



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

SUBJECT: Class Deviation No. 2026-24, Supplement to the FAR Class Deviations for FAR Parts 9, 12, and 22 in Support of Executive Order 14398, Addressing DEI Discrimination by Federal Contractors

FROM: Chrishaun Jones
Senior Procurement Executive
Office of the Senior Procurement Executive

CHRISHAUN
PATRICE JONES
Digitally signed by CHRISHAUN
PATRICE JONES
Date: 2026.04.24 16:11:37
-04'00'

TO: Department of Transportation Chiefs of the Contracting Offices

- I. Purpose:** This class deviation (CD) supplement is issued under Federal Acquisition Regulation (FAR) part 1 and Transportation Acquisition Regulation (TAR) part 1201 and authorizes a class deviation to FAR parts 9, 12, 22 and 52 for purposes of implementing the FAR Council’s (the Council’s) updates to the model deviation text to the aforementioned FAR parts.
- II. Effective Date:** Immediately.
- III. Background:** On March 26, 2026, [Executive \(E.O.\) 14398 on Addressing DEI Discrimination by Federal Contractors](#) was signed. Section 3 of the E.O. establishes the policy 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).

On April 20, the FAR Council issued model FAR deviation text to implement the changes required by E.O. 14398 and directed agencies to update their Revolutionary FAR Overhaul (RFO) Class Deviations for Parts 9, 12, 22, and 52 in accordance with the model text. Contracting Officers are directed to use the new clause at 52.222-90 in all new solicitations and contracts performed in the United States, to amend open solicitations to incorporate the clause, and to make every effort to bilaterally modify existing contracts over the micro-purchase threshold to incorporate new clause FAR 52.222-90. Further details are below.

IV. Summary of Changes:

Updates to DOT’s FAR Deviations implementing the RFO (“Supplements”) are as follows-

	RFO FAR part 9
Supplement Update	Section III. “Background” is updated as follows:

	<p>Update to Subpart 9.4, Debarment, Suspension, and Ineligibility, for a contractor's failure to comply with the requirements of clause 52.222-90, Addressing DEI Discrimination by Federal Contractors:</p> <ul style="list-style-type: none"> • Debarment (9.406-2 (b)(1)(viii)) • Suspension (9.407-2(a)(11)) <p>Note: A bold and bracketed version of the RFO model deviation text can be found in Attachment A. All other content remains the same from the existing RFO FAR part 9 CD of January 12, 2026: Class Deviation No. 2026-22, Supplement to Certain Federal Acquisition Regulation (FAR) Deviations (Part 5, 8, 9, 12, 13, and 23), in Support of Executive Order 14275 on Restoring Common Sense to Federal Procurement.</p>
RFO FAR part 12	
Supplement Update	<p>Section III. "Background" is updated as follows:</p> <p>FAR part 12 includes an update to 12.205, Solicitation provisions and contract clauses (12.205(b)(2), Table 12-3 – Clauses to include as prescribed:</p> <p>52.222-90, Addressing DEI Discrimination by Federal Contractors.</p> <p>Note: A bold and bracketed version of the RFO model deviation text can be found in Attachment A. All other content remains the same from the existing RFO FAR part 12 CD of January 12, 2026: Class Deviation No. 2026-22, Supplement to Certain Federal Acquisition Regulation (FAR) Deviations (Part 5, 8, 9, 12, 13, and 23), in Support of Executive Order 14275 on Restoring Common Sense to Federal Procurement.</p>
RFO FAR part 22	
Supplement Update	<p>Section III. "Background" is updated as follows:</p> <p>Update to FAR part 22 includes:</p> <ul style="list-style-type: none"> • Added Subpart 22.22, Addressing DEI Discrimination by Federal Contractors to implement E.O. 14398. <ul style="list-style-type: none"> ○ Section 22.2101, Definitions, added to include definitions for "program participation" and "racially discriminatory DEI activities". ○ As prescribed in section 22.2203, new clause 52.222-90, Addressing DEI Discrimination by Federal Contractors, was added for contracts and subcontracts 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. <p>Note: A bold and bracketed version of the RFO model deviation text can be found in Attachment A. All other content remains the same from the existing RFO FAR part 22 CD of October 27, 2025: Class Deviation No. 2026-17 from the Federal Acquisition</p>

	Regulation for FAR Part 22 in Support of Executive Order 14275 on Restoring Common Sense to Federal Procurement.
	RFO FAR part 52
Supplement Update	<p>Update to FAR part 52 includes:</p> <ul style="list-style-type: none"> • As prescribed in section 22.2203, new clause 52.222-90, Addressing DEI Discrimination by Federal Contractors, was added. • 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026) was added to the clause table for 52.244-6(b)(2), <i>Requirements</i>, 52.244-6, Subcontracts for Commercial Products and Commercial Services. <p>Note: A bold and bracketed version of the RFO model deviation text can be found in Attachment A.</p>

