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# THE GOVERNMENT CONTRACTOR<sup>®</sup>

Information and Analysis on Legal Aspects of Procurement

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## ¶ 117 FEATURE COMMENT: California Executive Order N-5-26: Procurement Power As AI Policy

On March 30, 2026, California Governor Gavin Newsom took a significant step in shaping the future of artificial intelligence governance by issuing Executive Order N-5-26 (the “Order”). See State of California Executive Order N-5-26, <https://www.gov.ca.gov/wp-content/uploads/2026/03/3.30-FINAL-Trusted-AI-Procurement-EO-N-5-26.pdf>. While noting that California is a global hub for AI innovation, home to 33 of the 50 top AI companies, rather than imposing sweeping new regulations on the private sector, the Order adopts a more targeted approach. Order, p. 1. Executive Order N-5-26 uses California’s immense procurement power to influence how AI systems are developed, deployed, and monitored. *Id.* Coming on the heels of recent federal AI action, the Order signifies the tension between California and the Federal Government over control of AI regulation. The Order seeks to assure that companies wanting to do business with California can demonstrate policies that prevent misuse of their technology to protect the public’s privacy and safety.

**From Study to Strategy**—To understand the significance of the Order, it helps to look at the California AI Executive Order that preceded it. As Governor Newsom notes in the Order, in 2023, California issued an earlier AI-focused executive order that focused on how the State would safely learn, innovate, and use Generative AI (GenAI). See State of California Executive Order N-12-23, <https://www.gov.ca.gov/wp-content/uploads/2023/09/AI-EO-No.12--GGN-Signed.pdf>. The previous Executive Order N-12-23 emphasized research, risk assessment, and internal planning. *Id.* That effort came during a time of uncertainty about how to handle rapidly advancing generative AI technologies to which California responded by taking steps to lead the country in AI innovation. As Governor Newsom notes, the State launched pilots of GenAI projects to “reduce highway congestion, improve roadway safety, enhance customer service, accelerate the approval process for rebuilding permits, and improve firefighting detection and response.” Order, p. 1.

By contrast, the recent Order represents a shift from study to execution at the State level. It does not attempt to answer every question about AI governance. Instead, it identifies a specific lever of influence—public procurement—and uses it to shape AI actions. California is no longer just analyzing the impacts of AI; it is purposely leading its development. The Orders together seek to safeguard against AI’s risks while simultaneously expanding its use by State agencies and departments.

**New Certification Standards**—The Order essentially uses California procurement policy as a regulatory tool. Because California is one of the largest purchasers of technology services in the world, California’s

requirements on standard terms by which companies can sell AI to the State will likely have broad implications on companies' AI policies on a national or global level.

The requirements of the Order are as follows. Within 120 days of the Order, The California Department of General Services (DGS) and the Department of Technology (CDT) must submit recommendations to the Governor for new vendor certifications that may be incorporated into State contracting processes. Companies that want to do business with the State will need to attest to and explain their policies and safeguards to protect public safety while preventing the misuse of their technologies. These safeguards are to prevent misuse, including but not limited to:

- a. Exploitation or distribution of illegal content, such as child sexual abuse material and non-consensual intimate imagery;
- b. Utilization of models that display harmful bias or lack governance to reduce the risk of such harmful bias; and
- c. Violation of civil rights and civil liberties such as free speech, voting, human autonomy, and protections against unlawful discrimination, detention, and surveillance.

Order, p. 2.

Additionally, California's Government Operations Agency is to consult with DGS and CDT and give recommendations to the Governor within 120 days on any reforms to contractor responsibility regulations, including suspension, debarment, and ineligibility provisions, which are needed to ensure State entities do not contract with entities "judicially determined to have unlawfully undermined privacy or civil liberties" including but not limited to freedom of speech, voting, and protections from unlawful discrimination and surveillance. Order, p. 2. This is crucial in the State procurement process because any contractor who does not meet the State's responsibility standards is not eligible to bid on State contracts. This is significant for all vendors to note as a potential bid protest ground should the awarding agency fail to exclude a company that should be ineligible for one of these reasons.

DGS and CDT will have approximately four months to propose specific certification standards and implementation strategies. While this frame-

work is flexible, allowing California to refine its approach based on expert input, industry feedback, and best practices, it may create uncertainty for companies trying to anticipate future requirements. Overall, the direction is clear: AI vendors will be expected to demonstrate a higher level of accountability if they want to do business with California. It is important to note that California's model, requiring companies to attest to and explain their AI policies, ensures that companies remain vigilant, or else they will be held accountable through fraud or California False Claims Act actions.

