U.S. Department of Transportation

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

Office of the Secretary of Transportation

SUBJECT: Class Deviation No. 2026-09 from the Transportation Acquisition Regulation for TAR Part 1209 in Support of Executive Order 14275, Restoring Common Sense to Federal Procurement

FROM: Chrishaun Jones
Senior Procurement Executive
Office of the Senior Procurement Executive

CHRISHAUN PATRICE JONES
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Date: 2026.10.27 17:50:17 -04'00'

TO: Department of Transportation Chiefs of the Contracting Offices

I. Purpose: This memorandum approves a class deviation to the Transportation Acquisition Regulation (TAR) part 1209 for the purpose of implementing, in the TAR, Federal Acquisition Regulation (FAR) Class Deviation (CD) (No. 2026-24 and 2025-22) for FAR part 9 in support of Executive Order (E.O.) 14275, "Restoring Common Sense to Federal Procurement."

II. Effective Date: Immediately.

III. Background: On April 15, 2025, Executive Order (E.O.) 14275, Restoring Common Sense to Federal Procurement was signed. Section 2 of the E.O. establishes 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." The Revolutionary FAR Overhaul (RFO) initiative will make the FAR more concise, understandable, and focused on core procurement requirements. This also applies to agency supplements to the FAR.

Under this initiative, 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- Remove duplicative or outdated language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 RFO FAR part 9 model deviation text upon which this RFO TAR part 1209 deviation is based, establishes bedrock principles. The Department of Transportation (DOT) issued FAR CD 2026-24 for FAR part 9 on April 24, 2026, and FAR CD 2025-22 on December 9, 2025. Both documents can be accessed here.

To ensure alignment with issued E.O.s and the RFO FAR part CD, it is necessary to issue this RFO TAR CD in advance of a proposed rule to implement these requirements to ensure DOT policies and procedures align with these requirements. DOT intends on conducting further analysis and developing a rule for publication in the Federal Register for public comment after the release of this CD, and after FAR proposed and final rules are published.

IV. Summary of Changes: The following table is not an exhaustive list but includes notable updates to TAR part 1209:

Change	Description
New/Retained/ Updated	General – Retained as the coverage directly implements a specific statute. Updated TAR content and headings to align with RFO FAR Part 9. **TAR part 1209—Contractor Qualifications** • **Subpart 1209.2—Qualification Requirements.** New. o Added to provide key delegations from the agency head. o 1209.202, Policy. Provides the HCA is delegated responsibility to prepare a required written justification on establishing qualification requirements. The Senior Procurement Executive (SPE) is delegated authority to approve it. 1209.206-1, General. The SPE is delegated authority to determine an emergency exists or existed with respect to continuing enforcement or qualifications standards that were waived or in abeyance during an emergency. • **Subpart 1209.4—Debarment, Suspension, and Ineligibility.** Revised; the following sections were updated to RFO FAR drafting standards with minor administrative and grammatical edits (including reducing the number of "shalls" and updated citations as shown in the bold and brackets and line in-line out text. Additional edits noted separately, as applicable: o 1209.400, Scope of subpart. o 1209.403, Definitions. ▪ Removed one definition not required in part, and added one new definition on Unfair trade practices. o 1209.405, Effect of listing. o 1209.405-1, Continuation of current contracts. ▪ Added new text at paragraph (b) that DOT is a covered agency as defined in FAR 9.110-1. o 1209.405-2, Restrictions on subcontracting. o 1209.406, Debarment. o 1209.406-1, General. ▪ Added new references to the non-delegable waiver authority of the Secretary of Transportation pursuant to FAR 26.505-1(e)

