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## WHITE HOUSE PROPOSES MANDATORY DISCLOSURE OF POLITICAL CONTRIBUTIONS BY FEDERAL CONTRACTORS

A proposed Obama Administration [executive order](#) would require all federal contractors to disclose political contributions and expenditures made by their principals and related entities during the two years prior to submitting a bid.

As a condition for receiving an award, contractors would be required to disclose the following contributions, if the annual aggregate amount of such contributions exceeds \$5,000 to a given recipient:

- Contributions made to federal candidates or political parties by the bidding entity, its directors or officers, or any affiliates or subsidiaries within its control; and
- Contributions made to third party entities with the intention or reasonable expectation that the contributions will be used to make independent expenditures or electioneering communications

Dozens of [states and localities have “pay-to-play” laws](#) that compel disclosure by bidders and contractors, and even restrict or prohibit contributions by certain individuals and entities associated with a bidder or contractor. But in states and municipalities where disclosure is required, it is generally limited to direct contributions from corporate officials and PACs (political action committees). The draft executive order goes further by requiring federal contractors to investigate whether contributions to trade associations and other groups will be used in connection with federal elections. If such use is intended, the contractor will have to weigh whether making the contribution could give an appearance of undue influence, thus jeopardizing a future bid.

It is important to note that the Administration’s draft order only addresses disclosure. It does not restrict or prohibit any political contributions. Under current law, federal contractors may not make political contributions, but their PACs individual owners, officers, and employees are free to make contributions subject to generally applicable limits.

Several important issues remain to be worked out through implementing regulations. For example, since contract award is conditioned on the disclosure of political contributions, it is not clear what sanctions, if any, may result from errors or omissions discovered after contract performance has commenced. In addition, while the order is not intended to create any rights enforceable against the federal government, the order would seem to allow a contract bidder to try to oust a competing bidder based on an inaccurate or incomplete disclosure.

As currently drafted, the new requirements will apply to contracts resulting from solicitations issued on or after the effective date of implementing rules, which must be issued by the Federal Acquisition Regulatory (FAR) Council by the end of the year.

**Contact information:**

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