

Executive Order Suspending Foreign Aid Roils State Department and USAID Grantees and Contractors

Client Alerts

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The first week of the second Trump Administration brought with it the issuance of dozens of executive orders (EO) that suggest far reaching implications for organizations large and small, for profit and non-profit alike. Although many details are still unclear and await further guidance, one EO, *Reevaluating and Realigning United States Foreign Aid*^[1] (Foreign Assistance EO), has resulted in uncertainty and acute concern on the part of many business entities that contract with or are grantees of the US Department of State or US Agency for International Development (USAID) to administer the billions of dollars in foreign assistance appropriated annually by Congress.

The United States government has long relied upon the private sector to implement programs, deliver services, and conduct various activities to advance US foreign policy objectives. Citing the Foreign Assistance EO, over the past 96 hours the State Department and USAID have served on government contractors and grantees Notices of Suspension (Notices) directing an immediate stoppage of their work.

Contractors and grantees are scrambling to figure out how to respond to the Notices. Simultaneously, they are assessing the impact of an immediate cessation of certain business operations on the organizations themselves and, in some cases, the impact on the beneficiaries of the programs they administer. Organizations are confronting serious questions related to potential legal exposure from lower tier contractors, staff, and other vendors if they fail to meet obligations they have incurred under the awards.

Without much guidance beyond that contained in the bare bones Notices, contractors and grantees are having to make quick decisions, including whether to proceed with any work at all knowing that they may risk not being reimbursed for direct costs consistent with past practice. Organizations are also assessing the consequences, both moral and legal, of potentially furloughing, or worse, permanently laying off staff with essentially no notice.

Many organizations are halting programmatic activities and carefully combing through contracts and awards to identify allowable expenses for which they might be able to seek reimbursement. But in

the absence of clear guidance on expenses and reimbursement, which may or may not be forthcoming, every decision an organization makes over these coming days and weeks will carry financial risk. For some organizations, the risks associated with these decisions could prove to be an existential dilemma.

None of these questions are easy to answer. And all of the decisions, to varying degrees, are tough. But there are some items worth thinking through right now to best position both contractors and grantees to navigate this situation as the dust continues to settle and we await clearer guidance from either the Administration or, what looks to be increasingly likely, from the courts.

Industry participants understand that the government generally has the ability to order temporary work stoppages for government contracts. The waters are murkier for grants, which are governed by a combination of federal and agency specific regulations, as well as each individual grant's terms and conditions. Setting aside the propriety of the suspension instruction, the Notices state, "[e]ffective immediately upon receipt of this Notice of Suspension the Recipient must stop all work under the award(s) and not incur any new costs after the effective date cited above. The Recipient must cancel as many outstanding obligations as possible." The reality of the situation is that organizations receiving this Notice must immediately begin to mitigate where possible. While it is always possible that the suspension will be rescinded and work will return to normal, contractors and grant recipients should not plan on that outcome.

As such, organizations are well advised to take stock of their operations. The questions worth asking include:

- What type of contracts/grants does the organization have? Are they fully funded with disbursed funds and can therefore operate over a longer period, or are they more at risk to funding disruptions? Are there any notice obligations on the organization to preserve rights such as through a government contract's Changes Clause or specific grant terms and conditions?
- What agreements are in place with suppliers and subcontractors/subrecipients, and can they be temporarily suspended?
- What ability does the organization have to reassign staff or mitigate payroll costs during a suspension of work? Capable employment law counsel can assist with that assessment.
- What recordkeeping structure exists to track expense, cost, and performance impacts of the suspension? These records will be important to maximizing opportunities to recover from the government in the future.

In the future, organizations are likely to be required to explain how they attempted to mitigate damages and expenses resulting from the suspension of work. This will include proactively engaging and negotiating with business counterparties (i.e., contractors, subgrantees, lessors, etc.) to

suspend operations or, in the event of a termination, to part ways on terms that reduce both financial costs and legal exposure for the organization.

Contractors and grantees that received Notices as described above are facing incredible pressures. Capable counsel can assist with navigating these difficult dynamics while maximizing the potential for recovery in the future.

Footnotes

[1] <https://www.whitehouse.gov/presidential-actions/2025/01/reevaluating-and-realigning-united-states-foreign-aid/>

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