



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

SUBJECT: Class Deviation No. 2025-01 from the Federal Acquisition Regulation Regarding Executive Orders 14173 and 14168

FROM: Chrishaun Jones
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Office of the Senior Procurement Executive

TO: Department of Transportation Chiefs of the Contracting Offices

- I. Purpose:** This class deviation (CD) is issued under Federal Acquisition Regulation (FAR) 1.404 and Transportation Acquisition Regulation (TAR) 1201.404 and authorizes a class deviation regarding the revocation of Executive Order (E.O.) 11246, *Equal Employment Opportunity*, and updates terminology based on E.O. 14168, *Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government*, issued on January 20, 2025.
- II. Effective Date:** Immediately
- III. Background:** On January 21, 2025, President Trump issued E.O. 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, which revoked E.O. 11246, *Equal Employment Opportunity*. The Office of Federal Contract Compliance Programs (OFCCP) published an announcement reiterating, as provided in E.O. 14173, 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.

On February 15, 2025, the Chair of the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter No. [2025-01](#), and on February 18, 2025, [Supplement 1](#) to the letter, in accordance with FAR 1.404(a)(1) to authorize agencies to issue their own class deviations. The CAAC Letter addressed the removal of equal employment opportunity language per revoked E.O. 11246. Several FAR provisions promulgated to enforce E.O. 11246 are not consistent with the direction in E.O. 14173 (see FAR subpart 22.8 and associated provisions and clauses as prescribed at FAR 22.810, as well as affected parts).

The CAAC Letter also addressed new E.O. 14168, and the required removal of the defined term “gender identity” per E.O. 14168 from FAR 22.801 and applicable clauses at FAR Part 52 that include the term.

This class deviation implements the CAAC Letter while rulemaking is conducted to update the FAR.

IV. Required Actions: The requirements in this CD apply to all DOT Operating Administrations and Contracting Offices for applicable solicitations and contracts.

Heads of the Contracting Activities (HCA) must ensure this CD is disseminated to the acquisition workforce and ensure compliance with the requirements in the class deviation.

Effective immediately, DOT contracting staff must comply with the following:

a) When issuing new solicitations or contracts:

1. **INCLUDE** the following deviated provisions and clauses, if applicable:
 - i. 52.204-8, Annual Representations and Certifications (JAN 2025) (DEVIATION FEB 2025)
 - ii. 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services (MAY 2024) (DEVIATION FEB 2025)
 - iii. 52.212-5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)
 - iv. 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (JAN 2025) (DEVIATION FEB 2025)
 - v. 52.222-6 Construction Wage Rate Requirements (AUG 2018) (DEVIATION FEB 2025)
 - vi. 52.222-11 Subcontracts (Labor Standards) (MAY 2014) (DEVIATION FEB 2025)
 - vii. 52.222-12 Contract Termination—Debarment (MAY 2014) (DEVIATION FEB 2025)
 - viii. 52.244-6, Subcontracts for Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)
2. **DO NOT INCLUDE** any of the following provisions and clauses:
 - i. 52.222-9, Apprentices and Trainees
 - ii. 52.222-21, Prohibition of Segregated Facilities
 - iii. 52.222-22, Previous Contracts and Compliance Reports
 - iv. 52.222-23, Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity for Construction
 - v. 52.222-24, Preaward On-Site Equal Opportunity Compliance Evaluation
 - vi. 52.222-25, Affirmative Action Compliance
 - vii. 52.222-26, Equal Opportunity
 - viii. 52.222-27, Affirmative Action Compliance Requirements for Construction
 - ix. 52.222-29, Notification of Visa Denial

b) Amend open solicitations to include the applicable clauses and to remove inapplicable clauses as listed above.

c) **When issuing new solicitations:**

1. **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 DOT 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 need to 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.”

d) **ENSURE** contractors are aware that:

1. FAR subparts 22.13, *Equal Opportunity for Veterans*, and 22.14, *Employment of Workers with Disabilities*, and their related provisions and clauses, are based on statute, and are not covered by the revocation of E.O. 11246, and thus are not affected by this FAR class deviation.
2. Existing United States laws on civil rights/nondiscrimination apply whether or not the company is a government contractor.

e) **FOR EXISTING CONTRACTS**, Heads of the contracting activities (HCAs) shall ensure that they issue appropriate guidance for when existing contracts should be modified to comply with this deviation. At a minimum, contracting officers shall provide a copy of this FAR class deviation to contractors when the contract has more than six months remaining under the period of performance and ensure the contract incorporates the new language and removes the rescinded language at the next modification.

