



U.S. Department of Housing and Urban Development
Washington, D.C. 20410

CHIEF PROCUREMENT OFFICER

Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Executive Order 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, and Executive Order 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government.

The HUD Chief Procurement Officer (CPO) is issuing this class deviation to Federal Acquisition Regulation (FAR) subpart 22.8, Equal Employment Opportunity and associated provisions and clauses to stop the enforcement of FAR policies related to the now revoked Executive Order 11246, Equal Employment Opportunity. [Executive Order \(E.O.\) 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity \(January 21, 2025\)](#), revoked E.O. 11246.

Additionally, this class deviation implements [E.O. 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government \(January 30, 2025\)](#), by removing the defined term "gender identity" at FAR 22.801 and the clauses at FAR part 52 that include the term.

Background.

- On January 21, 2025, President Trump issued Executive Order (E.O.) 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity which revoked E.O. 11246, Equal Employment Opportunity.
- On January 24, 2025, the Department of Labor issued Order 03-2025 announcing that it would cease enforcement activity under the rescinded E.O. 11246. In addition, the Office of Federal Contract Compliance Programs (OFCCP) published a Bulletin announcing that for 90 days from the date of the E.O., Federal contractors may continue to comply with the regulatory scheme in effect on January 20, 2025, while also announcing it would cease:
 - Promoting "diversity"
 - Holding Federal contractors and subcontractors responsible for taking "affirmative action," and
 - Allowing or encouraging Federal contractors and subcontractors to engage in workforce balancing based on race, color, sex, sexual preference, religion, or national origin.
- I received consultation from the chair of the Civilian Agencies Acquisition Council (CAAC) in accordance with FAR 1.404 to issue this class deviation.

Applicability. This class deviation applies to all HUD solicitations and contracts (including leases of real property), as appropriate, and provides guidance to the HUD acquisition workforce on how to implement the class deviation for:

- New or open solicitations
- New contracts or orders
- Existing contracts or orders

Instructions.

- a. **For New or Open Solicitations and New Contracts.** Contracting officers shall take the following actions:
- Amend solicitations (e.g., Request for Proposals (RFP), Request for Quotations (RFQ), Request for Bids (RFB), and Solicitation for Offers (SFO) issued on or after the effective date of this class deviation: You may do so either prior to solicitation closing, or prior to award, whichever is more efficient.
 - For solicitations which have closed and have offers in house, either amend the solicitation or incorporate the noted changes prior to contract award.
 - For existing contracts (including leases) with remaining periods of performance of six months or more, modify the contracts at the next reasonable opportunity.
 - For existing contracts with six months or less remaining, no action is required.
- i. **Where applicable, include** the following deviated provisions and clauses:
1. FAR 52.204-8, Annual Representations and Certifications (JAN 2025) (DEVIATION FEB 2025)
 2. FAR 52.212-3, Offeror Representations and Certifications Commercial Products and Commercial Services (MAY 2024) (DEVIATION FEB 2025)
 3. FAR 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)
 4. FAR 52.213-4, Terms and Conditions Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025) (DEVIATION FEB 2025)
 5. 52.222-6, Construction Wage Rate Requirements (AUG 2018)
 6. 52.222-11, Subcontracts (Labor Standards) (MAY 2014)
 7. 52.222-12, Contract Termination—Debarment (MAY 2014)
 8. FAR 52.244-6, Subcontracts for Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)
- ii. **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 HUD solicitations. Examples include:

- 52.222-25, Affirmative Action Compliance, and
- 52.212-3(d), 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.”

iii. **Do not include** any of the following provisions and clauses:

1. 52.222-9(c), Apprentices and Trainees (DEVIATION FEB 2025)
2. 52.222-21, Prohibition of Segregated Facilities
3. 52.222-22, Previous Contracts and Compliance Reports
4. 52.222-23, Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction
5. 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation
6. 52.222-25, Affirmative Action Compliance
7. 52.222-26, Equal Opportunity
8. 52.222-27, Affirmative Action Compliance Requirements for Construction
9. 52.222-29, Notification of visa denial

iv. **Ensure** contractors understand that the HUD deviation does not affect the following:

1. Any FAR subparts that are based on statute or are not covered by E.O. 11246 such as:
 - a. FAR subparts 22.13, Equal Opportunity for Veterans and its related clauses and provisions; and
 - b. FAR subpart 22.14, Employment of Workers and Disabilities.
2. Existing U.S. laws on civil rights, nondiscrimination, or any laws that generally apply to a company regardless of whether it is a government contractor.

- b. **For Existing Contracts or Orders in the Final Period of Performance.** For contracts (including leases) or orders nearing the end of their period of performance (e.g., less than 6 months), and where all options to extend have been exhausted or an option to extend is not planned, contracting officers are not required to revise or remove the FAR clauses or provisions associated with the rescinded E.O. This decision reflects the determination that modifying contracts with limited time remaining is inefficient and the costs do not outweigh the benefits.

The contracting officer must provide the following notification to appropriate contractors and subcontractors:

“As of February 15, 2025, FAR clauses and provisions covered under E.O. 11246, Equal Employment Opportunity, will no longer be enforced. Therefore, contractors and their subcontractors will not be held accountable for applying the FAR clauses or provisions outlined in FAR subpart 22.8 - Equal Employment Opportunity or the associated provisions and clauses prescribed at FAR 22.810. In addition, contractors will no longer be required to comply with the System for Award Management (SAM) representation requirements based on these provisions and clauses. Examples include:

- FAR 52.222-25, Affirmative Action Compliance, and
- FAR 52.212-3(d), Offeror Representations and Certifications Commercial Products and Commercial Services.

This notification does not affect:

- Any FAR subparts that are based on statute or are not covered by E.O. 11246 such as:
 - FAR subparts 22.13, Equal Opportunity for Veterans and its related clauses and provisions; and
 - FAR subpart 22.14, Employment of Workers and Disabilities; Existing U.S. laws on civil rights, nondiscrimination, or any laws that generally apply to a company regardless of whether it is a government contractor.”

Authority. This class deviation is issued under the authority of FAR 1.404 and HUD Acquisition Regulation (HUDAR) 2401.471. It is following receipt of consultation from the Chair of the CAAC, in accordance with FAR 1.404.

Effective Date. This deviation is effective immediately and shall remain in effect until rescinded or incorporated into the FAR or HUDAR.

Point of Contact. The point of contact is Ms. Nicole Jackson, Procurement Analyst, Procurement Policy and Systems Division, at 202-402-3868 or Nicole.H.Jackson@hud.gov.

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