- V. **Required Actions:** All DOT Operating Administrations (OAs), the Office of the Secretary of Transportation (OST), and the Office of the Inspector General (OIG), excluding the Federal Aviation Administration (FAA) per RFO TAR 1201.104(d) shall follow the RFO model deviation text instead of the FAR parts codified at 48 CFR chapter 1. The Council’s RFO FAR parts model deviation text is available at [Acquisition.gov/far-overhaul](https://www.acquisition.gov/far-overhaul) and is incorporated by reference into this CD. A line-out version of the changes may also be found in each RFO FAR parts Practitioner’s Album for reference.

Chief of the Contracting Offices (COCOs) must ensure this deviation is disseminated to the acquisition workforce and ensure compliance with the requirements in the revised FAR parts guidance.

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, except those that result in contracts for which the place of delivery or performance is outside 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.
- It is not necessary to include the clause in new orders under existing GSA governmentwide contracts (FSS, GWACs, other GSA managed multi-agency contracts). The instructions regarding these contracts and orders thereunder are described below.

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.

- Existing orders under GSA government-wide contracts (FSS, GWACs, other GSA managed multi-agency contracts) do not need to be modified.
- Modification of contracts with a final expiration no later than December 31, 2026, is at the contracting officer's discretion.

FAR 52.222-90 Information Collection. The FAR Council is seeking clearance from the Office of Management and Budget (OMB) for information collections related to the FAR clause 52.222-90. The clearance will provide coverage for all agencies using the clause. The clause requires that 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)).

Until clearance is received, you 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 as records that may be requested by the Equal Employment Opportunity Commission or the Department of Justice as part of an investigation of an alleged violation of the clause.

You should further expect that contractors will alert the appropriate contracting officer of potential violations of the clause or lawsuits relating to the clause.

Once clearance is received, the Office of the Senior Procurement Executive (OSPE) will communicate to the workforce that you can begin to enforce full compliance with FAR clause 52.222-90 requirements.

- VI. Applicability:** This supplement to applicable class deviations applies to all DOT OAs, OST, and OIG, excluding the FAA in accordance with TAR 1201.104(d).
- VII. Expiration Date:** This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded, whichever occurs first.

VIII. Point of Contact: Questions or comments regarding this deviation may be directed to DOTAcquisitionPolicy@dot.gov.

Attachments:

A. RFO Model Deviation Text

Attachment A

(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. Asterisks ********* or ******* reflects text remains unchanged.

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

* * * * *

Subpart 9.4 - Debarment, Suspension, and Ineligibility

* * * * *

9.406 Debarment.

* * * * *

9.406-2 Causes for debarment.

The suspending and debarring official may debar-

* * * * *

(b)(1) * * *

* * * * *

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

* * * * *

9.407 Suspension.

* * * * *

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.]

* * * * *

PART 12—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

* * * * *

Subpart 12.2 - Solicitation, Evaluation, and Award

* * * * *

12.205 Solicitation provisions and contract clauses.

* * * * *

(b)(2) * * *

Table 12-3 — Clauses to include as prescribed.

Number	Title	Source
* * * * *	* * * * *	* * * * *
[52.222-90	Addressing DEI Discrimination by Federal Contractors	E.O.]

*****	*****	*****
-------	-------	-------

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

[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.]

*** * * * ***

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

*** * * * ***

Subpart 52.2—Text of Provisions and Clauses

*** * * * ***

[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 APR 2026)**

(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)]

* * * * *

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 APR 2026])**

* * * * *

(b)(2) * * *

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

* * * * *



**U.S. Department
of Transportation**

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

SUBJECT: Class Deviation No. 2026-22, Supplement to Certain Federal Acquisition Regulation (FAR) Deviations (Part 5, 8, 9, 12, 13, and 23), in Support of Executive Order 14275 on Restoring Common Sense to Federal Procurement

FROM: Chrishaun Jones
Senior Procurement Executive
Office of the Senior Procurement Executive

CHRISHAUN
PATRICE JONES  Digitally signed by CHRISHAUN
PATRICE JONES
Date: 2026.01.12 19:19:51 -05'00'

TO: Department of Transportation Chiefs of the Contracting Offices

- I. Purpose:** This class deviation (CD) supplement is issued under Federal Acquisition Regulation (FAR) part 1 and Transportation Acquisition Regulation (TAR) part 1201 and authorizes a class deviation to FAR part 25 for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text to FAR part 25.
- II. Effective Date:** Immediately.
- III. Background:** On April 15, 2025, [Executive Order \(E.O.\) 14275 on Restoring Common Sense to Federal Procurement](#) was signed. Section 2 of the E.O. establishes the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed."

