

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 9 – CONTRACTOR
QUALIFICATIONS**

Findings

1. The objective of this class deviation is to implement the Federal Acquisition Regulatory Council’s model deviation text to the Federal Acquisition Regulation (FAR) Part 9 – Required Sources of Supplies and Services, and applicable section of FAR Part 52 - Solicitation Provisions and Contract Clauses.
2. On April 15, 2025, President Donald J. Trump issued Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*. Section 2 of the E.O. established 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.”
3. On May 2, 2025, the Office of Management and Budget (OMB) issued memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*, initiating a major overhaul of the FAR (Revolutionary FAR Overhaul, or “RFO”). The memorandum tasked the Office of Federal Procurement Policy (OFPP) with leading the RFO, in coordination with the other members of the Federal Acquisition Regulatory Council – i.e., the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA) and federal buying agencies. The goal is refocusing the FAR on its statutory roots. To that end, 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 - Remove duplicative or outdated language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

The OMB memorandum M-25-26 established a two phased approach to implementing enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. Phase one involves the FAR Council issuing guidance on a rolling basis with clear, plain language model deviation text organized by FAR part. The goal is streamlining the regulation by aligning it more closely to its statutory base. According to the memorandum, agencies should adopt this model deviation text within 30 days by issuing either individual or class deviations.

4. On May 2, 2025, the FAR Council issued further implementing guidance in a memorandum titled *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*. Pursuant to the FAR Council’s memorandum, “agencies that adopt the Council’s RFO class deviation text without change or require different text only

to address statutory direction unique to the agency, do not need to coordinate with the Council.”

5. On August 21, 2025, the FAR Council issued model deviation text for FAR Part 9 and corresponding clauses at FAR Part 52. FAR Part 9 - largely based on statute - establishes the standards and procedures for determining contractor responsibility and eligibility for federal contracts, ensuring that only qualified, reliable contractors receive government awards. It protects the government's interests by requiring contractors to demonstrate they have adequate financial resources, technical capability, integrity, and past performance to successfully fulfill contract requirements.

Statutory requirements and presidential directives retained in the RFO FAR part 9 model deviation include, but are not limited to, the following:

- 6 U.S.C. § 395, Prohibition on Contracts with Corporate Expatriates
- 10 U.S.C. § 3206 and 41 U.S.C. § 3306, Planning and Solicitation Requirements
- 10 U.S.C. § 3243 and 41 U.S.C. § 3311, Qualification Requirements
- 22 U.S.C. § 2593e, Measures Against Activities that Violate Arms Control Treaties
- 41 U.S.C. § 113, Responsible Source
- 41 U.S.C. § 2303, Ethics Safeguards Related to Contractor Conflicts of Interest
- 41 U.S.C. § 2304, Conflict of Interest Standards for Consultants
- 41 U.S.C. § 2313, Database for Suspension and Debarment Officials
- Pub. L. 103-355 Sec 2455, Uniform Suspension and Debarment
- Pub. L. 111-84 Sec 815, Clarification of Uniform Suspension and Debarment Requirement
- Pub. L. 117-324, Preventing Organization Conflicts of Interest in Federal Acquisition
- E.O. 12549 and E.O. 12689, Debarment and Suspension

Other updates within Part 9 include:

- Subparts 9.1, 9.2, and 9.3 are significantly streamlined with some shifting and reorganizing of sections and subsections throughout.
- Subparts 9.4 “Debarment, Suspension, and Ineligibility”, and 9.5 “Organizational and Consultant Conflicts of Interest”, are retained and updated with plain language edits.
- All existing provisions and clauses are retained (or remain reserved if previously reserved) with no changes to the text.

Sections removed from either Part 9 or Part 52 include:

- Section 9.000 “Scope of Part”, has been removed as the language was duplicative.
- The definition of “Surveying activity” has been removed from section 9.101, “Definitions”.

- Section 9.104-2 “Special Standards”, has been removed and may be moved to non-regulatory content.
- Section 9.106 “Preaward Surveys”, has been removed and may be moved to non-regulatory content. This includes the reference to utilizing the Standard Form 1403, Preaward Survey of Prospective Contractor (General).
- Section 9.107 “Surveys of Nonprofit Agencies Participating in the AbilityOne Program” has been removed. The AbilityOne Program is covered in part 8 and nuances of pre-award surveys relevant to the AbilityOne Program are now covered in non-regulatory content.
- Subpart 9.6 “Contractor Team Arrangements”, has been removed and may be moved to non-regulatory content.
- Subpart 9.7 “Defense Production Pools and Research and Development Pools”, has been removed and may be moved to non-regulatory content.

Determination

In accordance with RFO 1.304 *Class deviations* and Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Parts 9 and 52, it is hereby determined that a class deviation is appropriate pursuant to OMB memorandum M-25-26 (Attachment 1) and the FAR Council memorandum (Attachment 2) issued on May 2, 2025, using the RFO model deviation text for Part 9 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 9 in lieu of 48 Code of Federal Regulations (CFR) Part 9, and the RFO model deviation text for the applicable sections of Part 52. 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 on November 3, 2025, and will remain effective until cancelled or incorporated into the FAR.

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Attachments:

OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*
FAR Council Memorandum, *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*
RFO Parts 9 and 52 Model Deviation Text