

**CLASS DEVIATION
FINDINGS AND DETERMINATION
DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR) PART 916 -
TYPES OF CONTRACTS**

Findings

1. The objective of this class deviation is to update the Department of Energy Acquisition Regulation (DEAR) Part 916 - *Types of Contracts* to implement the changes to the Federal Acquisition Regulation (FAR) Part 16 - *Types of Contracts* by the Federal Acquisition Regulatory Council (FAR Council) through the Revolutionary FAR Overhaul (RFO) initiative and make other deregulatory revisions to DEAR Part 916 pursuant to Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*.
2. On April 15, 2025, President Donald J. Trump issued 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 FAR Council. The goal is to refocus 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 - Remove duplicative or outdated language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 implement enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. During phase one, the FAR Council issued plain language model deviation text for all applicable FAR parts.

4. On September 30, 2025, the FAR Council issued model deviation text for FAR Part 16 and the corresponding sections of FAR Part 52, which the Department of Energy (DOE) and the National Nuclear Security Administration (NNSA) adopted through a class deviation (Attachment 3), issued via Policy Flash 2026-21 on January 2, 2026.
5. DOE, including NNSA, is implementing E.O. 14275 and the related FAR revisions from the RFO through updates to its FAR supplement (the DEAR) via class deviations. These

class deviations update FAR references in the DEAR, and make additional substantive changes, when necessary, driven by the RFO revisions to the relevant FAR parts, and the requirements of E.O. 14275 and OMB Memorandum M-25-26.

During phase one of the RFO – when the FAR is updated via class deviations incorporating the RFO model text – the DEAR will not be updated to align with the new FAR numbering structure. Once the RFO revisions to the FAR are finalized through formal rulemaking, the DEAR will be updated through formal rulemaking to align with the revised FAR numbering structure.

6. Accordingly, DEAR Part 916 is revised to update internal references following the RFO, as implemented by DOE/NNSA class deviation, and make plain language edits to improve readability, including changes to the active voice. The plain language edits are not intended to change existing DEAR requirements, but rather to improve clarity pursuant to the federal plain language guidelines as directed by the Plain Writing Act of 2010 (Pub. L. 111-274). Additionally, the DEAR is revised to replace the term “shall” with “must” or “will”.

Specifically, DEAR Part 916 is updated to:

- a. Add new section 916.000 *Scope* to provide a notation that all references within Part 916 are to be read as implemented through the DOE and NNSA class deviation for FAR Part 16 that implemented the RFO for FAR Part 16. This avoids having to reference the DOE/NNSA class deviation for FAR Part 16 after every FAR reference, which breaks up the sentence structure, disrupting flow and reducing readability.
- b. Delete the content and mark as reserved section 916.405-2 *Cost-plus-award-fee contracts* because the content was deemed partially duplicative of FAR requirements (FAR 16.402-2), which already require that award fee determinations to be based on the contractor’s “overall cost, schedule, and technical performance in the aggregate”, meaning that all three areas—cost, schedule, and technical—must be considered together when evaluating performance for award fee purposes, and partially excessively descriptive and advisory in nature that is not appropriate for regulation. The content of this subsection is not statutorily based or required by the principles of sound procurement, and is better suited for non-regulatory policy documents such as guides or handbooks.
- c. Reserve section 916.405 *Cost-reimbursement incentive contracts*, because the subsection under it is deleted pursuant to 6.b. above.
- d. Reserve subpart 916.4—*Incentive Contracts*, because the section under it is deleted pursuant to 6.c. above.
- e. Delete the content and mark as reserved section 916.504 *Indefinite-quantity contracts*, which prescribes procedures for establishing minimum ordering guarantees under indefinite-quantity, multiple award contracts, because the requirement is not statutorily based or required by the principles of sound procurement. The FAR already addresses the need to establish minimum guarantees and their application to all indefinite-delivery/indefinite-quantity

contracts. Adding further guidance or requirements creates redundancies and conflicts with the RFO policy of giving contracting officers greater discretion and responsibility.

- f. Section 916.505 *Ordering*, delete subparagraph (b)(8)(iii) because the content is not statutorily based or required by the principles of sound procurement, and, given its procedural nature, is better suited for non-regulatory policy documents such as guides or handbooks.

Determination

In accordance with DEAR 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Part 16 (Attachment 4), it is hereby determined that a class deviation is appropriate pursuant to OMB memorandum M-25-26 (Attachment 5), using the attached deviation text for DEAR Part 916 (Attachment 2) and applicable section of DEAR Part 952. Specifically, DOE/NNSA will use the deviation text for Part 916 in lieu of 48 Code of Federal Regulations (CFR) Part 916 and the deviation text for the applicable section of Part 952 in lieu of the corresponding applicable section at 48 CFR 952.216-7. 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 in effect until cancelled or incorporated into the DEAR.

Derek Passarelli,
Senior Procurement Executive
Department of Energy

William J. Quigley,
Deputy Associate Administrator
Office of Partnership and Acquisition Services
Senior Procurement Executive
National Nuclear Security Administration

Attachments:

1. DEAR Part 916 Deviation Text – Track Changes
2. DEAR Part 916 Deviation Text – Final
3. Class Deviation to Adopt Revolutionary FAR Overhaul (RFO) Part 16 - Types of Contracts
4. RFO FAR Part 16 Model Deviation Text
5. OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*