

Exhibit 2

Memorandum from Fed. Acquisition Regul. Council, Agency
Implementation of Executive Order 14398, Addressing DEI
Discrimination by Federal Contractors (Apr. 17, 2026)

April 17, 2026

MEMORANDUM FOR CHIEF ACQUISITION OFFICERS
SENIOR PROCUREMENT EXECUTIVES
DEFENSE ACQUISITION REGULATIONS COUNCIL
CIVILIAN AGENCY ACQUISITION COUNCIL

FROM: Dr. Kevin R. Rhodes,
Administrator
for Federal Procurement Policy
Office of Management and Budget

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SUBJECT: Agency Implementation of Executive Order 14398, Addressing DEI
Discrimination by Federal Contractors.

The purpose of this memorandum is to provide guidance to agencies that issue contracts subject to the Federal Acquisition Regulation (FAR) to support their implementation of Executive Order (E.O.) 14398, Addressing DEI Discrimination by Federal Contractors, dated March 26, 2026. E.O. 14398 establishes that agencies should not do business with contractors that engage in any racially discriminatory diversity, equity, and inclusion (DEI) activities (91 FR 16147, March 31, 2026).

Section 5 of E.O. 14398 directs the Federal Acquisition Regulatory Council (FAR Council) to issue a deviation regarding agency implementation of the contract clause described in section 3 of the E.O., as appropriate and consistent with applicable law.

Guidance

To implement section 3 of the E.O., agencies must—

1. Update their Revolutionary Federal Acquisition Regulation Overhaul class deviations for parts 9, 12, 22, and 52 by April 27, 2026;
2. Use the new clause at FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026) (DEVIATION APR 2026) as described in the applicability section, beginning April 24, 2026; and
3. Modify existing contracts, as described in the applicability section, by July 24, 2026.

Agencies that adopt the model deviation text provided by this guidance without change are not required to coordinate with the Council. Unless an agency has existing statutory direction that requires reconciliation with this guidance, agencies must request approval from the Council before adopting FAR text that differs from the Council's model deviation text.

Applicability

For new solicitations and resulting contracts

Insert the clause at FAR 52.222-90 in new solicitations and resulting contracts valued over the micro-purchase threshold, including those for commercial products and commercial services, and for which the place of delivery or performance is in 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.

For existing contracts

Insert the clause at FAR 52.222-90 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, and for which the place of delivery or performance is in the United States. In accordance with FAR 1.107(d) (May 2, 2025 deviation), 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.

Modification of contracts with a final expiration no later than December 31, 2026, is at contracting officer discretion.

Public posting of agency-specific deviations. Agencies should provide copies of their updated RFO class deviations to the FAR Secretariat at GSARegSec@gsa.gov for public posting on the RFO website.

Agency class deviation effective dates. The FAR Council intends to conduct rulemaking pursuant to the notice and comment process set forth at 41 U.S.C. 1707. Agencies are encouraged to make their class deviations effective until implemented in the FAR.

Paperwork Reduction Act

The FAR Council is seeking clearance from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) for the information collections related to FAR clause 52.222-90. The clearance will provide coverage for all agencies using the clause under which 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)).

Once OMB approves the information collection under the PRA, agencies will be expected to enforce full compliance with these requirements. Until that time, however, agencies 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 records include those requested by the Equal Employment Opportunity Commission or the Department of Justice as part of an investigation of an alleged violation of the clause. In addition, agencies should expect that contractors will alert the appropriate contracting officer of potential violations of the clause or lawsuits relating to the clause.

Agency Reporting and Annual Reviews

Section 4(c) of the E.O. requires each agency to review its implementation of section 3 of the E.O. and report to the Assistant to the President for Domestic Policy regarding its compliance by July 24, 2026 (120 days after the issuance of the E.O.).

Reports should identify the following:

- (i) The date the agency's deviation was issued.
- (ii) Whether the deviation included language other than that stated in the FAR

Council's model deviation.

(iii) Whether the agency's approach to applicability includes any variances from the FAR Council's guidance.

Agencies must also conduct an annual review of their compliance and implement appropriate corrective measures as needed.

Severability

If any portion (e.g., section, clause, sentence) of the resultant deviations is held to be invalid or unenforceable facially, or as applied to any entity or circumstance, it shall be severable from the remainder of the deviation, and shall not affect the remainder thereof, or its application to entities not similarly situated or to other dissimilar circumstances. The various portions of the resultant deviations are independent and serve distinct purposes. Even if one aspect were rendered invalid, the other benefits of the deviations would still be applicable.

If you have any questions or require additional information about this memorandum, please contact MBX.OMB.OFPPv2@OMB.eop.gov.

(DEVIATION APR 2026)

Executive Order 14398, Addressing DEI Discrimination by Federal Contractors

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.

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PART 9—CONTRACTOR QUALIFICATIONS

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Subpart 9.4 - Debarment, Suspension, and Ineligibility

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9.406 Debarment.

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9.406-2 Causes for debarment.

The suspending and debarring official may debar-

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(b) (1) * * *

* * * * *

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

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9.407 Suspension.

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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 the clause at 52.222-90, Addressing DEI Discrimination by Federal Contractors.]

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PART 12-ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

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Subpart 12.2 - Solicitation, Evaluation, and Award

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12.205 Solicitation provisions and contract clauses.

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(b) (2) * * *

Table 12-3 - Clauses to include as prescribed.

Number	Title	Source
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[52.222-90	Addressing DEI Discrimination by Federal Contractors	EO]
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PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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[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, and for which the place of delivery or performance is in the United States.]

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 52.2—Text of Provisions and Clauses

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[52.222-90 Addressing DEI Discrimination by Federal Contractors
As prescribed in 22.2203, insert the following clause:

ADDRESSING DEI DISCRIMINATION BY FEDERAL CONTRACTORS (DEVIATION
DATE)

(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.

(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, for which the place of delivery or performance is in the United States.

(End of clause)]

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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 DATE])

* * * * *

(b) (2) * * *

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