 14, 2021, President Biden officially announced the drawdown of all 2,500 U.S. troops in Afghanistan beginning May 1, 2021 and concluding by Sept. 11, 2021 the 20th anniversary of the war
- Drawdown will impact the approx. 17,000 contractor personnel currently deployed in Afghanistan (approx. 6,000 U.S. citizens), as well as contracts supporting U.S. missions from outside the country
- Drawdown will involve the de-scoping of many contracts, either through terminations for convenience (full or partial) or deductive changes, or the re-scoping of contracts to provide support from other locations
 - Existing/proposed budget will place substantial pressure on the government to cover drawdown/de-scoping cost impacts, notwithstanding future-year savings
 - Complicated cost and pricing issues may be particularly challenging for subcontractors/vendors that are not set up to provide the cost and pricing information required for termination settlement proposals and equitable adjustments
 - Difficult decisions regarding demobilization logistics and disposition of equipment and facilities may result
 - Contractors with partially descoped requirements will be challenged to perform to remaining requirements
- Drawdown will require DoD and other agencies to apply lessons learned from the Iraq drawdown, where government agencies were criticized for poor communication and planning and insufficient oversight
- Force protection for remaining contractor personnel will be a critical issue

Procurement Collusion Strike Force (“PCSF”)

- Originally established in 2019 to combat antitrust crimes and related schemes in government procurement, grant, and program funding at all levels of government—federal, state, and local
- Led by Department of Justice (“DOJ”) Antitrust Division, membership has grown from 13 to over 20 U.S. Attorneys’ Offices, the FBI, and the Offices of Inspector General for multiple federal agencies
 - U.S. Attorney Offices in D.C. and Northern Virginia are key partners
- Recent developments portend increased activity in the near future:
 - Recent indictments involving bid rigging in state projects and alleged violations of the Procurement Integrity Act
 - PCSF: Global
 - Effort to build connections with enforcement counterparts and tackle potential collusion in bids for the “staggering amount of U.S. funds spent abroad”
 - PCSF presenting to international groups and pursuing joint investigations
 - Data Analytics Project
 - Leveraging bid data and partnering with agencies to implement collusion analytics
 - PCSF engaged with dozens of agency analytics shops encouraging them to build analytical tools to detect collusion; advocating for collection and retention of bid data across government

Pandemic Spending Oversight and Investigations

- In March, DOJ trumpeted the government’s “historic level of enforcement action” in response to COVID-19 related fraud
 - Since passage of the CARES Act, DOJ has criminally charged approx. 500 individuals for alleged efforts to fraudulently obtain over \$500 million through schemes related to the COVID-19 pandemic
 - Most cases so far involve “low-hanging fruit” and garden-variety fraud; however, the government will likely shift focus towards more complex white-collar conduct
- A key area of focus has been and will continue to be on the Paycheck Protection Program (“PPP”)
 - All PPP loan recipients that received \$2 million or more will be audited at the time the borrower requests forgiveness
 - PPP borrowers subject to audit must complete a loan necessity questionnaire which is being used for a *post hoc* assessment of the certification of economic necessity that the borrower signed at the time of loan application
- The CARES Act established a number of different enforcement, oversight, and audit mechanisms in addition to the existing capabilities within DOJ and the agency inspectors general:
 - Special Inspector General for Pandemic Recovery (SIGPR) within the Treasury
 - Pandemic Response Accountability Committee (PRAC) of more than 20 existing federal IGs

DoD FAR Supplement (“DFARS”) Case 2019-D041, Strategic Assessment and Cybersecurity Certification Requirements

