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Trump Administration Issues AI Memoranda and Executive Order with Government Contracts Impacts

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Highlights

- Contractors must align artificial intelligence (AI) systems with new federal directives, including "high impact" AI use cases that require enhanced compliance measures such as pre-deployment testing, impact assessments and continuous monitoring.
- The procurement of American-made AI systems is prioritized, giving contractors with U.S.-developed tools a competitive advantage.
- Contractors must navigate complex intellectual property (IP) and data rights clauses in AI contracts, ensuring transparency, portability and government access to necessary data without vendor lock-in.

The Trump Administration's policies on artificial intelligence (AI) have been shaped by an executive order (EO) and two memoranda aimed at promoting the use of AI in government operations while ensuring safety, security and public trust. These policies have significant implications for government contractors involved in AI development and procurement. Government contractors must align their offerings with these policies to successfully engage in federal AI procurement.

This Holland & Knight alert briefly summarizes below the key points from the EO and memos and provides useful tips for government contractors to successfully navigate the emerging landscape of AI in the federal procurement space.

Key Policies and Initiatives

Executive Order 14179

Issued on Jan. 23, 2025, EO 14179 focuses on the development of "AI systems that are free from ideological bias or engineered social agendas" and defines "AI" under 15 U.S.C. 9401(3) as "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments." The EO:

- directs certain individuals – including the President for Science and Technology (APST), Special Advisor for AI and Crypto, and Assistant to the President for National Security Affairs (APNSA) – to develop an action plan within 180 days of the EO's issuance (by July 22, 2025) to implement the EO's policy to "sustain and enhance America's global AI dominance in order to promote human flourishing, economic competitiveness and national security"
- instructs the "immediate review" by the APST, APNSA and Special Advisor for AI and Crypto, in coordination with the heads of all agencies "as they deem relevant," of "all policies, directives, regulations, orders, and other actions taken pursuant to the revoked Executive Order 14110 of October 30, 2023 (Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence)"; to the extent any of the foregoing are inconsistent with the EO's policy, the heads of agencies are directed to suspend, revise or rescind such actions (or take steps to provide all

available exemptions until such action can be finalized)

M-25-21: Accelerating Federal Use of AI through Innovation

On April 3, 2025, the Trump Administration issued M-25-21: Accelerating Federal Use of AI through Innovation (AI Use Memo), which discusses how federal agencies, with some exceptions, should use AI. The AI Use Memo does not cover AI when it is being used as a component of a national security system (NSS). Notably, the AI Use Memo emphasizes innovation, governance and public trust.

Key policies under the AI Use Memo include:

- Agencies must maximize the use of American AI when seeking new AI solutions.
- Agencies will utilize an Agency Chief AI Officer to promote innovation in each agency's AI policy.
- A "high impact" AI category will be created to track AI use cases that require heightened due diligence because of potential impacts on rights or safety.
- Agencies must produce an AI adoption maturity assessment to better track their AI progress and needs.
- Agencies must discontinue the use of AI by April 3, 2026, if a high-impact use case is not compliant with minimum practices described.

M-25-22: Driving Efficient Acquisition of Artificial Intelligence

Also on April 3, 2025, the Trump Administration issued M-25-22: Driving Efficient Acquisition of AI (AI Acquisition Memo), which details the approach federal agencies will take to acquire AI systems and services.

Key policies under the AI Acquisition Memo include:

- Agencies must maximize the use of American AI systems and services.
- Agencies must establish policies and processes, including contractual terms and conditions, that ensure compliance with privacy requirements in law and policy.
- Agencies must develop contract terms to prevent "vendor lock-in" such as requirements regarding knowledge transfer, clear data and model portability practices, clear licensing terms and clear pricing.
- Agencies must develop requirements for ongoing testing of and monitoring of AI systems and services during contract performance.
- Agencies must disclose in solicitations whether the planned use of an AI system meets the threshold of a high-impact use case.

Five Tips for Government Contractors to Keep in Mind in Navigating the Trump Administration's AI Direction and Policies

The EO 14179 and recent memoranda have introduced pivotal changes for government contractors, particularly in the realm of AI procurement. These policies underscore the necessity for contractors to grasp the implications of AI use in federal procurement processes. Below, we delve into five critical themes contractors should understand to leverage these AI procurement opportunities.

1. Recognize High-Impact AI Use

Both memoranda emphasize enhanced requirements for situations where an agency engages in high-impact use of AI. This requires government contractors to identify when AI systems are classified as "high impact," which involves significant compliance requirements.

The AI Use Memo defines a "high impact" use as "AI with an output that serves as a principal basis for decisions or actions with legal, material, binding, or significant effect" on:

- an individual or entity's civil rights, civil liberties or privacy

- an individual or entity's access to education, housing, insurance, credit, employment and other programs

- an individual or entity's access to critical government resources or services

- human health and safety

- critical infrastructure or public safety, or

- strategic assets or resources, including high-value property and information marked as sensitive or classified by the federal government

When agencies determine that the use of AI will touch on one of the above areas, the federal government will subject a contractor's AI system to the minimum risk management requirements. At a minimum, the contractor's AI system may undergo pre-deployment testing, undergo an AI impact assessment by the agency, continuous monitoring, human monitoring and development of appropriate failsafe mechanisms. More requirements may be added by specific agencies.

