

SUBPART 201.4—DEVIATIONS FROM THE FAR

201.402 Policy.

(1) The Director of Defense Procurement, Office of the Under Secretary of Defense (Acquisition & Technology), USD(A&T)DP, is the approval authority within the DoD for—

(i) Any individual deviation from—

(A) FAR/DFARS Section 3.104, Procurement integrity;

(B) FAR/DFARS Subpart 27.4, Rights in Data and Copyrights;

(C) FAR/DFARS Subpart 31.1, Applicability (contract cost principles);

(D) FAR/DFARS Subpart 31.2, Contracts with Commercial Organizations;

or

(E) FAR/DFARS Part 32, Contract Financing (except 32.7, 32.8, and the payment clauses prescribed by 32.1).

(ii) Any class deviation.

(2) *Individual deviations.*

(i) Except as provided in paragraph (2)(ii) of this section, individual deviations, other than those in paragraph (1)(i) of this section, must be approved in accordance with the department/agency plan prescribed by 201.304(4).

(ii) Contracting officers outside the United States are authorized to deviate from prescribed non-statutory FAR and DFARS clauses when contracting for support services, supplies, or construction, with the governments of North Atlantic Treaty Organization (NATO) countries or other allies (as described in 10 U.S.C. 2341(2)), or with United Nations or NATO organizations. This authority shall be exercised only if such governments or organizations will not agree to the standard clauses.

(3) Submit requests for deviation approval through department/agency channels to the approval authority in paragraphs (1) or (2), as appropriate. Submit deviations which require USD(A&T)DP approval through the Director of the DAR Council. At a minimum, each request must—

(i) Identify the department/agency, and component if applicable, requesting the deviation;

(ii) Identify the FAR or DFARS citation from which a deviation is needed, state what is required by that citation, and indicate whether an individual or class deviation is requested;

(iii) Describe the deviation and indicate which of paragraphs (a) through (f) of FAR 1.401 best categorizes the deviation.

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(iv) State whether the deviation will have a significant effect beyond the internal operating procedures of the agency and/or a significant cost or administrative impact on contractors or offerors, and give reasons to support the statement;

(v) State the period of time for which the deviation is required;

(vi) State whether approval for the same deviation has been received previously, and if so, when;

(vii) State whether the proposed deviation was published (see FAR Subpart 1.5 for publication requirements) in the Federal Register and provide analysis of comments;

(viii) State whether the request for deviation has been reviewed by legal counsel, and if so, state results; and

(ix) Give detailed rationale for the request. State what problem or situation will be avoided, corrected, or improved if request is approved.

201.403 Individual deviations.

See approval requirements in 201.402.

201.404 Class deviations.

See approval requirements in 201.402.