

Publications

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The New Rules of Federal Contracting: Redefining DEI Compliance

Key Takeaways

- Federal contractors and subcontractors should assess whether their existing DEI policies and initiatives include any race- or ethnicity-based disparate treatment that could constitute a violation under EO 14398 and the new FAR 52.222-90 clause.
- Effective April 24, 2026, all new federal contracts must include a clause prohibiting "racially discriminatory DEI activities," with existing contracts required to be modified by July 24, 2026.
- Non-compliance carries serious consequences, including contract cancellation, termination or suspension, debarment and potential liability under the False Claims Act.
- Contractors should map flowdowns across their supply chain to ensure subcontractor compliance and prepare for forthcoming agency information collection requests related to FAR 52.222-90.

On March 26, 2026, President Trump issued Executive Order (EO) 14398, titled Addressing DEI Discrimination by Federal Contractors, ordering federal executive departments and agencies to ensure federal contracts do not include "racially discriminatory DEI activities." To that effect, within 30 days of the EO, federal agencies are directed to incorporate a specific clause in their federal contracts, requiring contractors to agree to the following:

- The contractor will not engage in racially discriminatory DEI activities.
- The contractor will furnish all information and reports as required by the contracting agency to determine compliance with the prohibition.
- The contract may be canceled, terminated or suspended in whole or in part for non-compliance.
- The contractor will report known or reasonably known conduct that may violate this clause and take appropriate remedial actions as directed by the agency.
- The contractor will notify the agency of any suits a subcontractor initiates against the contractor relating to the prohibition against racially discriminatory DEI activities.
- Compliance with this requirement is a material representation for purposes of invoking the False Claims Act.

Related People

- James W. Kim
- Erin D. Schilling
- Cate Baskin
- Shivani P. Bailey
- Eyasu Yirdaw

Related Capabilities

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These obligations apply not only to prime contractors, but also to subcontractors and lower-tier subcontracts, encompassing the entire supply chain.

The EO defines “racially discriminatory DEI activities” as “disparate treatment” based on race or ethnicity in recruitment, employment, contracting, program participation or resource allocation. The Supreme Court has historically defined “disparate treatment” as *intentional* discrimination, as opposed to unintentional practices that disproportionately impact a certain group. *Ricci v. DeStefano*, 557 U.S. 557, 577 (2009). Last year, the Supreme Court clarified that the disparate treatment standard applies equally to both minority and majority groups. *Ames v. Ohio Dep’t of Youth Servs.*, 605 U.S. 303, 304 (2025).

The stakes are significant. Penalties for contractors considered to be engaged in “racially discriminatory DEI activities” include contract cancellation, termination or suspension; contractor or subcontractor suspension or debarment; and actions under the False Claims Act.

On April 17, 2026, pursuant to the EO, the Federal Acquisition Regulatory Council (the “Council”) issued a memorandum to all agencies, providing guidance on how to implement the EO. That memorandum requires agencies to include the new clause, Federal Acquisition Regulation (FAR) 52.222-90, in all new government contracts beginning April 24, 2026. Agencies are also required to modify existing contracts with the new clause by July 24, 2026. Accordingly, the Council has requested approval from the Office of Management and Budget to allow agencies to collect all information and reports from federal contractors relating to compliance with FAR 52.222-90.

In light of the evolving DEI compliance landscape, contractors involved at all tiers of federal government contracting should take the following steps:

- Audit their existing DEI policies and initiatives for any race- or ethnicity-based disparate treatment.
- Once the new FAR 52.222-90 clause is included in a federal contract or subcontract, map flowdowns to ensure subcontract compliance at all tiers.
- Anticipate any forthcoming information collection initiatives.
- Be prepared to modify contracts by July 24, 2026 deadline.

Polsinelli is available to assist with any compliance questions or concerns you may have about navigating the new federal contracting requirements under EO 14398 and FAR 52.222-90. Please reach out to your Polsinelli relationship attorney for support in addressing these developments.