V. Applicability: This CD is applicable to all solicitations and contracts (see definition of contract at FAR.2101).

See Attachment A for the changes in the FAR text as revised by this deviation.

VI. Expiration Date: This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded, whichever occurs first.

VII. Point of Contact: Questions or comments regarding this class deviation may be directed to DOTAcquisitionPolicy@dot.gov.

Attachments:

Attachment A – Line-In/Line-Out: FAR Deviation Text

ATTACHMENT A
FAR DEVIATION TEXT

(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.

Additions are shown as **[bolded and bracketed]** and deletions are shown in strikethrough ~~deletions~~.

FAR Text unchanged shown as asterisks.

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PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

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Subpart 1.1—Purpose, Authority, Issuance

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1.106 OMB approval under the Paperwork Reduction Act.

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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

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PART 2—DEFINITIONS OF WORDS AND TERMS

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Subpart 2.1—Definitions

2.101 Definitions.

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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.~~

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PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

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Subpart 4.12—Representations and Certifications

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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.~~

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PART 14—SEALED BIDDING

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Subpart 14.4—Opening of Bids and Award of Contract

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14.405 Minor informalities or irregularities in bids.

* * * * *

(d) Acknowledge receipt of an amendment to an invitation for bids, but only if-

(1) * * *

(2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon[.]; ~~and~~

~~(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.~~

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PART 19—SMALL BUSINESS PROGRAMS

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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.

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PART 22-APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

* * * * *

Subpart 22.4-Labor Standards for Contracts Involving Construction

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22.406-4 [Reserved] ~~Apprentices and trainees.~~

~~(a) The contracting officer shall review the contractor's employment and payment records of apprentices and trainees made available pursuant to the clause at [52.222-8](#), Payrolls and Basic Records, to ensure that the contractor has complied~~

~~with the clause at [52.222-9](#), Apprentices and Trainees.~~

~~(b) If a contractor has classified employees as apprentices, trainees, or helpers without complying with the requirements of the clause at [52.222-9](#), the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.~~

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22.407 Solicitation provision and contract clauses.

(a) * * *

* * * * *

(4) **[Reserved]** ~~[52.222-9](#), Apprentices and Trainees.~~

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Subpart 22.8 [Reserved]

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 52.2—Text of Provisions and Clauses

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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.~~

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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.~~

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(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).~~

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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).~~

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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).~~

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52.222-6 Construction Wage Rate Requirements.

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

Construction Wage Rate Requirements (AUG 2018) [(DEVIATION FEB 2025)]

(a) * * *

(b) * * *

* * * * *

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, ~~except as provided in the clause entitled Apprentices and Trainees.~~ Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided that the employer's payroll records accurately set forth the time spent

in each classification in which work is performed.

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52.222-9 [Reserved]

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52.222-11 Subcontracts (Labor Standards).

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

Subcontracts (Labor Standards) (MAY 2014) [(DEVIATION FEB 2025)]

(a) * * *

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States

the clauses entitled—

(1) Construction Wage Rate Requirements;

(2) Contract Work Hours and Safety Standards—Overtime
Compensation

(if the clause is included in this contract);

(3) ~~[Reserved] Apprentices and Trainees;~~

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52.222-12 Contract Termination—Debarment.

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

Contract Termination—Debarment (MAY 2014) [(DEVIATION FEB 2025)]

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards—Overtime Compensation, ~~Apprentices and Trainees,~~ Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts

(Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

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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]

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52.222-29 [Reserved]

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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).~~

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