	○ 1209.406-3, Procedures. ▪ Removed text at subparagraphs (a)(1) – (11) as more appropriate to agency internal procedures and guidance. ▪ Paragraph (c) – removed some content more appropriate to internal procedures regarding SAM, and removed other content to reference the RFO FAR citation instead. ○ 1209.406-4, Period of debarment. ○ 1209.407, Suspension. ○ 1209.407-1, General. ▪ Removed paragraph (b) since the referenced GSA CFR rule was removed from the CFR. ○ 1209.407-3, Procedures. ○ 1209.470, Fact-finding procedures. ○ 1209.471, Appeals. • **Subpart 1209.5—Organizational Conflicts of Interest** ▪ 1209.503, Waiver. New. Provides that the head of the contracting activity (HCA) (non-delegable) is delegated waiver authority under FAR 9.503. ○ 1209.507, Solicitation provisions and contract clause. No change. ○ 1209.507-1, Solicitation provisions. New. Moved prescription from existing 1209.507-270(a) to align with RFO FAR appropriate placement. ○ 1209.507-2, Contract clause. Updated title to align with the RFO FAR and edited prescription to new RFO FAR drafting style. • **TAR clause 1252.209-70, Organizational and Consultant Conflicts of Interest.** (SEP 2026)(RFO DEVIATION) – updated citation and revised/streamlined for clarity and RFO FAR drafting style. • **TAR clause 1252.209-71, Limitation of Future Contracting.** (SEP 2026)(RFO DEVIATION) – updated citation and revised/streamlined for clarity and RFO FAR drafting style.
Removed	General – Text has been revised/deleted in the subpart/section below to remove non-statutory guidance. • **Subpart 1209.6— Contractor Team Arrangements.** Removed. ○ FAR subparts 9.6, Contractor Team Arrangements, and 9.7, Defense Production Pools and Research and Development Pools were removed from the FAR. FAR content moved to the FAR Companion Guide. No separate DOT content required.

V. Required Actions: Contracting Officers shall follow the RFO TAR part 1209 deviation text, including the corresponding part 1252 deviation text, in lieu of TAR part 1209 and part 1252 as codified at 48 CFR, chapter 12. The RFO TAR deviation text is shown in the Attachment including any cognizant TAR part 1252 solicitation provisions or contract clauses prescribed in TAR part 1209.

Chiefs of the Contracting Offices (COCOs) must ensure this deviation is disseminated to the acquisition workforce and ensure compliance with the requirements in the CD.

For new solicitations, contracts or orders:

- Include applicable deviated provisions and clauses (marked **(SEP 2026)(RFO Deviation)**) as attached.

For open solicitations:

- The contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clauses, the contracting officer may be required to separately address certain aspects in an awarded contract.

For existing contracts and orders:

- No action required for the clause associated with this class deviation.

VI. Applicability: This CD applies to 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) in accordance with RFO TAR 1201.103-70(b).

VII. Authority: This CD is issued under the authority of RFO FAR 1.304, Class deviations; TAR 1201.404, Class deviations; and the revised citation at RFO TAR 1201.304, for the purpose of implementing policy in the TAR to comply with requirements of certain E.O.s, statutes, and other directives in DOT FAR CD No. 2026-24 and 2025-22.

VIII. Expiration Date: This CD will remain in effect until it is incorporated into the TAR, superseded, or is otherwise rescinded, whichever occurs first.

IX. Point of Contact: Questions or comments regarding this deviation may be directed to DOTAcquisitionPolicy@dot.gov.

Attachment:

A. RFO TAR Part 1209 & Applicable Part 1252 Deviation Text – Bold/Bracketed/Line-in Line-Out (BB-LILO)

Transportation Acquisition Regulation (TAR) Class Deviation (CD) No. 2026-09

Attachment A

RFO TAR Part 1209 and 1252 Deviation Text

TAR Text Baseline is 48 CFR chapter 12 as of June 22, 2026.

Additions are shown as **[bolded and bracketed]** and deletions are shown in strikethrough ~~deletions~~. TAR Text unchanged shown as asterisks.

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Part 1209—Contractor Qualifications [(RFO Deviation)]

[Subpart 1209.2—Qualification Requirements
1209.202 Policy.
1209.206-1 General.]

Subpart 1209.4—Debarment, Suspension, and Ineligibility
1209.400 Scope of subpart.
1209.403 Definitions.
1209.405 Effect of listing.
1209.405-1 Continuation of current contracts.
1209.405-2 Restrictions on subcontracting.
1209.406 Debarment.
1209.406-1 General.
1209.406-3 Procedures.
1209.406-4 Period of debarment.
1209.407 Suspension.
1209.407-1 General.
1209.407-3 Procedures.
1209.470 Fact-finding procedures.
1209.471 Appeals.

