



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Administration

CFTC Class Deviation 2025-01

Class Deviation from the Federal Acquisition Regulation Regarding Executive Orders 14173 and 14168.

TO: CFTC's Procurement Office

FROM: William M. Roberson, Senior Procurement Executive

DATE: May 09, 2025

SUBJECT: Implementation of deviations to contract and solicitation terms to ensure compliance with E.O.s 14173 and 14168.

1. **Purpose:** Implementing class deviation authorized by the Chair of the Civilian Agency Acquisition Council (CAAC) in CAAC Letter 2025-01, Supplement 1.
2. **Background:** On January 20, 2025, President Trump issued E.O. 14168, "[Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government](#)". On January 21, 2025, an E.O. 14173 entitled, "[Ending Illegal Discrimination and Restoring Merit-Based Opportunity](#)", was issued which revoked E.O. 11246. As a result of the E.O.s, the Civilian Agency Acquisition Council (CAAC) released a letter, dated February 18, 2025, providing agencies with several changes to FAR Part 22 contract and solicitation terms to ensure compliance with E.O. 14173. In addition, agencies were authorized to remove the defined term "gender identity" at FAR 22.801 and the clauses at FAR part 52 that include the term. The CAAC Chair then issued a letter in accordance with FAR 1.404, authorizing Agencies to issue class deviations consistent with the letter to ensure compliance with the E.O.s. The contents of that letter are fully contained within this class deviation, including both this notice and the attachment entitled, "Attachment to CFTC CD# 2025-01".

3. Guidance:

- a. 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, are not covered by Executive Order 11246, and thus are not affected by this deviation.
- b. Contractors are still covered by existing United States laws on civil rights/nondiscrimination.

4. Actions Required by Contracting Officers:

- a. When issuing new solicitations or contracts, Contracting Officers shall not include any of the following provisions and clauses:
 - 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
- b. Contracting Officers should amend any open solicitations to remove the provisions or clauses listed above.
- c. When issuing new solicitations or contracts, Contracting Officers shall include the following deviated provisions and clauses when 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)
 - 52.222-11 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)
- d. Contracting Officers should amend any open solicitations to replace the provisions and clauses listed above with the deviated version of the provisions and clauses.
- e. Contracting officers should modify existing contracts (including leases) with remaining periods of performance of six months or more, at the next reasonable opportunity. For existing contracts with six months or less remaining, no action is required.
- f. When issuing new solicitations, Contracting Officers **shall 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.”
5. **Effective Date:** This class deviation is effective as dated and shall remain in effect until it is incorporated into the FAR or until this class deviation is otherwise rescinded.
6. **Deviation:** See Attachment for the changes to the FAR text as revised by this deviation.

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(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~~.

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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.
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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:

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(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.

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~~(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

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19.602 Procedures.

19.602-1 Referral.

(a) * * *

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(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

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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 or trainees 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) * * *

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(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)

* * *

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(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.~~

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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)

* * *

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(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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