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# Anti-bribery/compliance pitfalls at the U.S. state level

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As compliance and legal professionals, we are asked to help business leaders determine specific and potential risks when entering a new market, developing a new product or solution, or partnering with others in the market. In these evaluations, there is much emphasis on compliance with anti-bribery laws, such as the United States' Foreign Corrupt Practices Act (FCPA) and the United Kingdom's Anti-Bribery Act, as well as country-specific anti-bribery laws. In recent history, we have seen a lot of research, training, and effort put into spreading the word about various compliance issues involving global trade and bribery, data protection, and export/import concerns in those cross-border transactions. This effort is important, because transparency and an even playing field will help ensure a thriving global economy.

It is equally important, however, to remember the United States' domestic laws, which are designed to prevent domestic bribery and increase transparency when businesses engage with state or local governments. Rather than providing broad-brush guidance to "not engage in bribery," these laws provide specific rules that must be followed in government procurement or government engagement. These rules (1) outline the activities that require individuals to publicly register as lobbyists and report their activities (Lobby Laws); (2) limit the types of payments that can be made to third parties in government procurement (Contingent Fee Bans); (3) limit the types of expenditures vendors and those acting on their behalf can make to government employees (Gift Rules); and (4) provide limits on transitions from public to private sector, and sometimes from private to public sector (Revolving Door/Conflicts of Interest). Failure to comply with these rules can subject your company and its employees to adverse media attention, debarment from government contracting or bidding on a contract at issue, contract cancellation, and significant criminal or civil fines and penalties.

The rules apply to practically all businesses selling and marketing into United States federal, state, and local governments. Although the laws have the common foundation to prevent bribery and foster transparency in government procurement, they are different in each jurisdiction, and businesses selling to governments at all levels in the U.S. would be wise to implement a domestic anti-bribery compliance program that is equally as robust as their global anti-bribery compliance program.

## Market

The United States government sales market has several common attributes among the federal, the 50 states, and more than 89,000 local governments. These common attributes include: each governmental entity generally has a need for technology, goods, and services; and each entity has some level of autonomy to make purchasing/implementation decisions from the more geographically senior government body (i.e., federal government for states and state government for locals).

Likewise, these entities are also quite diverse in reference to social priorities, historical implications, economic factors, and current economic conditions. Because of this diversity, one set of marketing and sales strategies will not fit well across the state and local geographies.

Many companies have targeted the United States government marketplace for sales because of the size of the cumulative marketplace. Many people know that the federal budget is massive. However, many are surprised to discover that state and local government spend is nearly equal to the federal spend. The total federal budget is approximately $3.8 trillion per year, with approximately $450 billion awarded in new prime contracts each year.[1] The National Contract Management Association (NCMA) expects total state and local government expenditures to be a very similar number of $3.5 trillion dollars in 2018.

One can also compare individual US states to various global national economies. The gross domestic product for the three largest US states are: California, $169 billion; New York, $101 billion; and Texas, $82 billion. California's economy is the eighth largest in the world, just ahead of Russia.[2]

In addition to being a large marketplace, state and local governments are particularly attractive to sales professionals because of comparatively easy access to decision makers. For example, it is not out of the ordinary for a company representative to call on a state governor, her/his staff, or an agency head to discuss/pitch a product. These senior state and local leaders in turn have much more autonomy and influence on the final contract decisions.