Subpart 1209.5—Organizational and Consultant Conflicts of Interest
[1209.503 Waiver.]
1209.507 Solicitation provisions and contract clause.
[1209.507-1 Solicitation provisions.]
1209.507-2~~70~~ Contract clause~~s~~.

~~**Subpart 1209.6—Contractor Team Arrangements**~~
~~1209.602 General.~~

Authority: 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); **[and]** 41 U.S.C. 1702~~; and 48 CFR 1.301 through 1.304~~.

PART 1209—CONTRACTOR QUALIFICATIONS [(RFO DEVIATION)]

[Subpart 1209.2—Qualification Requirements

1209.202 Policy.

(a)(1) The head of the contracting activity is delegated authority to prepare the written justification establishing a qualification requirement as specified at FAR 9.202(a)(1). The Senior Procurement Executive (SPE) is delegated authority to approve it.

1209.206-1 General.

(b) The Senior Procurement Executive (SPE) is delegated authority to determine an emergency exists or existed with respect to continuing enforcement of qualification standards that were waived or in abeyance during an emergency (see FAR 9.202(a)).]

Subpart 1209.4—Debarment, Suspension, and Ineligibility

1209.400 Scope of subpart.

This subpart provides DOT's policy and procedures for the debarment and suspension of contractors.

1209.403 Definitions.

As used in this subpart—

DOT Order 4200.5G means the DOT order establishing DOT's internal procedures for Suspension and Debarment, and Ineligibility Policies. **[The term also includes any subsequently-issued Order that supersedes or supplements DOT Order 4200.5G.]**

~~*Senior Accountable Official (SAO) for Suspension and Debarment* means the Senior Procurement Executive (SPE), as delegated by the Secretary of DOT, for all suspensions and debarments within DOT. The SAO sets forth standards for suspension and debarment policies and procedures for the Department of Transportation, excluding the Office of Inspector General (OIG).~~

Suspension and Debarment Coordinator (SDC) means the program manager for the Suspension and Debarment Program at each OA and Office of the Secretary of Transportation. The SDC advises the Suspending and Debarring Official (SDO). The SDC coordinates all materials for presentation to the SDO for proposed suspension or debarment activities, enters information regarding any administrative agreement into the Federal Awardee Performance and Integrity Information System (FAPIIS), and enters information regarding suspensions and debarments into *SAM.gov.*

Suspending and Debarring Official (SDO) means the individual designated responsibility as authorized by the Secretary of DOT to impose procurement suspensions and debarments, exclusions, and other related matters pursuant to FAR part 9. Each OA and the OST has separately appointed SDOs. The SPE serves as the SDO for OST. A list of the OA-appointed SDOs is maintained on the OSPE website at *https://www.transportation.gov/assistant-secretary-administration/procurement/suspension-and-debarment*.

[*Unfair trade practices*. See definition at FAR 9.403, paragraph (3). The SPE is delegated authority to determine whether a knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply for certificates was furnished under DOT acquisitions.]

1209.405 Effect of listing.

(a) The SDO is **[delegated authority]** ~~authorized~~ to make a written determination of compelling reasons to solicit offers from, award contracts to, or consent to subcontract with contractors debarred, suspended, or proposed for debarment and that has an active exclusion record in the System for Award Management (SAM) in accordance with FAR 9.405.

(e)

(2) The SDO is **[delegated authority]** ~~authorized~~ to make a written determination of compelling reasons to consider a bid or offer from a contractor whose name or company is included on the listing.

(3) The SDO is **[delegated authority]** authorized to make a written determination of compelling reasons for a contracting officer to consider proposals, quotations, or offers received from any listed contractor that have an active exclusion record in SAM, and that such proposals, quotations, or offers may be evaluated for award or included in the competitive range, and, if applicable, discussions conducted with a listed ~~offeror as set forth in FAR 9.405(e)(3)~~.

1209.405-1 Continuation of current contracts.

(a) Notwithstanding the suspension, proposed debarment, or debarment of a contractor, contracting officers may continue contracts or subcontracts in existence at the time the contractor was suspended, proposed for debarment, or debarred, if authorized by the SDO and the SDO makes a written determination~~, consistent with the procedures described in FAR 9.405-1(a)~~ setting forth the compelling reasons for continuing such contract(s) and placing order(s).

