Date: November 9, 2026

U.S. DEPARTMENT of ENERGY

ACQUISITION LETTER

This Acquisition Letter is issued under the authority of the Senior Procurement Executives of DOE and NNSA. It is intended for use by the procurement professionals of DOE, primarily Contracting Officers, and other officials of DOE that participate in the acquisition process. Other parties are welcome to its information, but definitive interpretation of its effect on DOE Solicitations, Awards, and other related procedures and actions may only be made by DOE Contracting Officers.

Federal Acquisition Regulation No. AL 2027-01

Subject: Implementation of Executive Order 14402, *Promoting Efficiency, Accountability, and Performance in Federal Contracting* and Federal Acquisition Regulatory Council Memorandum Titled "Agency Implementation of Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting"

References:

Executive Order 14402*, Promoting Efficiency, Accountability, and Performance in Federal Contracting*
Federal Acquisition Regulatory Council Memorandum Titled "Agency Implementation of Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting"

FAR Part 16 - Types of Contracts

When is this Acquisition Letter (AL) effective?

This AL is effective immediately upon issuance.

When does this AL/FAL/OTL expire?

This AL remains in effect until superseded or canceled.

Who is the intended audience?

Department of Energy (DOE) and National Nuclear Security Administration (NNSA) contracting officers. Any reference in this guidance to DOE should be understood to include the NNSA, unless otherwise indicated.

Who are the points of contact?

DOE questions regarding this AL should be sent to the Contract and Financial Assistance Policy Division at DOE_OAPMPolicy@hq.doe.gov.

NNSA personnel may contact the Acquisition Policy and Oversight Division, Policy & Oversight Branch (NA-PAS-111), at (505) 845-5639.

What is the purpose?

The purpose of this AL is to provide guidance to the DOE acquisition community regarding DOE's implementation of Executive Order (E.O.) 14402, *Promoting Efficiency, Accountability, and Performance in Federal Contracting* and Federal Acquisition Regulatory Council (FAR Council) memorandum titled "Agency Implementation of Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting", and the supplement to the class deviation that implemented the Federal Acquisition Regulatory Council's model deviation text for Federal Acquisition Regulation (FAR) part 16 - *Types of Contracts* and applicable sections of Part 52 - *Solicitation Provisions and Contract Clauses*.

What types of actions are affected by this AL?

This AL applies to all DOE solicitations and contracts that use a contact type other than fixed-price, including cost-reimbursement, time-and-material, labor-hour, or any other non-fixed-price contract under FAR part 16. The AL applies at the contract/agreement level for single award indefinite delivery contracts (IDC) and Blanket Purchase Agreements (BPA), and at the task/delivery order/BPA order level for multiple award IDCs and BPAs.

In accordance with Section 2, paragraph (b)(iv)(A) and (B) of the E.O. the FAR Council memorandum (including the revised FAR 16.104(e)), and class deviation supplement to Revolutionary Federal Acquisition Regulation (FAR) Overhaul (RFO) FAR part 16, the approval requirements described in Section 2, paragraph (b)(ii) of the E.O. and FAR 16.104(c), as implemented in the class deviation supplement to RFO FAR part 16, do not apply to contracts that support response to an emergency, major disaster, or contingency operation; involve research and development; or pre-production development for major systems acquisitions.

What is the background information?

On January 2, 2026, DOE/NNSA issued a class deviation to implement the FAR Council's RFO model deviation to FAR part 16 - *Types of Contracts* and relevant sections of part 52 - *Solicitation Provisions and Contract Clauses*. The class deviation was transmitted by Policy Flash PF 2026-21.

On April 30, 2026, President Trump issued E.O. 14402, *Promoting Efficiency, Accountability, and Performance in Federal Contracting*, which established fixed-price contracts as the default and preferred method of procurement (91 FR 24325, May 5, 2026). Section 3 of the E.O. directs the Director of the Office of Management and Budget (OMB) to issue guidance to agencies to ensure consistent implementation of the E.O. and to propose amendments to the FAR, consistent with the policy in section 1 of the E.O. in coordination with the FAR Council. Section 2(f) of the E.O. directs agencies to utilize applicable deviations from provisions of the FAR to comply with the provisions of the E.O.

On June 25, 2026, the FAR Council issued a memorandum regarding "Agency Implementation of Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting," which provided guidance and updated the RFO model deviation text for FAR part 16 - *Types of Contracts*, with corresponding updates to part 52 - *Solicitation Provisions and Contract Clauses*, for purposes of implementing the requirements of E.O. 14402.

