

CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 41 – ACQUISITION OF
UTILITY SERVICES

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 41 – Acquisition of Utility Services, and applicable section 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 - Remove duplicative or outdated language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 25, 2025, the FAR Council issued model deviation text for FAR Part 41 and corresponding clauses at FAR Part 52. FAR part 41, Acquisition of Utility Services, has been retained, streamlined, and improved for clarity. All subparts have been retained. Plain language edits or other updates have been made throughout the part to remove unnecessary information or otherwise clarify the content. All clauses and provisions are retained. Notably, the definition of “utility service” is updated. Services such as broadband internet and information technology services, which were nascent or nonexistent when the original regulation was drafted, are now explicitly carved out. This prevents agencies from incorrectly applying utility acquisition procedures. This change reduces the risk of improper sole-source justifications and promotes full and open competition in those dynamic markets.

Statutory requirements retained in the RFO FAR part 41 model deviation include, but may not be limited to, the following:

- 40 U.S.C. § 501, Services for Executive Agencies
- 42 U.S.C. § 2204, Electric Utility Contracts
- 42 U.S.C. §§ 7251 *et. seq.*, Department of Energy Organization Act
- 42 U.S.C. § 8287, Authority to Enter into Contracts

Determination

In accordance with RFO 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 41 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 41 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 41 in lieu of 48 Code of Federal Regulations (CFR) Part 41, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the applicable sections of 48 CFR 52.241-1 to 52.241-13. 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 on the date of 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 41 and 52 Model Deviation Text