



October 6, 2025

Mr. Mathew Blum
Acting Administrator
Office of Federal Procurement Policy
Office of Management and Budget
Washington, DC 20503

Subject: Feedback on Federal Acquisition Regulation Overhaul – Parts 9, 33, & 49

Dear Mr. Blum,

On behalf of the Aerospace Industries Association (AIA), which represents the nation's leading aerospace and defense companies, we appreciate the opportunity to offer informal input on the proposed updates to Federal Acquisition Regulation (FAR) Part 9 (Contractor Qualifications), Part 33 (Protests, Disputes, and Appeals), and Part 49 (Termination of Contracts). We commend the Administration's ongoing commitment to modernizing and streamlining the FAR and have actively contributed feedback on previous revisions.¹ Our member companies have carefully reviewed the proposed changes to FAR Parts 9, 33, and 49, and respectfully submit the following comments and recommendations for consideration.

FAR Part 9: Contractor Qualifications

1. **Contractor Performance Record:** The revised FAR Part 9 significantly shortens the description of what constitutes a nonresponsible contractor, including eliminating certain qualifiers (i.e., "seriously deficient") and eliminating consideration of the number of contracts involved. While these revisions may be an attempt to streamline language in line with the objective of the FAR Overhaul, the changes could have a significant impact on whether contractors are deemed to be nonresponsible and are therefore not allowed to compete for federal contracts. For example, without these qualifiers and context, contracting officers may consider a contractor to be nonresponsible for any delivery delays, to include errors in modification processing, or late deliveries against only a small percentage of their total deliverables, which is not necessarily indicative of a nonresponsible contractor. To avoid unfairly labeling contractors as nonresponsible, AIA recommends revising the language to state: "*Satisfactory performance record*: Presume a prospective contractor is nonresponsible if it is or has recently been seriously deficient in contract performance, unless the circumstances were beyond the contractor's control, or the contractor has taken corrective action. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination." (Citation: revised FAR Subpart 9.104-3(b)).
2. **Conflicts of Interest:** The revised FAR Part 9 describes rules and procedures for identifying and resolving organizational conflicts of interest that can exist in certain circumstances. This includes situations where a contractor is providing systems engineering and technical direction for a system but does not have overall contractual responsibility for the system's development, integration, or production. As written, AIA is

¹ [AIA Feedback on Revised FAR Parts 1, 10, 34](#); [AIA Feedback on Revised FAR Parts 11, 18, 39, 43](#); [AIA Feedback on Revised FAR Part 6](#); [AIA Feedback on Revised FAR Parts 29, 31](#); [AIA Feedback on Revised FAR Part 35](#); [AIA Feedback on Revised FAR Part 50](#); [AIA Feedback on Revised FAR Part 5](#)

concerned that the language lacks clarity and could penalize ongoing research & development (R&D) efforts. To avoid penalizing innovation, while maintaining conflict-of-interest safeguards, AIA recommends refining the language to more clearly exclude R&D and iterative refinement from restrictions (Citation: revised FAR Subparts 9.505-1 and 9.508).

3. **Inclusion of Contract Clauses:** In several places, the revised FAR Part 9 directs contracting officers to “insert a clause *substantially the same* as...” Such phrases introduce inconsistency and subjectivity and provide an avenue for agency heads and contracting officers to implement deviations, seemingly counter to the overarching goal of streamlining and simplifying the federal procurement process. To eliminate ambiguity and ensure uniform application across agencies, AIA recommends requiring contracting officers to include the clause(s) as written (Citation: revised FAR Subpart 9.308-1(b)(1) and revised FAR Subpart 9.308-2(b)(1)-(3)).
4. **Definition of Qualified Lists:** The revised FAR Part 9 offers definitions for a “Qualified bidders list (QBL)” and a “Qualified manufacturers list (QML),” but does not offer a similar definition for a “Qualified product list (QPL).” As “QPL” is used throughout the subpart, AIA recommends adding a definition to ensure clarity and consistency (Citation: revised FAR Subpart 9.201).

