

Government Reshuffling and Its Implications on State and Local Procurement

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In the current climate of federal restructuring, government contractors must be vigilant and adaptable. Understandably, a major focus for the contracting community has been the rewrite of the Federal Acquisition Regulation (FAR), but this initial step has proven to be less “revolutionary” than anticipated. Other initiatives from the Trump Administration, however, particularly those not explicitly targeted at federal procurement, portend more dramatic changes to contracting opportunities that agile contractors should prepare to capitalize on. The Trump Administration’s concerted efforts to downsize the federal government, announced for now through a series of Executive Orders (EOs) aimed at reducing bureaucracy and shifting responsibilities to state and local governments, present both challenges and opportunities for contractors. Adapting to this changing landscape requires an acute awareness of not only federal policies but also the diverse and evolving procurement laws and practices at the state and local levels.

Executive Order Changes

The first year of the Trump presidency saw several attempts to downsize parts of the federal government. Although many of the initiatives have been challenged in court as needing congressional involvement, the U.S. Supreme Court has signaled that it will not derail the Administration’s efforts to reshape the federal bureaucracy. For now, most of the Administration’s initial plans have been implemented through a series of EOs intended to reduce the scope and influence of federal agencies. Many of these orders have focused on the elimination of perceived unnecessary elements or redundancies in the federal bureaucracy, consistent with the mission of the Department of Government Efficiency (DOGE).

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Among the most notable of these orders was EO 14217, "Continuing the Reduction of the Federal Bureaucracy," which provides for the reduction of seven federally funded agencies and institutes in media, business development, and policy scholarship. Similarly, EO 14242, "Improving Education Outcomes by Empowering Parents, States, and Communities," directs the closure of the U.S. Department of Education and the return of "authority over education to the States and local communities while ensuring the effective and uninterrupted delivery of services, programs, and benefits on which Americans rely." Actions like these represent the Trump Administration's attempts to shrink the federal government's footprint and will have a direct impact on opportunities for government contractors.

EOs and other public statements by the Administration have signaled that the Federal Emergency Management Agency (FEMA) is also a key target for significant downsizing, if not elimination. The Administration has issued Executive Orders seeking a greater degree of federal-local cooperation on issues of national importance, including disaster response. For example, EO 14239, "Achieving Efficiency Through State and Local Preparedness," provides that state and local governments shall "play a more active and significant role in national resilience and preparedness," with the Administration enabling them "to better understand, plan for, and ultimately address the needs of their citizens." While the EO does not specifically outline the role of state and local governments, it orders the development of a National Risk Register to identify and quantify risks to national infrastructure - a measure intended to better inform and streamline state investments. EO 14308, "Empowering Commonsense Wildlife Prevention and Response," takes a similar tack but contains greater detail on strategies to "expand and strengthen the use of partnerships, agreements, compacts and mutual aid capabilities that empower Federal, state, local, tribal, and community-driven land management that reduces wildlife risk and improves wildlife response." One such strategy is the creation of a technology roadmap designed to "increase wildlife firefighting capabilities at the State and local levels, including through artificial intelligence, data sharing, innovating modeling and mapping capabilities, and technology..."

State and Local Laws and Accepted Practices Are Varied

While the bulk of President Trump's deregulatory actions do not explicitly reference or impinge on government contractors, they nevertheless reflect a marked shift in federal priorities, emphasizing the need for more state and local government action across a range of areas. The looming possibility of certain government functions devolving to the state and local level means that current and prospective contractors should familiarize themselves with and monitor non-federal procurement policies and the many variations among them.

Below is just a sample of some unique characteristics found in state and local procurement processes:

New York

New York imposes a **restricted period (i.e., a blackout period)** commencing when a solicitation is posted and ending with the final contract award and approval, during which an offeror is allowed to communicate with only persons designated by the soliciting agency as knowledgeable and permissible contacts for the purposes of that procurement.

Georgia

Similarly, many Georgia municipalities and state agencies implement a “**cone of silence**” akin to New York’s restricted period, during which vendors may only communicate with an agency-designated contracting officer as the sole point of contact with respect to the procurement. (link)

Contractors in Georgia must also be careful to avoid even the appearance of collusion, as it is a felony to enter into a contract, combination, or conspiracy in restraint of trade or in restraint of free and open competition in any transaction with the state. Contractors should be especially vigilant when considering any ventures with those that may have been competitors for the same requirements to avoid allegations of antitrust violations.

Florida

Florida also has a restricted period by which every solicitation must include a provision attesting that respondents may not contact any employee of the soliciting agency except the procurement officer between the release of the solicitation and the end of the 72-hour period following the agency posting the notice of intended award. Fla. Stat. § 287.057(25).

