

GIBSON DUNN



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## New Executive Order Outlines Program to Lease Federal Sites to Private AI Data Center Developers

Gibson Dunn lawyers are available to assist developers preparing proposals for the competitive solicitation process or to answer questions about the Executive Order.

On January 14, 2025, President Biden issued an executive order<sup>[1]</sup> that directed certain federal agencies—predominantly the Department of Energy (DOE), the Department of Defense (DOD), and the Department of the Interior (DOI), but also the Department of State and other agencies—to stand up processes by which non-federal entities, including private-sector companies, can apply to lease certain federal sites for the purpose of constructing and operating “AI infrastructure.”<sup>[2]</sup> Much of the Executive Order focuses on encouraging the development on federal lands of large data centers capable of developing artificial intelligence (AI) models that match or surpass the current state of the art, a type-and-location combination the order dubs “frontier AI data centers.”<sup>[3]</sup>

The order also requires federal agencies to take additional actions meant to: (1) help the agencies understand and mitigate the impact of AI infrastructure on consumers’ electricity rates and the environment;<sup>[4]</sup> (2) identify the characteristics of transmission infrastructure near potential federal sites<sup>[5]</sup> and ensure that adequate transmission infrastructure exists at federal sites;<sup>[6]</sup> (3) facilitate the expeditious permitting of AI infrastructure projects on federal sites;<sup>[7]</sup> (4) improve the overall permitting and power procurement processes for AI infrastructure;<sup>[8]</sup> and (5) engage with other countries on accelerating the global buildout of AI infrastructure.<sup>[9]</sup> At its most

practical level, the Executive Order sets an objective to achieve full permitting and approval of construction to begin for six frontier AI data centers (three on DOE sites and three on DOD sites) by the end of 2025.[\[10\]](#)

This client alert focuses on the leasing program established by the Executive Order, which will be available to the private sector, and provides a high-level summary of: (1) the process by which agencies are required to select the federal sites that will be leased; (2) the information that agencies must request from prospective developers in the competitive public solicitation process; (3) the criteria by which agencies must judge proposals submitted in the competitive public solicitation process; and (4) the types of provisions that are required in the lease agreement.

## **1. Federal Site Selection**

The Executive Order requires the Secretary of the DOD and the Secretary of the DOE (the “Secretaries”) to identify by February 28, 2025, at least three sites on their respective agency’s land that may be suitable for the construction and operation of a frontier AI data center and clean energy facilities to serve such data center by the end of 2027.[\[11\]](#) To identify these sites, the Secretaries are directed to prioritize sites that:

1. are geographically sufficient for the AI infrastructure;
2. minimize possible adverse effects of AI infrastructure on the local community, natural and cultural resources, threatened or endangered species, or harbors or rivers not associated with hydropower;
3. are in close proximity to communities seeking to host AI infrastructure;
4. have access and are close in proximity to high-voltage transmission infrastructure that minimizes transmission-related costs associated with the construction of the AI infrastructure;
5. are not at risk of persistently failing to attain National Ambient Air Quality Standards;
6. lack proximity to waters that fall under the jurisdiction of the federal government under the Clean Water Act, 33 U.S.C. 1251 et seq.;
7. lack extensive restrictions on land uses associated with constructing and operating AI infrastructure;
8. have access to high-capacity telecommunications networks;
9. are suitable for the development of temporary infrastructure necessary for the construction of AI infrastructure; and
10. would not compromise a competing national security concern if the site were used or repurposed for AI infrastructure.[\[12\]](#)

The Executive Order also requires the Secretary of the Department DOI, in consultation with other agencies, to (1) identify sites managed by the Bureau of Land Management (BLM) that can be used to construct or operate clean energy facilities that are being or may be built to support AI infrastructure, prioritizing the identification of sites that meet certain criteria listed in the Executive Order[\[13\]](#) and (2) designate at least five regions composed of lands or subsurface areas as

“Priority Geothermal Zones” based on certain criteria listed in the Executive Order.<sup>[14]</sup> The Secretaries must also each make legal determinations that they have the authority to lease each identified site and that the site is available to lease.<sup>[15]</sup> Finally, the Secretaries must publicize the selected sites and certain characteristics of those sites by March 31, 2025.<sup>[16]</sup>

## **2. Project Solicitations**

The Executive Order requires that the Secretaries coordinate with one another to design, launch, and administer competitive public solicitations of proposals from non-federal entities seeking to lease and construct AI infrastructure on the land that the Secretaries identified.<sup>[17]</sup> In the solicitations, the Secretaries must require applicants to:

1. identify particular sites on which they propose to construct and operate the AI infrastructure;
2. submit a detailed plan specifying proposed timelines, financing methods, and technical plans for the construction of the AI infrastructure, including a contingency plan for decommissioning the infrastructure;
3. describe proposed AI training work that will occur when the site is operational;
4. describe plans to use high labor and construction standards; and
5. submit proposed lab-security measures associated with the operation of the AI infrastructure.<sup>[18]</sup>