Additionally, the revised FAR Part 9 incorrectly lists “OMLs” in place of “QMLs.” To maintain accurate terminology, AIA recommends correcting this administrative error (Citation: revised FAR Subpart 9.204(b)(3)).

FAR Part 33: Protests, Disputes, and Appeals

1. **Postaward GAO Protests:** The revised FAR Part 33 allows a contracting officer to direct a contractor to stop work if a protest is “likely to be filed.” The term “likely to be filed” is vague and subjective and places the burden on the contracting officer to anticipate a protest without a defined threshold or standard, which could lead to inconsistent application across agencies. Without guidance on what constitutes a “likely” protest, this provision could be misused or lead to unnecessary performance delays based on speculation rather than fact. Additionally, this provision may be unnecessary given existing FAR provisions that provide for automatic stays of performance when a protest is filed. To avoid confusion, AIA recommends reevaluating the need for this provision (Citation: revised FAR Subpart 33.105-3(a)).
2. **Party Responsible for Reimbursement:** The revised FAR Subpart 33.103(b)(3)(i)-(ii) replaces “awardee” with “contractor” when discussing the party responsible for reimbursement when a protest is sustained. AIA is concerned that this revision introduces unnecessary ambiguity regarding the party liable for reimbursing government costs. In this section, if the action (i.e., the protest) is sustained, it has been determined to be valid, and the “awardee” (i.e., the incumbent) would be the party that would be held liable for potential reimbursement. The filing “contractor” (i.e., the protester) would not be liable for reimbursement to the government on findings of misrepresentation. To ensure clarity regarding reimbursement responsibility, AIA recommends retaining the original language (i.e., “awardee”) (Citation: original FAR Subpart 33.102(b)(3)).

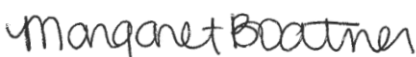
FAR Part 49: Termination of Contracts

1. **Release of Excess Funds & Restoration of Funds:** In situations where previous funding releases have created a shortage for settlement, the revised FAR Part 49 requires the contracting officer to restore the funds needed for such settlement within 30 days. However, AIA notes this process typically cannot be done without coordination with the contractor and typically requires more than 30 days. To allow for practical implementation, AIA recommends extending the required timeframe to 60 days (Citation: revised FAR Subpart 49.105-1(b)).
2. **Profit Determination:** The revised FAR Part 49 provides guidance regarding how terminating contracting officers (TCOs) should determine fair profit on a terminated fixed-price contract. To ensure consistency when determining fair profit, AIA recommends adding an explicit reference to paragraph (b), which provides additional considerations that should be made. AIA recommends the following language: “(a) The TCO can use any reasonable method to determine a fair profit taking into account the considerations in paragraph (b) of this section.” (Citation: revised FAR Subpart 49.202(a)-(b)).
3. **Government Assistance to Subcontractor Settlement:** The revised FAR Part 49 moves prior language that addressed government involvement in subcontractor settlement to guidance, and clarifies that, in some instances, the government may provide assistance to the prime contractor in the settlement of a subcontract. AIA recommends supplementing the guidance to encourage early government involvement in subcontractor settlements, where appropriate, as early government involvement often improves the efficiency of the settlement process (Citation: original FAR Subpart 49.108-6).

AIA supports ongoing efforts to enhance the efficiency, clarity, and agility of the federal procurement system. We welcome the Office of Management and Budget’s initiative to modernize the FAR and are committed to being an active partner throughout the FAR Overhaul process. AIA and its member companies look forward to engaging constructively and providing informed feedback as revised FAR Parts are released.

Thank you in advance for considering our views. Please direct any questions to the undersigned at margaret.boatner@aia-aerospace.org or 703-358-1085.

Sincerely,



Margaret Boatner
Vice President, National Security Policy