White House Issues First Artificial Intelligence Executive Order: AI Guidance for Federal Contractors Forthcoming

On October 30, 2023, President Biden issued an “Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence” (the “EO”), the first executive order directly addressing artificial intelligence.

Of particular interest to federal government contractors, the EO provides that within 365 days of publication, “to prevent unlawful discrimination from AI used for hiring, the Secretary of Labor shall publish guidance for Federal contractors regarding nondiscrimination in hiring involving AI and other technology-based hiring systems.” This development follows the publication of OFCCP’s new scheduling letter and itemized listing, which now requires contractors to “[i]dentify and provide information and documentation of policies, practices, or systems used to recruit, screen, and hire, including the use of artificial intelligence, algorithms, automated systems or other technology-based selection procedures.”
In addition, within 150 days of the date of the EO, the Director of the Office of Management and Budget (“OMB”) will issue guidance to federal agencies on “maximizing the value to agencies when relying on contractors to use and enrich Federal Government data for the purposes of AI development and operation.” Within 180 days of issuing this initial guidance, the Director of OMB will “develop” further guidance “to ensure that agency contracts for the acquisition of AI systems and services align with the” EO and address protection of government information, privacy, and civil rights as outlined in section 7224(d)(1) of the Advancing American AI Act.

Also, within 180 days of the EO’s publication, the Secretary of Health and Human Services (HHS) must “consider appropriate actions to advance the prompt understanding of, and compliance with, Federal nondiscrimination laws” by HHS providers that receive Federal financial assistance, “as well as how those laws relate to AI,” such as by issuing guidance or technical assistance to HHS providers.

FAQs on the EO can be found here.

© 2023 Proskauer Rose LLP.