The FAR is being updated to:

- Remove language that is not required by statute
- Remove duplicative or outdated language
- Clarify or provide more plain language
- Revise language for the new FAR framework
- Retain language necessary for governmentwide acquisition standards.

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative.

Subsequent review has identified the need to update and amend DOT's implementing deviations for RFO FAR Parts 5, 8, 9, 13, and 23.

Summary of Supplement Updates are as follows-

RFO FAR parts 5, 12, 13, and 23	
Background	RFO FAR parts 5, 12, 13, and 23 included corresponding definition updates to part 2, but the implementing DOT deviations did not provide instructions to the workforce on how to use the revised part 2 definitions in concert with existing definitions in part 2.
Supplement Update	<p>In DOT’s class deviations implementing RFO FAR parts 5, 12, 13, and 23, section 4, “Required Action,” is updated to add the following sentence after, “A line-out version of the changes may also be found here for reference.”</p> <p>“The DOT acquisition workforce must use the definitions (Part 2 – Definitions of Words and Terms) found on Acquisition.gov/far-overhaul.”</p> <p>The remainder of the deviation is unchanged.</p>

RFO FAR part 8	
Background	<p>The FAR Council initially released the RFO FAR part 8 model deviation text on August 14, which required use of Office of Federal Property Policy best-in-class (BIC) contracts. On August 29, OFPP updated the model deviation text to reference “required use” contracts at 8.104 instead of BIC contracts. It is understood that OFPP will be establishing a new class of “required use” contracts (and associated criteria) that will be separate from BIC contracts. “Required use” contracts will be mandatory. BICs may be prioritized, but are not mandatory.</p> <p>DOT’s class deviation implementing RFO FAR Part 8 is amended as follows, to reflect the updated RFO FAR part 8 model deviation text:</p>
Supplement Update 1	<p>Section 3, “Background” is updated as follows:</p> <p>FAR part 8, Required Sources of Supplies and Services, is significantly updated. The model deviation language:</p> <ul style="list-style-type: none"> • Enhances usability by restructuring and organizing the part in the logical flow of the acquisition lifecycle. • Simplifies mandatory guidance. • Make the use of Governmentwide Best in Class (BIC) contracts mandatory [Makes the use of OFPP – designated “Required Use” contracts mandatory.] • Retains focus on the importance of the AbilityOne Program

Supplement Update 2	<p>The fourth bullet in the “Retained” section of the table in Section 3, “Background,” is updated as follows:</p> <ul style="list-style-type: none"> • Use of Existing Contracts. 8.104 replaces section 8.004, “Use of Other Sources.” Best in class (BIC)[OFPP – designated “Required Use”] contracts or BPAs are now required[mandatory] to be used when a commercial product or commercial service meets an agency’s need, unless approved by the Head of the Contracting Activity (HCA). If a BIC[“required use” contract] is not suitable, agencies should consider use of an existing governmentwide contract, BPA, or shared service.
Miscellaneous	<ul style="list-style-type: none"> • OFPP is expected to provide more information about “required use” contracts in the future.

RFO FAR part 9

Background	<p>The DOT implementing deviation stated that all existing provisions and clauses are retained (or remain reserved if previously reserved) with no changes to the text. The implementing class deviation is amended as follows to highlight that some provisions and clauses were updated.</p>
Supplement Update 1	<p>The third bullet in the “Retained” section of the table in Section 3, “Background,” is updated as follows:</p> <p>From: All existing provisions and clauses are retained (or remain reserved if previously reserved) with no changes to the text.</p> <p>To: The following provision and clause are retained (or remain reserved if previously reserved) with no changes to the text:</p> <ul style="list-style-type: none"> • 52.209-8 remains reserved • 52.209-12 (Provision), Certification Regarding Tax Matters • 52.209-14 (Clause), Reserve Officer Training Corps and Military Recruiting on Campus
Supplement Update 2	<p>A new section titled “Updated” is added to the table in Section 3, “Background.” The following bullet is added.</p>