On September 14, 2026, DOE and NNSA adopted the revised RFO model deviation text by issuing a supplement to the class deviation that implemented the RFO model deviation text for FAR part 16 - *Types of Contracts* and part 52 - *Solicitation Provisions and Contract Clauses*. The class deviation supplement was transmitted by Policy Flash PF 2026-62.

What guidance is included in this AL?

Refer to the FAR Council memorandum and updated model deviation text for FAR part 16 and relevant sections of part 52 for the specific line-in/line-out updates. The changes are briefly summarized as follows:

- Establishes fixed-price contract types as the default and preferred contract type.
- Creates a new FAR 16.104 section that includes—
  - A new definition of covered contract or order; and
  - A new written justification requirement for covered contracts or orders.
- Makes various other revisions to FAR parts 16 and 52 to support the E.O. implementation.

General Actions.

- Pursuant to the class deviation supplement issued on September 14, 2026, the DOE acquisition workforce will use the revised RFO model deviation text identified in the class deviation supplement for FAR part 16 and applicable

sections of FAR part 52 in lieu of the model deviation text originally issued, and implement the FAR Council memorandum's guidance in new solicitations and resulting contracts and existing contracts, as described in the FAR Council memorandum.

- For DOE-funded acquisitions, pursuant to FAR 16.104(d)(2), the approval authority for the justification required for covered contracts valued at or above $10 million is the cognizant non-career Head of Departmental Element (HDE) for the program, or for programs that do not have a non-career HDE, the cognizant Under Secretary. For programs or offices that do not have a non-career HDE, the approval authority is the Deputy Secretary. For covered NNSA contracts valued at or above $10 million, the approval authority is the Under Secretary for Nuclear Security, Administrator of the NNSA.
- The $10 million threshold applies to the total potential value (including all options, estimated cost, and fees) of a covered contract or order as defined in FAR 16.104(a).
- For covered contracts or orders (see FAR 104(a)), that require approval pursuant to FAR 16.104(c), the justification will be in the form of a Determination and Findings (D&F), pursuant to FAR subpart 1.5, with appropriate approval signatures as required by established review and approval thresholds and the E.O. The HDE or Under Secretary approval may be documented on the D&F (via signature), or provided in a different written format documenting approval and included with the D&F. If the justification requires approval by the Deputy Secretary, the justification must be submitted to the cognizant Head of the Contracting Activity (HCA) for review and concurrence prior to submission to the Deputy Secretary for approval. NNSA will follow local guidance for documenting justification of covered contracts or orders pursuant to FAR 16.104(d).
- Pursuant to FAR 16.104(d), the justification must include an explanation for why a fixed-price arrangement is not suitable and address all the requirements of FAR 16.103, as applicable.
- The justification must be maintained in the official contract file, pursuant to FAR Companion FC 4.101. Copies of such justifications may also be maintained separately by the Contracting Activity to support the reporting requirements of the E.O.
- For BPAs, pursuant to FAR 16.104(c)(4), the justification requirements of E.O. 14402, as implemented in FAR 16.104, apply at the BPA level for single award BPAs and will be based on whether the estimated total value of the known and forecasted covered BPA orders is valued at or above the $10 million threshold, and at the order level for multiple award BPAs and will be based on the value of each covered order.
- For assisted acquisitions where DOE is the servicing agency—
    - Use the FAR 16.104(c)(1) threshold applicable to the requesting (funding) agency to determine whether approval by the head of the agency (or their delegee) is required. For example, if the requesting (or funding) agency is DoD, the threshold is $100 million.
    - The applicable DOE approval authority is responsible for developing,

approving, and reporting the justification, unless otherwise stated in the interagency agreement that the requesting (or funding) agency is responsible for these responsibilities.

- Contracting activities must review related procedures and guidance to ensure this Supplement is properly implemented.

Specific Actions. For covered contracts or orders, as defined in FAR 16.104, follow the below, in conjunction with General Actions section above.

- For solicitations issued before July 15, 2026, but resulting contracts or orders awarded on or after July 15, 2026, a justification pursuant to FAR 16.104(d) should be approved no later than July 15, 2027.
- For solicitations issued on or after July 15, 2026, a justification pursuant to FAR 16.104(d), must be approved prior to the release of the solicitation.
- For existing covered contracts or orders, if the remaining period of performance (including options) is at least 18 months or longer, a justification pursuant to FAR 16.104(d), must be prepared prior to the exercise of the next option period and approved no later than July 15, 2027, or, if the option period is exercised after July 15, 2027, the justification must be prepared and approved prior to the exercise of the option period.