# Subpart 701.4—Deviations from the FAR or AIDAR

**Parent topic:** PART 701—FEDERAL ACQUISITION REGULATION SYSTEM

## 701.402 Policy.

It is USAID policy to approve deviations from the mandatory requirements of the FAR and AIDAR only if it is essential to effect necessary procurement actions and when special and exceptional circumstances make such deviation clearly in the best interest of the Government.

## 701.470 Procedure.

(a) *Deviation from the FAR or AIDAR affecting one contract or transaction.*

(1) Deviations that affect only one contract or procurement require prior approval by the head of the contracting activity.

(2) In preparing and submitting deviations for approval, USAID operating units must follow the applicable USAID policies in the ADS 300 series, including mandatory written consultations with the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P) and the Office of the General Counsel. For deviations related to AIDAR appendices D and J, Director of M/OAA clearance is required in lieu of M/OAA/P consultations, as outlined in appendices D and J. The CO must retain all approved deviations in the contract file.

(b) *Class deviations from the FAR or AIDAR.* Class deviations are those that affect more than one contract or contractor. Deviations involving basic ordering agreements or indefinite-delivery contracts are class deviations as they are considered to involve more than one contract.

(1) Class deviations from the AIDAR will be processed in the same manner as prescribed in paragraph (a)(2) of this section.

(2) Class deviations from the FAR will be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) pursuant to FAR 1.404. M/OAA/P is responsible for consultations with the C/CAAC. If the head of the contracting activity determines that urgency precludes such consultations, the deviation must include the reason, certified by the head of the contracting activity, for not coordinating with the C/CAAC and must be promptly shared with M/OAA/P. M/OAA/P is responsible for notifying the C/CAAC of the class deviation.

(3) Individual heads of contracting activities have authority to approve class deviations affecting contracts only within the contracting activity under their management authority. Only the M/OAA Director has authority to approve class deviations that affect more than one contracting activity.

(4) Class deviations from the FAR and the AIDAR will expire two (2) years from the date of approval, unless a shorter period is specified in a deviation or approval is rescinded. Class deviations from the FAR or the AIDAR that are based on statutory requirements or those that are in an active agency or Federal rulemaking process may extend beyond the 2-year period until the rulemaking is completed.

Expiration of the deviation or the completion of related rulemaking ends its availability for use in future awards and modifications. Expiration dates must be shown on all class deviations.

(5) Class deviations cannot be extended, except as provided in paragraph (b)(3) of this section. A new deviation to replace an expiring deviation must be prepared and approved in accordance with applicable Agency policy.

(6) Approved class deviations must be retained by the issuing office and also in each contract file where the deviation is used.

(c) *Deviation request requirements.* All requests for deviations must contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, and, as applicable, the name(s) of the contractor(s), and the contract or task order number(s).

(d) *Award terms.* Once the terms and conditions of an award are approved based on a deviation, they remain in effect unless such authority is limited by the terms of the contract or removed by a modification.