(b) **[DOT is a covered agency as defined in FAR 9.110-1. DOT is prohibited from providing funds to an institution of higher education when an active exclusion record for the institution exists in the System for Award Management (SAM) (see FAR 9.110-3).]** ~~The SDO is delegated the authority on behalf of the Secretary of DOT to make the written determination required under FAR 9.405-1(b).~~

1209.405-2 Restrictions on subcontracting.

(a) The SDO is delegated the authority on behalf of the Secretary of DOT to authorize contracting officers to consent to subcontracts with contractors debarred, suspended, or proposed for debarment~~as required by FAR 9.405-2(a)~~.

1209.406 Debarment.

1209.406-1 General.

(**[d]**~~c~~) The OST Suspending and Debarring Official (SDO) and each OA-appointed SDO ~~(*see* 1209.403)~~ is authorized to continue business dealings between the agency and a contractor that is debarred or proposed for debarment under FAR 9.406~~-1(c), except under FAR 23.506(c)~~ if the SDO has made a written determination of compelling reasons justifying the continued business dealings **[(except see FAR 26.505-1(e) for certain non-delegable waiver authority of the Secretary of Transportation concerning 52.226-7, Drug-Free Workplace)].**

(**[e]**~~d~~) (1) The SDO's authority includes debarments from contracts for the purchase of Federal personal property pursuant to the Federal Management Regulation at **[41 CFR 102-38.]** ~~41 CFR 102-117.295 (*see* FAR 9.406-1(d)(1) through (2)).~~

1209.406-3 Procedures.

Contracting officers and contracting activities ~~shall~~ **[will]** comply with DOT Order 4200.5G, Suspension and Debarment, and Ineligibility Policies, and this subpart to include the following procedures—

(a) ***Investigation and referral.*** Any individual may submit a referral to debar an individual or contractor to the cognizant SDO (the debarring official) (*see* 1209.403). The referral for debarment ~~shall~~ **[must]** be supported with evidence of a cause for debarment listed in FAR 9.406-2 and this subpart. The contracting officer ~~shall~~**[will]** promptly report a proposed debarment action directly to the SDO. Upon review by the SDO, if the matter involves possible criminal or fraudulent activities, the SDO ~~shall~~**[must]** also refer the matter to the DOT Office of Inspector General to ensure coordination of appropriate activity. ~~The report shall contain the following information:~~

~~(1) The DOT official OA code to identify the OA taking action is as follows: DOT (general) (DOT-OST); Federal Aviation Administration (DOT-FAA); Federal Highway Administration (DOT-FHWA); Federal Motor Carrier Safety Administration (DOT-FMCSA); Federal Railroad Administration (DOT-FRA); Federal Transit Administration (DOT-FTA); Maritime Administration (DOT-MARAD); National Highway Traffic Safety Administration (DOT-NHTSA); Pipeline and Hazardous Materials Safety Administration (DOT-PHMSA); Office of the Assistant Secretary for Research and Technology (OST-R); and Great Lakes St. Lawrence Development Corporation (GLS).~~

~~(2) Name, address, and telephone number for the point of contact for the activity making the report.~~

~~(3) Name and address of the contractor.~~

~~(4) Names and addresses of the members of the board, principal officers, partners, owners, and managers.~~

~~(5) Names and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship.~~

~~(6) For each contract affected by the conduct being reported —~~

~~(i) The contract number;~~

~~(ii) Description of supplies or services;~~

~~(iii) The amount;~~

~~(iv) The percentage of completion;~~

~~(v) The amount paid to the contractor;~~

~~(vi) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom; and~~

~~(vii) The amount due to the contractor.~~

~~(7) For any other contracts outstanding with the contractor or any of its affiliates —~~

~~(i) The contract number(s);~~

~~(ii) The amount(s);~~

~~(iii) The amounts paid to the contractor;~~

~~(iv) Whether the contract(s) is assigned under the Assignment of Claims Act and, if so, to whom; and~~

