



President Obama Issues Executive Order on Environmental Sustainability

On October 5, 2009, President Obama issued an executive order¹ “to establish an integrated strategy towards sustainability in the Federal Government and to make reduction of greenhouse gas emissions a priority for Federal agencies.” Two elements of the order are of particular interest: (1) The order directs federal agencies to reduce their own greenhouse gas (GHG) emissions, just as the Environmental Protection Agency (EPA) is requiring the same from the private sector, and (2) the order directs federal agencies to select vendors and contractors that meet certain environmental-sustainability metrics. Through this order, the Obama administration intends both to lead by example in achieving environmental sustainability and to use the immense purchasing power of the federal government, which spends approximately \$500 billion a year on products and services, to achieve its environmental goals.

Federal Agency Action

Several provisions in the order direct agencies to monitor, report, and reduce GHG emissions:

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- Within 90 days the head of each federal agency must establish a target for agency-wide reductions of GHG emissions by 2020;
- The head of each federal agency must report agency-wide GHG emissions annually;
- Within 120 days the Office of Management and Budget (OMB) director must establish an aggregate, federal government-wide target for GHG emissions by 2020;
- Within 180 days the Department of Energy (DOE) must develop and recommend federal GHG reporting and accounting procedures for agencies to use.

The order also directs agencies to move toward environmental sustainability in other ways, such as:

- Reducing water consumption;
- Promoting pollution prevention and eliminating waste;
- Advancing regional and local integration of sustainability planning; and
- Implementing sustainable federal building design, construction, operation and management, maintenance, and deconstruction.

¹ “Federal Leadership in Environmental, Energy, And Economic Performance,” available at http://www.whitehouse.gov/assets/documents/2009fedleader_eo_rel.pdf.

Vendor and Contractor Action

Of perhaps greater significance, however, are provisions in the order that provide guidance to federal agencies on their dealings with vendors and contractors.

Not only are agencies directed to reduce their own GHG emissions, but they are directed to reduce GHG emissions “from sources not owned or directly controlled by a Federal agency but related to agency activities.” In other words, agencies must take actions that reduce GHG emissions from their vendors and contractors. Most likely, such actions would include selecting vendors and contractors that have themselves taken actions to reduce GHG emissions.

Agencies are also directed to consider other environmental-sustainability metrics when selecting vendors and contractors. One provision directs agency heads to ensure that 95 percent of new contract actions are for products and services that are energy efficient (*e.g.*, Energy Star or Federal Energy Management Program (FEMP) designated), water-efficient, biobased, environmentally preferable (*e.g.*, Electronic Product Environmental Assessment Tool (EPEAT) certified), non-ozone depleting, contain recycled content, or are non-toxic or less-toxic alternatives, where such products and services are available and meet agency performance requirements.

While several of these environmental-sustainability metrics are defined in the order (Energy Star designated), others (non-toxic or less-toxic alternatives) are not. Although agency heads may have some discretion in making these decisions for their own agency, the order does provide some guidance on coordination between agencies. For example, the OMB Director and the Council on Environmental Quality (CEQ) Chair are directed to establish an interagency Steering Committee on Federal Sustainability. The CEQ Chair is directed to foster the sharing of best practices throughout the federal government, and the OMB Director must approve annually proposed implementation plans for each agency beginning in fiscal year 2011.

Moreover, within 180 days, the General Services Administration (GSA), in coordination with other agencies, is directed to provide recommendations to the CEQ Chair and the Administrator of OMB’s Office of Federal Procurement Policy regarding agency selection of vendors and contractors. GSA is directed to consider the potential impact on the procurement process and on the federal vendor and contractor community when devising its recommendations.

Entities that contract with the government should pay special attention to the second element in this executive order. Although the order does not explicitly provide an opportunity for public comment, vendors and contractors should look for every opportunity to provide input to the various agencies making determinations on what products and services are environmentally sustainable in order to maintain or increase their business with the federal government.

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