

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 16 - TYPES OF CONTRACTS**

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 16 - Types of Contracts, and applicable sections 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"). The memorandum tasked the Office of Federal Procurement Policy (OFPP) with leading the 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:
 - 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 - Remove duplicative or outdated language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 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 either 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 September 30, 2025, the FAR Council issued model deviation text for FAR Part 16 and corresponding provisions and clauses at FAR Part 52. Pursuant to the RFO, FAR Part 16 has been revised to clarify complicated policies and procedures for selecting contract type and provide the acquisition workforce new tools and flexibilities to support the guiding principles for the FAR System as follows:

- **Innovative contract types** that empower contracting officers to use novel contract structures.
- **Task and delivery order procedure simplification** that will help reduce administrative errors, enhance consistency, and streamline the ordering process for both federal buyers and multiple-award contract holders.
- **On-and-off ramps** to maintain current, competitive, and innovative pools of vendors on multiple-award contracts.
- **Blanket purchase agreements** are allowed for repetitive requirements under all multiple award contracts, providing consistency with ordering procedures for Federal Supply Schedules.

Statutory requirements retained in the RFO FAR Part 16 model deviation include, but are not limited to, the following:

- 10 U.S.C. §§ 3321 et seq. and 41 U.S.C. §§ 3901 et seq., *Specific Types of Contracts*
- 10 U.S.C. §§ 3371 et seq., *Undefinitized Contractual Actions*
- 10 U.S.C. §§ 3401 et seq. and 41 U.S.C. 4101 §§ et seq., *Task and Delivery Order Contracts*
- 41 U.S.C. § 3302, *Requirements for Purchase of Property and Services Pursuant to Multiple Award Contracts*
- Pub. L. 109-364 Section 814 and 41 U.S.C. § 4711, *Linking of Award and Incentive Fees to Acquisition Outcomes*

In addition, the following table provides a non-exhaustive list of non-statutory requirements that have been revised and retained, or removed from Part 16:

| Change | Description |
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| Retained | <ul style="list-style-type: none"> • 16.001, <i>Definitions</i>, is retained without changes. • All provisions and clauses have been retained (or remain reserved) with no changes except for four noted in the “Moved/Updated” section below |
| Moved / Updated | <ul style="list-style-type: none"> • 16.000, <i>Scope of Part</i>, is updated to add an important new sentence: “Except for limited instructions regarding the placement of task and delivery orders, the entirety of this part |

