



Homeland  
Security

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Sarah Green  
Deputy Chief Procurement Officer

SUBJECT: FAR Class Deviation (Number 25-18) for FAR Part 26 in Support  
of Executive Order on Restoring Common Sense to Federal  
Procurement

1. **Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 26 for purposes of implementing the FAR Council's model deviation text to FAR Part 26.
2. **Background.** [Executive Order \(E.O.\) 14275, Restoring Common Sense to Federal Procurement](#), signed April 15, 2025, mandates a comprehensive review and simplification of the FAR.

The FAR is being updated to:

- Eliminate non-statutory language
- Remove redundant or obsolete language
- Enhance clarity through plain language
- Align with the new FAR framework
- Preserve essential governmentwide acquisition standards

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative. This initiative will make the FAR more concise, understandable, and focused on core procurement requirements.

3. **Summary of Changes.** FAR Part 26, Other Socioeconomic Programs, has been reorganized within each subpart to follow the acquisition process (i.e., steps to take before solicitation vs. after award). This new structure makes it easier and faster to find needed information at each stage of a procurement.

Statutory requirements retained in the RFO FAR part 26 model deviation include, but are not limited to, the following:

- 6 U.S.C. § 796, Registry of Disaster Response Contractors

- 25 U.S.C. § 1544, Additional Compensation to Contractors of Federal Agency
- 41 U.S.C. §§ 8101 et seq, Drug Free Workplace
- 42 U.S.C. § 1792, Promoting Federal Food Donation
- 42 U.S.C. § 5150, Use of Local Firms and Individuals
- Pub. L. 100-707 (42 U.S.C. §§ 5121 et seq), Robert T. Stafford Disaster Relief and Emergency Assistance Act
- Pub. L. 114-328 Section 816, Amendments to Special Emergency Procurement Authority
- Pub. L. 114-328 Section 1641, Special Emergency Procurement Authority to Facilitate the Defense Against or Recovery from a Cyber Attack
- E.O. 12928, Promoting Procurement with Historically Black Colleges and Universities, and Minority Institutions

Change	Description
Retained	<ul style="list-style-type: none"> <li>• All <b>subparts remain</b>. The subparts are restructured from numerous scattered sections to sections that now reflect the acquisition lifecycle.</li> <li>• The core tenets of the programs governed by part 26 are preserved. <ul style="list-style-type: none"> <li>○ The <b>5% incentive payment</b> for utilizing Indian organizations and Indian-owned economic enterprises as subcontractors remains allowable and is renumbered as 26.102-1.</li> <li>○ The statutory preference for <b>awarding contracts to local firms</b> in the aftermath of a major disaster or emergency remains and is renumbered as 26.202-1.</li> <li>○ The policy to <b>encourage the participation of Historically Black Colleges and Universities and Minority Institutions</b> in federal procurement continues and is renumbered as 26.301-1.</li> <li>○ The policy encouraging contractors to <b>donate excess wholesome food</b> remains the same and is renumbered as 26.402-1.</li> <li>○ The fundamental requirements to <b>maintain a drug-free workplace</b> continues and is renumbered as 26.504-1.</li> </ul> </li> <li>• All existing provisions and clauses are retained. The following clauses are updated: <ul style="list-style-type: none"> <li>○ <b>Clause 52.226-1</b>, Utilization of Indian Organizations and Indian-Owned Economic Enterprises.</li> <li>○ <b>Clause 52.226-6</b>, Promoting Excess Food Donation to Nonprofit Organizations. This clause no longer flows down to subcontractors.</li> </ul> </li> </ul>
Removed	<ul style="list-style-type: none"> <li>• Former sections 26.601, “<b>Purpose</b>”, 26.602, “<b>Applicability</b>”, and 26.603, “<b>Definitions</b>” are removed. The clause at 52.226-8 retains the definitions.</li> <li>• Former section 26.303, <b>Data collection and reporting requirements</b> is removed. Detailed data on contract awards is already captured and tracked through other methods (e.g., the</li> </ul>

	<p>Federal Procurement Data System (FPDS)).</p> <ul style="list-style-type: none"> <li>• The procedures for challenges to representations under the <b>Indian Incentive Program</b> were removed from FAR part 26.103 and may be incorporated into non-regulatory guidance.</li> <li>• Information pertaining to the <b>Disaster Response Registry</b> was removed from FAR part 26.205 and may be covered in non-regulatory guidance.</li> <li>• Procedures related to the <b>Food Donation Program</b> were removed from FAR 26.403 and may be retained in non-regulatory guidance.</li> </ul>
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This table is not an exhaustive list.

