

CLIENT UPDATE

JOSHUA S. ROFFMAN

APRIL 2026

FAR COUNCIL ISSUES FEDERAL ACQUISITION REGULATION MODEL DEVIATION FOR IMPLEMENTATION OF EXECUTIVE ORDER 14398

The Federal Acquisition Regulatory Council (FAR Council) has issued its Federal Acquisition Regulation (FAR) [deviation](#) for implementation of Executive Order 14398 (EO 14398). New FAR clause 52.222-90 implements the definitions and six-paragraph contract clause from EO 14398.

Highlights:

- 1) Clause is applicable to contracts and subcontracts at all tiers above the micro-purchase threshold (currently \$15,000).
- 2) Clause to be inserted into all new solicitations and resulting contracts with values over the micro-purchase threshold beginning April 24.
- 3) “[C]ontracting officers must make every effort to bilaterally modify existing contracts by July 24, 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." Contracting officers have discretion on whether to modify contracts that expire by December 31, 2026.

- 4) The FAR clause adds a new paragraph (c), which explicitly requires the contractor as well as subcontractors to include the clause in subcontracts (i.e., flow down requirement): "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, for which the place of delivery or performance is in the United States."
- 5) Clauses have been added to the FAR sections on debarment and suspension to incorporate failure to comply with new FAR clause 52-222.90 as a basis for debarment or suspension.

This clause is coming and it's coming now. It's not theoretical. Appropriate due diligence is an immediate action item. Contact one of the Roffman Horvitz attorneys listed below for assistance.

Joshua S. Roffman
Managing Attorney
jroffman@roffmanhorvitz.com
(703) 752-3775

Alissa A. Horvitz
Member Attorney
ahorvitz@roffmanhorvitz.com
(703) 752-3776

James M. McCauley
Of Counsel
jmccauley@roffmanhorvitz.com
(703) 752-3766