~~(v) The amount(s) due the contractor.~~

~~(8) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor.~~

~~(9) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated).~~

~~(10) The comments and recommendations of the contracting officer and each higher-level contracting review authority regarding—~~

~~(i) Whether to suspend or debar the contractor;~~

~~(ii) Whether to apply limitations to the suspension or debarment;~~

~~(iii) The period of any recommended debarment; and~~

~~(iv) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contract is not included).~~

~~(11) When appropriate, as an enclosure to the report—~~

~~(i) A copy or extracts of each pertinent contract;~~

~~(ii) Witness statements or affidavits;~~

~~(iii) Copies of investigative reports;~~

~~(iv) Certified copies of indictments, judgments, and sentencing actions; and~~

~~(v) Any other appropriate exhibits or documents.~~

(b) ***Decision[-]making process.*** When the SDO finds preponderance of the evidence for a cause for debarment~~, as listed in FAR 9.406-2 or this subpart,~~ the contracting officer in conjunction with the SDC ~~shall~~**[will]** prepare a recommendation and draft notice of proposed debarment for the SDO's consideration. The contractor (and any specifically named affiliates) **[proposed for debarment]**~~are provided an opportunity to~~ **[may]** submit, in person, in writing, or through a representative, information and argument in opposition to ~~the~~**[a]** proposed debarment as set forth in paragraph (d) of this section.

(c) ***Notice of proposal to debar.*** DOT ~~shall~~**[must]** ~~send~~ **[issue]** the **[written]** notice of proposed debarment to the **[contractor and any specifically named affiliates in accordance with FAR 9.406.3(c).]**~~last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery to include by mail, to the last known street address, to the last known facsimile numbers, or to the last known email address. In the case of a contractor,~~ DOT may send the notice of proposed debarment to the contractor, any partner, principal, officer, director, owner or co-owner, or joint venture; to the contractor's identified counsel for purposes of administrative proceedings; or to the contractor's agent for the service of process. If sent by email, it ~~shall~~**[must]** be sent to the last known email addresses for all three, if known. Additionally, for each specifically named affiliate, the notice shall be sent to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agency for service of process. If sent by email, it shall be sent to the last known email addresses for all three, if known. ~~The SDO shall also ensure that the~~

~~appropriate parties are listed as excluded in the System for Award Management (SAM) in accordance with FAR 9.404.~~

(d) **[Suspending and]** ***~~D~~[d]ebarring official's decision.***

(1) If DOT does not receive a reply from the contractor within 30 calendar days after sending the notice of proposed debarment, the SDC ~~shall~~**[will]** prepare a recommendation in conjunction with the cognizant contracting officer and refer the case to the SDO for a decision on whether to debar based on the information available. If DOT receives a reply from the contractor within 30 calendar days after sending the notice of proposed debarment, the SDC in conjunction with the cognizant contracting officer ~~shall~~**[will]** consider the information in the reply before the SDC makes their recommendation to the SDO.

(2) The SDO reviews submittals and case documents, and acts in accordance with DOT Order 4200.5G and the General DOT Guidelines for Suspension and Debarment, paragraph 12c.

(i) The SDO, upon the request of the contractor proposed for debarment, ~~shall~~**[will]**, as soon as practicable, allow the contractor an opportunity to appear before the SDO to present information or argument, in person or through a representative. The contractor may supplement the oral presentation with written information and argument. This information submitted by a contractor proposed for debarment is known as a Presentation of Matters in Opposition as set forth in DOT Order 4200.5G. DOT ~~shall~~**[will]** conduct the proceeding in an informal manner and without requirement for a transcript. The SDO may use flexible procedures to allow a contractor to present matters in opposition via telephone or internet. If so, the debarring official should change the notice in paragraph (c) of this section to include those flexible procedures.

(ii) If the SDO finds the contractor's or individual's submission in opposition to the proposed debarment raises a genuine dispute over facts material to the proposed debarment and the debarment action is not based on a conviction or civil judgment, the SDC ~~shall~~ **[will]** submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO ~~shall~~ **[will]** conduct a fact-finding proceeding or ~~shall~~ refer the dispute to a designee for resolution pursuant to 1209.470. The SDC ~~shall~~ **[will]** provide the contractor or individual the disputed material fact(s).

