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## New Executive Order Makes Green Initiatives a Priority for Federal Agencies

On October 5, 2009, President Obama issued Executive Order ("EO") 13514, "Federal Leadership in Environmental, Energy, and Economic Performance." The purpose of EO 13514 is to make various "green" initiatives a priority for federal agencies. These initiatives include: reduction in greenhouse gas emissions; conservation of water resources; elimination of waste; and the construction of sustainable buildings. While the EO is generally consistent with green policy objectives outlined by the Bush administration in late 2007, it goes a step beyond those objectives. It also marks the first concrete step toward implementing these practices and mandating agency action. Contractors working for federal agencies should be aware of the key elements of the EO so that they may understand how the current administration's focus on green contracting practices will affect their business, as well as what they may do to increase their marketability.

### December 28, 2007, OFPP proposed Acquisition of Green Products and Services Policy.

On December 28, 2007, the Office of Federal Procurement Policy proposed issuing a policy letter, "Acquisition of Green Products and Services Policy," providing guidance on green purchasing policies and strategies for the federal government. The policy would have directed agencies to identify opportunities and to give preference to the acquisition of green products and services, including:

- Alternative fuels and alternative fuel vehicles and hybrids
- Bio-based products
- Energy Star and Federal Energy Management Program-designated products
- Environmentally-preferable products and services
- Electronics registered on the Electronic Product Environmental Assessment Tool
- Low or no toxic or hazardous chemicals or materials or products
- Non-ozone depleting substances
- Recycled-content and/or remanufactured products
- Renewable energy
- Water-efficient products

Among other provisions, the proposed policy letter would have required agencies to first consider mandatory and preferred sources to obtain green products and services (and only where these sources were unable to meet their needs were they to purchase green products and services from other sources) and to include requirements and preferences for the use of green products in all new service contracts and other existing service contracts as they were re-competed. The policy letter also would have encouraged agencies to incorporate these requirements and preferences into existing contracts as they were modified or extended through the exercise of options. The letter, however, was never finalized.

**Executive Order 13514.** The new EO implements for the first time the government's policy toward attaining a comprehensive approach to sustainable government practices, incorporating much of the Acquisition of Green Products and Services Policy, and more, including:

- Establishing greenhouse gas reduction targets
- Increasing water use efficiency and management
- Promoting pollution prevention and eliminate waste
- Implementing high performance sustainable federal building design, construction, operation and management, maintenance, and deconstruction
- Advancing sustainable acquisition
- Promoting electronics stewardship
- Sustaining environmental management
- Tracking greenhouse gas emissions

Notably, the EO calls for the creation of a Steering Committee on Federal Sustainability that will be tasked with ensuring that agencies are held accountable for conformance with the requirements of the EO. See Sec. 3(a). The apparent intent is to ensure that the EO has some teeth - suggesting that the administration expects the EO to be more than a mere policy statement.

**Impact on Federal Acquisitions.** One of the priorities established by EO 13514 is to “leverage agency acquisitions to foster markets for sustainable technologies and environmentally preferable materials, products, and services.” Sec. 1. To achieve this goal, the EO notes that agencies are to prioritize green initiatives by not only taking into account the economic benefits, but the social benefits of the initiatives as well. See *id.* Thus, the expectation is that federal agencies are to pursue the various green initiatives even though doing so may increase costs to the government, as this increased cost will be off-set by the social benefit of the sustainable practice.

Significantly, the EO explains that agencies should seek to ensure that 95% of contract actions, including task and delivery orders, are either energy-efficient, water efficient, non-ozone-depleting, contain recycled content, or provide non-toxic or less-toxic alternatives, as long as “such products and services meet agency performance requirements.” Sec. 2(h). Another goal for agencies is the promotion of “electronics stewardship” by creating a procurement preference for Electronic Product Environmental Assessment Tool-registered electronic products and ensuring the procurement of Energy Star- and Federal Energy Management Program-designated electronic equipment. See Sec. 2(i).

**Recommendations for Vendor and Contractor Emissions.** The EO requires each agency to set greenhouse gas emission reduction targets, both for themselves *and for their vendors and contractors.* In addition, GSA, DoD, EPA, and other agencies are directed to study the feasibility of requiring government contractors to track and report their greenhouse gas emissions. Among the specific ideas to study include:

- (a) requiring vendors and contractors to register with a voluntary registry or organization for reporting greenhouse gas emissions;
- (b) requiring contractors, as part of a new or revised registration under the Central Contractor Registration or other tracking system, to develop and make available its greenhouse gas inventory and description of efforts to mitigate greenhouse gas emissions;
- (c) using Federal Government purchasing preferences or other incentives for products manufactured using processes that minimize greenhouse gas emissions; and
- (d) other options for encouraging sustainable practices and reducing greenhouse gas emissions.

Sec. 13. While the objectives outlined in the required feasibility study are not yet requirements, they are an important reflection on the current administration’s priorities with respect to greenhouse gases, and willingness to consider acquisition policy changes that would make greenhouse gas emission levels relevant to contractors’ businesses.

**Practitioner’s Tips:**

- Take advantage of the environmental goals established under EO 13514 by marketing your company’s existing green initiatives to government customers. With a goal of 95% of contract actions, agencies will seek out opportunities to award contracts to companies implementing green initiatives.
- Consider how procurement preferences for energy efficient electronics or products manufactured using processes that minimum greenhouse gas emissions may put you at a possible disadvantage if you do not qualify for the preferences. The EO requires agencies to consider the “social benefit” of the green initiatives - suggesting that agencies will pay a higher price for products and services that further the government’s sustainability goals.
- As a result of the feasibility study, government contractors may be required to develop and publish their greenhouse gas inventory and describe their efforts to mitigate greenhouse gas emissions. Getting ahead of the curve now may make you more competitive later.

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