

# How Biden's First 100 Days Will Affect Gov't Contractors

By **Joseph Berger and Thomas Mason** (May 10, 2021)

The first 100 days of the Biden-Harris administration saw important developments in the field of government contracting and grants, which set the stage for their key role during the next four years.

Contracting and grants are central to the Biden-Harris agenda, and will provide critical support for the pandemic response and economic recovery, domestic manufacturing, U.S. supply chains, and clean energy, while advancing additional administration priorities.

To mark the first 100 days, President Joe Biden spoke to a joint session of Congress, where he lobbied for a White House infrastructure plan of historic scale, arguing that public investments and infrastructure have transformed America throughout its history, and that the U.S. should be at the forefront of technological change. The research funding he proposed could lead to future breakthroughs that surpass America's unrivaled track record in technology achievements.

Developments during the first 100 days included several key executive orders, the American Rescue Plan Act and the proposed American Jobs Plan, which collectively set forth the administration's proposals for infrastructure, research and development, and renewed support for U.S. manufacturing, small businesses and a clean energy economy.



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## **The Executive Orders**

Biden's early executive orders indicate the administration expects government contracting and grantmaking to play a central role in implementing its policy priorities and setting forth a plan to accomplish its goals. The executive orders also provide important context for the administration's infrastructure proposals. The administration is signaling continued reliance on the private sector.

## ***The Pandemic Response Orders***

Biden's day-one executive order on providing an organized and effective response to combat COVID-19, and the related national strategy plan to fight the pandemic, each included use of the Defense Production Act, or DPA, to help coordinate the nation's pandemic response. The Biden administration invoked the DPA early on in connection with production and distribution of vaccines, surgical gloves and test kits.

Throughout 2020, the Trump administration also invoked the DPA in its pandemic response. The Biden administration has proposed to use the DPA more broadly in connection with other critical supply chain issues. The Executive Order on a Sustainable Public Health Supply Chain, issued on Jan. 21, instructed agencies to invoke the DPA as necessary in support of long-term capability to manufacture supplies for future biological threat preparedness.

Use of the DPA in this manner would be consistent with the Biden administration's stated priority of bolstering domestic manufacturing and a congressional mandates that supports the same objective.

Commercial companies should expect more DPA-rated orders, as well as Federal Acquisition Regulation clauses that accompany government funding, throughout the supply chain over the next several years, not limited to the pandemic response. DPA orders will require commercial companies to proactively respond to their requirements because rated orders require priority under the law.

Following its initial executive orders, the administration focused on increasing the pace of vaccinations with critical help from the private sector and health care workforce. On April 21, the president announced that the nation had delivered 200 million vaccine shots in less than 100 days. The nation would soon be positioned to aid the rest of the world with urgently needed vaccine exports, reflecting success in the U.S. government contracting programs.

### ***The Racial Equity Order***

On his first day Biden also issued the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, requiring each agency to review, within 200 days, the potential barriers underserved communities and individuals may face in agency procurement and contracting opportunities.

This review can be expected to increase agency attention on improving opportunities for various categories of disadvantaged small businesses, historically underutilized business zones, and minority- and women-owned small-business contracting programs, as well as increased enforcement of affirmative action programs.

Biden has previously proposed increasing contracting opportunities for small, disadvantaged businesses under the Small Business Administration's Section 8(a) program and requiring prime contractors to increase their subcontracting with these businesses, and contractors should expect future measures along these lines.

### ***Buy American Under Biden***

The Jan. 25 Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers set forth Biden's "Buy American" policy mandate that federal procurement and financial assistance should maximize the use of goods produced and services offered in the U.S.

This policy mandate will set the context for many initiatives over the next several years, including the pending infrastructure proposals. While there exist significant legal limitations to this goal in the form of existing trade agreements, the priority established by the White House means that contractors should expect increasing emphasis on "Buy American" principles, requirements and enforcement.

### ***Minimum Wage Increase***

On April 27, Biden signed an executive order increasing the hourly minimum wage for federal contractors to \$15, with adjustments based on inflation, to be implemented by regulations and a FAR clause. The increase must be included in new contracts and modifications by Jan. 30, 2022. Contractors can expect the administration to continue implementing new labor protections through federal contracting regulations, and to enforce existing requirements.

## ***The Clean Energy Order***

On Jan. 27, Biden signed the Executive Order on Tackling the Climate Crisis at Home and Abroad, which aims to use the power of federal procurement to achieve a carbon pollution-free electricity sector no later than 2035, and clean and zero-emission vehicle fleets for federal, state, local and tribal governments.

Following the "Buy American" policy, this order requires goods purchased to be made in the U.S. The contracting community can expect increased government demand for the production of electric vehicles and clean power, including solar and wind energy, using American products, services and technology.

In February, the administration announced an innovation effort to address climate change, releasing \$100 million from the U.S. Department of Energy to support low-carbon energy technologies. The DOE has announced related loan guarantee programs.

Biden has also announced his intention to accelerate R&D and launch the Advanced Research Projects Agency-Climate, as part of a governmentwide effort to encourage game-changing technologies that address the complex challenges posed by climate change.