(iii) If the proposed debarment action is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 1209.470, the SDO ~~shall~~**[will]** make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written arguments presented or submitted to the SDC by the contractor.

(e) ***Notice of [suspending and] debarring official's decision.*** In actions processed under FAR 9.406 where no suspension is in place and where a fact-finding proceeding is not required, DOT ~~shall~~ **[will]** make the final decision on the proposed debarment within 30 business days

after receipt of any information and argument submitted by the contractor by the means of delivery set forth in paragraph (c) of this section, unless the SDO extends this period for good cause.

1209.406-4 Period of debarment.

(b) The SDC, in conjunction with the contracting officer, may submit a recommendation to the SDO to extend or reduce the period of debarment, or amend the scope of the debarment, imposed under FAR 9.406.

1209.407 Suspension.

1209.407-1 General.

~~(b) For the purposes of FAR 9.407-1, the SDO is the suspending official under the Federal Management Regulation at 41 CFR 102-117.295.~~

(d) The SDO is authorized to make a written determination of compelling reasons justifying continuing business dealings between the agency and a contractor that is suspended. However, in accordance with FAR ~~23.506(e)~~**[26.505-1(e)]**, only the Secretary of Transportation may waive the suspension of contract payments, termination of a contract for default, or suspension of a contractor for actions under FAR subpart ~~23.5~~**[26.5]** and FAR ~~23.506~~ **[FAR 25.505-1]**.

1209.407-3 Procedures.

Contracting officers and contracting activities ~~shall~~ **[will]** comply with DOT Order 4200.5G, Suspension and Debarment, and Ineligibility Policies, and this subpart to include the following procedures—

(a) ***Investigation and referral.*** Any individual may submit a referral to suspend an individual or contractor to the SDC or SDO (the debarring official) (*see* 1209.403). The SDC ~~shall~~**[will]** promptly report, in writing, a proposed suspension action directly to the SDO. Upon review by the SDO, if the matter involves possible criminal or fraudulent activities, the SDO ~~shall~~**[will]** also refer the matter to the DOT OIG to ensure coordination of appropriate activity.

(b) ***Decision[-]making process.*** When the SDC finds adequate evidence of a cause for suspension, as listed in FAR 9.407-2, the SDC ~~shall~~**[will]** prepare a recommendation and draft notice of suspension for the SDO's consideration. After receipt of the report from the SDC, the SDO may request from interested parties, including the contractor if deemed appropriate, a meeting or additional supporting information to assist in the suspension decision. The SDC creates a case in the DOT Suspension and Debarment Tracking System as set forth in DOT Order 4200.5G. The contractor (and any specifically named affiliates) are provided an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed debarment as set forth in paragraph (d) of this section.

(c) ***Notice of suspension.*** DOT shall send the notice of suspension to the last known address of the individual or contractor, the individual or contractor's counsel, or agent for service of process, by certified mail, return receipt requested, or any other means that allows for confirmation of delivery to include by mail, to the last known street address, to the last known facsimile numbers, or to the last known email address. In the case of a contractor, DOT may send the notice of suspension to the contractor, any partner, principal, officer, director, owner or co-owner, or joint venture; to the contractor's identified counsel for purposes of administrative proceedings; or to the contractor's agent for the service of process. If sent by email, it ~~shall~~**[must]** be sent to the last known email addresses for all three, if known. Additionally, for each specifically named affiliate, the notice shall be sent to the affiliate itself, the affiliate's identified counsel for purposes of the administrative proceedings, or the affiliate's agency for service of process. If sent by email, it ~~shall~~**[must]** be sent to the last known email addresses for all three, if known. The SDO ~~shall~~**[will]** also ensure that the appropriate parties are listed as excluded in SAM in accordance with FAR 9.404. After reviewing the SDC's report, and any additional information received in accordance with paragraph (b) of this section, the SDO shall prepare and coordinate with legal counsel a written notice of suspension.

(5) The SDO, upon the request of the contractor suspended, ~~shall~~**[will],** as soon as practicable, allow the contractor an opportunity to appear before the SDO to present information or argument, in person or through a representative. The contractor may supplement the oral presentation with written information and argument. DOT ~~shall~~**[will]** conduct the proceeding in an informal manner and without requirement for a transcript.

