

NEW TRUMP DEI EXECUTIVE ORDER **MEANS GOVCONS HAVE 30 DAYS TO** **ACT**

On March 26, 2026, the Trump Administration issued a new Executive Order ("EO"), titled "**Addressing DEI Discrimination By Federal Contractors**," relating to its efforts to eradicate Diversity, Equity, and Inclusion ("DEI") programs and practices from the federal government and federal contracting. This new EO imposes new and immediate compliance requirements on federal contractors.

Under the EO, federal agencies must ensure **within 30 days (by April 25, 2026)** that all contracts, **including contractors' subcontracts and subcontractors' lower-tier subcontracts**, include the following clause:

"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)."*

Prohibited Activities Under the EO: Under the EO, "**racially discriminatory DEI activities**" is 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." The EO further defines "**program participation**" as "membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor."

Enforcement: The EO imposes significant penalties if a contractor is found to violate the clause, including and up to contract termination, debarment, and actions for violation of the False Claims Act ("FCA").

Regulatory Implementation: The EO directs the Federal Acquisition Regulatory ("FAR") Council to (i) amend the FAR to include the clause, and (ii) issue a deviation and interim guidance within 60 days for agencies to implement the clause pending formal FAR amendment.

Actions for Federal Contractors: While the EO directs the FAR Council to formally implement the EO into the FAR, it also requires agencies to ensure compliance with the EO within 30 days, meaning it imposes immediate obligations on federal contractors. **By April 25, 2026**, federal contractors should complete the following actions:

1. **Review** all company policies, procedures, practices, and programs (including those sponsored by the contractor) to assess whether any of them could be considered to constitute disparate treatment based on race or ethnicity, and to ensure compliance with the EO;
2. **Engage** with subcontractors (and, for subcontractors, engage with lower-tier subcontractors) regarding the new EO and **amend** all existing subcontracts to include the clause contained in the EO (this includes agreements with independent contractors and consultants working on a federal contract); and
3. **Amend** all pending subcontracts and subcontract templates to include the clause contained in the EO.