Ramish, Sencenbaugh, McDonald and Nieto for Westlaw Today: Government Contracts DEI Restrictions Under EO 14398 — What Contractors Need to Know

By Daniel Ramish, Adam H. Sencenbaugh, Taryn McDonald, Mia Nieto | July 10, 2026

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A Haynes Boone **alert** by attorneys **Daniel Ramish**, **Adam Sencenbaugh**, **Taryn McDonald** and **Mia Nieto** has been republished by *Thomson Reuters Westlaw Today*, bringing broader attention to the significant compliance considerations arising from Executive Order 14398.

In the article, the authors break down the new FAR requirements, discuss the risks associated with noncompliance and outline steps contractors can take now to assess policies, prepare for contract modifications and navigate an evolving regulatory landscape.

Read an excerpt from the article below.

How does the new executive order compare to the Administration's earlier DEI policies?

The Administration has targeted certain DEI programs from the outset, starting with Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity (January 21, 2025) (https://bit.ly/4vLdhPz),[2] issued on the President's second day in office.

EO 14173 mandated clauses in every contract and grant award requiring contractors and recipients to certify that they did not operate DEI programs that violated applicable federal anti-discrimination laws. The Order also explicitly stated that it did not "prevent ... federal contractors ... from engaging in First Amendment-protected speech."

EO 14398 marks a significant expansion beyond EO 14173. Where EO 14173 is framed as enforcing existing anti-discrimination law, EO 14398 establishes standalone prohibitions on specified DEI-related activities, including conduct that historically may not have been interpreted to violate existing civil rights laws. …

What are the potential consequences of violating FAR 52.222-90?

The contractor is required to provide the government access to books and records requested by the contracting officer to verify compliance with the clause. FAR 52.222-90 and the implementing regulations authorize severe consequences for violations, including contract cancellation, termination, suspension or debarment, and potential False Claims Act exposure. …

What should government contractors do now to prepare?

First, if contractors have not already evaluated their current activities, they should do so and consider engaging counsel to assist with their analysis. The Executive Order may reach many common, longstanding corporate activities that promote diversity. …

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Second, contractors should consider whether they will, or can, accept the clause in new solicitations and existing contracts or whether they want to pursue a challenge to the Order and its implementation on grounds already expressed in the Maryland lawsuits, which now include constitutional claims, substantive APA claims, and procedural claims such as the alleged failure to follow required notice-and-comment procedures….

Third, contractors that accept the clause will need to take steps to achieve compliance and mitigate risk. That starts with adjusting their DEI-related activities as needed to comply with restrictions under EO 14398 — and creating documentation supporting that any remaining activities are lawful. Contractors should review and consider adjustments to any public statements regarding DEI or diversity on websites, filings, or otherwise.

Read the full article on *Westlaw Today* **here**.

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