	<ul style="list-style-type: none"> • The following provisions and clauses have been updated to reflect plain language, update cross-references, or to correspond with updates made within the part: <ul style="list-style-type: none"> ○ 52.209-1 (Clause), Qualification Requirements ○ 52.209-2 (Provision), Prohibition on Contracting with Inverted Domestic Corporations-Representation ○ 52.209-3 (Clause), First Article Approval-Contractor Testing <ul style="list-style-type: none"> ▪ Note - The Alternates are not updated ○ 52.209-4 (Clause), First Article Approval-Government Testing <ul style="list-style-type: none"> ▪ Note - The Alternates are not updated ○ 52.209-5 (Provision), Certification Regarding Responsibility Matters ○ 52.209-6 (Clause), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, Proposed for Debarment, or Voluntarily Excluded ○ 52.209-7 (Provision) Information Regarding Responsibility Matters ○ 52.209-9 (Clause), Updates of Publicly Available Information Regarding Responsibility Matters ○ 52.209-10 (Clause), Prohibition on Contracting with Inverted Domestic Corporations ○ 52.209-11 (Provision), Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law ○ 52.209-13 (Provision) Violation of Arms Control Treaties or Agreements-Certification
<p>Supplement Update 3</p>	<p>Section 4, “Required Actions,” is updated to add the following bullets after the first paragraph:</p> <ul style="list-style-type: none"> • For new solicitations or contracts, when using any provisions or clauses that have been revised, utilize the RFO model deviation language at RFO FAR Part 52. • For open solicitations or awarded contracts, the contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clause, the contracting officer may be required to separately address certain aspects in the contract. <p>The rest of Section 4, “Required Actions,” is unchanged.</p>

Miscellaneous	<ul style="list-style-type: none">• For ease of reference, GSA’s Office of Acquisition Policy has created a helpful tool to easily find and sort provision and clauses changes: RFO Part 52 P&C Table.
----------------------	--

- IV. **Applicability:** This supplement to applicable class deviations applies to all DOT OAs, OST, and OIG, excluding the FAA in accordance with TAR 1201.104(d).
- V. **Expiration Date:** This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded, whichever occurs first.
- VI. **Point of Contact:** Questions or comments regarding this deviation may be directed to DOTAcquisitionPolicy@dot.gov.

- 10 U.S.C. §§ 3451 et seq, Procurement of Commercial Products and Commercial Services
- 10 U.S.C. § 3453 and 41 U.S.C. § 3307, Preference for Commercial Products and Commercial Services
- 10 U.S.C. § 3771 and 41 U.S.C. § 2302, Rights in Technical Data
- 10 U.S.C. § 3805 and 41 U.S.C. § 4505, Payments for Commercial Products and Commercial Services
- 41 U.S.C. § 103, Commercial Product
- 41 U.S.C. § 103a, Commercial Service
- 41 U.S.C. § 104, Commercially Available Off-the-Shelf Item
- 41 U.S.C. § 1708, Procurement Notice
- Pub. L. 103-355, Federal Acquisition Streamlining Act of 1994 (FASA)
- Pub. L. 105-261 Sec 803, Defense Commercial Pricing Management Improvement

The following table is not an exhaustive list but includes notable updates to FAR part 12.

Change	Description
Retained	<ul style="list-style-type: none"> • The revised part structure consolidates all relevant guidance into process-oriented subparts: <ul style="list-style-type: none"> ○ Subpart 12.1 - Presolicitation ○ Subpart 12.2 - Solicitation, Evaluation, and Award ○ Subpart 12.3 - Postaward ○ Subpart 12.4 - Micro-purchases • Definitions related to this part, such as “Commercially Available Off-the-Shelf Item or COTS Item” and “Nondevelopmental Item” still remain at FAR 2.101, with some edits. • The definition of “Commercial service” at FAR 2.101 clarifies that construction is included within the definition. • Section 12.000, “Scope”, now clarifies that simplified procedures authorized by statute are implemented in part 12. This includes using simplified procedures for acquisitions up to \$7.5 million (or \$15 million to support responses to emergencies or major disasters, or other specified situations). • Tables are added that help readers find information easier: <ul style="list-style-type: none"> ○ Table 12-1, Authority citations for restricting competition. ○ Table 12-2, Provisions to include as prescribed ○ Table 12-3, Clauses to include as prescribed ○ Table 12-4, Provisions and clauses to include as needed. • New section 12.101, “Preference”, retains the preference for commercial procurement. • New section 12.104, “Contract Type”, retains the preference to utilize fixed-price contracts to the maximum extent practicable.

