



PROCUREMENT MEMORANDUM 2026-09

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: Olivia J. Bradley
Senior Procurement Executive and
Director for Acquisition Management

SUBJECT: Implementing Executive Order 14398, Addressing DEI Discrimination by Federal Contractors, for Non FAR-Based Contract-Like Instruments

Background

Executive Order (EO) 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.

Section 3 of the EO instructed executive agencies to ensure that contracts and contract-like instruments include a clause related to the EO.

Purpose

This procurement memorandum provides Department of Commerce-wide direction for non-FAR based contract-like instruments such as other transaction agreements, concession contracts, and no-cost contracts.

Required Actions

1. Insert a clause with substantially the same language as FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (DEVIATION APR 2026) in new solicitations and resulting contract-like instruments valued over the micro-purchase threshold, and include the clause in the list of flow down clauses for any subcontracts for commercial products or commercial services.
2. Insert a clause with substantially the same language as FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (DEVIATION APR 2026) in all existing contract-like instruments valued over the micro-purchase threshold and include the clause in the list of flow down clauses for any subcontracts for commercial products or commercial services. Every effort should be made to bilaterally modify existing contract-like instruments by July 24, 2026. Modification of contract-like instruments with a final expiration no later than December 31, 2026, is at contracting officer discretion.

Effective Date

This procurement memorandum is effective immediately and remains in effect until rescinded.

Questions

Please direct any questions regarding this Procurement Memorandum to OAM_Mailbox@doc.gov.