

## Enter DOGE: Trump Executive Order Formalizes DOGE and Directs Agencies on Next Cost Cutting Steps

### PREAMBLE

While it is not our intent to flood your inbox with articles, alerts, and analyses; the pace, breadth, and volume of actions by the Trump administration in its first month (not even 100 days) is nothing short of remarkable. The authors and our team remain vigilant in trying to keep abreast of developments that impact the government contracts, construction, and other ancillary business spaces and, in turn, we try to keep our clients and friends of the firm aware of this seemingly daily barrage of changes, revisions, firings, terminations, and the like. As critically, there does not appear to be any end in sight. As such, we will continue to write alerts such as this and keep you current on events. That being said, this appears to just be the beginning, so bear with us.

### EXECUTIVE ORDER NO. 14219

On February 26, 2025, the administration issued Executive Order No. 14219, titled “Implementing the President’s ‘Department of Government Efficiency’ Cost Efficiency Initiative.”<sup>1</sup> This order comes as a follow-up to Executive Order 14158, dated January 20 “Establishing and Implementing the President’s ‘Department of Government Efficiency’ and related orders. In summary, it creates and develops a framework for DOGE to interact and work with virtually all executive agencies and requires each agency head to identify a “DOGE Team Lead.” Much of this EO is related to “Covered contracts and grants,” which is broadly defined as seemingly all “...discretionary spending through Federal contracts, grants, loans, and related instruments, but excludes direct assistance to individuals; expenditures related to immigration enforcement, law enforcement, the military, public safety, and the intelligence community; and other critical, acute, or emergency spending, as determined by the relevant Agency Head. Notification shall be made to the agency’s DOGE Team Lead.” EO § 2(d).

### NEW TECHNOLOGY – COST AND PAYMENT MONITORING SYSTEM

As part of its efforts, the EO requires each agency head to “build a centralized technological system [the “System”] within the agency to seamlessly record every payment issued by the agency pursuant to each of the agency’s covered contracts and grants, along with a brief, written justification for each payment submitted by the agency employee who approved the payment.” This system shall include a mechanism for the agency head to pause and rapidly review any payment for which the approving employee has not submitted a brief, written justification within the technological system.” *Id.* § 3(a). No definitive time frame is provided for implementation of this system, but the concept of each agency having its own system seems to both waste time and resources as well as create inconsistencies between agency “accounting-type” systems. Interestingly, much of this data at the contract level is supposed to be posted to [www.usaspending.gov](http://www.usaspending.gov), but the news has regularly reported that the data therein is not complete or accurate.

Once implementation of the system occurs, the agency head is to issue guidance (*new regulations* – which also take time to prepare, publish, and implement under the Administrative Procedures Act) to require that relevant agency employees “promptly submit a brief, written justification prior to that employee’s approval of a payment under covered contracts and grants, subject to any exceptions the Agency Head deems appropriate.” *Id.* at § 3(a)(ii). Again, this is a time intensive procedure that seems to both increase the time for payment, possibly creating a violation of the Prompt Payment Act, and also adds a step to presumably the approving contracting officer’s review and processing of payments. As critically, the justification for each payment is to be publicly available to the



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maximum extent permitted by law and as deemed practicable by the agency head. This creates more transparency, but agencies may need to consider issues (such as “black budget” classified contracts) and create exceptions therefore, depending upon the data contained in such a justification. It also is problematic for contractors in that if a payment application is rejected in whole or part, such a publicly available justification may contain information that is reputationally damaging to the contractor (such as “payment is rejected due to assessment of liquidated damages” or “payment is rejected in full due to defaults by the contractor”).

## REVIEW OF EXISTING COVERED CONTRACTS & GRANTS

Also included in this EO is a mandate that each agency head in consultation with the DOGE team lead “...review all existing covered contracts and grants and, where appropriate and consistent with applicable law, **terminate or modify (including through renegotiation) such covered contracts and grants to reduce overall Federal spending or reallocate spending to promote efficiency and advance the policies of my Administration.** This process shall commence immediately and shall prioritize the review of funds disbursed under covered contracts and grants to educational institutions and foreign entities for waste, fraud, and abuse. Each Agency Head shall complete this review within 30 days of the date of this order.” *Id.* at § 3(b)(emphasis added). It remains to be seen how any agency shall be able to productively, efficiently, and accurately complete this process within 30 days (March 26). Keep in mind too that terminations for convenience of awarded contracts (or even sometimes mere modification) can result in significant government liability. See, e.g., FAR Part 49. What has been seen in the previous few weeks is a seemingly wholesale cancellation of contracts, grants, and programs (USAID comes to mind as widely reported in the public news). This creates a possible quagmire for contractors and grant recipients alike, of not only (a) having to fight and litigate over past due payments and claims, but also improper terminations, whether for default or convenience; and (b) will undoubtedly cause massive backlogs and a flood of disputes to the Boards of Contract Appeals and U.S. Court of Federal Claims to review either these default terminations or if for convenience, disputes over the appropriate pay outs for costs incurred and also other procedural violations.

