U.S. Department of Homeland Security
Washington, DC 20528

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa
Chief Procurement Officer

SORAYA CORREA
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Date: 2020.12.01 13:44:03 -05'00'

SUBJECT: Class Deviation (Number 21-01) Implementing Executive Order 13950, Combating Race and Sex Stereotyping

Purpose: This class deviation is issued to implement requirements of Section 4 and Section 9 of Executive Order (E.O.) 13950, *Combating Race and Sex Stereotyping*.

Effective Date: Immediately

Background: E.O. 13950, *Combating Race and Sex Stereotyping* (85 FR 60683, September 28, 2020) 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 Federal contractors from using any workplace training that inculcates in its employees any form of race or sex stereotyping or scapegoating.

Requirement: Effective immediately, except in contracts exempted in the manner provided by section 204 of E.O.11246, *Equal Employment Opportunity*, as amended (see FAR 22.807), contracting officers shall—

(a) Include the attached clause 3052.222-72 *Combating Race and Sex Stereotyping* (DEVIATION 21-01) in solicitations issued on or after November 21, 2020, and in the resultant contracts that include the clause 52.222-26, *Equal Opportunity*, or its Alternate I.

(b) Amend solicitations issued prior to November 21, 2020, and include clause 3052.222-72, *Combating Race and Sex Stereotyping* (DEVIATION 21-01) in any resultant contracts that includes clause 52.222-26, *Equal Opportunity*, or its Alternate I.

For purposes of efficiency when maintaining clauses within the respective DHS Component Contract Writing Systems, this class deviation does not include revisions to the commercial items clause 52.212-5, *Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items*. Instead, when the clause at 52.212-5 is used and clause 52.222-26, *Equal Opportunity* or its Alternate I is applicable to the specific acquisition, contracting officers shall include the full text of the clause 3052.222-72, *Combating Race and Sex Stereotyping* (DEVIATION 21-01) in addition to the required solicitation provisions and contract clauses for the acquisition of commercial items.

Expiration Date: This class deviation will remain in effect until it is incorporated into the FAR or is otherwise rescinded.

Additional Information: The final full text of the deviated clause is provided in the Attachment 1. In order to provide access to clauses in Component Contract Writing Systems, Policy Chiefs should coordinate with the appropriate Component personnel.

Questions or comments about this class deviation may be directed to David.Duda@hq.dhs.gov or call (202) 447-5415.

Attachments:
Attachment 1: Clause 3052.222-72, Combating Race and Sex Stereotyping (Deviation 21-01)

Attachment 1

Final Full Text of Clause

3052.222-72 Combating Race and Sex Stereotyping (DEVIATION 21-01).

Insert this clause in solicitations and contracts when a contract is contemplated that will include the clause 52.222-26, *Equal Opportunity* or its Alternate I.

COMBATING RACE AND SEX STEREOTYPING (DEVIATION 21-01) (NOV 2020)

(a) *Definition*. As used in this clause.

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.

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.

(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 the 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—

"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.* 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.

(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)