This executive order illustrates the administration's policy to use federal research and procurement power to spur development of breakthrough technologies, in this case, domestic clean energy. The administration has made clear it intends to use the power of federal procurement to support domestic innovation in many other areas of emerging technologies.

## ***The Order on U.S. Supply Chains***

On Feb. 24, Biden signed an executive order stating the policy that the U.S. needs resilient, diverse and secure supply chains to ensure economic prosperity and national security.

The order mandated a 100-day review period to address supply chain vulnerabilities in four key product areas: active pharmaceutical ingredients, or APIs; critical minerals; semiconductors; and large capacity batteries. The order also directed a one-year review of a broader set of U.S. supply chains.

In April, the administration convened a CEO summit on supply chain resilience and the semiconductor shortage. Biden related the need for supply chain security to the need for domestic manufacturing and R&D. He pointed out that government-funded research led to development of lithium batteries, LED technology, the internet, COVID-19 vaccines, and the Human Genome Project, leading to breakthroughs against cancer and other diseases.

These examples demonstrate the potential of government-funded R&D to succeed, and also the need for secure supply chains to ensure that technology development will not be jeopardized by supply chain weaknesses. The order on supply chains provides this context for the R&D funding proposed in the infrastructure plan, intending to ensure that the necessary domestic capabilities exist for successful innovations in technology.

## ***The American Rescue Plan***

The American Rescue Plan Act, or ARPA, was signed into law on March 11, and was the first major legislation enacted under the new administration. The law provides about \$1.9 trillion in federal funding for diverse priorities, including the COVID-19 pandemic response and

economic recovery, state and local fiscal relief, as well as government oversight of COVID-19 relief funding.

Contractors can expect enforcement efforts will follow this and all other pandemic relief funding.

A new \$10 billion critical infrastructure projects program was included to help states, territories and tribal governments carry out critical capital projects in response to COVID-19, to facilitate remote work, education and health monitoring. Contractors should expect related opportunities on the state level.

The law also provides \$10 billion for DPA purchases to expand domestic manufacturing of vaccines, test kits, personal protective equipment and other medical supplies. When Biden spoke on March 18 to mark the completion of 100 million vaccinations, he acknowledged the role of the power given to a president under the DPA. The president's executive orders ensure that this funding will be used.

While ARPA is expansive legislation that will take many years to be fully implemented — and for its impacts to be fully understood — its facilitation of nationwide vaccinations demonstrates the potential for success when government and private sector capabilities are combined. The act takes a similar approach to its transportation and infrastructure funding, which will also rely on the private sector to succeed.

ARPA sets the stage for the administration's next major legislative proposal, the American Jobs Plan, which will rely even more heavily on contracting and grants to achieve its goals for the American economy and infrastructure.

## **Defense, Space and Cyberspace**

In April, the Biden administration proposed a \$715 billion budget for the U.S. Department of Defense fiscal year 2022, a slight increase from 2021. The White House submission to Congress stated the budget request would, among other priorities, support defense R&D, ensure troop readiness, optimize naval shipbuilding, invest in hypersonic capabilities and counter emerging biological threats.

The DOD's role in advancing technology breakthroughs cannot be understated. Biden's remarks at the Pentagon on Feb. 10 reflected the reality of the global technology race:

We need to take on the dangers and opportunities of emerging technologies, enhance our capabilities in cyberspace, ensure that we are positioned to lead in a new era of competition, from deep sea to outer space.

The new administration announced early on its support for the U.S. Space Force established by law in 2019, as well as NASA's Artemis lunar exploration program, which will return U.S. astronauts to the moon and eventually, send them to Mars.

NASA's commercial-crew program has recently taken leaps in human spaceflight, launching American astronauts into space last year and again last month. The crew program began more than 10 years ago, when Biden was vice president, and demonstrates that government contracting programs can provide a stable platform for American technological achievements, which can advance and succeed across changing presidential administrations.

In a series of White House announcements in April, in the wake of the recent high-profile cyber breaches, the National Security Council addressed cybersecurity as an administration priority and stated that it is determined to meet the growing challenge posed by adversaries in cyberspace.

The administration announced it is taking steps to safeguard the nation's critical infrastructure from sophisticated cyber threats, and that public-private partnerships are paramount to these efforts. An executive order is expected and contractors should continue to expect increased attention to, and enforcement of, evolving cybersecurity requirements.

### **The American Jobs Plan**

On March 31, following passage of ARPA, the administration released the American Jobs Plan, which proposes investing about 1% of U.S. gross domestic product per year over eight years, totaling about \$2 trillion, in infrastructure, R&D, manufacturing and related initiatives. In response, U.S. Senate Republicans released a \$568 billion counterproposal, focusing on transportation infrastructure.

It appears likely that Biden's infrastructure plan will ultimately pass in one form or another. No matter what the final dollar value, contractors and grantees should expect significant transparency, accountability and enforcement measures to accompany any resulting legislation. Such measures were integral provisions in the 2009 American Recovery and Reinvestment Act, and in regulations that followed it.

