

## U.S. ENVIRONMENTAL PROTECTION AGENCY (EPA)

### CLASS DEVIATION DETERMINATION AND FINDINGS

#### Class Deviation from the Federal Acquisition Regulation (FAR) Regarding Executive Orders 14173 and 14168

#### FINDINGS

1. Executive Order (E.O.) 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, revoked E.O. 11246, Equal Employment Opportunity. Several FAR solicitation provisions and contract clauses promulgated to enforce E.O. 11246 are not consistent with the direction of the President (see FAR subpart 22.8 and associated provisions and clauses as prescribed at FAR 22.810).
2. E.O. 14168, Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government removed the defined term "gender identity" at FAR 22.801 and the clauses at FAR part 52 that include the term.
3. Civilian Agency Acquisition Council (CAAC) Letter 2025-01 Supplement 1, authorizes agencies, including EPA, to issue a class deviation to ensure compliance with Executive Orders 14173 and 14168 until the FAR has been amended. The CAAC Letter also serves as consultation with the Chair of the CAAC required by FAR 1.404(a)(1).
4. CAAC directed that when issuing new solicitations or contracts **do not include** the following in any new solicitation:
  - 52.222-9, Apprentices and Trainees
  - 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 referenced provisions or clauses listed above will be amended to remove the applicable provision or clause.

When issuing new solicitations or contracts **include** the following 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)
- 52.222-6 Construction Wage Rate Requirements (AUG 2018) (DEVIATION FEB 2025)
- 52.222-9, Apprentices and Trainees (DEVIATION FEB 2025)
- 52.222-11 Subcontracts (Labor Standards) (MAY 2014) (DEVIATION FEB 2025)
- 52.222-12 Contract Termination—Debarment (MAY 2014) (DEVIATION FEB 2025)
- 52.244-6, Subcontracts for Commercial Products and Commercial Services (JAN 2025) (DEVIATION FEB 2025)

Any open solicitations will be amended to include the above referenced and required provisions and clauses.

5. For existing contracts, modifications shall be issued to remove all non-compliant clauses, and incorporate all compliant deviated clauses as identified above. This will bring all existing contracts into compliance with E.O. 14173.

6. 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.”

7. Agencies are given the authorization to issue a class deviation, in accordance with FAR 1.404, under Civilian Agency Acquisition Council (CAAC) Letter 2025-01. The CAAC Letter also constitute consultation with the Chair of the CAAC as required by FAR 1.404(a)(1).

8. Agencies are reminded that FAR 1.404 requires agencies to furnish a copy of each approved class deviation to the FAR Secretariat, General Services Administration, by emailing the deviation to [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov) and noting whether or not the document can be posted on Acquisition.gov.

### **DETERMINATION**

1. Under the authority of FAR 1.404 and based upon the above findings, I grant a class deviation to ensure compliance with Executive Orders 14173 and 14168 until the FAR has been amended, in accordance with CAAC Letter 2025-01, Supplement 1.
2. This deviation is effective at the date of signature below and shall remain in effect until incorporated into the FAR, superseded, or is otherwise rescinded.

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Pamela D. Legare, Director  
Office of Acquisition Solutions

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Date