## **3. Project Selections**

When evaluating and selecting proposals, the Secretaries (in consultation with other agencies) generally<sup>[19]</sup> must consider the information detailed in the applications including, at a minimum:

1. the proposed financing mechanisms and sources of funds secured for the project;
2. the plans for AI training operations to be executed at the site;
3. the plans for maximizing resource efficiency;
4. the plans for safety and security measures, including cybersecurity measures;
5. the capabilities of the applicant’s AI scientists, engineers, and other AI infrastructure workforce;
6. the plans for commercializing or otherwise deploying the (i) intellectual property and/or (ii) generation and transmission infrastructure innovations that are developed at the site;
7. the plans to help ensure that the construction and operation of AI infrastructure does not increase electricity or water costs to other rate payers;
8. the plans to use high labor standards and a plan to address labor-related risks associated with the development and use of AI;
9. the design features, operational controls, and plans that mitigate potential environmental effects and protect community health, public safety, and the environment;

10. the benefits to the community and electric grid infrastructure surrounding the site;
11. the applicant's experience completing comparable projects;
12. the applicant's experience with federal, state, and local permit compliance and with relevant environmental reviews or, alternatively, other evidence of the applicant's ability to obtain and comply with such permits or reviews;
13. the applicant's organizational and management structures that will help ensure sound governance of work performed at the site;
14. whether the selection of the applicant will support the emergence of an interoperable, competitive AI ecosystem;
15. whether an applicant has already been selected to construct or operate AI infrastructure in an opportunity related to the instant Executive Order; and
16. other national defense, national security, or public interest considerations that the Secretaries deem appropriate.[\[20\]](#)

#### **4. Contractual Obligations**

For projects that are selected to become frontier AI data centers, the Executive Order requires the Secretaries to require lease or contract terms that accomplish the following:

1. establishing target dates for the construction of each frontier AI data center by January 1, 2026, and the full-capacity operation of the AI infrastructure by December 31, 2027;
2. requiring that the non-federal parties have procured sufficient new clean power generation resources to meet the frontier AI data center's planned electricity needs by providing power that matches the data center's timing of electricity use on an hourly basis and is deliverable to the data center;
3. clarifying that the non-federal parties bear all responsibility for paying any costs incurred from work pursuant to the contract or lease regardless of whether they, transmission providers, transmission organizations, or other entities that are not party to the contract incur such costs;[\[21\]](#)
4. requiring adherence to technical standards and guidelines identified by various federal agencies for cyber, supply-chain, and physical security for protecting and controlling the facilities and other property developed, acquired, modified, used, or stored at the site or in the course of work performed on the site;
5. requiring that non-federal parties owning or operating frontier AI data centers sign a memorandum of understanding with the Secretary of Commerce "to facilitate collaborative research and evaluations on AI models developed, acquired, modified, run, or stored at the site or in the course of work performed on the site, for the purpose of assessing the national-security or other significant risks of those models;"[\[22\]](#)
6. requiring non-federal parties to (i) report certain information about investments or financial capital used for the development, ownership, or operation of AI infrastructure on the site, including the AI models operating in the AI infrastructure, to evaluate risks to national security and (ii) limit investments or financial capital from any person designated by the Secretaries on national security grounds;

7. requiring non-federal parties owning or operating AI data centers on federal sites to (i) take appropriate steps to advance the objective of harnessing AI for purposes of national security and (ii) commit to providing access to such models and their derivatives to the federal government for national-security applications at terms at least no less favorable than current market rates;
8. requiring that non-federal parties owning or operating AI data centers on federal sites develop plans to make available certain computational resources (including computational resources that are not already dedicated to supporting frontier AI training or otherwise allocated under another provision) for commercial use by startups and small firms on nondiscriminatory terms and in a manner that minimizes barriers to interoperability, entry, or exit for users;
9. requiring non-federal parties owning or operating AI infrastructure on federal sites to explore the availability of certain clean energy resources (including geothermal power, long-duration storage paired with clean energy, and others) at appropriate sites that they lease for AI data centers or generation capacity serving those centers; and
10. requiring AI developers owning and operating frontier AI data centers on federal sites to either (a) procure an “appropriate share” of leading-edge logic semiconductors fabricated in the United States to the maximum extent practicable or (b) develop and implement a plan to qualify leading-edge logic semiconductors fabricated in the United States for use in the developer’s data centers as soon as practicable if that plan is approved by the applicable Secretary.[\[23\]](#)

### **Takeaways and Timelines**

The Executive Order sets an ambitious timeline for the solicitations of large infrastructure projects, projects of a type that often take years to successfully permit and begin constructing. Nonetheless, the Executive Order is the result of bipartisan urging to protect and expand U.S. AI data center infrastructure and may represent an area where the Biden and Trump administrations find some common ground. The Executive Order addresses wide-ranging infrastructure needs for data centers, particularly in the energy sector, but leaves some critical issues unaddressed, perhaps due to the jurisdictional limitations of federal and executive powers. For example, the Executive Order addresses transmission grid interconnection issues but is silent as to coordination with owners and operators of the nation’s distribution grids, which are generally regulated at the state level. The order, as ambitious as it is, also does not clear a path for expediting securing the many non-federal permits that will likely be necessary to build transmission facilities to serve frontier AI data centers.