### ***Transportation and Infrastructure***

The Biden plan would invest \$621 billion in transportation infrastructure. Given the state of the nation's infrastructure and what would be needed to keep pace with other nations, the plan would benefit the greater U.S. economy, as well as domestic manufacturing and construction.

Within the \$621 billion, \$115 billion is proposed for bridges, highways and roads, including \$20 billion for road safety; \$85 billion to modernize existing public transit services; and \$80 billion for rail, with additional billions allocated to improving airports, inland waterways and coastal ports.

A significant amount of this transportation funding can be expected to flow through state agencies, as occurred through the 2008 U.S. Housing and Economic Recovery Act. Contractors should be prepared to engage with state and federal procurement mechanisms, and be prepared for loan guarantees as well as grants and contracts.

An additional \$174 billion is proposed to win the electric vehicle market. This funding would build a national network of 500,000 EV charging stations by 2030, replace diesel transit vehicles, electrify a portion of the yellow school bus fleet and electrify the federal vehicle fleet. This part of the plan seeks to effectively transform the economy with clean energy transportation options, and again highlights the power of federal procurement to influence industry.

The plan considers the increasing impact and cost of the weather-related disasters the federal government — and contractors — must address on a yearly basis. It calls for investment in resilient infrastructure that can better withstand the impacts of climate change and safeguard vulnerable communities from climate-driven disasters.

The plan also calls for more than \$300 billion for clean drinking water infrastructure, a modernized power infrastructure and providing nationwide access to high-speed broadband. These investments, which require contracting to implement, could help promote equity in the economy across geographic areas and help facilitate the transformation to a clean-energy economy.

### ***R&D and Domestic Manufacturing***

The administration argues that historically, the government's public investments have driven new engines of economic growth, from the invention of the semiconductor to the creation of the internet to development of the COVID-19 vaccines. The plan's R&D funding, which Biden has described as the biggest increase in nondefense R&D on record, would be as important as the funding for more traditional brick-and-mortar infrastructure. New competition with economic rivals demands R&D investment, in order for the U.S. to maintain its global technology leadership in the future.

Biden's plan calls for \$180 billion in R&D to compete with China and other rival economic powers, and to advance U.S. leadership in critical technologies, such as artificial intelligence, biotechnology, and computing, which are critical to America's future economic competitiveness and national security.

The plan also seeks to address racial and gender inequities in R&D, and in science and technology, by allocating billions to fund research at historically black colleges and universities, and other minority serving institutions.

The plan includes a \$50 billion investment in the National Science Foundation targeted to development of semiconductors, advanced computing and communications, energy technologies and biotechnology; \$30 billion is allocated for R&D to support job creation including in rural areas; \$40 billion is to upgrade research infrastructure at federal agencies and research laboratories; and \$35 billion for technology breakthroughs to position America as the global leader in clean energy technology.

These are logical priorities and targeted technologies for R&D investments that can be distributed in an equitable manner.

The plan also calls for \$300 billion for American manufacturing and small businesses. This includes \$50 billion to support domestic industrial capacity and the production of critical goods through U.S. supply chains, as well as \$50 billion in semiconductor manufacturing and research. These investments would address critical product shortages, provide new opportunities for small businesses and improve domestic supply chain resilience.

Another \$30 billion is included to protect against future pandemics. Biden has also proposed creation of the Advanced Research Projects Agency for Health, which would aim to develop breakthroughs against diseases and "end cancer as we know it." The administration believes this goal is within reach.

Further, the plan calls for a \$46 billion investment to use the federal government's buying power to drive clean energy innovation and manufacturing, and to help achieve net-zero emissions in the economy by 2050. With procurement that includes EVs, charging ports, and electric heat pumps for residential and commercial buildings, the plan would affect both clean energy and domestic manufacturing.

The plan proposes putting additional billions towards various categories of support for

domestic manufacturing and small businesses, including small businesses that are minority-owned or rurally located. These investments seek to advance and bolster the U.S. economy in previously underserved communities and geographic areas, and to distribute resulting benefits more evenly across the nation.

### **Continued Reliance on Government Contracting**

In total, if enacted on the scale proposed by the Biden-Harris administration, the infrastructure plan would deploy government investment, grants, procurement and R&D on a transformative scale.

The potential impact would be commensurate with the funding provided, including for U.S. manufacturing, international competitiveness, related programs for domestic preferences, small businesses and rural areas, and the U.S. response to climate change with clean energy options.

Biden's executive orders set the policy context for the infrastructure plan, while also establishing government contracts and grants as a central mechanism for implementing the administration's agenda and achieving its goals.

The administration's proposals recognize that government contracting and grants are powerful tools that can provide effective support for the U.S. economy. Government investments can promote American leadership in global technology, building on its long history of government-funded breakthroughs leading to commercial innovation success.

The tools of R&D, grantmaking and government procurement can enable U.S. industry to achieve the envisioned technology advancements needed to preserve global leadership.

The ultimate scale and scope of the White House infrastructure plan is now up to Congress. In the meantime, based on its first 100 days, it is clear that federal research, grants and government contracting remain essential to the nation's work under the Biden-Harris administration.

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