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New Executive Order Seeks to Prioritize Commercial Items in Federal Procurement

Client Alert

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Last week, we published a Client Alert regarding the Trump Administration's proposed Federal Acquisition Regulation (FAR) rewrite. As part of this overhaul of federal procurement, on April 16, 2025, the White House also issued Executive Order 14271 entitled, "*Ensuring Commercial, Cost-Effective Solutions in Federal Contracts*." The Executive Order (EO) basically requires additional internal agency review and formal approval in order to purchase products and services that are not commercially available. Specifically, the EO states that, as a policy, all agencies are to "procure commercially available products and services, including those that can be modified to fill agencies' needs, to the maximum extent practicable[.]"

In setting forth this policy, the EO takes agencies to task for not strictly following the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355, as amended) (FASA), which was enacted to, among other things, increase the use of commercial items acquisitions. The EO essentially argues that FASA's goal has been undermined, in practice, by unwieldy acquisition procedures required to be followed by agency contracting officers (COs).

Under the EO, COs in each agency are directed, within 60 days of issuance, to "review all open agency solicitations, pre-solicitation notices, solicitation notices, award notices, and sole source notices for non-commercial products or services"—including highly specialized, government-unique systems, custom-developed products or services, or research and development requirements—where the agency has not identified a satisfactory commercial option. COs are then to create applications for approval to procure the non-commercial goods or services, to be submitted to agency approval authority, defined as "the senior procurement executive, responsible for management direction of the

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acquisition system of an agency.” The applications are required to include (1) “the market research and price analysis used to determine the availability of commercial products and services to meet the Government’s needs and to justify the procurement of a non-commercial product or service, as required by 41 U.S.C. 3307(d) and 10 U.S.C. 3453(c) and 3453(d)[;]” and (2) “the rationale for pursuing a Government-unique, custom-developed or otherwise non-commercial product or service.”

The approval authority then has 30 days to assess the application for compliance with FASA, including the sufficiency of the market research and price analysis, and to make “appropriate recommendations to advance the solicitation of commercial products and services where those products or services would be sufficient to serve the applicable procurement needs.”

For future solicitations of non-commercial products or services, the CO is required to go through this same process of providing to the approval authority the market research and price analysis needed to support the proposed solicitation. In sum, the EO seeks to make the procurement of commercial products and services the norm, unless the CO undertakes significant additional research and provides strong documentation and justification as to why a commercial product or service is insufficient.

Like the proposed FAR rewrite, this EO has the potential to dramatically alter the landscape for federal contractors, including in the aerospace and defense industry. For example, for non-commercial products, it could cause significant delays in solicitations and contract awards while COs conduct the necessary market research and price analysis and seek required approvals. However, and also like the proposed FAR rewrite, this EO is placing a large burden on agency procurement officials in a very short period of time. As a result, the timing of some of the impact to industry remains to be seen.

Nonetheless, we recommend that if you are a prospective federal contractor (or subcontractor) with a product or service that is commercially available, you pay close attention as this EO is implemented, as you may stand to benefit from the Administration’s re-prioritization. Please stay tuned for further updates from Butzel regarding this EO, and others impacting federal procurement policy, in the months that follow.

Members of Butzel’s Aerospace and Defense Practice have extensive experience advising contractors on all aspects of the procurement process. We encourage you to reach out to the authors of this Client Alert or your Butzel attorney for further information.

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