- Implements a DoD Assessment Methodology and Cybersecurity Maturity Model Certification (“CMMC”) framework in order to assess contractor implementation of cybersecurity requirements and enhance the protection of unclassified information within the DoD supply chain
- Interim rule issued Nov. 30, 2020; final rule anticipated in the coming weeks:
 - Added DFARS 252.204-7019 – requires offerors to have a current NIST SP 800-171 DoD Assessment on record in order to be considered for award
 - Added DFARS 252.204-7020 – requires contractors to provide the government with access to its facilities, systems, and personnel when necessary for DoD to conduct or renew a Medium or High NIST SP 800-171 DoD Assessment, and to ensure subcontractors have a current Basic Assessment
 - Added DFARS 252.204-7021 – requires contractors to maintain the requisite CMMC level for the duration of the contract and ensure its subcontractors have the appropriate CMMC level prior to awarding a subcontract
- DoD implementing phased rollout of CMMC
 - Prior to September 30, 2025, use of new DFARS clause (252.204-7021) must be approved by OUSD(A&S)
 - DoD announced “Pathfinder” procurements with anticipated awards in late 2021 that will require offerors to certify compliance with CMMC
- Other agencies are implementing CMMC on an ad hoc/procurement-specific basis (e.g., GSA STARS III)

FAR Case 2018–017, “Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment”

- Amends the FAR to implement Section 889(a)(1)(A) of the National Defense Authorization Act (“NDAA”) for FY 2019 (Pub. L. 115–232)
 - Section 889(a)(1)(A) prohibits the government from procuring any equipment, system or service that uses “covered telecommunications equipment or services” as a substantial or essential component of any system
 - “Covered telecommunications equipment or services” = certain telecommunications and video surveillance equipment or services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any subsidiaries or affiliates
- First interim rule (August 13, 2019) added FAR 52.204-24 and 52.204-25
 - FAR 52.204-24: requires that an offeror represent on an offer-by-offer basis whether it will provide any covered telecommunications equipment or services to the government and, if so, to provide additional disclosures
 - FAR 52.204-25: prohibits the contractor from providing covered telecommunications equipment or services as a substantial or essential component of any system, and imposes reporting requirements
- Second interim rule (Dec. 13, 2019) added FAR 52.204-26
 - Requires offerors to annually represent whether they provide covered telecommunications equipment or services to the government; if answered in the negative, offerors can skip the offer-by-offer representation at FAR 52.204-24
- Final rule still pending

FAR Case 2019–009, “Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment”

- Amends the FAR to implement Section 889(a)(1)(A) of the NDAA for FY 2019 (Pub. L. 115–232)
 - Section 889(a)(1)(B) prohibits executive agencies from entering into, extending or renewing, a contract with an entity that uses any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system
- First interim rule (July 14, 2020) supplemented FAR 52.204-24 and 52.204-25
 - FAR 52.204-24 now also requires an offeror to represent, after conducting a reasonable inquiry, whether it uses any equipment, system or service that uses covered telecommunications equipment or services
 - FAR 52.204-25 now also includes the Section 889(a)(1)(B) prohibition, and maintains the reporting requirements
 - Effective August 13, 2020
- Second interim rule (Aug. 27, 2020) supplemented FAR 52.204-26
 - Requires offerors to annually represent, after conducting a reasonable inquiry, whether they use any equipment, system or service that uses covered telecommunications equipment or services; if answered in the negative, offerors can skip the offer-by-offer representation at FAR 52.204-24
 - Effective October 26, 2020
- Final rule still pending

FAR Case 2017–005, Whistleblower Protection for Contractor Employees

- Proposes a rule to amend the FAR to implement Public Law 114-261, “Enhancement of Whistleblower Protection for Contractor and Grantee Employees” (Dec. 14, 2016)
- The rule would enhance whistleblower protections by making permanent a pilot program that protects civilian agency contractor employees from reprisal for sharing certain information
 - The four-year pilot program was enacted on January 2, 2013, by Section 828 of the NDAA for FY 2013
 - Under the program, contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing to any government entity information that the employee reasonably believes is evidence of gross mismanagement, waste, fraud, abuse of authority, or a violation of laws or regulations relating to a federal contract
- The rule would also clarify that the prohibition on reimbursement for certain legal costs accrued in defense against reprisal claims applies to both contractors and subcontractors
- Rule will not be applicable to DoD, NASA or the Coast Guard, which are covered by a separate program
- Final rule still pending

QUESTIONS?

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