(6)

(i) If the SDC finds the contractor's or individual's submission in opposition to the suspension raises a genuine dispute over facts material to the suspension, or for the purposes of FAR 9.407-3(b)(2), in actions not based on an indictment, the SDC ~~shall~~**[will]** submit to the SDO the information establishing the dispute of material facts. If the SDO agrees there is a genuine dispute of material facts, the SDO ~~shall~~**[will]** conduct a fact-finding proceeding or refer the dispute to a designee for resolution pursuant to 1209.470. The SDC ~~shall~~**[must]** provide the contractor or individual the information that established the dispute of material fact(s) in advance of the fact-finding proceeding, in the event the contractor would like to add to the facts prior to the decision of the SDO.

(ii) If the suspension is based on a conviction or civil judgment, or if there are no disputes over material facts, or if any disputes over material facts have been resolved pursuant to 1209.470, the SDO ~~shall~~**[will]** make a decision on the basis of all information available including any written findings of fact submitted by the designated fact finder, and oral or written arguments presented or submitted by the contractor. The contractor may supplement the oral presentation with written information and argument. The proceeding will be conducted in an informal manner and without requirement for a transcript.

(d) ***Suspending official's decision.*** The SDO shall notify the contractor of the decision whether to impose a suspension. The SDO ~~shall~~**[will]** then forward the original signed decision to the

contracting officer for inclusion in the contract file. The SDO reviews submittals and case documents~~,~~ and acts in accordance with DOT Order 4200.5G and the General DOT Guidelines for Suspension and Debarment, paragraph 12c. The SDO may use flexible procedures to allow a contractor to present matters in opposition via telephone of internet. If so, the debarring official should change the notice in paragraph (c) of this section to include those flexible procedures.

1209.470 Fact-finding procedures.

The provisions of this section constitute the procedures to be used to resolve genuine disputes of material fact pursuant to 1209.406-3 and 1209.407-3. The SDC ~~shall~~**[will]** establish the date for the fact-finding hearing, normally to be held within 30 business days after notifying the contractor or individual that the SDO has determined a genuine dispute of material fact(s) exists.

(a) The Government's representative and the contractor ~~shall~~**[will]** each have an opportunity to present evidence relevant to the genuine dispute(s) of material fact identified by the SDO. The contractor or individual may appear in person or through counsel at the fact-finding hearing and should address all defenses, contested facts, admissions, remedial actions taken, and, if a proposal to debar is involved, mitigating and aggravating factors. The contractor or individual may submit documentary evidence, present witnesses, and confront any person the agency presents.

(b) Witnesses may testify in person. Witnesses will be reminded of the official nature of the proceedings and that any false testimony given is subject to criminal prosecution. Witnesses are subject to cross-examination. The fact-finding proceeding is an informal evidentiary hearing, during which the Rules of Evidence and Civil Procedure do not apply. Hearsay evidence may be presented and will be given appropriate weight by the fact-finder.

(c) The proceedings ~~shall~~**[will]** be transcribed and a copy of the transcript ~~shall~~**[will]** be made available at cost to the contractor upon request, unless the contractor and the factfinder, by mutual agreement, waive the requirement for a transcript.

(d) The fact-finder ~~shall~~**[will]** prepare a written finding(s) of fact for the record by a preponderance of the evidence for proposed debarments, and by adequate evidence for suspensions. A copy of the findings of fact shall be provided to the SDO, the Government's representative, and the contractor or individual. The SDO will consider the written findings of fact in the decision regarding the suspension or proposed debarment.

1209.471 Appeals.

Based on the decision by the SDO, the respondent may elect to request reconsideration as provided for in paragraph (a) of this section. If the request for reconsideration is denied, the respondent may seek judicial review as provided for in paragraph (b) of this section.

(a) ***Request for reconsideration.*** Upon receiving a final decision to debar from the SDO, a debarred individual or entity may ask the SDO to reconsider the debarment decision or to

modify the debarment by reducing the time period or narrowing the scope of the debarment. This request must be in writing and supported with documentation.

