

## Four Key Questions on Biden's Buy American Order

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President Joe Biden's directive to prioritize domestic sources in federal procurements could lead to the biggest makeover to Buy American requirements in decades, but vague language in the order has left contractors with important unanswered questions regarding its implementation.

The executive order directs federal agencies to maximize their use of domestically sourced products and services, and mandates changes to "Made in America" rules, while seeking to clamp down on the use of waivers to get around those rules.

The order includes a test based on "the value that is added to the product through US-based production or US job-supporting economic activity," fitting in with Biden's call for procurement policy that "will help American businesses compete in strategic industries and help America's workers thrive."

But those terms are not defined in the order and are so broad and so vague that they are open to multiple interpretations, with both the nature and impact of the changes to how domestic content is assessed hinging almost entirely on how the FAR Council interprets those terms, attorneys said.

"There's zero detail in this order as to what that's actually going to mean," McCarter & English LLP associate Cara Wulf said. "But it is such a dramatic shift from what companies have been doing for decades that it's something that we'll want to watch very carefully."

"I think that the Trump final rule, if you will, is a step in the right direction from the Biden administration's perspective," Wulf said.

The executive order's only specific reference to the Trade Agreements Act is to direct agencies to conduct biannual analyses of their spending on products using TAA waivers, which is a strong indication the new administration is going to examine the use of TAA waivers, although it is less clear what the White House intends to do with that information, said Wulf of McCarter & English.