

## **Federal Contractors to Be Evaluated on Compliance with Labor, Environmental, and Tax Laws**

**March 17, 2010**

The Obama administration is expected to present a new system for evaluating, and giving preference to, federal contractors based on their record of compliance with labor, environmental, tax, and other laws. This sweeping addition to the federal procurement process is likely to be unveiled in the coming weeks and, if implemented, will have a major impact on how federal contracts are awarded.

This new policy, which advocates have labeled the “High Road Procurement Policy,” is modeled after a “blacklisting” rule developed (but never implemented) during the Clinton administration, although there will be at least one important difference. While the Clinton administration rule sought to *disqualify* contractors completely based on recorded violations or even alleged violations of labor, environmental, and other laws, the Obama administration’s policy will likely take the form of a *preference* for contractors that have no or few compliance violations, as evidenced by agency citations and/or court findings.

In addition, the policy is expected to award preference to contractors that meet certain wage standards and that provide health benefits to their workers. It is also possible that the policy will afford preference to contractors based on other labor-friendly criteria, such as whether the contractor takes a position of neutrality in union organizing campaigns.

At present, it is not clear whether this new procurement policy will be implemented through an Executive Order, a Notice of Proposed Rulemaking, or some combination of the two. The Clinton administration chose to use the rulemaking process, which slowed its implementation. It is expected that the Obama administration will seek to implement its policy more quickly, most likely through an Executive Order, but there are potential political costs to enacting such a major change in procurement policy by Executive Order. That method would also make the new policy more vulnerable to legal challenge.

Regardless of how and when the new policy is implemented, present and future federal contractors could be affected by actions they take now. Federal contractors should evaluate their current litigation and compliance strategies and determine whether these could present a risk to the company’s ability to win federal contracts under a procurement policy that includes such new features. Avoiding claimed violations of labor, environmental, and tax laws or resolving them short of formal violation proceedings might significantly improve a company’s chances of winning a federal contract under the new