**Watermarking**—In addition to procurement standards, the Order addresses the growing concern over imitation media. As generative AI tools become more capable of producing realistic images, videos, and audio, the threat of misinformation increases. To address this, the Order calls for the development of best practices for watermarking or otherwise labeling AI-generated content. The Order gives CDT 120 days to provide these best practices for watermarking, in line with the requirements outlined in California Business & Professions Code §§ 22757.2 & 22757.3, AI-generated or significantly manipulated images or video. The ultimate goal is that the public should be able to distinguish between authentic and AI-generated material. Adequate watermarking would serve to mitigate the risk of AI-manipulated images influencing local, state, and federal elections through misinformation.

**Independence from Federal Law**—Another notable feature of the Order is its stance on federal oversight. The Order explicitly states that California will not automatically adopt federal determinations about whether a particular AI system or company poses a security risk. The Order came soon after San Francisco-based AI developer Anthropic was designated a Supply Chain Risk by the Department of War in early March. See Pentagon Labels AI Company Anthropic a Supply Chain Risk, <https://www.npr.org/2026/03/06/g-s1-112713/pentagon-labels-ai-company-anthropic-a-supply-chain-risk>. Instead of adopting the federal determinations, like that regarding Anthropic, California Department of Technology's Chief Information Security Officer (CISO) will review the federal determination, conduct its own evaluation, and if it concludes that the federal designation is improper, DGS and

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CDT will jointly issue guidance confirming that agencies can continue to “easily procure from that company.” Order, p. 2. Further, the Order also gives the CISO authority to review other federal procurement changes to assess whether “they improperly restrict procurement and to recommend appropriate measures in response.” Order, p. 2.

This aspect of the Order reflects a broader tension in the balance between national coordination and state-level autonomy. By reserving the right to make independent judgments, California is positioning itself as a parallel authority in AI governance. Earlier in March, the White House released its National Policy Framework for Artificial Intelligence, which called for a preemptive national standard on AI, stating that Congress should preempt state AI laws that “impose undue burdens to ensure a minimally burdensome national standard consistent with these recommendations, not fifty discordant ones.” See National Policy Framework, Artificial Intelligence, <https://www.whitehouse.gov/wp-content/uploads/2026/03/03.20.26-National-Policy-Framework-for-Artificial-Intelligence-Legislative-Recommendations.pdf>. Not long after the release of the federal framework, California responded, declaring in the March 2026 Order that “no state has taken more aggressive action to strengthen the safety and security of technology and online platforms, including through enacting legislation addressing AI trust and safety, children’s safety online, data privacy, cybersecurity, and consumer protection.” Order, p. 1. Governor Newsom explained the intent behind the Order: “California leads in AI, and we’re going to use every tool we have to ensure companies protect people’s rights, not exploit them or put them in harm’s way. While others in Washington are designing policy and creating contracts in the shadow of misuse, we’re focused on doing this the right way.” See Governor Gavin Newsom Newsroom, <https://www.gov.ca.gov/2026/03/30/as-trump-rolls-back-protection-s-governor-newsom-signs-first-of-its-kind-executive-order-to-strengthen-ai-protections-and-responsible-use/>.

The practical implications of this approach are that a company flagged as high-risk at the federal level might still be eligible for California contracts, depending on the State’s assessment. Conversely,

California could impose restrictions that go beyond federal requirements. This creates a more complex regulatory environment for potential vendors. The legal implications are still unclear. Will Congress try to preempt California’s individual regulations? If it does, will preemption be upheld in the courts? One thing is for sure; there will be some level of uncertainty on AI standards for the near future.

### **Implications for Technology Companies—**

While the consequence of California creating new, possibly stricter AI requirements, will introduce new compliance burdens and potential barriers to entry for contractors wanting to do business with the State, it also offers a clear path to credibility. Companies that can meet California’s certification standards may gain a competitive advantage, not only in securing State contracts but also in demonstrating their commitment to responsible AI practices. Further, compliance with California policies will likely benefit companies for contract opportunities beyond California. As the fourth largest economy in the world, it would be no surprise if California’s policies on AI became the global standard. Whatever recommendations come in response to this Order, there is no harm for companies to implement them as best practices. Trustworthiness and responsibility in terms of AI practices are attributes that transcend state boundaries.

**The Path Forward—**Because the Order itself establishes a 120-day timeframe for State departments and agencies to issue recommendations for certifications that *may be* incorporated into the California public contracting process, it does not currently impose binding legal requirements on companies. AI companies should closely monitor whether the recommended certifications are ultimately adopted by the Governor.

In the meantime, it is clear that increased AI regulation is coming. Companies who currently contract with California, or hope to in the future, should evaluate existing AI policies and safeguards—specifically in regard to the objectives set out in the Order. Companies should review their current policies and methods related to prevention of illegal content, harmful bias, civil rights protections, and watermarking. While the State’s ultimate certification requirements are not final, the Order

reveals the areas of importance that will be scrutinized in the future.



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