

FAR Class Deviation from the Federal Acquisition Regulation (FAR) for Executive Order 13950 Combating Race and Sex Stereotyping

Purpose: This memorandum approves a class deviation from the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13950, Combating Race and Sex Stereotyping ([85 FR 60683, September 28, 2020](#))

Authority: This class deviation is issued under the authority of the FAR 1.404 and by recommendation from the Office of Federal Procurement Policy.

Background: E.O. 13950 seeks to promote economy and efficiency in Federal contracting, to promote unity in the Federal workforce, and to combat race and sex stereotyping and scapegoating. Section 4 of the E.O. requires agencies to include a clause in new solicitations and resultant contracts that prohibits contractors from using any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating. Sections 4 and 9 specify that the clause is required in all contracts entered into beginning November 21, 2020, except those exempted in the manner provided by section 204 of E.O. 11246 of September 24, 1965 (Equal Employment Opportunity), as amended.

Action: Effective immediately, contracting officers shall (except in contracts exempted in the manner provided by section 204 of Executive Order 11246 of September 24, 1965 (Equal Employment Opportunity) (see FAR 22.807))--

- Include the attached clause in all solicitations issued on or after November 21, 2020 and in any resultant contracts that will include the clause at FAR 52.222-26, Equal Opportunity, or its Alternate I. This includes solicitations below the simplified acquisition threshold and solicitations for the acquisition of commercial items under FAR part 12.
- Amend solicitations issued prior to November 21, 2020 where the resultant contract award is expected to occur on or after November 21, 2020 to include the attached clause, if the contract is contemplated to include the clause at FAR 52.222-26, Equal Opportunity, or its Alternate I. This includes solicitations below the simplified acquisition threshold and solicitations for the acquisition of commercial items under FAR part 12.

Effective Date: This deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

Point of Contact: Questions regarding this deviation may be directed to Procurement.Policy@usda.gov

Attachment

Class Deviation: combatting Race and Sex Stereotyping

452.222-70 Combating Race and Sex Stereotyping. [(DEVIATION)]

Use this clause in solicitations and contracts, when a contract is contemplated that will include the clause at Federal Acquisition Regulation (FAR) 52.222-26, Equal Opportunity or its *Alternate I*.

COMBATING RACE AND SEX STEREOTYPING (DEVIATION)

(a) Definitions. As used in this clause—

“Race or sex scapegoating” means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex.

“Race or sex stereotyping” means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.

(b) Exemptions. The exemptions that apply to Executive Order (E.O.) 11246 also apply to E.O. 13950. See FAR 22.807.

(c) Compliance with E. O. 13950, Combating Race and Sex Stereotyping. Unless exempted under paragraph (b) of this clause, the Contractor shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating, including the concepts that—

- (1) One race or sex is inherently superior to another race or sex;**
- (2) An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;**
- (3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;**
- (4) Members of one race or sex cannot and should not attempt to treat others without respect to race or sex;**
- (5) An individual’s moral character is necessarily determined by his or her race or sex;**
- (6) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;**
- (7) Any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or**

(8) Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.

(d) Notice. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice provided below advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

**NOTICE
E.O. 13950, Combating Race and Sex Stereotyping
Employers Holding Federal Contracts or Subcontracts**

Contractors shall not use any workplace training that inculcates in its employees any form of race or sex stereotyping or any form of race or sex scapegoating, including the following concepts that—

- (1) One race or sex is inherently superior to another race or sex;**
- (2) An individual, by virtue of his or her race or sex, is inherently racist, sexist, or oppressive, whether consciously or unconsciously;**
- (3) An individual should be discriminated against or receive adverse treatment solely or partly because of his or her race or sex;**
- (4) Members of one race or sex cannot and should not attempt to treat others without respect to race or sex;**
- (5) An individual's moral character is necessarily determined by his or her race or sex;**
- (6) An individual, by virtue of his or her race or sex, bears responsibility for actions committed in the past by other members of the same race or sex;**
- (7) Any individual should feel discomfort, guilt, anguish, or any other form of psychological distress on account of his or her race or sex; or**
- (8) Meritocracy or traits such as a hard work ethic are racist or sexist, or were created by a particular race to oppress another race.**

For use in this notice, the terms—

“Race or sex scapegoating” means assigning fault, blame, or bias to a race or sex, or to members of a race or sex because of their race or sex; and

“Race or sex stereotyping” means ascribing character traits, values, moral and ethical codes, privileges, status, or beliefs to a race or sex, or to an individual because of his or her race or sex.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under this notice should immediately contact the Office of Federal Contract Compliance Programs (OFCCP) Complaint Hotline to Combat Race and Sex Stereotyping at 202-343-2008 or via email at OFCCPComplaintHotline@dol.gov.

(End of notice)

(e) *Noncompliance.* If the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in E. O. 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in E. O. 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(f) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that exceed \$10,000 and are not exempted by the rules, regulations, or orders of the Secretary of Labor issued under E.O. 11246 and E.O. 13950, as amended, so that these terms and conditions of this clause will be binding upon each subcontractor.

(2) The Contractor shall take such action with respect to any subcontract as the Director of OFCCP may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(End of clause)