Existing and prospective contractors should meticulously evaluate solicitations to determine if they involve high-impact AI, which necessitates additional compliance measures such as pre-deployment testing and continuous monitoring. Understanding when AI will have a high-impact use will be important for contractors moving forward when determining whether to bid on a contract that calls for the use of AI. The list of high-impact AI covers a broad array of services that the government frequently acquires. For instance, a contract with the U.S. Department of Transportation (DOT) that leverages AI to compile information on highway bridges could qualify as a high-impact use because it use could affect decisions related to critical infrastructure. Therefore, contractors will need to assess solicitations carefully to determine whether the work calls for high-impact use of AI that comes with additional compliance requirements.

Furthermore, contractors can seek waivers from these requirements, making it essential to pinpoint potential high-impact uses early in the procurement process. Knowing when the use of AI will qualify as high-impact is important for understanding when to seek a waiver of the minimum risk management requirements. Under the announced framework in the AI Use Memo, contractors will be able to request waivers from the agency's Chief AI officer of some or all high-impact use minimum risk management requirements. Accordingly, it will be important for a contractor to identify any potential high-impact use early in a procurement so it can submit a waiver of some of the more burdensome minimum risk management requirements.

2. Prioritizing American-Made AI Systems

The EO and AI Acquisition Memo stresses the administration's focus on the procurement of American AI systems and services to the maximum extent possible. Thus, contractors with AI tools developed in the U.S. or sourced from American suppliers will have a competitive advantage in future procurements. Those without American AI tools should consider forming partnerships with American providers to align with the Trump Administration's policy objectives.

3. Navigating Intellectual Property (IP) and Data Rights

To prevent vendor lock-in, the AI Acquisition Memo requires agencies to develop contract terms that include vendor knowledge transfers, data, and model portability and transparency in licensing and pricing.

This also includes a mandate for agencies to develop contracts terms that include "vendor knowledge transfers, data and model portability, providing agencies with rights to code and models produced in performance of a contract and transparency in licensing and pricing." Additionally, the AI Acquisition Memo calls for agencies to ensure that the

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"components necessary to operate and monitor the AI system or service remain available for the acquiring agency to access and use for as long as it may be necessary." As a result, agencies may attempt to obtain licensing rights in form, fit and function data so agencies can continue to use the AI tools without a particular vendor.

Contractors should carefully review and negotiate IP and data rights clauses in AI contracts to protect their interests and ensure compliance with government requirements.

Likewise, contractors should be prepared to negotiate data and IP rights clauses with the government for AI systems. Engaging a skilled attorney who specializes in IP is recommended given the sensitivities and anticipated negotiation position of the government and the memorandum's directives. After negotiating favorable IP terms, contractors must also be very careful to mark any deliverables in accordance with the agreed-upon terms.

Contractors should also evaluate how it will impact the value of the contractor's AI tool if the government obtains rights in data produced by the AI tool. For instance, some contractors may want to consider whether consider whether they want to offer the same AI tools for use by a government customer as they offer to commercial customers.

4. Embracing Nontraditional Procurement Methods

The memoranda highlight the use of nontraditional procurement methods, such as Other Transaction Authority (OTA) agreements, which offer flexibility and streamline the contracting process. These methods differ from traditional Federal Acquisition Regulation (FAR)-based contracts by encouraging innovation and allowing engagement with nontraditional contractors. Contractors should be prepared to negotiate streamlined procurements while ensuring their IP and data rights remain protected.

Both memoranda direct agencies to adopt a "forward-leaning" and "pro-innovation" approach. Similar to the recent announced changes to defense acquisitions (see Holland & Knight's previous alert, "New Executive Orders Seek to Improve Acquisition in the Defense Industrial Base," April 4, 2025), the focus on innovation means that the government is likely use nontraditional means to acquire AI systems and services. For instance, the U.S. Department of Defense (DOD) may opt to utilize OTAs, which are a more flexible and streamlined contracting mechanism.

This presents an opportunity for nontraditional government contractors to enter the procurement marketplace. It is also an opportunity for contractors to work with the government on news ways to approach procurements. Contractors must be ready to negotiate streamlined procurements if they wish to take full advantage of the AI marketplace in federal procurement. However, even in a more streamlined procurement environment, contractors must still ensure that their IP and data rights remain protected.

5. Incorporating Minimum Risk Management Practices, Including Robust Security and Data Protection Mechanisms, in Product Development and AI Governance Policies

Contractors should proactively develop AI systems that comply with the minimum risk management practices in the AI Use Memo and security goals outlined in the AI Acquisition Memo. Contractors should create and maintain AI governance policies that incorporate, at a minimum, the testing, assessment, ongoing monitoring and other requirements described in the AI Use Memo. The memoranda also underscore the importance of security, maintain privacy protections, and data quality and traceability. These memoranda and other government AI and privacy guidance, such as those from the National Institute of Standards and Technology (NIST), are informative for developing appropriate policies and processes.

For existing government contractors that are in scope of the high-impact AI systems, AI governance policies and practices should be reviewed immediately, as agencies have one year to ensure vendor compliance with the minimum risk management requirements or potentially face contract cancellation.

Early adoption of these measures can also provide a competitive edge for existing and prospective contractors in the

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government marketplace as the government introduces more detailed requirements and passes them on to vendors. For instance, the government will demand that AI systems contain privacy protections that align with the law and federal policy. Similarly, a contractor's AI system will need to have the ability to neatly separate contractor data from government data and conform to the government's data handling requirements. Any delay in implementing the basic security requirements could leave contractors scrambling once the government rolls out more detailed requirements.

Conclusion

AI procurement is a rapidly evolving area of federal procurement law. Holland & Knight's Government Contracts Group stands ready to assist government contractors in navigating these changes, helping ensure they are well-positioned to contribute to and benefit from U.S. leadership in AI. Please contact the authors to learn more about and receive support through this rapidly expanding and evolving procurement landscape.

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