#### 4. Instructions.

- The Department of Homeland Security (DHS) acquisition workforce shall follow the RFO Part 26 deviation text instead of FAR Part 26 as codified at 48 CFR Chapter 1. The Council's RFO Part 26 model deviation text is available at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-26>.
- See Attachment 1 for changes to FAR Part 26 solicitation provisions and contract clauses.
- Do not include any of the removed provisions or clauses in future solicitations and contracts.
- For open solicitations or awarded contracts, 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 the contract.

**5. Applicability.** This class deviation applies to all DHS procurements.

**6. Authority.** This class deviation is issued under the authority of [E.O. 14275](#), [OMB M- 25-25](#), 48 CFR 1.4, and RFO FAR 1.304.

**7. Effective Date.** This class deviation is effective November 3, 2025 and remains in effect until rescinded or incorporated into the FAR.

**8. Points of Contact.** Questions regarding this class deviation may be directed to Acquisition Policy and Legislation Branch at [Acquisition.Policy@hq.dhs.gov](mailto:Acquisition.Policy@hq.dhs.gov).

#### Attachments:

1. FAR Part 26 Solicitation Provisions and Contract Clauses Revisions

## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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### **Subpart 52.2—Text of Provisions and Clauses**

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#### **52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.**

As prescribed in 26.102-2, insert the following clause:

##### **Utilization of Indian Organizations and Indian-Owned Economic Enterprises (August 2025) (DEVIATION 25-18)**

(a) *Definitions.* As used in this clause:

*Indian* means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) (see 25 U.S.C. 1452) and any “Native” as defined in the Alaska Native Claims Settlement Act (see 43 U.S.C. 1602).

*Indian organization* means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

*Indian-owned economic enterprise* means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

*Indian tribe* means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA. See 25 U.S.C. 1452.

*Interested party* means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to receive a subcontract.

(b) *Opportunity to participate in subcontracts.* The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises maximum practicable opportunity to participate in the subcontracts it awards, while still efficiently performing its contract.

- (1) The Contracting Officer and the Contractor may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its own eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status.
  - (2) If the representation of a subcontractor is challenged, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Acquisition Management Director (<https://www.bia.gov/as-%20ia/ocfo/acquisitions>).
  - (3) BIA will determine the eligibility and notify the Contracting Officer. The Contractor shall not make an incentive payment within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be ineligible, the Contractor shall not make an incentive payment under the Indian Incentive Program.
  - (4) The Contractor may request an adjustment under the Indian Incentive Program to the following:
    - (i) The estimated cost of a cost-type prime contract.
    - (ii) The target cost of a cost-plus-incentive-fee prime contract.
    - (iii) The target cost and ceiling price of a fixed-price incentive prime contract.
    - (iv) The price of a firm-fixed-price prime contract.
  - (5) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract first awarded to the Indian organization or Indian-owned economic enterprise.
  - (6) The Contractor must prove the amount claimed. They must request an adjustment before completing contract performance.
- (c) *Incentive payment.* The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor.

(End of clause)

**52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.**

As prescribed in 26.402-2, insert the following clause:

**Promoting Excess Food Donation to Nonprofit Organizations  
(August 2025) (DEVIATION 25-18)**

(a) *Definitions.* As used in this clause-

*Apparently wholesome food* means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

*Excess food* means food that-

- (1) Is not required to meet the needs of the executive agencies; and
- (2) Would otherwise be discarded.

*Food-insecure* means inconsistent access to sufficient, safe, and nutritious food.

*Nonprofit organization* means any organization that is—

- (1) Described in section 501(c) of the Internal Revenue Code of 1986; and
- (2) Exempt from tax under section 501(a) of that Code.

(b) *Food donation.* The Contractor is encouraged to donate excess apparently wholesome food to nonprofit organizations that help food-insecure people in the United States, where practical and safe.

(c) *Costs.*

- (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and logistics of collecting, transporting, maintaining the safety of, or distributing the excess, apparently wholesome food to the nonprofit organization(s) helping food-insecure people.
- (2) Costs incurred for excess food donations are unallowable and, as such, the Contractor will not be reimbursed for any associated costs.

(d) *Liability.* The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good

FAR Class Deviation 25-18 for FAR Part 26 in Support of Executive Order on Restoring Common Sense to Federal Procurement, Attachment 1: FAR Part 26 Solicitation Provisions and Contract Clauses Revisions

Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(End of clause)