Texas

The Texas Professional Services Procurement Act (PSPA) forbids state entities from selecting a provider of professional services or awarding a contract for such services through the standard competitive bidding process; instead, they must make the selection and award based on the **demonstrated competence and qualifications** to perform the services for a fair and reasonable price. Tex. Gov. Code § 2254.003. The chapter defines professional services as those services within the scope of the practice of accounting, architecture, landscape architecture, land surveying, medicine, optometry, professional engineering, real estate appraising, professional nursing, or forensic science. *Id.* at § 2254.003(2). Any contract in violation of the PSPA is considered void as contrary to public policy. *See City of Denton v. Mun. Admin. Servs., Inc.*, 59 S.W.3d 764, 768 (Tex. App. 2001).

Maryland (link)

Maryland has a constitutionally established Board of Public Works (BPW) which convenes to “review and approve” several statutorily mandated projects and programs, including significant state expenditures for certain capital improvements. Md. Code Regs. § 21.02.01.05. The BPW delegates the authority to review and approve certain procurement awards under \$200,000 to several designated agencies within the state government, including the Department of Budget and Management, Department of General Services, Department of Transportation, Maryland Port Administration, Department of Public Safety and Correctional Services, Department of Information Technology, and the Treasurer’s Office. Md. Code Regs. § 21.02.01.04. All procurement actions exceeding set thresholds for procurement and contracting authority must be submitted to the BPW for approval.

Michigan (link)

Michigan provides that “all other things being equal, preference shall be given to products manufactured or services offered ... by facilities with respect to which the operator is designated as a clean corporate citizen ...” Mich. Comp. Laws § 18.1261(1). A “**clean corporate citizen**” is a “facility that has demonstrated environmental stewardship and a strong environmental ethic.” Mich. Comp. Laws § 324.1401(e). To qualify for the clean corporate citizenship (C3) program, an operator must have a “strong and effective environmental management system,” implement a robust pollution prevention policy and program, and demonstrate consistent compliance with all applicable state and federal environmental requirements and have no outstanding unresolved violations. (link)

Michigan also incorporates a reciprocal preference to Michigan businesses against an out-of-state business for purchases over \$100,000 consistent with federal law, meaning that “a Michigan bidder is preferred in the same manner in which an out-of-state bidder would be preferred in its home state.” Mich. Comp. Laws § 18.1268. A bidder must certify its status as a Michigan business to claim this preference. False certification is a felony.

District of Columbia

The Procurement Practices Reform Act of 2010 provides for the purchase of **environmentally preferable products and services** (EPPS) by requiring the District to issue an environmental certification demonstrating, to the maximum extent practicable, the purchase of EPPS for contracts exceeding \$100,000. D.C. Law § 2-351.04 (30); § 2-361.01. District government procurement staff must in turn ensure that EPPS requirements are accounted for in the contract package. D.C. Law § 2-361.01(c)(1). The District may decide not to utilize a recommended EPPS specification if doing so will cause “undue financial burden, reduce performance in a meaningful way, or if pursuing the EPPS option limits availability in the marketplace.” (link)

The Office of Contracting and Procurement has set out sustainable specifications for 18 broad product categories and 100 discrete products, ranging from adhesives and automobiles to landscaping services and snow and ice products. Applicable contractors are subject to reporting requirements and must submit to the contract administrator an EPPS report annually or as requested to indicate that the product or service supplied to the District complies with EPPS criteria.

Mississippi

In Mississippi, purchases are made from the “**lowest and best bidder**,” and not necessarily the lowest bidder. Miss. Code Ann. § 31-7-13(d)(i). Any governing board or authority that accepts a bid other than the lowest bid actually submitted shall put forth “detail[ed] calculations and [a] narrative summary showing that the accepted bid was determined to be the lowest and best bid, including the dollar amount of the accepted bid and the dollar amount of the lowest bid.” *Id.* In other words, the board must explain why it did not accept the lowest bid, but it is not required to hold a hearing when it does so. See *J&A Excavation, Inc. v. City of Ellisville*, 371 So. 3d 199, 205-06 (Miss. Ct. App. 2023). A board acts arbitrarily when it does not explain why the non-lowest bid is the best bid or better than the lowest bid even if it supplies legitimate reasons to show that the

lowest bid is problematic or insufficient. See *id.* at 206. Rather, it must point to “some evidence regarding the capabilities of the winning bidder.” *Id.* at 207.

Bottom Line

Both businesses already active in the government contracts space and those interested in entering the arena should pay close attention to the current Administration’s policies. Looking forward, companies engaged in government contracts should prepare to interact more with state and local governments, and may need to grapple with the impact that could have on how they conduct business.

Wiley’s Government Contracts Practice has extensive experience helping clients navigate state and local procurement processes. We are continuing to monitor developments from the Administration and are ready to help our clients navigate these changes.