



**U.S. Department  
of Transportation**

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

Office of the Secretary  
of Transportation

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**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  
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**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
<b>Supplement Update</b>	Section III. “Background” is updated as follows:

	<p>Update to <b>Subpart 9.4, Debarment, Suspension, and Ineligibility</b>, 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"> <li>• Debarment (9.406-2 (b)(1)(viii))</li> <li>• Suspension (9.407-2(a)(11))</li> </ul> <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>
<b>RFO FAR part 12</b>	
<b>Supplement Update</b>	<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><b>52.222-90, Addressing DEI Discrimination by Federal Contractors.</b></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>
<b>RFO FAR part 22</b>	
<b>Supplement Update</b>	<p>Section III. "Background" is updated as follows:</p> <p>Update to FAR part 22 includes:</p> <ul style="list-style-type: none"> <li>• Added <b>Subpart 22.22, Addressing DEI Discrimination by Federal Contractors</b> to implement E.O. 14398. <ul style="list-style-type: none"> <li>○ Section <b>22.2101, Definitions</b>, added to include definitions for "<b>program participation</b>" and "<b>racially discriminatory DEI activities</b>".</li> <li>○ As prescribed in section <b>22.2203</b>, new clause <b>52.222-90, Addressing DEI Discrimination by Federal Contractors</b>, 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.</li> </ul> </li> </ul> <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.
	<b>RFO FAR part 52</b>
<b>Supplement Update</b>	<p>Update to FAR part 52 includes:</p> <ul style="list-style-type: none"> <li>• As prescribed in section 22.2203, new clause <b>52.222-90, Addressing DEI Discrimination by Federal Contractors</b>, was added.</li> <li>• <b>52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026)</b> was added to the clause table for 52.244-6(b)(2), <i>Requirements</i>, <b>52.244-6, Subcontracts for Commercial Products and Commercial Services</b>.</li> </ul> <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](mailto: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.

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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-

\* \* \* \* \*

(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.]**

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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.**

\* \* \* \* \*

(b)(2) \* \* \*

Table 12-3 — Clauses to include as prescribed.

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

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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**

**\* \* \* \* \***

**[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)**

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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 APR 2026])**

\* \* \* \* \*

(b)(2) \* \* \*

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