



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of
Contracting and
Procurement

1400 Independence
Ave., SW
Mailstop 9308
Room 126-W
Whitten Building

Washington, DC
20250-9308

March 14, 2025

MEMORANDUM FOR: Mission Area Senior Contracting Officials (MASCOS)

FROM: Donald W. Baker, Jr.
Senior Procurement Executive

SUBJECT: FAR Class Deviation Regarding Executive Orders 14173 (Ending Illegal Discrimination and Restoring Merit-Based Opportunity) and 14168 (Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government)

Purpose: This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) Subpart 1.404 in order to implement Executive Orders 14173 and 14168. This deviation allows USDA to fully support the subject Executive Orders through deviations to existing FAR text (see Attachment) until the FAR is able to be officially updated by the Defense Acquisition Regulations Council (DARC) and the Civilian Agency Acquisition Council (CAAC). This class deviation is issued through consultation with the CAAC via the CAAC [Letter 2025-01, Supplement 1](#).

Effective Date: This class deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

Background: [Executive Order \(E.O.\) 14173](#), "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," revoked E.O. 11246, "Equal Employment Opportunity." Several FAR provisions promulgated to enforce E.O. 11246 are inconsistent with the direction of the President (see FAR subpart 22.8 and associated provisions and clauses as prescribed at FAR 22.810).

- FAR subparts 22.13, Equal Opportunity for Veterans, and 22.14, Employment of Workers with Disabilities, and their related provisions and clauses, are based in statute, and thus are not covered by E.O. 11246, and are unaffected by this class deviation.
- Contractors remain covered by existing United States laws on civil rights/nondiscrimination. These laws apply whether or not the company is a government contractor.
- The Department of Labor sent a [message](#) stating: "On January 21, 2025, the White House and President Donald Trump issued an Executive Order: "Ending Illegal Discrimination and Restoring Merit-Based Opportunity", which revoked Executive Order 11246. For 90 days from the date of this order, Federal contractors may continue to comply with the regulatory scheme

in effect on January 20, 2025.”

This class deviation also addresses [E.O. 14168](#), “Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government,” by removing the defined term "gender identity" at FAR 22.801 and the clauses at FAR part 52 that include the term.

Requirement: This class deviation applies to all USDA solicitations and contracts, as deemed appropriate, including open or new solicitations, new contracts or orders and existing contracts or orders. Contracting officers shall implement the following changes outlined below and refer to the revised FAR text in the attachment:

- 1) When issuing new solicitations or contracts **do not include** any of the following provisions and clauses:
 - Paragraph (c) of 52.222-9, Apprentices and Trainees (include paragraphs (a) and (b))
 - 52.222-21, Prohibition of Segregated Facilities
 - 52.222-22, Previous Contracts and Compliance Reports
 - 52.222-23, Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction
 - 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation
 - 52.222-25, Affirmative Action Compliance
 - 52.222-26, Equal Opportunity
 - 52.222-27, Affirmative Action Compliance Requirements for Construction
 - 52.222-29, Notification of visa denial

Any open solicitations that contain any of the provisions or clauses listed above should be amended to remove the provisions and clauses.

- 2) When issuing new solicitations or contracts **include** the following updated provisions and clauses, if applicable:
 - 52.204-8, Annual Representations and Certifications (JAN 2025) (DEVIATION FEB 2025)
 - 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services (MAY 2024) (DEVIATION FEB 2025)
 - 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)
 - 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025) (DEVIATION FEB 2025)
 - 52.244-6, Subcontracts for Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)

Any open solicitations should be amended to include these required provisions and clauses.

- 3) Any existing contracts shall include these required provisions and clauses when the next modification occurs, or the next option is exercised.
- 4) When issuing new solicitations, include the following notice:
“System updates may lag policy updates. The System for Award Management (SAM) may continue to require entities to complete representations based on provisions that are not included in agency solicitations. Examples include 52.222-25, Affirmative Action Compliance, and paragraph (d) of 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services. Contracting officers will not consider these representations when making award decisions or enforce requirements. Entities are not required to, nor are they able to, update their entity registration to remove these representations in SAM.”

Applicability: This class deviation is applicable to all USDA solicitations and contracts.

Expiration: This class deviation remains in effect until rescinded or incorporated into the FAR.

Attachment: See Attachment for the changes in the FAR text as amended by this class deviation.

Additional Information: Questions regarding this class deviation may be directed to procurement.policy@usda.gov.

Attachment

(DEVIATION FEB 2025)

Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity," of January 21, 2025, revoking Executive Order 11246, Equal Employment Opportunity

Baseline is FAC 2025-03, published in the Federal Register on January 3, 2025, effective January 17, 2025.

Changes made in the proposed rule are shown by [additions] and deletions.

* * * * *

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

* * * * *

Subpart 1.1—Purpose, Authority, Issuance

* * * * *

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
-------------	-----------------

* * * * *	* * * * *
-----------	-----------

22.8	1250-0003
-----------------	----------------------

* * * * *	* * * * *
-----------	-----------

52.222-21	1250-0003
----------------------	----------------------

52.222-22	1250-0003
----------------------	----------------------

52.222-23	1250-0003
52.222-25	1250-0003
52.222-26	1250-0001 and 1250-0003
52.222-27	1250-0003

