



Government Contracts Update

April 2026

From Affirmative Action to False Claims: Federal Contractors Face Another New DEI Prohibition

Key Notes:

- A new executive order requires a mandatory clause in covered federal contracts and subcontracts within 30 days, prohibiting “racially discriminatory DEI activities” and tying compliance directly to FCA liability.
- Conflicts between federal and state affirmative action policies will put pressure on contractors with certain state and local government customers.
- Contractors should start remediating now because whistleblowers and agencies will not wait.

The White House has placed diversity, equity, and inclusion (“DEI”) compliance at the forefront of procurement enforcement. A March 26, 2026, [executive order](#), *Addressing DEI Discrimination by Federal Contractors* (“Order”), embeds a mandatory clause in all covered contracts and subcontracts *within 30 days* of the Order, prohibiting “racially discriminatory DEI activities” and backs it with termination, suspension, debarment, and express False Claims Act (“FCA”) liability. The clock is ticking, and contractors should be preparing now.

Executive Order Mandate

The mandatory clause is broad and carries significant enforcement consequences. Contractors will be required to:

- Refrain from “racially discriminatory DEI activities,” defined as “disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity’s resources.”

- Provide government access to books, records, and accounts to verify compliance.
- Report subcontractor conduct that is “known or reasonably knowable” and may violate the clause.
- Notify the contracting agency if a subcontractor files suit challenging the clause.

Compliance is expressly material to payment decisions under the contract, which is intended to invoke the FCA. This fundamentally changes the risk calculus for federal contractors. Every certification and invoice a contractor submits carries potential FCA exposure for breaches of contract provisions for which compliance is material to the government’s payment decision. With this new clause, another compliance burden-carrying FCA risk is imposed on contractors and subcontractors. Along those lines, the Order directs the Attorney General to pursue enforcement actions and fast-track qui tam actions. This gives both whistleblowers and the government a direct pathway to challenge contractors whose programs do not conform to the new standard. In short, this is a new tripwire with significant consequences—treat it that way.

Continuing the Sharp Pivot Away from Affirmative Action

Contractors should pay close attention to this latest pivot away from affirmative action programs relating to gender and race or ethnicity, which contractors were required to maintain for nearly 60 years prior to January 2025. If still maintained by contractors, reassessment of legacy programs built for compliance with Executive Order 11246

and FAR Subpart 22.8 is a must. What was previously required is now being reframed as the very conduct that can trigger liability. The compliance infrastructure that contractors built in good faith to satisfy prior requirements has now become a potential source of FCA exposure.

Agencies have already begun issuing class deviations to remove FAR 22.8 clauses (including FAR 52.222-21, 52.222-25, and 52.222-26) from new and existing awards. It is imperative that contractors immediately address policies, procedures, or programs built around those prior requirements. Do not leave those compliance programs in place while waiting for the Order to be implemented. Retire, rework, or replace them before the new clause lands.

Dual State and Federal Contractors Face Conflicting Obligations

Contractors active at both the state and federal levels face a very real conflict because of the Order. Many states and localities still require affirmative action in employment and supplier diversity programs as conditions of award. A contractor fulfilling state affirmative action or minority business enterprise participation requirements on one contract could violate the new federal prohibition on another. The Order does not resolve this tension: there is no safe harbor, no preemption clause, and no roadmap. Contractors, unfortunately, will need to work through the conflict on a jurisdiction-by-jurisdiction and contract-by-contract basis.

Practical Steps

The timeline is tight. Contractors should focus their efforts on the following areas:

- **Audit internal policies and agreements.** Review every policy, program, and agreement that is relevant to equal opportunity and affirmative action, including recruiting and hiring practices, promotion and mentoring programs, employee resource groups, supplier diversity criteria, subcontract flowdowns, and certifications referencing EO 11246 or FAR 22.8. If a policy could be characterized as race- or ethnicity-based disparate treatment, redesign it now to comply

with the Order. Contractors should consult legal counsel to assist in this review on a privileged basis.

- **Strengthen subcontract oversight.** The “known or reasonably knowable” reporting standard means contractors bear responsibility for subcontractor conduct they should reasonably be aware of. Update flowdowns, require compliance certifications, implement monitoring, and prepare a rapid response plan for records requests.
- **Map conflicting state and local obligations.** Identify where state or local requirements conflict with the Order and develop jurisdiction-specific strategies with the help of counsel.
- **Monitor agency action.** The rollout will not be uniform. Track solicitations, bilateral modifications, agency deviations, and sector-specific guidance from OMB. The FAR Council is required to develop formal guidance over the next 60 days—be ready to pivot before it lands.
- **Be mindful of ongoing obligations.** The new Order does not impact contractors’ affirmative action obligations for individuals with disabilities and protected veterans under Section 503 of the Rehabilitation Act or the Vietnam Era Veterans’ Readjustment Assistance Act. Because those obligations are statutory, they remain in effect unless revoked through an act of Congress. Contractors should therefore continue implementing their compliance programs in these areas.

Every contractor’s risk profile under this Order will vary based on contract portfolio, internal programs, and state and local obligations. If you have questions or need help to move as swiftly and decisively as the Order requires, our [Government Contracts](#) practice group is available to help you assess your exposure, sequence the work, and implement a right-sized compliance plan.

FOR MORE INFORMATION

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