

**CLASS DEVIATION  
FINDINGS AND DETERMINATION  
FEDERAL ACQUISITION REGULATION (FAR) PARTS 9, 12, 22, AND 52  
REGARDING IMPLEMENTATION OF EXECUTIVE ORDER 14398, ADDRESSING  
DEI DISCRIMINATION BY FEDERAL CONTRACTORS**

**Findings**

1. The objective of this class deviation supplement is to implement the Federal Acquisition Regulatory Council (FAR Council) memorandum “Agency Implementation of Executive Order 14398, *Addressing DEI Discrimination by Federal Contractors*” and Executive Order (E.O.) 14398 *Addressing DEI Discrimination by Federal Contractors*. The FAR Council memorandum implements E.O. 14398 by updating the Federal Acquisition Regulation (FAR) model deviation texts for the following parts:
  - a. Part 9 – *Contractor Qualifications*
  - b. Part 12 – *Acquisition of Commercial Products and Commercial Services*
  - c. Part 22 – *Application of Labor Laws to Government Acquisitions*
  - d. Part 52 – *Solicitation Provisions and Contract Clauses*
2. On March 26, 2026, President Trump issued E.O. 14398 *Addressing DEI Discrimination by Federal Contractors*, which established 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 directed the 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.
3. On April 17, 2026, the FAR Council issued a memorandum regarding “Agency Implementation of Executive Order 14398, *Addressing DEI Discrimination by Federal Contractors*”, which provided guidance to agencies regarding implementing E.O. 14398.
4. To implement the FAR Council memorandum and the requirements of E.O. 14398, the class deviations (and associated Policy Flashes (PF)) implementing the Revolutionary Federal Acquisition Regulation (FAR) Overhaul for the following parts are updated by this class deviation supplement pursuant to the attached FAR Council memorandum:
  - a. Part 9 (issued via PF 2025-58 on September 10, 2025, and updated on October 31, 2025): Updated to reference the new clause and make clear that failure to comply with the clause may result in suspension and/or debarment.
  - b. Part 12 (issued via PF 2025-61 on September 12, 2025, and updated on October 31, 2025): Updated to prescribe the new clause for the acquisition of commercial products and commercial services.
  - c. Part 22 (issued via PF 2026-25 on January 7, 2026, and updated on March 18, 2026): Updated to establish the new policy and prescribe the new clause.
  - d. Part 52 (issued via various PFs at various dates corresponding to the respective FAR part): Updated to add new clause 52.222-90 *Addressing DEI Discrimination by Federal Contractors* and revise clause 52.244-6 *Subcontracts for Commercial*

*Products and Commercial Services* to add the new clause to the list of clauses required to be flowed down to subcontracts for commercial products and commercial services.

5. The attached FAR Council memorandum provides revisions to the model deviation texts for FAR parts 9, 12, 22, and 52.

## **Determination**

In accordance with FAR 1.304 *Class deviations* (as implemented by Department of Energy (DOE) and National Nuclear Security Administration (NNSA) class deviation), Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, and the attached FAR Council memorandum, it is hereby determined that a class deviation supplement is appropriate for the class deviations implementing the RFO model deviation texts for FAR parts 9, 12, 22, and applicable sections of part 52. Specifically, DOE/NNSA will use the revised RFO model deviation texts in lieu of the model deviation texts originally issued and subsequently updated as described in section 4 above. Contracting officers will implement the FAR Council memorandum's guidance in new solicitations and resulting contracts and existing contracts, as described in the FAR Council memorandum. Once approved, the Department will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to the affected regulations. This class deviation is effective upon issuance, and will remain effective until cancelled or incorporated into the FAR.

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Attachment:  
FAR Council memorandum "Agency Implementation of Executive Order 14398, *Addressing DEI Discrimination by Federal Contractors*"