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| | <p>applies to the pre-solicitation phase and is meant to guide in acquisition planning.”</p> <ul style="list-style-type: none"> • Subpart 16.1, <i>Selecting Contract Types</i>, has been significantly restructured to consolidate policies, emphasize documentation, and provide greater flexibility to contracting officers. • 16.101(a), <i>Policies</i>, clarifies that “contract types that promote the best interests of the Government, but are not described in this regulation, are permitted for use in accordance with agency procedures”. <ul style="list-style-type: none"> ○ This replaces the more restrictive policy in the former 16.102(b), which stated that unlisted contract types “shall not be used, except as a deviation under subpart 1.4”. ○ This update represents a deliberate shift from a restrictive to a permissive framework, empowering contracting officers to use novel and innovative contract structures consistent with the “Guiding Principles for the System” in RFO FAR 1.102. • 16.104, <i>Solicitation Provision</i>, updates the prescription for using the provision at “52.216-1, Type of Contract”. <ul style="list-style-type: none"> ○ It has been changed from mandatory (“The contracting officer shall...insert”) to discretionary (“The contracting officer may...insert”). ○ A new Alternate I has been added for use when the solicitation allows offerors to propose an alternative contract type, reinforcing the push for greater flexibility and industry input. • Subpart 16.2, <i>Fixed-Price Contracts</i>, is retained and streamlined to include updated guidance for ease of the reader. • Subpart 16.3, <i>Cost-Reimbursement Contracts</i>, has been substantially streamlined and reorganized by consolidating descriptions and relocating all incentive-based contract types to subpart 16.4, <i>Incentive Contracts</i>. The restructuring declutters the subpart by removing redundant text and consolidating guidance for complex incentive contract types. <ul style="list-style-type: none"> ○ New 16.302, <i>Cost contracts</i>, and 16.303, <i>Cost-sharing contracts</i>, are reduced to single-sentence descriptions, whereas the former text included separate subsections for <i>Description</i>, <i>Application</i>, and <i>Limitations</i>. ○ The content for <i>Cost-Plus-Incentive-Fee</i> (former 16.304) and <i>Cost-Plus-Award-Fee</i> (former 16.305) contracts has been deleted from this subpart and moved to 16.405 and 16.402-3, respectively. • Subpart 16.4, <i>Incentive Contracts</i>, has undergone a complete reorganization to consolidate all incentive-related policies and contract type descriptions into a single subpart. The changes |
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| | <p>centralize content, particularly for award-fee contracts, to ensure consistent application.</p> <ul style="list-style-type: none"> • Subpart 16.5, <i>Indefinite-Delivery Contracts</i>, has been revised to clearly outline the types of task and delivery order contracts and how to utilize them. • 16.504-4, <i>On-ramps and off-ramps</i>, is a new subsection that authorizes “on-ramping” (adding new contractors) and “off-ramping” (removing contractors) from a multiple-award contract during its ordering period. • The content of the former 16.505, <i>Ordering</i>, is now distributed across three new sections: <ul style="list-style-type: none"> ○ New 16.506, <i>Postaward Procedures for Placement of Task and Delivery Orders</i>, consolidates the general administrative requirements for contents of orders (formerly in 16.505(a)(7)) and other general post-award rules. ○ New 16.507, <i>Additional ordering procedures for multiple-award contracts</i>, is now the central location for all rules related to the requirement to provide fair opportunity to be considered for orders or Blanket Purchase Agreements (BPA). It is broken down by dollar value and contains the rules for orders below the micro-purchase threshold (MPT), fair opportunity for orders and BPAs above the MPT, exceptions to fair opportunity, brand-name justifications, and the new authorization for BPAs. <ul style="list-style-type: none"> ▪ 16.507-2(a)(2), under <i>Fair opportunity procedures</i>, emphasizes that the contracting officer has broad discretion to develop appropriate order placement procedures and encourages innovative techniques highlighted in the Periodic Table of Acquisition Innovations. ▪ 16.507-2(c)(3), <i>Blanket Purchase Agreements</i>, is a new subsection that explicitly authorizes the establishment of BPAs under multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts to fill repetitive needs, if authorized in the master contract. Note - contracting officers must establish ordering procedures in the BPA that ensure BPA holders (but not other multiple-award contractors) are provided the fair opportunity procedures in 16.507-3 through -5. ▪ 16.507-3 through -5 consolidate fair opportunity procedures and documentation requirements for orders valued above the MPT, above the simplified acquisition threshold (SAT), and above |
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| | <p>\$7.5 million (\$6 million prior to October 1, 2025).</p> <ul style="list-style-type: none"> ▪ 16.507-4(a), clarifies the requirement to provide fair notice of intent to place an order for orders or BPAs valued above the SAT. ▪ 16.507-5(a) clarifies additional fair notice requirements for orders or BPAs valued above \$7.5 million (\$6 million prior to October 1, 2025) (previously at 16.505(b)(1)(iii)-(iv)). ○ New 16.508, <i>Protests of orders</i>, consolidates all rules regarding the protest of task and delivery orders (previously at 16.505(a)(10)). • Subpart 16.6, <i>Time-and-Materials, Labor-Hour, and Letter Contracts</i> is improved for readability and to provide clarity on these high-risk contract types. • Subpart 16.7, <i>Agreements</i>, is updated with structural formatting updates to improve clarity. • The following provision and clauses have been updated to reflect plain language, update cross-references, or to correspond with updates made within the part: <ul style="list-style-type: none"> ○ 52.216-1 (Provision), <i>Type of Contract</i> ○ 52.216-7 (Clause), <i>Allowable Cost and Payment</i> ○ 52.216-21 (Clause), <i>Requirements</i> ○ 52.216-22 (Clause), <i>Indefinite Quantity</i> |
| Removed | <ul style="list-style-type: none"> • Obsolete <i>American Recovery and Reinvestment Act</i> of 2009 (Pub. L. 111-5) (ARRA) Provision (from former 16.505(a)(11)): All requirements related to publicizing orders funded by the ARRA have been removed as obsolete. |

Determination

In accordance with FAR 1.304 *Class deviations* (as implemented by DOE/NNSA class deviation) 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 16 and 52, it is hereby determined that a class deviation is appropriate 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 16 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 16 in lieu of 48 Code of Federal Regulations (CFR) Part 16, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections at 48 CFR 52.216-1 through 52.216-32. 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 16 and 52 Model Deviation Text