

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PARTS 8 and 9 SUPPLEMENT**

Findings

1. The objective of this class deviation is to supplement the class deviations that implemented the Federal Acquisition Regulatory Council’s model deviation text to the Federal Acquisition Regulation (FAR) Part 8 - *Required Sources of Supplies and Services* and Part 9 - *Contractor Qualifications*.
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”) and the FAR Council issued further implementing guidance in a memorandum titled *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*.
4. In accordance with the OMB and FAR Council memoranda, the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) issued implementing class deviations following release of each RFO FAR part deviation text. More information about the purpose of the RFO initiative and background on individual model deviation language can be found in the original DOE/NNSA implementing class deviation for each part. Subsequent review has identified the need to update and amend DOE/NNSA’s implementing deviation for RFO Parts 8 and 9, as described below.

a. RFO FAR Part 8

- i. Background. The FAR Council initially released the RFO FAR Part 8 model deviation text on August 14, 2025, 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, whereas BIC contracts may be prioritized, but are not mandatory.

DOE/NNSA class deviation implementing RFO FAR Part 8 is amended as described in 4.a.ii. below.

- ii. Supplement Update.

1. Section 5., first paragraph. The third bullet within this section is revised as follows:

- ~~Makes the use of Governmentwide Best In Class (BIC) contracts mandatory.~~ **[Makes the use of OFPP-designated “required use” contracts mandatory.]**

2. Section 5., “Other updates within Part 8 include:”. The fourth bullet within this section is revised as follows:

- 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.

b. RFO FAR Part 9

i. Background. DOE/NNSA 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:

ii. Supplement Update.

1. Section 5., “Other Updates within Part 9 include:”. The title of this section is revised as follows: “Other Updates within Part 9 **[and Part 52]** include:”

2. Section 5., “Other Updates within Part 9 and Part 52 include:”. The third bullet within this section is revised as follows:

- ~~All existing~~**[The following]** provisions and clauses are retained (or remain reserved if previously reserved) with no changes to the text.
 - **[52.209-8 remains reserved**
 - **52.509-12 (Provision), Certification Regarding Tax Matters**
 - **52.209-14 (Clause), Reserve Officer Training Corps and Military Recruiting on Campus]**

3. Section 5., “Other Updates within Part 9 and Part 52 include:”. A fourth bullet is added to this section as follows:
 - “The following provisions and clauses have been updated to reflect plain language, update cross-references, or to correspond with updates made within the part:
 - 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
 - Note - The Alternates are not updated
 - 52.209-4 (Clause), First Article Approval-Government Testing
 - 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”

Determination

In accordance with RFO 1.304 *Class deviations* (as implemented by DOE/NNSA class deviation) and Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, it is hereby determined that a class deviation supplement, as described above, to the class deviations that implemented the RFO model deviation text for Parts 8 and 9 is appropriate. Once approved, the Department will share the deviation supplement widely among its workforce to ensure full awareness of and compliance with the revisions to the affected regulations. This class deviation supplement is effective upon issuance, and will remain effective until cancelled or incorporated into the FAR.

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