* * * * *

PART 2-DEFINITIONS OF WORDS AND TERMS

* * * * *

Subpart 2.1-Definitions

2.101 Definitions.

* * * * *

United States, when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

* * * * *

(2) **[Reserved]** ~~For use in subpart 22.8, see the definition at 22.801.~~

* * * * *

PART 4-ADMINISTRATIVE AND INFORMATION MATTERS

* * * * *

Subpart 4.12-Representations and Certifications

* * * * *

4.1202 Solicitation provision and contract clause.

(a) * * *

* * * * *

(18) ~~[Reserved] 52.222-22, Previous Contracts and Compliance Reports.~~

(19) ~~[Reserved] 52.222-25, Affirmative Action Compliance.~~

* * * * *

PART 14—SEALED BIDDING

* * * * *

Subpart 14.4—Opening of Bids and Award of Contract

* * * * *

14.405 Minor informalities or irregularities in bids.

* * * * *

~~(c) Execute the representations with respect to Equal Opportunity and Affirmative Action Programs, as set forth in the clauses at 52.222-22, Previous Contracts and Compliance Reports, and 52.222-25, Affirmative Action Compliance.~~

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

* * * * *

Subpart 19.6—Certificates of Competency and Determinations of Responsibility

* * * * *

19.602 Procedures.

19.602-1 Referral.

(a) * * *

* * * * *

(2) Refer the matter to the cognizant SBA Government Contracting Area Office (Area Office) serving the area in which the headquarters of the offeror is located, in accordance with agency procedures, except that referral is not necessary if the small business concern-

* * * * *

(ii) Is suspended or debarred under ~~Executive Order 11246~~ or subpart 9.4.

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT

ACQUISITIONS

* * * * *

Subpart 22.8[Reserved]

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

Subpart 52.2—Text of Provisions and Clauses

* * * * *

52.204-8 Annual Representations and Certifications.

As prescribed in 4.1202(a), insert the following provision:

Annual Representations and Certifications (JAN

2025) (DEVIATION FEB 2025)

* * * * *

(c) (1) * * *

* * * * *

(xiv) **[Reserved]** ~~52.222-22, Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at 52.222-26, Equal Opportunity.~~

(xv) **[Reserved]** ~~52.222-25, Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at 52.222-26, Equal Opportunity.~~

* * * * *

52.212-3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

As prescribed in 12.301(b) (2), insert the following provision:

Offeror Representations and Certifications—Commercial Products and Commercial Services (MAY 2024) (DEVIATION FEB 2025)

* * * * *

(d) **[Reserved]** ~~Representations required to implement provisions of Executive Order 11246—~~

~~(1) Previous contracts and compliance. The offeror represents that—~~

~~(i) It ☐ has, ☐ has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and~~

~~(ii) It ☐ has, ☐ has not filed all required compliance reports.~~

~~(2) Affirmative Action Compliance. The offeror represents that—~~

~~(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or~~

~~(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.~~

~~* * * * *~~

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

As prescribed in 12.301(b) (4), insert the following clause:

**Contract Terms and Conditions Required To Implement
Statutes or Executive Orders—Commercial Products and
Commercial Services** (JAN 2025) (DEVIATION FEB 2025)

* * * * *

(b) * * *

* * * * *

___ (33) **[Reserved]** ~~52.222-21, Prohibition of Segregated
Facilities (APR 2015).~~

___ (34) **[Reserved]** ~~(i) 52.222-26, Equal Opportunity (SEPT
2016) (E.O. 11246).~~

___ ~~(ii) Alternate I (FEB 1999) of 52.222-26.~~

* * * * *

(e) (1) * * *

* * * * *

(ix) **[Reserved]** ~~52.222-21, Prohibition of Segregated
Facilities (APR 2015).~~

(x) **[Reserved]** ~~52.222-26, Equal Opportunity (SEP 2016) (E.O.
11246).~~

* * * * *

Alternate II (JAN 2025) (DEVIATION FEB 2025). * * *

* * * * *

(e) (1) * * *

(ii) * * *

* * * * *

(I) **[Reserved]** ~~52.222-21, Prohibition of Segregated Facilities (APR 2015).~~

(J) **[Reserved]** ~~52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).~~

* * * * *

**52.213-4 Terms and Conditions—Simplified Acquisitions
(Other Than Commercial Products and Commercial Services).**

As prescribed in 13.302-5(d), insert the following clause:

**Terms and Conditions—Simplified Acquisitions (Other Than
Commercial Products and Commercial Services)**

(JAN 2025) (DEVIATION FEB 2025)

* * * * *

(a) * * *

(1) * * *

* * * * *

(vii) **[Reserved]** ~~52.222-21, Prohibition of Segregated Facilities (APR 2015).~~

(viii) **[Reserved]** ~~52.222-26, Equal Opportunity (SEP 2016) (E.O. 11246).~~

* * * * *

52.222-9 Apprentices and Trainees.

As prescribed in 22.407(a), insert the following clause:

Apprentices and Trainees (JUL 2005) (DEVIATION FEB 2025)

* * * * *

~~(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, and 29 CFR part 30.~~

* * * * *

52.222-21 [Reserved]

52.222-22 [Reserved]

52.222-23 [Reserved]

52.222-24 [Reserved]

52.222-25 [Reserved]

52.222-26 [Reserved]

52.222-27 [Reserved]

* * * * *

52.222-29 [Reserved]

* * * * *

52.244-6 Subcontracts for Commercial Products and Commercial Services.

As prescribed in 44.403, insert the following clause:

Subcontracts for Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)

* * * * *

(c) (1) * * *

* * * * *

(xi) **[Reserved]** ~~52.222-21, Prohibition of Segregated
Facilities (APR 2015).~~

(xii) **[Reserved]** ~~52.222-26, Equal Opportunity (SEP 2016)
(E.O. 11246).~~

* * * * *