



OFFICE OF FINANCE AND ADMINISTRATION

WASHINGTON, D.C. 20460

MEMORANDUM

DATE: April 23, 2026

SUBJECT: Supplement to the Environmental Protection Agency (EPA) Interim Policy Notices (IPN) 25-25, 25-22, and 25-40, Federal Acquisition Regulation (FAR) Class Deviation, RFO-2025-09, RFO-2025-12, and RFO-2025-22, for FAR Part 9, FAR Part 12 and FAR Part 22 in Support of Executive Order 14398 Addressing DEI Discrimination by Federal Contractors.

FROM: Stefan Martiyan
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Office of the Chief Procurement Officer

TO: EPA Acquisition Community

1. Purpose. This supplement provides updates and amendments to certain EPA implementing deviations. This supplement approves changes to the Revolutionary Federal Acquisition Regulation Overhaul (RFO) class deviations to Federal Acquisition Regulation (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.

- EPA issued IPN 25-25, 25-22, and 25-40; RFO-2025-09, RFO-2025-12, and RFO-2025-22, approving a class deviation to FAR parts 9, 12, and 22 for purposes of implementing the FAR Council's model deviation text for these FAR parts. These deviations became effective September 24, 2025, October 21, 2025, and January 6, 2026, respectively.
- 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 EPA workforce must follow the new model deviation text.
- For open and new solicitations
 - **Beginning April 27, 2026**, Insert the clause at FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026) in open and new solicitations 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), 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.
- For existing contracts
 - Insert the clause at FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 2026), 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 RFO FAR 1.107(d) (May 2, 2025, deviation), contracting officers **must make every effort to bilaterally modify existing contracts by July 24, 2026**, to incorporate FAR 52.222-90, Addressing DEI Discrimination by Federal Contractors (APR 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.
 - Modification of contracts with a final expiration no later than December 31, 2026, is at contracting officer discretion.
- 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. Information Collection requirements for FAR 52.222-90. The FAR Council is seeking clearance from OMB for information collection 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, it will be communicated to the acquisition workforce to enforce full compliance with FAR clause 52.222-90 requirements.

6. Applicability. This class deviation applies to all EPA procurements above the micro-purchase threshold. This IPN deviation document will be posted in each of the respective agency deviation section for RFO Parts 9, 12, and 22, and implemented in Part 52.

7. Authority. This class deviation is issued under the authority of [E.O. 14398](#), [OMB M-25-26](#), 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 OFA-OCPO-AcquisitionPolicy@epa.gov.

10. Attachment. See Attachment A – E.O. 14398 Amended FAR Text that is also available in the EPA Acquisition System (EAS) Clause database.

Attachment A - EO 14398 Amended FAR Text

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

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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-

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(b) (1) * * *

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

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9.407 Suspension.

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9.407-2 Causes for suspension.

(a) The suspending and debarring official may suspend a contractor suspected, upon adequate evidence, of-

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[(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.

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(b) (2) * * *

Table 12-3 – Clauses to include as prescribed.

Number	Title	Source
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[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])**

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(b) (2) * * *

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