(b) ***Judicial review.*** A suspended or debarred individual or entity may seek judicial review upon denial of a request for reconsideration.

Subpart 1209.5—Organizational and Consultant Conflicts of Interest

[1209.503 Waiver.

The head of the contracting activity (HCA) (non-delegable) is delegated waiver authority under FAR 9.503.]

1209.507 Solicitation provisions and contract clause.

[1209.507-1 Solicitation provisions.

Insert a clause substantially the same as the clause at 1252.209-70, Organizational and Consultant Conflicts of Interest, as applicable, in solicitations and contracts.]

1209.507-2~~70~~ Contract clause~~s~~.

~~(a) In accordance with FAR 9.507-2, the contracting officer shall insert a clause substantially the same as the clause at 1252.209-70, Organizational and Consultant Conflicts of Interest, as applicable, in solicitations and contracts.~~

~~(b) In accordance with FAR 9.507-2, the contracting officer shall i~~**[I]**nsert a clause substantially the same as the clause at 1252.209-71, Limitation of Future Contracting, as applicable, in solicitations and contracts.

~~**Subpart 1209.6—Contractor Team Arrangements**~~

~~**1209.602 General.**~~

~~(c) Contracting officers shall require offerors to disclose teaming arrangements as a part of any offer. The teaming arrangement shall be evaluated as a part of overall prime contractor responsibility, as well as under the technical and/or management approach evaluation factor where applicable.~~

Part 1252 – Solicitation Provisions and Contract Clauses (RFO Deviation)

Subpart 1252.2—Texts of Provisions and Clauses

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1252.209-70 Organizational and Consultant Conflicts of Interest. [(SEP 2026) (RFO Deviation)]
1252.209-71 Limitation of Future Contracting. [(SEP 2026) (RFO Deviation)]

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Subpart 1252.2—Texts of Provisions and Clauses

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1252.209-70 Organizational and Consultant Conflicts of Interest.

As prescribed in 1209.507-~~270(a)~~**[1]**, ~~the contracting officer shall~~ insert a clause substantially as follows in solicitations and contracts:

Organizational and Consultant Conflicts of Interest (~~NOV 2022~~[SEP 2026])[(RFO DEVIATION)]

(a) An offeror ~~shall~~**[must]** identify in its proposal, quote, bid or any resulting contract, any potential or actual Organizational and Consultant Conflicts of Interest (OCCI) as described in FAR subpart 9.5. This includes actual or potential conflicts of interests of proposed subcontractors. If an offeror identifies in its proposal, quote, bid or any resulting contract, a potential or actual conflict of interests the offeror shall submit an Organizational and Consultant Conflicts of Interest Plan (OCCIP) to the contracting officer. The OCCIP ~~shall~~**[must]** describe how the offeror addresses potential or actual conflicts of interest and identify how they will avoid, neutralize, or mitigate present or future conflicts of interest.

(b) Offerors must consider whether their involvement and participation raises any OCCI issues, especially in the following areas when:

(1) Providing systems engineering and technical direction.

(2) Preparing specifications or work statements and/or objectives.

(3) Providing evaluation services.

(4) Obtaining access to proprietary information.

(c) If a prime contractor or subcontractor breaches any of the OCCI restrictions, or does not disclose or misrepresents any relevant facts concerning its conflict of interest, the government may take appropriate action, including terminating the contract, in additional to any remedies that may be otherwise permitted by the contract or operation of law.

(End of clause)

1252.209-71 Limitation of Future Contracting.

As prescribed in 1209.507-2~~70(b)~~, ~~the contracting officer shall~~ insert a clause substantially as follows in solicitations and contracts:

Limitation of Future Contracting (~~NOV 2022~~[SEP 2026]) [RFO DEVIATION)]

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, prospective offerors are encouraged to review FAR subpart 9.5—Organizational Conflicts of Interest.

(b) The nature of this conflict is [*describe the conflict*].

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing government contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time ~~shall~~**[will]** in no case be less than the duration of the initial ensuing contract).

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and if these data remain proprietary or confidential, the Contractor shall protect such data from unauthorized use and disclosure and agrees not to use the data to compete with those other companies.

(End of clause)

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