

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 37 – SERVICE
CONTRACTING**

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 37 – Service Contracting, 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”), 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 September 25, 2025, the FAR Council issued model deviation text for RFO FAR Part 37 – Service Contracting, and the corresponding clauses at FAR Part 52 – Solicitation Provisions and Contract Clauses. RFO FAR Part 37 has been updated with a new structure that is more logical and easier to follow. The changes focus on two key themes: emphasizing policy priorities and organizing guidance to follow the acquisition lifecycle.

Previously, critical topics like Performance-Based Acquisition (PBA), rules on personal services, and the prohibition on contracting for inherently governmental functions were either embedded within broader sections or placed at the end of the Part. Now, these topics have been elevated into their own distinct subparts at the very beginning of the regulation. Placing PBA first, for example, is a deliberate signal of policy emphasis.

Additionally, each of these new subparts is organized to mirror parts of the acquisition process. Sections are now titled “Presolicitation,” “Evaluation and Award,” and “Postaward” where applicable. This turns the regulation into a procedural roadmap, guiding users through the steps at each phase of the acquisition. Statutory requirements retained in the RFO FAR Part 37 model deviation include, but are not limited to, the following:

- 5 U.S.C. §§ 3101-3116, Employment Authorities
- 10 U.S.C. § 3133, Contracts for Periods Crossing Fiscal Years: Severable Service Contracts; Leases of Real or Personal Property, and 41 U.S.C. § 3902, Severable Services Contracts for Periods Crossing Fiscal Years
- 10 U.S.C. § 3744 and 41 U.S.C. § 4304, Specific Costs not Allowable
- 10 U.S.C. § 4507, Procurement of Services: Contracts for Professional and Technical Services
- 34 U.S.C. § 20351, Requirement for Background Checks
- 40 U.S.C. §§ 3141-3148, Wage Rate Requirements
- 41 U.S.C. § 1709, Contracting Functions Performed by Federal Personnel
- 41 U.S.C. § 4105, Advisory and Assistance Services
- 41 U.S.C. §§ 6701-6707, Service Contract Labor Standards
- Pub. L. 106-398, Sec 821, Improvements in Procurements of Services

Other key changes include, but are not limited to the following:

Retained:

- Section 37.000, “Scope of Part”, is retained and revised for brevity and focus. The legacy text included a detailed list of other applicable FAR parts (35, 36, 39, 47), a statement of precedence for those parts, and a specific reference to the Service Contract Labor Standards. The revised text removes these specific cross-references, retaining only the core statement that the Part prescribes policy for service contracts and applies to all such contracts and orders.
- Subsection 37.101-1, “Policy”, located under “Presolicitation” for PBA, retains the mandate to use PBA methods to the maximum extent practicable, lists the

same exceptions (architect-engineer services, construction, utility services, and incidental services), and retains the required order of precedence for contract types. The language clarifies that this policy applies to acquisitions of commercial services using FAR part 12 procedures.

- Subsection 37.102-1, “Procedures”, under “Evaluation and award” for PBA, consolidates and rewrites the content from the legacy sections 37.601, 37.602, and 37.603. It clarifies the relationship between the Performance Work Statement (PWS) and the Statement of Objectives (SOO), stating that the SOO is used to guide PWS development but does not become part of the contract. It also incorporates the requirements for describing work in terms of outcomes and using measurable performance standards.
- Subsection 37.201-1, “Policy”, under “Presolicitation” for Personal Services, retains the requirement that agencies must not contract for personal services unless specifically authorized by statute.
- The following provisions and clauses are retained with no changes to text:
 - 52.237-1 (Provision), Site Visit
 - 52.237-2 (Clause), Protection of Government Buildings, Equipment, and Vegetation
 - 52.237-3 (Clause), Continuity of Services
 - 52.237-4 (Clause), Payment by Government to Contractor
 - 52.237-5 (Clause), Payment by Contractor to Government
 - 52.237-6 (Clause), Incremental Payment by Contractor to Government
 - 52.237-10 (Provision), Identification of Uncompensated Overtime

Moved/Updated:

- Most of the definitions previously at section 37.101 have been relocated to more relevant areas of the part. The definition of “Service contract” has been updated and moved to a new section at the part level, 37.001, “Definition”. The definitions of “Child care services”, “Adjusted hourly rate (including uncompensated overtime)”, and “Uncompensated overtime” have been relocated to subparts 37.5 and 37.8.
- Subpart 37.1, “Performance-based Acquisition” is a new subpart that represents a major consolidation and elevation of PBA policy. It merges the policy preference for PBA from the former 37.102(a) with the procedural guidance from the entirety of the former Subpart 37.6. Placing all PBA content into a single, high-level subpart streamlines the regulation and makes the guidance significantly easier for contracting personnel to locate and apply. Under the old structure, a user had to read 37.102(a) to understand that PBA was the preferred method and then navigate to the very end of the part to find the implementation details.
- Subpart 37.2, “Personal Services”, is created by consolidating and substantially rewriting the content from the former 37.104. This gives the critical topic of personal services its own dedicated, high-visibility subpart.
 - Subsection 37.201-2, “Characteristics of personal services contracts”, replaces the lengthy, six-factor descriptive guide previously located at 37.104(d).