The Secretary of the DOI, in consultation with the Secretaries, is required to publicize the sites they have selected for clean energy generator leases by March 31, 2025, at the latest, and the Secretaries are required to issue solicitations for frontier AI infrastructure proposals by March 31, 2025, at the latest, and close solicitations within 30 days of their issuance.[\[24\]](#) The Executive Order requires the DOE and DOD to announce winning proposals by June 30, 2025, with a goal of fully permitting winning proposals by the end of 2025 so construction can begin. Given the fast pace of these timelines, and assuming the incoming administration does not repeal or modify the Executive Order, entities that are interested in participating in this program may wish to closely

monitor the DOE, DOD, and DOI websites for the DOI's publication of the selected sites and the DOE's and DOD's issuance of solicitations of proposals.

Additionally, given the relatively short amount of time entities will have to prepare their proposals and the amount of information that will be required in their proposals, entities may wish to consider compiling information they know will be required in their proposals based on the Executive Order as soon as the DOI announces the selected sites. Gibson Dunn attorneys are available to assist developers preparing proposals for the competitive solicitation process or to answer questions about the Executive Order. Please contact your contact attorney at Gibson Dunn or one of the Gibson Dunn attorneys that authored this article with any questions you may have regarding this Executive Order.

[1] *Executive Order on Advancing United States Leadership in Artificial Intelligence Infrastructure*, The White House (Jan. 14, 2025), <https://www.whitehouse.gov/briefing-room/presidential-actions/2025/01/14/executive-order-on-advancing-united-states-leadership-in-artificial-intelligence-infrastructure/> (“Executive Order”).

[2] *Id.* at Sections 3(c), 4 (“The term ‘AI infrastructure’ refers collectively to AI data centers, generation and storage resources procured to deliver electrical energy to data centers, and transmission facilities developed or upgraded for the same purpose.”).

[3] *Id.* at Section 3(m) (A “frontier AI data center” is defined as “an AI data center capable of being used to develop, within a reasonable time frame, an AI model with characteristics related either to performance or to the computational resources used in its development that approximately match or surpass the state of the art at the time of the AI model’s development.”).

[4] *Id.* at Section 5.

[5] *Id.* at Section 6.

[6] *Id.* at Section 8.

[7] *Id.* at Section 7.

[8] *Id.* at Section 9.

[9] *Id.* at Section 10.

[10] *Id.* at Section 4.

[11] *Id.* at Section 4(a).

[12] *Id.* at Section 4(a).

[13] *Id.* at Section 4(b) (specifically, the Secretary of the DOI must prioritize identification of sites used to construct or operate clean energy facilities based on the same criteria by which the Secretaries of the DOD and DOE must prioritize sites (listed above) and must also prioritize sites

that: (1) contain completed, permitted, or planned clean generation projects that (i) can deliver electricity to the data centers and (ii) possess an executed interconnection agreement with a transmission provider; (2) have been allocated as available for clean-energy applications in a BLM resource management plan; and (3) have reasonable access to existing high-voltage transmission lines that have at least one gigawatt of additional capacity available or for which such capacity can be reasonably developed).

[14] *Id.* at Section 4(c) (“The Secretary of the Interior shall designate those regions based on their potential for geothermal power generation resources, including hydrothermal and next-generation geothermal power and thermal storage; diversity of geological characteristics; and possession of the characteristics described in subsections (a)(i)-(x) and (b)(i)-(v) of this section.”)

[15] *Id.* at Section 4(d).

[16] *Id.* at Section 4(f).

[17] *Id.* at Section 4(e).

[18] *Id.*

[19] Interestingly, the Executive Order also requires that the Secretaries “select at least one proposal developed and submitted jointly by a consortium of two or more small- or medium-sized organizations — as determined by those organizations’ market capitalization, revenues, or similar characteristics — provided that the Secretaries receive at least one such proposal that meets the appropriate qualifications” to the extent consistent with applicable law and the Secretaries’ assessment that the requirement promotes national defense, national security, or the public interest. *Id.* at Section 4(g).

[20] *Id.* at Section 4(g).

[21] Note that these costs explicitly include the “costs of work performed by agencies to complete necessary environmental reviews, any costs related to the procurement of clean power generation resources and capacity in accordance with [AI training operations described in *Id.* at Section 4(g)(ii)], any costs of decommissioning AI infrastructure on Federal sites, any costs of developing transmission infrastructure needed to serve a frontier AI data center on a Federal site, and the fair market value of leasing and using applicable Federal lands.” *Id.* at Section 4(h)(iii).

[22] *Id.* at Section 4(h)(v).

[23] *Id.* at Section 4(h).

[24] *Id.* at Section 4(f)-(g).

*Gibson Dunn’s Data Center Task Force attorneys are available to assist clients by offering strategic advice; drafting comment letters to agencies; arranging and preparing for high-level executive branch and congressional meetings; and helping clients take advantage of potential opportunities emerging from the rapidly changing regulatory environment.*

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