

GIBSON DUNN



Government Contracts Update

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New Executive Order Directs Agencies to Default to Fixed-Price Contracting

Until implemented through formal rulemaking or binding agency guidance, the Order's practical impact will depend on how agencies apply the mandates. Contractors should monitor forthcoming OMB guidance and any proposed FAR amendments closely.

On April 30, 2026, President Trump signed an [Executive Order](#) titled “Promoting Efficiency, Accountability, and Performance in Federal Contracting,” directing executive branch agencies to use fixed-price contracts as their default method of procurement. The Order and accompanying [Fact Sheet](#) describe the Administration’s view that cost-reimbursement contracting has led to “unpredictable costs, bloated overhead, and weak performance incentives” in federal procurement. While not unique—the government has periodically pivoted toward greater use of fixed-price contracting over the past several decades, usually in response to similar concerns—the new policy nevertheless signals a significant shift in federal contracting policy.

Overview

The Order directs agencies to utilize fixed-price contracts “to the maximum extent consistent with law.” For purposes of the Order, “fixed-price contracts” includes firm-fixed-price contracts and fixed-price incentive contracts as defined in Part 16 of the Federal Acquisition Regulation (FAR), as well as contracts that tie profit to performance-based metrics when appropriate. The Administration states that fixed-price contracting promotes cost control and timely performance, whereas cost-reimbursement contracts allow for “poorly defined” deliverables and “increase the Government’s exposure to overspending by providing little incentive to control costs.” The Order also purports to align federal contracting with private-sector contracts, which the Administration states “frequently focus on driving performance by dictating a fixed cost for a well-defined outcome and by tying contractor payment to performance-based metrics.”

Approval Thresholds

Although the Order acknowledges that cost-reimbursement contracting may be appropriate in certain circumstances (including certain research and development, emergency response, and pre-production developmental phases of major systems acquisitions), it requires contracting officers to provide written justification for any cost-type contract. For cost-type awards that exceed specified dollar thresholds, the contracting officers must obtain written approval by the agency head. The same thresholds apply to the cost-type portion of hybrid contracts. Those thresholds are:

- **\$100 million** for Department of War contracts;
- **\$35 million** for National Aeronautics and Space Administration contracts;
- **\$25 million** for Department of Homeland Security contracts; and
- **\$10 million** for contracts involving any other agency.

Delegations and Exceptions

Agency heads may delegate their approval authority to appropriate “non-career” employees. The Order’s emphasis on “non-career” officials may reflect an intent to place approval decisions with political appointees rather than career personnel. These approval requirements do not apply to contracts supporting response to an emergency, major disaster, or contingency operation as defined in FAR Part 2, or certain research and development or pre-production development contracts for major systems acquisition under FAR Parts 34–35.

90-Day Review & Reporting Requirements

Within 90 days of the Order, each agency head must review—and, to the maximum extent practicable and consistent with law, seek to modify, restructure, or renegotiate—the agency’s 10 largest cost-type contracts by dollar value to facilitate conversion to fixed prices and performance-based incentives. Contracts involving research and development or pre-production development for major systems acquisition, as well as contracts supporting emergency or contingency operations, are exempt from this review requirement.

Agency heads must provide semi-annual reports to the Director of OMB on implementation of the Order, including the number and value of approved cost-type contracts, along with the associated written justifications. Initial reports are due 90 days after the Order’s release, underscoring the Administration’s expectation of rapid implementation. As part of their initial reports, agency heads must also identify additional opportunities—beyond the 10 largest contracts subject to mandatory review—to move other cost-type contracts toward fixed-price structures.

Key Takeaways for Federal Contractors

Near-Term Impacts. The Executive Order could materially affect contractors that perform cost-reimbursement, time-and-materials, or labor-hour contracts. Although the FAR expresses a preference for fixed-price contracts (see FAR 12.207(a)), the Order’s requirement for contracting officers to justify and seek approval for other contract types above the prescribed thresholds represents a marked escalation of the existing preference. Moreover, the Order’s instruction to

review and potentially restructure the 10 largest cost-type contracts at each agency means that contractors holding such contracts may face renegotiation discussions in the near term.

Practical Steps for Contractors. Although the Order anticipates implementation through OMB guidance and potential FAR amendments, contractors that rely heavily on cost-type contracts should assess now how a transition to fixed-price arrangements could affect pricing, cost structure, and risk. Fixed-price contracts transfer performance and cost risk to the contractor, making accurate pricing dependent on defined scope, reliable estimating, and sufficient data. Where requirements are uncertain, contractors may face increased exposure—or may price that uncertainty into bids, potentially raising Government costs. Contractors should also expect increased negotiation over scope definition and pricing (including potential requests for equitable adjustment during performance), and should engage early with agency counterparts to ensure that statements of work are sufficiently defined to support fixed-price proposals.

What to Monitor. The Executive Order directs agency action but does not itself amend the FAR or override existing statutory authorities governing contract type selection. Until implemented through formal rulemaking or binding agency guidance, the Order's practical impact will depend on how agencies apply the mandates. Contractors should monitor forthcoming OMB guidance and any proposed FAR amendments closely.

The following Gibson Dunn lawyers prepared this update: [Lindsay Paulin](#), [Sarah-Jane Lorenzo](#), and [Katie Rubanka](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding these developments. To learn more about these issues, please contact the Gibson Dunn lawyer with whom you usually work, the authors, or leaders or members of the firm's [Government Contracts](#) practice group:

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