



CHIEF PROCUREMENT OFFICER

Supplement to the Federal Acquisition Regulation (FAR) for FAR Parts 9, 12, and 22 in Support of Executive Order (E.O.) 14398, Addressing DEI Discrimination by Federal Contractors

- 1. Purpose.** This supplement approves changes to the Revolutionary Federal Acquisition Regulation Overhaul (RFO) class deviations to Federal Acquisition Regulation (FAR) parts 9, 12, 22, and 52 for purposes of implementing the FAR Council's updates to the model deviations to address the language described in Executive Order (E.O.) 14398.
- 2. Background.**
 - In September 2025 and January 2026, HUD issued [RFO-2025-09](#), [RFO-2025-12](#), and [RFO-2025-22](#), approving a class deviation to FAR parts 9, 12, and 22 for purposes of implementing the FAR Council's model deviation text for these FAR parts. These deviations became effective November 3, 2025.
 - E.O. 14398 was issued on March 26, 2026, establishing that agencies should not do business with contractors that engage in any racially discriminatory diversity, equity, and inclusion (DEI) activities.
 - In accordance with Section 5 of E.O. 14398, the FAR Council is issuing a deviation to update the model deviation text for these parts.
- 3. Summary of Changes.**
 - Part 9 - References the new clause and makes clear that failure to comply with the clause may result in debarment or suspension.
 - Part 12 - Prescribes the new clause for commercial acquisition.
 - Part 22 - Establishes the new policy and prescribes the new clause.
 - Part 52 - Creates the new clause 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026), and adds this clause to the table of clauses required to be flowed down to subcontracts for commercial products or commercial services in clause 52.244-6 (APR 2026).
- 4. Instructions.**

The HUD acquisition workforce must follow the new model deviation text.

- For new solicitations and resulting contracts
 - **Beginning April 27, 2026**, Insert the clause at FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026) in new solicitations and resulting contracts valued over the micro-purchase threshold, including those for commercial products and commercial services, except those that result in contracts for which the place of delivery or performance is outside the United

States. In accordance with FAR 1.107(d), amend any open solicitations to incorporate the clause.

- The clause flows down to subcontracts at any tier, including those for commercial products and commercial services, for which the place of delivery or performance is in the United States.
 - It is not necessary to include the clause in new orders under existing GSA governmentwide contracts (FSS, GWACs, other GSA managed multi-agency contracts). The instructions regarding these contracts and orders thereunder are described below.
 - For existing contracts
 - In accordance with FAR 1.107(d)(HUD deviation RFO-2025-01, May 2, 2025), contracting officers **must make every effort to bilaterally modify existing contracts by July 24, 2026.** If a contractor refuses to agree to a bilateral modification, the contracting officer should consider whether, absent the modification, the contract no longer meets the agency's needs and should therefore be terminated for convenience.
 - Insert the clause at FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026), in all existing contracts (i.e., definitive contracts and Indefinite delivery contracts) valued over the micro-purchase threshold, including those for commercial products and commercial services, except those for which the place of delivery or performance is outside the United States.
 - Existing orders under GSA government-wide contracts (FSS, GWACs, other GSA managed multi-agency contracts) do not need to be modified; the master contract's modification covers the orders. Modifications made to GSA master contracts must state explicitly that the modification applies to both existing and future orders.
 - Modification of contracts with a final expiration no later than December 31, 2026 is at contracting officer discretion.
 - Utilize the RFO model deviation language at [RFO FAR part 52](#).
 - Review templates and related standard operating procedures to align with this class deviation and remove unnecessary processes and steps.
5. FAR 52.222-90 Information Collection. The FAR Council is seeking clearance from OMB for information collections related to the FAR clause 52.222-90. The clearance will provide coverage for all agencies using the clause. The clause requires that contractors must—
- Furnish all information and reports, including providing access to books, records, and accounts, as required by the contracting officer, for purposes of ascertaining

compliance with the clause (FAR 52.222-90(b)(2));

- Report any subcontractor's known or reasonably knowable conduct that may violate the clause to the contracting officer and take any appropriate remedial actions directed by the contracting officer (FAR 52.222-90(b)(4)); and
- Inform the contracting officer if a subcontractor sues the contractor and the suit puts at issue, in any way, the validity of the clause (FAR 52.222-90(b)(5)).

Until clearance is received, you may still enforce the requirement for contractors to submit existing records regarding compliance with the requirements of the clause in connection with individual investigations, such as records that may be requested by the Equal Employment Opportunity Commission or the Department of Justice as part of an investigation of an alleged violation of the clause.

You should further expect that contractors will alert the appropriate contracting officer of potential violations of the clause or lawsuits relating to the clause.

Once clearance is received, HUD OCPO policy will communicate to the workforce that you can begin to enforce full compliance with FAR clause 52.222-90 requirements.

