

RISK MOMENT 06 | MULTI-STATE & ADVANCED RISK

Procurement DEI and ESG Contract Response Guide

A practical guide for Christian employers reviewing customer, government, lender, and supply chain requirements.

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How to Use This Guide

Use this guide when a bid, renewal, vendor packet, financing document, or supply chain questionnaire asks your organization to make a DEI, ESG, climate, sustainability, or values-related representation. The immediate objective is to identify who is making the demand, what authority supports it, exactly what you would be certifying, and whether the language can be answered accurately, narrowed, revised, or declined.

Start Here

Do not treat every DEI or ESG request as either mandatory or unlawful. The correct response depends on the source of the requirement, the words used, the contract structure, the jurisdiction, and your organization's actual practices. Some provisions are lawful compliance terms. Some are negotiable commercial conditions. Some may create constitutional, civil rights, religious liberty, false certification, or breach of contract concerns.

Member rule: Do not sign first and investigate later. Preserve the deadline, collect the documents, and obtain legal review before making a disputed certification or declining a material opportunity.

The First Five Questions

- 1 Who is imposing the requirement:** a federal agency, state or local government, prime contractor, private customer, lender, insurer, investor, rating service, or another party?
- 2 What is the demand:** disclosure of facts, confirmation of legal compliance, adoption of a policy, numerical target, preferential treatment, compelled statement, subcontractor flow down, or ongoing reporting?
- 3 What authority is cited:** statute, regulation, executive order, solicitation provision, contract clause, customer policy, or no authority at all?
- 4 Can the organization truthfully certify** the exact language as written today?
- 5 What happens if** the organization requests clarification, proposes substitute language, reserves rights, or declines?

Triage the Requirement

Source	Typical Form	Primary Question	First Move
Federal contract	Solicitation or contract clause	Is the clause current, applicable, and incorporated into this procurement?	Ask the contracting officer to identify the authority and clause.
State or local contract	RFP scoring rule, certification, or ordinance	Does the jurisdiction require it, prohibit it, or limit it?	Check current jurisdiction-specific law and protest deadlines.
Prime contractor	Flow-down clause or supplier code	Is flow down required by the prime contract, or is it the prime's policy?	Request the source clause and proposed alternative wording.
Private customer	Vendor pledge, questionnaire, or code	Is the term negotiable, and can you answer it accurately?	Separate factual disclosures from ideological commitments.
Lender or insurer	Covenant, risk questionnaire, or rating	Does the answer affect pricing, eligibility, default, or renewal?	Review the full agreement and consequences of an inaccurate response.
Disclosure law	Climate or supply chain report	Does the law reach your entity directly or through a customer?	Confirm thresholds, dates, exemptions, and litigation status.

What Changed in Federal Contracting

Federal contractor obligations changed materially beginning in 2025, and continued to develop in 2026. Executive Order 14173 revoked Executive Order 11246 and directed the Office of Federal Contract Compliance Programs to stop enforcing the former race and sex affirmative action framework. It did not eliminate every federal contractor nondiscrimination or affirmative action obligation. Requirements under Section 503 of the Rehabilitation Act and the Vietnam Era Veterans Readjustment Assistance Act remain relevant for covered contractors.

Executive Order 14173 also directed federal contracts and grants to include terms addressing compliance with federal anti-discrimination law and certifications concerning programs that promote unlawful DEI. In March 2026, Executive Order 14398 directed agencies to add a clause barring defined racially discriminatory DEI activities in federal contracts and downstream subcontracts, with reporting, records access, termination, suspension, debarment, and False Claims Act consequences. Implementation details may continue to change through agency guidance, deviations, regulations, litigation, and the terms of a particular procurement.

KEY EXECUTIVE ACTIONS	
E.O. 14173	Revoked E.O. 11246; directed OFCCP to end former affirmative action framework enforcement. Issued Jan. 21, 2025.
E.O. 14398	Directed agencies to add clause barring racially discriminatory DEI in federal contracts; False Claims Act consequences. Issued Mar. 26, 2026.
Sec. 503 / VEVRAA	Affirmative action obligations for veterans and individuals with disabilities remain in effect for covered contractors.

Practical Effect

A clause mentioning DEI is not automatically obsolete. Current federal solicitations may impose new anti-discrimination certifications and flow-down duties even though the former Executive Order 11246 framework was revoked. Review the actual clause and current implementing authority.