While the government will likely use termination for convenience as a vehicle to effectuate this direction, it may only terminate under this guise if it has a good faith basis to terminate and even then, as noted above, the contractor is entitled to recover its costs incurred through the date of termination plus close-out and settlement expenses. These costs can be significant. Also, the government still must follow the APA and the FAR on what is required. Adequately documenting and creating a record to support a termination takes time and effort. Many agencies are in the process of mass terminations, and other agencies are seeing significant early retirements and/or mass resignations,<sup>2</sup> which could conceivably result in a lack of experienced, skilled personnel, and government attorneys available to handle these cases and situations.

As for renegotiating contract terms, that would normally take the form of a modification. But getting that done in 30 days is difficult, again due to (a) the need that both sides negotiate for a bilateral modification or (b) if the agency issues a unilateral modification that is not agreed to, then the issue of claims, disputes, and appeals rears its head yet again. These are all time and cost intensive events. In our experience, it is rare to get even a bilateral modification handled promptly, to say nothing of what appears to be a mass review and renegotiation of government contract terms and conditions. Again, the lack of enough government personnel to meet this “new demand” may create more quagmires and complications than the president realizes.

## FUTURE COVERED CONTRACT & GRANT APPROVAL

Once the existing contract/grant review is completed, going forward, and apparently prior to entering into any new contract, the EO instructs that agency heads in consultation with its DOGE team lead, shall issue guidance/regulations relating to the signing of new contracts or modifying existing contracts “to promote Government efficiency and the policies of the [Trump] Administration.” Agency heads may approve new contracts prior to such guidance being issued on a “case-by-case basis.” This once again increases the bureaucratic work effort, of having to get agency head approval for all contracts in the interim period before the aforementioned guidance is issued, again a process that typically takes months to work through. Interestingly, there is no explicit ability of the agency head to delegate this approval function discussed in the EO. As such,

it appears that only the agency head (secretary, administrator, commissioner, etc.) is the only person with case-by-case approval authority. The documentation needed to obtain that approval is going to be interesting to see and the cost and time related thereto will likely cause further procurement “back-ups.” As critically, the agencies are barred from issuing new warrants of authority to contracting officers during the 30-day review period absent a determination by the agency head that such approval is required.

Once an agency gets its payment system operational, its DOGE team lead shall provide monthly reports to the administration, and once the contract grant and justification procedures are implemented, the report shall include all of the payment justifications provided. It does not appear that the administration understands just how many payments a given agency, to say nothing of the entire executive branch, makes in a given month, but the number must be astronomical. This may be an instance of “be careful what you wish for,” but the outcome of this effort remains to be seen.

## OTHER HIGHLIGHTS

In addition to the foregoing, the EO directs that each agency build a system to monitor federally funded travel for conferences and non-essential purposes; freezes the use of credit cards held by employees for 30 days except for disaster or natural disaster relief; and such other expectations that an agency head identifies in consultation with the agency’s DOGE team lead.

The EO also discusses 30-day reviews of agency real estate leases and 60 days for the GSA administrator to develop a plan to get rid of unnecessary real estate holdings.

## EXCLUSIONS

The EO does not apply to law enforcement officers, U.S. Customs and Border Protection and Immigration and Customs Enforcement; the Uniformed Services and other grants and contracts or real estate exempted in writing by the agency head in consultation with both the OMB director and agency’s DOGE team lead; and classified information or classified information systems.

## CONCLUSION

It is reasonable, laudable goal to seek to reduce waste, fraud, and misspending under federally funded projects. The problem that appears to exist here is that no systems are in place to perform what this and other EOs are seeking to do. And make no mistake this contemplated overhaul in EO 14219 is massive in scope and magnitude. In effect, the administration is the proverbial “bull in a china shop,” coming in and developing plans without having the workforce and rules in place to implement what its goals are. This is all the more the case where mass firings, early retirement offerings, and general adversity to the administration’s and DOGE’s actions thus far have reached a near fever pitch.

In trying to implement these “cost savings” measures, the administration needs to be careful that it is not creating cost spending activities and/or creating additional procedures and policies that slow down the regular procurement practices and procedures, many of which have been in existence for decades. Change can be good, but only when it is thoroughly planned and organized.

We anticipate that the risks associated with different agencies having different payment monitoring systems; different implementations and regulations on awarding grants and contracts and other risks for inconsistency agency-by-agency; coupled with the risk of improper terminations and/or renegotiated contracts will create a “boomerang” effect that may cause headaches not only for the contractors and grant recipients but also the administration and judicial and administrative tribunals that have to wade into this possible quagmire. Only time will tell and Cozen O’Connor Government Contracts and Construction attorneys are here to help.

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<sup>1</sup> <https://www.whitehouse.gov/presidential-actions/2025/02/implementing-the-presidents-department-of-government-efficiency-cost-efficiency-initiative/>

<sup>2</sup> See e.g., EO 14217 “Commencing the Reduction of the Federal Bureaucracy,” <https://www.govinfo.gov/content/pkg/FR-2025-02-25/pdf/2025-03133.pdf>.