- 6. Applicability.** This class deviation applies to all HUD FAR based procurements. For all non-FAR based contracts like procurements including leases or real property, concession contracts, outleases, and child care agreements, see GSA Acquisition Letter [MV-2026-02](#)
- 7. Authority.** This class deviation is issued under the authority of EO 14398, E.O. 14275, [OMB Memo](#) M-25-26, 48 CFR 1.4, and RFO FAR 1.304. and FAR 1.304.
- 8. Effective Date.** This class deviation is effective immediately, and remains in effect until rescinded or incorporated into the FAR.
- 9. Points of Contact.** Questions regarding this class deviation may be directed to Mrs. Tabitha Painson-McLeod, Sr. Procurement Analyst, Procurement Policy and Systems Division, at 202-402-5680 or Tabitha.M.Painson-McLeod@hud.gov.
- 10. Attachment.** See Attachment A - EO 14398 Amended FAR Text

FRANCINE Digitally signed by
HEMPHILL FRANCINE HEMPHILL
Date: 2026.04.23
13:18:20 -04'00'

Francine L. Hemphill
Chief Procurement Officer

Attachment A - EO 14398 Amended FAR Text

Executive Order 14398, Addressing DEI Discrimination by Federal Contractors, of March 26, 2026

Baseline is the Revolutionary Federal Acquisition Regulation Overhaul as posted in [Acquisition.gov](https://www.acquisition.gov) on April 1, 2026. Changes made in the proposed rule are shown by [additions] and deletions.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

* * * * *

Subpart 9.4 - Debarment, Suspension, and Ineligibility

* * * * *

9.406 Debarment.

* * * * *

9.406-2 Causes for debarment.

The suspending and debarring official may debar-

* * * * *

(b)(1) * * *

* * * * *

[(viii) Failure to comply with the requirements of clause 52.222-90, Addressing DEI Discrimination by Federal Contractors.]

* * * * *

9.407 Suspension.

* * * * *

9.407-2 Causes for suspension.

(a) The suspending and debarring official may suspend a contractor suspected, upon adequate evidence, of-

* * * * *

[(11) Failure to comply with the requirements of clause 52.222-90,

Addressing DEI Discrimination by Federal Contractors.]

* * * * *

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

* * * * *

Subpart 12.2 - Solicitation, Evaluation, and Award

* * * * *

12.205 Solicitation provisions and contract clauses.

* * * * *

(b)(2) * * *

Table 12-3 – Clauses to include as prescribed.

Number	Title	Source
52.222-90	Addressing DEI Discrimination by Federal Contractors	EO
* * * *	* * * * *	* * * * * *
* * * *	* * * * *	* * * * * *

PART 22–APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

* * * * *

[Subpart 22.22–Addressing DEI Discrimination by Federal Contractors

22.2200 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order (E.O.) 14398, Addressing DEI Discrimination by Federal Contractors, (91 FR 16147, March 31, 2026).

22.2201 Definitions.

As used in this subpart-

Program participation means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor.

Racially discriminatory DEI activities means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources.

22.2202 Policy.

Executive Order 14398 requires measures to prevent contractors from engaging in any racially discriminatory DEI activities.

22.2203 Contract clause.

Insert the clause at 52.222-90, Addressing DEI Discrimination by Federal Contractors, in solicitations and contracts, including those for commercial products and commercial services, except those that result in contracts for which the place of delivery or performance is outside the United States.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

* * * * *

Subpart 52.2—Text of Provisions and Clauses

* * * * *

[52.222-90 Addressing DEI Discrimination by Federal Contractors

As prescribed in 22.2203, insert the following clause:

ADDRESSING DEI DISCRIMINATION BY FEDERAL CONTRACTORS
(APR 2026)

(a) *Definitions.* As used in this clause—
Program participation means membership or participation in, or access or admission to: training, mentoring, or leadership development programs; educational opportunities; clubs; associations; or similar opportunities that are sponsored or established by the contractor or subcontractor.

Racially discriminatory diversity, equity, and inclusion (DEI) activities means disparate treatment based on race or ethnicity in the recruitment, employment (e.g., hiring, promotions), contracting (e.g., vendor agreements), program participation, or allocation or deployment of an entity's resources.

(b) In connection with the performance of work under this contract, the Contractor agrees as follows:

(1) The Contractor will not engage in any racially discriminatory DEI activities;

(2) The Contractor will furnish all information and reports, including providing access to books, records, and accounts, as required by the Contracting Officer, for purposes of ascertaining compliance with this clause;

(3) In the event of the Contractor's or a subcontractor's noncompliance with this clause, this contract may be canceled, terminated, or suspended in whole or in part, and the Contractor or subcontractor may be declared ineligible for further Government contracts;

(4) The Contractor will report any subcontractor's known or

reasonably knowable conduct that may violate this clause to the Contracting Officer and take any appropriate remedial actions directed by the Contracting Officer; and

(5) The Contractor will inform the Contracting Officer if a subcontractor sues the Contractor and the suit puts at issue, in any way, the validity of this clause.

(6) The Contractor recognizes that compliance with the requirements of this clause are material to the Government's payment decisions for purposes of 31 U.S.C. 3729(b)(4).

(c) The Contractor must include the substance of this clause, including this paragraph (c), in subcontracts at any tier, including those for commercial products and commercial services, except those where the place of delivery or performance is outside the United States.

(End of clause)]

* * * * *

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
([DEVIATION APR 2026])**

* * * * *

(b)(2) * * *

* * * * *

**Addressing DEI Discrimination by Federal Contractors
APR 2026]**

* * * * *

Number	Title	Date
* * * * *	* * * * *	* * * * *
[52.222-90]	Addressing DEI Discrimination by Federal Contractors	[APR 2026]
* * * * *	* * * * *	* * * * *