Understand the Legal Boundaries

Government Requirements

Government conditions can raise constitutional and statutory questions, including compelled speech, viewpoint discrimination, equal protection, free exercise, unconstitutional conditions, and procurement authority. But the First Amendment does not automatically invalidate every certification or contract condition. Courts examine the precise speech, the government's role, the program, the applicable law, and the remedy. Do not promise a bid protest or constitutional claim without counsel reviewing the exact requirement and deadline.

Private Requirements

A private buyer generally has broader freedom to set commercial terms than the government. A supplier may negotiate, seek an exception, provide a qualified response, or decline, but it may not have a constitutional claim against a private purchaser. Other laws or contract rights may still matter, including civil rights statutes, state religious freedom or public accommodation laws, existing contract terms, tortious interference theories, and industry-specific rules. The analysis is fact specific.

Religious Status and Employment Rights

Religious organizations may have protections under Title VII's religious organization exemption and, for qualifying roles, the ministerial exception. Those doctrines do not apply identically to every Christian-owned business, every employment decision, or every procurement dispute. Do not state broadly that faith-based hiring rights travel unchanged into every vendor relationship. Identify the entity's legal status, the role involved, and the specific conduct at issue.

Accuracy and Certification Risk

The most immediate risk is often not the policy debate but the certification itself. An inaccurate representation can create termination, repayment, default, debarment, audit, or False Claims Act exposure. Do not sign language because it appears aspirational if the contract treats it as a material representation.

The Contract Review Process

1 Preserve the opportunity and the deadline.

Record the bid, renewal, protest, clarification, and signature deadlines. Ask for an extension if review cannot be completed responsibly.

2 Collect the complete document set.

Obtain the solicitation, amendments, incorporated policies, supplier code, questionnaires, prime contract flow-down provisions, scoring criteria, and prior versions.

3 Mark every representation.

Highlight each *certify, represent, warrant, agree, shall, must, report, audit, flow down, terminate, and material* provision.

4 Classify each requirement.

Label it: factual disclosure, legal compliance, policy adoption, preferential treatment, target, speech or values statement, reporting duty, audit right, or subcontractor obligation.

5 Verify the asserted authority.

Ask the buyer or contracting officer to identify the legal or contractual source. Do not rely solely on a portal label or buyer summary.

6 Test the answer for truthfulness.

Confirm the answer with HR, legal, procurement, finance, operations, and any employee responsible for the underlying data. Never guess.

7 Identify the conviction conflict precisely.

Describe the exact words or required conduct at issue. Distinguish a genuine conscience objection from a general dislike of the terminology.

8 Choose a response path.

Answer accurately, request clarification, propose substitute language, seek an exception, submit a qualified response if permitted, reserve rights, or decline after counsel review.

9 Escalate and approve.

Require designated executive and legal approval for any material certification, deviation, or refusal.

10 Create the record.

Keep the final clause, approvals, supporting facts, communications, and signed version together for the life of the contract and required retention period.

Negotiation Language

Use calm, precise language. Do not accuse the buyer of illegality unless counsel has reached that conclusion. The following examples are starting points for legal review, not universal clauses.

Request for Authority and Clarification

"We are reviewing this requirement and intend to provide an accurate response. Please identify the statute, regulation, solicitation provision, prime contract clause, or customer policy that requires this certification, together with any definitions or guidance incorporated by reference."

Alternative Compliance Language

"Supplier will comply with all federal, state, and local laws applicable to its performance under this agreement. Supplier cannot make representations beyond applicable law or certify policies it does not maintain. We propose replacing Section ___ with the preceding sentence."

Factual Response Instead of Endorsement

"We can provide accurate information concerning our existing employment, governance, environmental, and community practices. We request permission to answer the questionnaire factually and to mark provisions that do not apply, rather than adopt or endorse statements outside the scope of the services."

Reservation While Review Is Pending

"Our response is subject to clarification of Section ___ and does not waive any constitutional, statutory, contractual, or religious liberty rights. We request written confirmation that the proposed alternative satisfies the solicitation or agreement."

Document the Decision

- ☐ The complete solicitation, agreement, questionnaire, supplier code, and all incorporated documents.
- ☐ The date received and every response, clarification, renewal, protest, and signature deadline.
- ☐ The exact language reviewed and the version ultimately signed or declined.
- ☐ The source and authority asserted for each requirement.
- ☐ The facts supporting every answer, including data owner, time period, and review date.
- ☐ The written explanation of any religious or conscience conflict, approved by leadership and counsel.
- ☐ All proposed revisions, exception requests, buyer responses, and contracting officer determinations.
- ☐ Internal approvals and the business assessment of revenue, operational, reputational, and litigation risk.
- ☐ Any continuing reporting, audit, notice, training, subcontractor, or record-retention obligation.

