



**RFO-2025-18  
Supplement 26-01**

**United States  
Department of  
Agriculture**

April 23, 2026

Office of the  
Assistant Secretary  
for Administration

**MEMORANDUM FOR USDA CONTRACTING ACTIVITIES**

Office of  
Contracting and  
Procurement

**From:** Hilary Erickson  
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**Subject:** Supplement to the Revolutionary Federal Acquisition Regulation (FAR) Overhaul (RFO) Class Deviation for FAR Parts 9, 12, 22, and 52 in support of Executive Order 14398, Addressing DEI Discrimination by Federal Contractors

Washington, DC  
20250-9308

**1. Purpose.** This supplement approves changes to the RFO class deviations to FAR parts 9, 12, 22, and 52 for purposes of implementing the FAR Council’s updates to the model deviations to address the language described in Executive Order (E.O.) 14398.

**2. Background.**

The USDA issued the following class deviations to FAR parts 9, 12, and 22 for purposes of implementing the FAR Council’s model deviation text for these FAR parts:

| <b>Deviation</b>            | <b>Issued Date</b> | <b>Effective Date</b> | <b>FAR Part</b> |
|-----------------------------|--------------------|-----------------------|-----------------|
| <a href="#">RFO-2025-22</a> | 9/4/2025           | 9/4/2025              | 9               |
| <a href="#">RFO-2025-18</a> | 8/21/25            | 11/3/25               | 12              |
| <a href="#">RFO-2025-47</a> | 10/15/25           | 11/3/25               | 22              |

E.O. 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.

In accordance with Section 5 of E.O. 14398, the FAR Council is issuing a deviation to update the model deviation text for these parts.

**3. Summary of Changes.**

- Part 9 - References the new clause and makes clear that failure to comply with the clause may result in debarment or suspension.
- Part 12 - Prescribes the new clause for commercial acquisition.
- Part 22 - Establishes the new policy and prescribes the new clause.

- Part 52 - Creates the new clause 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026), and adds this clause to the table of clauses required to be flowed down to subcontracts for commercial products or commercial services in clause 52.244-6 (APR 2026).

#### **4. Instructions.**

- The USDA acquisition workforce shall follow the procedures provided on the USDA Acquisition Workforce website titled, [“Guidance for Implementing New FAR Clause on Prohibited DEI”](#).
- Utilize the RFO model deviation language at RFO FAR part 52.
- Contracting activities must review templates and related standard operating procedures to align with this class deviation and remove unnecessary processes and steps.

**5. FAR 52.222-90 Information Collection.** The FAR Council is seeking clearance from 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 Contracting and Procurement will communicate to the workforce that you can begin to enforce full compliance with FAR clause 52.222-90 requirements.

**6. Applicability.** This class deviation applies to all USDA procurements actions.

**7. Authority.** This class deviation is issued under the authority of E.O 14398, [E.O. 14275](#), [OMB M-25-25](#), and 48 CFR 1.4, and RFO FAR 1.304.

**8. Effective Date.** This class deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

**9. Points of Contact.** Questions regarding this class deviation may be directed to the USDA Procurement Policy Division at [procurement.policy@usda.gov](mailto:procurement.policy@usda.gov).

**10. Attachment.** See Attachment A - E.O. 14398 Amended FAR Text

**Attachment A - EO 14398 Amended FAR Tex**

**Executive Order 14398, Addressing DEI Discrimination by Federal Contractors, of March 26, 2026**

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**

\* \* \* \* \*

**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 clause 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 clause 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 | 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, except those that result in contracts for which the place of delivery or performance is outside 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 (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; and

(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, except those where the place of delivery or performance is outside 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) \* \* \*

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

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