- Subpart 37.3, “Inherently Governmental Functions”, consolidates policy previously found in two separate locations: the one-sentence prohibition from the former 37.102(c) and the detailed oversight requirements from the former 37.114. The new structure logically groups the presolicitation prohibition with the necessary post-award administration actions, presenting a complete, unified block of guidance.
- Subpart 37.4, “Advisory and Assistance Services (A&AS)”, is the reorganized successor to the former Subpart 37.2. The content has been restructured into the new acquisition lifecycle format.
 - 37.401, “Definition”, relocates the definition of “Covered personnel” from the former 37.201.
 - 37.402-1, “Policy”, provides clarity on the types of A&AS for which agencies may contract.
 - 37.402-3, “A&AS contracts for the evaluation of proposals”, clarifies the timing requirement for the agency head’s determination regarding the availability of personnel for proposal evaluation, stating that the contracting officer must ensure, to the maximum extent practicable, the determination is made prior to issuing the solicitation, or if the need arises later, prior to granting the A&AS contractor access to proposal material.
- Subpart 37.5, “Child Care Services”, is a new subpart created by consolidating the definition of “Child care services” from former 37.101 with the contracting officer’s responsibility for ensuring criminal history background checks from former 37.103(d). This consolidation creates a single, easy-to-find location for all rules related to this specific category of service contracts, improving usability and ensuring this important safety requirement is not overlooked.
- Subpart 37.6, “Nonpersonal Health Care Services”, is renumbered and reorganized from the former Subpart 37.4. The content is restructured into the lifecycle format, which clarifies the timing of the contracting officer’s actions regarding medical liability insurance.
 - 37.601-2, “Procedures”, adds a procedural step, explicitly instructing the contracting officer to insert the necessary insurance coverage values into paragraph (a) of the clause at 52.237-7.
- Subpart 37.7, “Dismantling, Demolition, or Removal of Improvements”, is renumbered and reorganized from the former Subpart 37.3. The content is largely the same but is now organized under a single “Presolicitation” section (37.701), as most of the content relates to structuring the solicitation and contract. The language has been slightly revised for clarity and readability.
- Subpart 37.8, “Other Service Considerations”, is a new subpart that acts as a consolidated home for various standalone content that was previously scattered throughout the former Subpart 37.1. The following illustrates this major consolidation effort.
 - Uncompensated Overtime: Content from the former 37.115 and the related definitions previously at 37.101 are consolidated and

- reorganized into new sections 37.801 (Definitions), 37.802 (Presolicitation), and 37.803 (Evaluation and award).
- Services of quasi-military armed forces: Content from the former 37.109 is relocated to the new 37.802-2. Note, reference to “Pinkerton Detective agencies” is deleted.
- Foreign national severance cost limitations: Content from the former 37.113 is relocated and revised in the new 37.802-3.
- Use of private sector temporaries: Content from the former 37.112 is relocated to the new 37.802-4.
- Solicitation provisions and contract clauses: The list of general service contract clauses from the former 37.110 is relocated to the new 37.802-5.
- Funding and term of service contracts: Content from the former 37.106 is relocated to the new 37.803-2.
- The following provision and clauses are updated to correct cross-references:
 - 52.237-7 (Clause), Indemnification and Medical Liability Insurance
 - 52.237-8 (Provision), Restriction on Severance Payments to Foreign Nationals
 - 52.237-9 (Clause), Waiver of Limitation on Severance Payments to Foreign Nationals
- The FAR Companion is expected to include best practice information on the following moved content that is not statutorily required:
 - Examples of various types of service contracts (formerly at 37.101)
 - Factors that aid in determining whether a contract is for personal services (formerly at 37.104)
 - Strategic inclusion of “continuity of services” and “option to extend services” clauses (formerly at 37.111)

Removed:

- The definition of “Nonpersonal services contract”, previously at section 37.101, is deleted as unnecessary.
- Former section 37.604, “Quality Assurance Surveillance Plans”, is removed from part 37. This topic is covered comprehensively in FAR Part 46, and its inclusion in Part 37 was redundant.
- Former section 37.102 (paragraphs b, e, f, g, h, i, j). These paragraphs contained general policy statements, such as the directive to rely on the private sector (OMB Circular A-76), obtain services cost-effectively, prevent fraud and abuse, ensure trained officials are available, and limitations on using the lowest price technically acceptable source selection process. These statements were largely high-level policy pronouncements that are covered more authoritatively elsewhere in the part or in other parts of the FAR (e.g., Part 1, Part 7, Part 15) or are considered inherent responsibilities of the acquisition workforce. Their removal streamlines Part 37 to focus on actionable rules specific to service contracting.
- Former section 37.103 (Contracting officer responsibility). This general list of contracting officer responsibilities is deleted as a standalone section. The

specific duties contained within it have been integrated directly into the new, relevant topical subparts, making the guidance more contextual and direct.

- Former sections 37.105, 37.107, 37.108, 37.111. These sections, which addressed competition, Service Contract Labor Standards, Small Business Certificates of Competency, and extension of services, have been deleted. The content of these sections is fully covered elsewhere in the part or in other parts of the FAR (e.g., part 6, part 17, part 19, and part 22, respectively), making their inclusion in Part 37 duplicative.
- Former subpart 37.5 (Management Oversight of Service Contracts). This entire subpart, which referenced OFPP Policy Letter 93-1 and the use of “best practices”, has been deleted.

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 Part 37 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 37 and the applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will follow the RFO model deviation text for Part 37 in lieu of 48 Code of Federal Regulations (CFR) Part 37, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections of 48 CFR Part 52.237-1 through 52.237-10. 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 37 and 52 Model Deviation Text