Red Lines

- Do not certify facts that have not been verified by the person responsible for the data.
- Do not assume a requirement is law merely because it appears in a mandatory portal field.
- Do not assume a federal DEI-related clause is outdated; current rules may impose different anti-discrimination certifications.
- Do not characterize every private request as government-compelled speech.
- Do not rely on a religious exemption without confirming that it applies to the entity, conduct, role, and jurisdiction.
- Do not alter a standard government certification unless the solicitation permits qualifications or the contracting officer approves the change.
- Do not miss a bid protest, clarification, objection, renewal, cure, or termination deadline while debating the merits.
- Do not allow sales or procurement personnel to make legal certifications without designated review.
- Do not use inconsistent explanations of the same religious conviction without documenting the reason for any difference.

When to Contact Qualified Counsel

- ▶ A government solicitation conditions eligibility or scoring on a contested pledge, certification, training, preference, target, or values statement.
- ▶ A federal contract or subcontract includes a DEI-related certification, records-access duty, reporting obligation, flow-down clause, or False Claims Act language.
- ▶ The organization cannot truthfully certify the provision as written.
- ▶ A clause requires speech, conduct, funding, benefits, hiring practices, or subcontractor treatment that may conflict with the organization's religious convictions.
- ▶ A buyer rejects substitute language, threatens termination, withholds payment, issues a cure notice, or considers suspension or debarment.
- ▶ A state climate, sustainability, human-rights, or supply-chain disclosure rule may apply directly or indirectly.
- ▶ The opportunity is financially material or the decision could set a precedent for other contracts.
- ▶ A protest, administrative appeal, pre-award clarification, or court deadline may be running.

Members may contact CEA for help identifying appropriate resources. Unless CEA or a lawyer expressly agrees in writing to represent the member in the specific matter, contacting CEA or receiving this guide does not create an attorney-client relationship.

One-Page Response Checklist

☐ Record all deadlines☐ Save the complete document set☐ Identify the party imposing the term☐ Copy the exact clause☐ Identify cited authority☐ Classify the demand☐ Confirm whether it applies☐ Verify every factual statement☐ Describe any conviction conflict precisely☐ Estimate financial and operational impact☐ Draft clarification or substitute language☐ Obtain legal and executive approval☐ Submit in the permitted form☐ Save the response and final decision☐ Calendar continuing duties and renewal review

Bottom Line

The safest response is neither automatic compliance nor automatic refusal. Identify the source. Read the operative words. Verify the facts. Protect the deadline. Negotiate when permitted. Obtain legal advice before making a disputed certification, surrendering a material opportunity, or asserting a constitutional or religious exemption.

Legal Notice

This guide is provided for general educational purposes only. It is not legal advice, does not address every jurisdiction or factual situation, and does not create an attorney-client relationship with Christian Employers Alliance, its staff, or any attorney. Laws, executive actions, procurement rules, contract clauses, agency guidance, and court decisions can change quickly. Employers should consult qualified legal counsel regarding their specific facts before signing, modifying, qualifying, or declining a certification or contract requirement. CEA legal counsel should review this guide before publication.

Christian Employers Alliance | Member Resource | Educational Use Only

Need Help Identifying Resources?

Members may contact CEA for help navigating a specific procurement requirement.

joinceanow.org

Member Portal Login Required

Selected Authorities and Official Resources

Executive Order 14173

Ending Illegal Discrimination and Restoring Merit-Based Opportunity. January 21, 2025.

whitehouse.gov/presidential-actions/2025/01/ending-illegal-discrimination-and-restoring-merit-based-opportunity/

U.S. Department of Labor, OFCCP

Executive Order 14173 implementation overview.

dol.gov/agencies/ofccp

Executive Order 14398

Addressing DEI Discrimination by Federal Contractors. March 26, 2026.

whitehouse.gov/presidential-actions/2026/03/addressing-dei-discrimination-by-federal-contractors/

303 Creative LLC v. Elenis, 600 U.S. 570 (2023)

Supreme Court decision on First Amendment limits on compelled speech in commercial contexts.

supremecourt.gov/opinions/22pdf/21-476_c185.pdf

