



ACQUISITION  
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

In reply refer to  
DARS Tracking Number: 2021-O0001, Revision 1

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(PROCUREMENT)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING)  
DIRECTORS, DEFENSE AGENCIES  
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Combating Race and Sex Stereotyping

Effective immediately, this class deviation revises and supersedes Class Deviation 2021-O0001, issued on November 20, 2020. This class deviation provides a revised clause, at the attachment, which contains a Notice that identifies the clause as inoperable until further notice. The purpose of this revision is to implement a preliminary injunction enjoining Sections 4 and 5 of Executive Order (E.O.) 13950, Combating Race and Sex Stereotyping (85 FR 60683, September 28, 2020), issued by the United States District Court for the Northern District of California on December 22, 2020, as well as guidance provided by the Office of Management and Budget (OMB) Office of Federal Procurement Policy (OFPP). Section 4 relates to Government contracts and contractors.

Immediately, to ensure compliance with the preliminary injunction and OMB's guidance, contracting officers shall take all steps necessary to ensure the enjoined Section 4 of E.O. 13950 and its associated clause 252.222-7999, Combating Race and Sex Stereotyping (DEVIATION 2021-O0001) (NOV 2020), are not implemented or enforced and are inoperable until further notice. These steps are as follows:

a) Ensure that any new contracts do not contain clause 252.222-7999 (DEVIATION 2021-O0001) (NOV 2020). Amend solicitations that include clause 252.222-7999 (DEVIATION 2021-O0001) (NOV 2020) to remove the clause.

b) Modify existing contracts that include clause 252.222-7999 (DEVIATION 2021-O0001) (NOV 2020) to remove the clause and replace it with the revised clause, 252.222-7999 (DEVIATION 2021-O0001) (JAN 2021).

Additionally, during the time the preliminary injunction remains in force, and until further notice, contracting officers—

- a) Shall not enforce any clauses contained in Government contracts added pursuant to Section 4(a) of E.O. 13950;
- b) Shall not cancel, terminate, suspend in whole or in part, any contractor's Government contracts for purported noncompliance with the Executive Order or any agency action implementing Section 4 of the Executive Order;
- c) Shall not declare any contractor or subcontractor ineligible for further Government contracts, nor impose any other sanctions, on the basis of purported noncompliance with the Executive Order or any agency action implementing Section 4 of the Executive Order; and
- d) Shall not require contractors or subcontractors to provide notice of any commitments under the Executive Order or any contract term inserted pursuant to the Executive Order to their respective labor unions or employee representatives.

This revision to the class deviation remains in effect until further notice. My point of contact is Mr. Michael Pelkey, who is available by telephone at (703) 614-1253 or by email at michael.f.pelkey.civ@mail.mil.

John M. Tenaglia  
Principal Director,  
Defense Pricing and Contracting

Attachment:  
As stated

**252.222-7999 Combating Race and Sex Stereotyping (DEVIATION 2021-O0001)**

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 2021-O0001) (JAN 2021)

Notice: On December 22, 2020, the United States District Court for the Northern District of California issued a preliminary injunction, enjoining Sections 4 and 5 of Executive Order 13950 “Combating Race and Sex Stereotyping.” So long as the December 22, 2020 preliminary injunction remains in force, the Government shall not enforce any provisions contained in Government contracts or subcontracts added pursuant to Section 4(a) of Executive Order 13950; the Government shall not cancel, terminate, suspend in whole or in part, any contractor or subcontractors’ Government contracts, nor declare any contractor or subcontractor ineligible for further Government contracts, nor impose any other sanctions, on the basis of purported noncompliance with the Executive Order or any agency action implementing Section 4 or 5 of the Executive Order; and the Government will not require contractors or subcontractors to provide notice of any commitments under the Executive Order or any contract term inserted pursuant to the Executive Order to their respective labor unions or employee representatives. To the extent that you have included the Executive Order’s provisions in subcontracts, please provide them with a copy of this notice.

(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 (see FAR 22.807) also apply to E.O. 13950 and the requirements of this clause.

(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—

*Changes to the clause text are indicated by a change bar in the right-hand margin.*

- (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;

*Changes to the clause text are indicated by a change bar in the right-hand margin.*

(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—

“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](mailto:OFCCPComplaintHotline@dol.gov).

(End of notice)

(e) *Noncompliance.* In the event it is determined 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, as amended, so that these terms and conditions will be binding upon each subcontractor.

*Changes to the clause text are indicated by a change bar in the right-hand margin.*

(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 such direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(End of clause)