- **Labor-hour or Time-and-Material contracts** may still be used for commercial services, but a determination and findings must be executed by the contracting officer.
- New section 12.201-1, “**Simplified Procedures**”, clarifies that for acquisitions valued up to \$7.5 million, the agency use a request for quotations (RFQ) followed by a purchase order (vs. RFP/part 15 procedures for acquisitions over \$7.5M).
- New section 12.201-1(b) provides clear guidance as to **the legal effect of quotations**.
- New section 12.201-1(d) encourages agencies to use additional innovative approaches to the maximum extent practicable when soliciting quotations and issuing purchase orders.
- New section 12.201-2, “**Other Procedures**”, provides clear instruction that for acquisitions valued at greater than \$7.5 million, agencies are to use the procedures in the new subpart 12.2 in conjunction with the procedures in part 15 for requests for proposals (RFPs) or part 14 for invitations for bids (IFBs), as appropriate. Use of an RFP is the preferred method because it includes consideration of past performance when evaluating offers (see the new 12.203(a)(2)).
- The deviated text clarifies that **construction can now be procured commercially**. When using the procedures in this subpart to acquire construction, comply with the requirements in part 36 for construction contracts and subpart 22.4 on labor standards.
- The contracting officer has **broad discretion in establishing how quotations will be evaluated**. For example, the contracting officer may perform a comparative evaluation of quotations.
- The deviated text emphasizes that evaluation procedures are not subject to part 15 or 14. **Contracting officers are not required to have evaluation plans, score quotations, or establish a competitive range before communicating with quoters or soliciting revised quotations (see 12.203(c)(2))**.
- The part is revised to clarify that if commercial products or commercial services that meet agency needs are available from any priority source identified in **part 8, including existing contracts awarded for Governmentwide use (e.g., the Federal Supply Schedules and Governmentwide acquisition contracts)**, agencies must procure the commercial products or commercial services from that source. If not available, agencies use the streamlined procedures for solicitation, evaluation, and award in the new subpart 12.2.
- **Timely quotations and offers**. The deviated text instructs contracting officers to exercise good business judgment in deciding whether to accept a quotation or offer received after the due date or time.
- The **definition of and requirements for subcontracts are retained**, and will be moved to part 44.

	<ul style="list-style-type: none"> • The following provisions and clauses are retained with plain language and other edits. <ul style="list-style-type: none"> ○ 52.212-1, Instructions to Offerors-Commercial Products and Commercial Services ○ 52.212-2, Evaluation-Commercial Products and Commercial Services ○ 52.212-4, Terms and Conditions-Commercial Products and Commercial Services
Removed	<ul style="list-style-type: none"> • A total of 46 clauses and provisions from other FAR parts are removed as they are no longer required for commercial contracts. This change reflects an approximate 30% reduction in the number of clauses and provisions that are applicable to commercial contracts. • Further, the following clause and provision are removed as they are unnecessary. The majority of the references are no longer required, and any required references are retained through other means: <ul style="list-style-type: none"> ○ 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Services ○ 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services

IV. Required Actions: All DOT Operating Administrations (OAs), the Office of the Secretary of Transportation (OST), and the Office of the Inspector General (OIG), excluding the Federal Aviation Administration (FAA) per RFO TAR 1201.104(d) shall follow the [RFO FAR part 12 model deviation text](#) instead of FAR part 12 as codified at 48 CFR chapter 1. The Council’s RFO FAR part 12 model deviation text is available at [Acquisition.gov/far-overhaul](#) and is incorporated by reference into this CD. A line-out version of the changes may also be found [here](#) for reference.

For new solicitations or contracts, when using any provisions or clauses that have been revised, utilize the RFO model deviation language at [RFO FAR part 52](#). Do not include any of the removed provisions or clauses in future solicitations and contracts.

- A clause matrix describing changes is available here.

For open solicitations or awarded contracts, the contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clauses, the contracting officer may be required to separately address certain aspects in the contract.

For any solicitation or contract using RFO provisions or clauses, contracting officers may include the following language:

“System updates may lag policy updates. The System for Award Management (SAM) may continue to require entities to complete representations based on provisions that are not included in this solicitation. Contracting officers will rely on representations from offers based on provisions in the solicitation. Entities are not required to, nor

are they able to, update their entity registration to remove these representations in SAM.”

Contracting activities must review templates and related standard operating procedures to align with this class deviation and remove unnecessary processes and steps.

Heads of the Contracting Activities (HCAs) must ensure this deviation is disseminated to the acquisition workforce and ensure compliance with the requirements in the revised FAR part 12 guidance.

- V. **Applicability:** This CD applies to all DOT OAs, OST, and OIG, excluding the FAA in accordance with TAR 1201.104(d).
- VI. **Expiration Date:** This CD will remain in effect until it is incorporated into the FAR or is otherwise rescinded, whichever occurs first.
- VII. **Point of Contact:** Questions or comments regarding this deviation may be directed to DOTAcquisitionPolicy@dot.gov.