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FAR Council Begins Rapid Implementation of New Contractor DEI Restrictions to New and Existing Contracts

Government Contractor Compliance & Regulatory Update on **April 27, 2026**

Quick Hit: On April 17, 2026, the Federal Acquisition Regulatory Council (the "FAR Council") commenced implementation of Executive Order 14398 ("the Order"). In its memorandum issued to government acquisition and procurement officials, the FAR Council provides guidance regarding the implementation of the Order, which it describes as establishing "that agencies should not do business with contractors that engage in any racially discriminatory diversity, equity, and inclusion (DEI) activities." The guidance includes the new Federal Acquisition Regulation ("FAR") language, as well as instructions about implementing it into new and existing contracts.

Key Takeaways: As we discussed in a prior post, the Order requires government agencies to include a new clause in federal contracts barring federal contractors and subcontractors from engaging in "racially discriminatory DEI activities." The FAR Council's guidance is the first step in implementing the Order's requirement. In addition to issuing new FAR deviation text containing the new prohibitions, the FAR Council has provided guidance as to how agencies should implement it.

Notable components in the guidance:

- Agencies are instructed not only to include the new clause in "new solicitations and resulting contracts" ***beginning April 24, 2026***, but also to ***insert the clause into certain existing contracts***.
- The guidance anticipates aggressive implementation of the new clause into existing contracts. Contracting officers are required to "***make every effort*** to bilaterally modify existing contracts ***by July 24, 2026***." If the "contractor refuses to agree to a bilateral modification, the contracting officer should consider whether, absent the modification, the contract no longer meets the agency's needs and should therefore be terminated for convenience."

- The new clause will only apply to contracts where the place of delivery or performance is in the United States.
- Certain components of the Order and new clause will not be implemented until the Office of Management and Budget approves a Paperwork Reduction Act request related to information gathering. These include the contractors' obligations to respond to information requests related to compliance, reporting on subcontractors' non-compliance, and informing contracting officers of efforts by the subcontractor to challenge the clause.

Accordingly, contractors need to be aware that in the coming months they will be seeing requests to modify their existing contracts to include the new clause. As such, they must take steps now to understand the full scope of the new requirement and ensure they are prepared. As discussed in our prior post, these efforts should include, with the guidance of legal counsel:

- Reviewing existing DEI-related programs and policies (particularly those related to race and ethnicity);
- Taking steps to ensure when a contract modification request is received it is routed to the appropriate personnel;
- Being aware of the False Claims Act ("FCA") component of the new clause and taking steps to limit FCA exposure; and
- Assessing how to manage subcontractors and subcontractor reporting obligations.

More Details: The Order, issued on March 26, 2026, requires federal agencies to include a clause prohibiting contractors from engaging in "racially discriminatory DEI activities," and instructs the FAR Council to amend the FAR to include the Clause "in federal procurement, solicitations, and contracts, and to remove any conflicting provisions in the FAR." It also instructs the FAR Council to, within 60 days of the date of the Order, "issue deviation and interim guidance … regarding agency implementation of the clause … before completion of the amendments" to the FAR. The FAR Council's memorandum here complies with that instruction less than 30 days after its issuance.

The Council has issued model deviation text for FAR 52.222-90, which follows the text required by the Order, while also adding a "flow down" clause requiring contractors to include the "substance of [FAR 52.222-90] … in subcontractors at any tier … for which the place of delivery or performance is in the United States." In implementing the new clause, agencies can only deviate from the model FAR text if permitted by existing statutory direction or with approval of the FAR Council.

The guidance provides for expedited implementation of the new contract clause. Agencies are required to begin using the new clause in new solicitations and resulting contracts by April 24, 2026, where the contracts at issue are "valued over the micro-purchase threshold [currently $15,000] … and for which the place of delivery or performance is in the United States."

In addition, agencies must modify existing contracts "valued over the micro-purchase threshold … for which the place of delivery or performance is in the United States" by July 24, 2026, though agencies have discretion with respect to modifying existing contracts set to expire by December 31, 2026. Contracting officers must "make every effort to bilaterally modify existing contracts by July 24, 2026." If the "contractor refuses to agree to a bilateral modification, the contracting officer should consider whether, absent the modification, the contract no longer meets the agency's needs and should therefore be terminated for convenience."

Notably, certain components of the Order and new clause will not be implemented until the Office of Management and Budget approves a Paperwork Reduction Act request related to information gathering. These include the contractors' obligations to respond to information requests related to compliance, reporting on subcontractors' non-compliance, and informing contracting officers of efforts by the subcontractor to challenge the clause. These provisions will be implemented once the request is approved.

With this guidance, contractors are now on notice that they will soon be asked to agree to include the ban on "racially discriminatory DEI activities" in their existing contracts. Contractors should be aware that the Order is currently being challenged in a Maryland federal court lawsuit on First Amendment grounds, and any decisions there could impact this new FAR. However, as discussed above, contractors should begin taking action now to ensure they are prepared for the new requirement.

We will continue to monitor and report on developments in this space.

Related Professionals

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