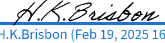




FAR CLASS DEVIATION 2025-01

MEMORANDUM TO: Heads of the Contracting Activities (HCA)

FROM: H. Katrina Brisbon 
H.K.Brisbon (Feb 19, 2025 16:07 EST)
Deputy Assistant Secretary for Acquisitions and Senior Procurement Executive
Office of Acquisitions
Office of Assistant Secretary for Financial Resources (ASFR)
Department of Health and Human Services (HHS)

SUBJECT: Class Deviation (CD) No. 2025-01 from the Federal Acquisition Regulation (FAR)
Regarding Executive Order (EO) 14173 and EO. 14168. (CAAC Letter 2025-01
Supplement 1)

1. EFFECTIVE DATE:

Immediately upon signature.

2. EXPIRATION DATE:

This CD remains in effect until the changes described herein are incorporated in the FAR, superseded, or otherwise rescinded.

3. PURPOSE:

This FAR CD implements requirements to comply with EO 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity* and EO 14168, *Defending Woman From Gender Ideology Extremism and Restoring Biological Truth to Federal Government*.

4. BACKGROUND:

EO 14173, *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, revoked EO 11246, *Equal Employment Opportunity*. Several FAR provisions promulgated to enforce EO 11246 are not consistent with the direction of the President under EO 14173 (see FAR subpart 22.8 and associated provisions and clauses as prescribed at FAR 22.810).

On February 4, 2025, HHS issued a special notice on SAM.gov entitled *HHS Compliance with President Trump's Priorities and Agenda*¹. This special notice informed the public that HHS was taking

¹ SAM.gov special notice is available at <https://sam.gov/opp/8779f5404cf5461b9b9680fda153eccc/view>

immediate action to begin forbearing enforcement of all contract clauses, provisions, terms, and conditions, related to any and all subsequent EOs issued by President Trump and implementing guidance.

On February 15, 2025, the Civilian Agency Acquisition Council (CAAC) issued CAAC Letter 2025-01², *CAAC Consultation to Issue a Class Deviation From the Federal Acquisition Regulation (FAR) Regarding Executive Orders 14173 and 14168* which describes changes to contract and solicitation terms that will ensure compliance with EO 14173 and serves as consultation in accordance with FAR 1.404, authorizing agencies to issue a class deviation to implement the necessary changes.

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 EO 11246, and thus are not affected by this Letter. Contractors are still 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”.³

This CD also addresses EO 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.

On February 18, 2025, the CAAC issued Supplement 1 to CAAC Letter 2025-01 which superseded the CAAC Letter 2025-01 issued on February 15, 2025. The CAAC Letter Supplement adds three clauses (FAR 52.222-6, 52.222-11, and 52.222-12) to the list of provisions and clauses for agencies to use and includes the FAR deviation text revisions in the Attachment. The three clauses are updated to remove references to the Apprentices and Trainees clause that was removed in the original CAAC Letter.

5. GUIDANCE:

The requirements in this CD apply to all HHS Operating Divisions and Staff Divisions for applicable solicitations and contracts as set forth herein and in the attached FAR deviation language.

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

² CAAC letters including Supplements are available at www.acquisition.gov.

³ Department of Labor Office of Federal Contract Compliance Programs (OFCCP) message bulletin is available at <https://content.govdelivery.com/accounts/USDOLOFCCP/bulletins/3ce7fa5#:~:text=On%20January%2021%2C%202025%2C%20the,effect%20on%20January%2020%2C%202025.>

Effective immediately, HHS contracting staff must comply with the following –

A. When issuing new solicitations or contracts/orders:

1. Do 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

2. 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)
- 52.222-11 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)

3. 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.”

B. For open solicitations:

1. Amend the solicitation to remove 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

**2. Amend the solicitation to include the following provisions and clauses, if applicable:
(See *Attachment 1* for FAR deviated text.)**

- 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)

3. Amend the solicitation to 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.”

C. For existing contracts and orders:

1. At the next available opportunity, modify the contract/order to remove:

- 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

2. At the next available opportunity, modify the contract/order to include the following provisions and clauses, if applicable: (See *Attachment 1* for FAR deviated text.)

- 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)

6. AUTHORITY:

This class deviation is issued under the authority of FAR 1.404 and the Department of Health and Human Services Acquisition Regulation (HHSAR) 301.401. Supplement 1 CAAC Letter 2025-01 serves as consultation with the Chair of the CAAC as required by FAR 1.404(a)(1).

7. DEVIATION:

See Attachment 1 for FAR deviated text.

8. CONTACT:

Acquisition workforce members with questions regarding this Class Deviation should contact their cognizant OpDiv/StaffDiv Acquisition Office or Acquisition Policy Council (APC) Representative(s), as appropriate.

The current list of APC Representatives may be found on the [Acquisition Councils and Workgroups Page](#) of the [HHS Acquisition Portal](#) (HHSAP).

All other questions should be directed to Acquisition_Policy@hhs.gov.

9. ATTACHMENTS

- Attachment 1: 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.

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

* * * * *

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.

* * * * *

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

* * * * *

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

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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 22.4—Labor Standards for Contracts Involving Construction

* * * * *

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.~~

* * * * *

22.407 Solicitation provision and contract clauses.

(a) * * *

* * * * *

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

* * * * *

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).~~

* * * * *

52.222-6 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.

* * * * *

52.222-9 [Reserved]

* * * * *

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;~~

* * * * *

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.

* * * * *

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).~~

* * * * *