

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 39 – ACQUISITION OF
INFORMATION AND COMMUNICATION TECHNOLOGY**

Findings

1. The objective of this class deviation is to implement the Federal Acquisition Regulatory Council’s model deviation text to the Federal Acquisition Regulation (FAR) Part 39 - Acquisition of Information and Communication Technology, and applicable section of FAR Part 52 - Solicitation Provisions and Contract Clauses.
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”), in coordination with the other members of the Federal Acquisition Regulatory Council – i.e., the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA) and federal buying agencies. The goal is refocusing the FAR on its statutory roots. To that end, 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

The OMB memorandum M-25-26 established a two phased approach to implementing enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. Phase one involves the FAR Council issuing guidance on a rolling basis with clear, plain language model deviation text organized by FAR part. The goal is streamlining the regulation by aligning it more closely to its statutory base. According to the memorandum, agencies should adopt this model deviation text within 30 days by issuing individual or class deviations.

4. On May 2, 2025, the FAR Council issued further implementing guidance in a memorandum titled *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*. Pursuant to the FAR Council’s memorandum, “agencies that adopt the Council’s RFO class deviation text without change, or require different text only to address statutory direction unique to the agency, do not need to coordinate with the Council.”

5. On June 12, 2025, the FAR Council issued model deviation text for FAR Part 39 and the corresponding clause at FAR Part 52. FAR Part 39 - Acquisition of Information and Communication Technology - has been streamlined to be future forward and emphasize strategies that promote faster acquisition and secure deployment of technology that is new or emerging. Statutory requirements retained in the RFO FAR Part 39 model deviation include, but are not limited to, the following:

- 41 U.S.C. § 2308, Modular Contracting for Information Technology
- 40 U.S.C. § 1461, Procurement Procedures
- 29 U.S.C. § 794d, Electronic and Information Technology

Other key changes include:

Retained:

- The applicability of Part 39 to information technology, Internet of Things devices, and operational technology. Importantly, Part 39 clarifies its application to new or emerging technology.
- Agencies should continue to use modular contracting for incremental and successive contracts when acquiring IT.
- The prohibition on describing minimum experience or educational requirements is now discretionary rather than mandatory.
- Accessibility standards, including Section 508 compliance, are still required (with limited exceptions and exemptions) to ensure Federal employees and members of the public with disabilities have comparable access and use of information and data.
- Information regarding the management of risk has been streamlined. Both the contracting and program office offices are responsible for assessing, monitoring and controlling risk throughout the acquisition process.

Removed:

- Reference to OMB Circular No's A-127, Financial Management Systems, and A-130, Management of Federal Information Resources. These Circulars may still be applicable for certain procurements and use of them is more appropriate for a guide.
- Redundant prohibitions currently covered at FAR subparts 4.20, 4.21, 4.22, 4.23, and FAR Part 40 not unique to IT procurements.
- Clause 52.239-1, Privacy or Security Safeguards, and its prescription.

Determination

In accordance with FAR 1.304 *Class deviations* and Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Parts 39 and 52, it is hereby determined that a class deviation pursuant to OMB memorandum M-25-26 (Attachment 1) and the FAR Council memorandum (Attachment 2) issued on May 2, 2025, using the RFO model deviation text for Part 39 and the applicable section of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 39 in lieu of 48 Code of Federal Regulations (CFR) Part 39, and the RFO

model deviation text for the applicable section of Part 52 in lieu of 48 CFR 52.239-1. Once approved, the Department will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to the affected regulations. This class deviation is effective upon issuance, and will remain effective until cancelled or incorporated into the FAR.

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Attachments:

OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*
FAR Council Memorandum, *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*
RFO Parts 39 and 52 Model Deviation Text