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Key Compliance Risks for Federal Contractors Under the New DEI Executive Order

On March 26, 2026, President Donald Trump signed a new executive order ramping up enforcement against unlawful DEI practices. Most notably, the order requires executive departments and agencies to include the following language in vendor contracts:

> *"In connection with the performance of work under this contract, [the contractor/appropriate party (contractor)] agrees as follows*:
>
> 1. *The contractor will not engage in any racially discriminatory DEI activities, as defined in section 2 of the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors);*
> 2. *The contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting agency pursuant to the Executive Order of March 26, 2026 (Addressing DEI Discrimination by Federal Contractors), for purposes of ascertaining compliance with this clause;*
> 3. *In the event of the contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor or subcontractor may be declared ineligible for further Government contracts;*
> 4. *The contractor will report any subcontractor's known or reasonably knowable conduct that may violate this clause to the contracting department or agency and take any appropriate remedial actions directed by the contracting department or agency;*
> 5. *The contractor will inform the contracting department or agency if a subcontractor sues the contractor and the suit puts at issue, in any way, the*

validity of this clause; and

6. *The contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of section 3729(b)(4) of title 31, United States Code (False Claims Act)."*

Federal departments and agencies must incorporate this language into their contracts **no later than April 25, 2026**, so federal contractors can expect requests to modify existing contracts and new contracts to contain this language in the immediate future.

There are a few notable aspects of this provision that require federal contractors to thoughtfully determine their level of risk tolerance.

- The scope of information that must be provided to the federal government is vague. But it is possible the administration will take an expansive view because the order seemingly asserts that any information "required … for purposes of ascertaining compliance…" must be disclosed. Put differently, a reasonable reading of the order would allow the administration to ask for any information it deems it necessary to determine whether the contractor operates any unlawful DEI programs or policies.

Federal contractors should review their information management protocols to ensure they do not needlessly increase risk. For example, now is a good time to ensure any pay equity or talent assessments undertaken to ensure compliance with state and federal anti-discrimination laws are adequately protected by the attorney-client privilege.

- The order also requires federal contractors to report their **subcontractors'** "known or reasonably knowable" use of unlawful DEI programs or failure to include the contractual language cited. This provision will prove uniquely difficult to address for several reasons. First, it means federal contractors must include the cited language in their own private contracts with subcontractors. That, alone, will require a burdensome review of applicable contracts and relationships to ensure compliance. Second, and perhaps more importantly, the order does not clearly define what it means by the phrase "known or reasonably knowable." For example, does this provision require federal contractors to set up control mechanisms, such as attestations or disclosure obligations, to ensure

subcontractors do not utilize any unlawful DEI policies or programs?

Relatedly, how should a federal contractor respond if one of their subcontractors publishes materials that arguably hint at non-compliance? Will the government impute knowledge on the federal contractor based on materials that provide only a narrow window into their subcontractors' practices? These issues are made all the more complicated because legal disputes between contractors on this topic must be reported to the federal government.

- The order notes that failure to comply may result in termination or cancellation of the contract, but it does not specify whether other laws, regulations, or contractual provisions that govern the termination of the contract will apply. For example, will the government have to make any specific showing before ceasing payments entirely? Similarly, the order notes that the federal contractor may be debarred, a move that would surely put at risk substantial revenue streams for some employers.

In addition to this key provision, there are a few other parts of the order that are worth highlighting.

- The order defines unlawful DEI to include "membership or participation in or access or admission to" any training, mentoring, development programs, educational opportunities, etc. that treat employees differently based on their race or ethnicity. Employers would thus do well to review the rules governing Employee Resource Groups (ERGs), leadership programs, and talent pipelines.
- The order makes plain the administration's view that noncompliance will subject federal contractors to the onerous penalties under the False Claims Act.
- Finally, much like previous DEI executive orders promulgated by this administration, this new order directs key agencies, including the U.S. Department of Justice, to identify economic sectors that pose a particular risk.

Like the previous DEI-related orders issued by this administration, this new order is sure to be challenged in court. However, it is unclear whether or to what extent this new order will be enjoined while those challenges wind their way through the system. Challenges to the previous orders have had mixed success. Moreover, it is unclear how aggressively the administration will act to enforce this new order. The previous orders have not remained at the front and center of this administration's efforts.

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