



LEGAL REPORT

*President's Memo on Government Contracting
Could Mean Big Changes in How the
Federal Government Does Business*

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On March 4, 2009, President Obama signed a memorandum that tasks the heads of all executive agencies with ensuring that the Federal Government will “perform its functions efficiently and effectively while ensuring that its actions result in the best value for taxpayers.” The memo creates a critical issue for government contractors: it suggests that the President may be inclined to have the Federal workforce, as opposed to private contractors, perform a greater portion of the Government’s work, including that covered by the new Stimulus Law.

The shift in who performs the Government’s work is just one of the changes to the government-contracting landscape that the President’s memo may create. The President directed certain agency leaders to develop and issue by July 1, 2009, Government-wide guidance to assist agencies in reviewing contracts in order to “identify contracts that are wasteful, inefficient, or not otherwise likely to meet the agency’s needs, and to formulate appropriate corrective action in a timely manner.”

The President also tasked the Director of the Office of Management and Budget to develop and issue by September 30, 2009, Government-wide guidance to:

- (1) Govern the appropriate use and oversight of sole-source and other types of noncompetitive contracts and to maximize the use of full and open competition and other competitive procurement processes;
- (2) Govern the appropriate use and oversight of all contract types, in full consideration of the agency’s needs, and to minimize risk and maximize the value of government contracts generally;
- (3) Assist agencies in reviewing the capacity and ability of the Federal acquisition workforce to develop, manage, and oversee acquisitions appropriately; and
- (4) Clarify when governmental outsourcing for services is and is not appropriate.

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While the four points themselves do not suggest that radical changes are intended, the President has signaled that he does want to change how the Government purchases goods and services. Over the next year, we should expect to see regulations that make it more difficult for agencies to award contracts without competition, greater restrictions on cost-reimbursement contracts, an increase in the number of procurement professionals employed by the Federal Government, and a shift of some work that historically has been performed by the private sector, to performance by Federal Government employees. The President's decision as to what are "inherently Government functions," and therefore must not be performed by private contractors, promises to be a lightning rod for government contractors, government-employee unions, and trade associations. From an economic point of view, is it more likely that benefits of the stimulus package will create jobs if contractors perform the work? Do we want a larger government bureaucracy? Are private contractors or the government work force better equipped to meet the technological, schedule, and cost challenges presented by specific work?

The full text of President Obama's memo on government contracting is available online at the following link: http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government-Contracting.

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We represent clients in matters related to government contracts across a diverse industry span: defense, energy, environment, technology, healthcare, real estate and construction. Applying the strong client-oriented litigation philosophy that distinguishes us, we staff to deliver cost-effective representations and routinely call upon the strong pool of talent within the firm, as well as the most sophisticated technologies available to assist in accomplishing our clients' objectives. Our litigation practice overall is not limited to in-court litigation. In the service of our clients' interests, Brown Rudnick has implemented a variety of effective alternative dispute resolution techniques, and we represent our clients' interests, not only in court, but, as appropriate, in arbitration and mediation proceedings.

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