

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 33 – PROTESTS, DISPUTES,
AND APPEALS**

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 33 – Protests, Disputes, and Appeals, 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 August 21, 2025, the FAR Council issued model deviation text for FAR Part 33 – Protests, Disputes, and Appeals and the corresponding clauses at FAR Part 52 – Solicitation Provisions and Contract Clauses. FAR Part 33 has been updated to reflect administration priorities to reduce protests and resolve protests at the lowest level possible. The update represents a significant and deliberate modernization of a critical component of the federal procurement system and is aimed at increasing efficiency, clarity, and fairness in federal acquisitions. Statutory requirements retained in the RFO FAR Part 33 model deviation include, but are not limited to, the following:

- 5 U.S.C. §§ 571-584, Administrative Dispute Resolution Act (ADRA)
- 31 U.S.C. § 1558, Availability of Funds Following Resolution
- 31 U.S.C. §§ 3551-3557, Procurement Protest System
- 41 U.S.C. §§ 7101-7109, Contract Disputes

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

Added:

- New purpose statement at 33.100, “Purpose of the Bid Protest System”. The new purpose statement sets forth the objectives of the bid protest process (e.g., promote integrity in the process, deter abuse of the bid protest process), and emphasizes that it is not intended to serve as a way for offerors to get additional insight or be used by incumbents to delay contract transition.
- Processes within the types of protests are broken down into pre-award and post-award actions for ease of the reader.
- New requirements applicable to “Protests to the Agency”.
 - 33.104-4(a)(4)(ii) - Contracting officers are required to report protests to the head of contracting activity (HCAs) as soon as practicable after filing.
 - 33.104-4(a)(5)(ii) - Protesters electing independent review at a level above the contracting officer must be provided a redacted copy of the source selection decision, and be provided an opportunity to submit a supplemental statement to the independent review official.
 - These new requirements are expected to increase confidence in the agency protest process, capture more data at the agency level on protests filed with contracting officers, allow for agency management to respond to procurement issues raised in protests, and resolve more protests at the agency level since protesters will have more information available to them.

Retained:

- Most of the “Definitions” now at section 33.102 are retained with only minor, non-substantive wording changes. Only the definition of “Protest venue” was removed, as it is unnecessary considering other changes within the part.
- “Protests to the Agency”, now at section 33.104 is retained, with key changes:
 - The section is completely reorganized into four distinct subsections for improved clarity and usability.

- The distinct subsections logically separate the rules for pre-award and post-award protests, which were previously intermingled in paragraphs (e) and (f) of section 33.103.
 - The section retains the requirement for parties to attempt resolution through “open and frank discussions” before filing a formal protest.
- “Protests to GAO”, now at 33.105, is retained and significantly streamlined. The previous content on protests to GAO was a lengthy, detailed section that essentially summarized many of the procedural rules found in GAO’s own regulations. This section now removes this duplication and points contracting officers to the GAO procedures at 4 CFR Part 21, “Bid Protest Regulations,” instead of repeating them in the FAR.
- Numerous procedural sections have been consolidated into a single, overarching section titled “Postaward” at 33.205. Separate sections on initiation of a claim (former 33.206), contractor certification (former 33.207), interest on claims (former 33.208), the contracting officer’s decision (former 33.211), and Alternative Dispute Resolution (former 33.214), among others, are now reorganized as subsections under 33.205, creating a more intuitive, step-by-step guide to the post-award claims process.
- All clauses and provisions for this part are retained, with plain language and streamlining updates.
 - 52.233-1 Disputes, revised to now describe what a defective certification means.
 - 52.233-2 Service of Protest, revised to require protests to be shared with the contracting office within one day of filing with the GAO.
 - 52.233-3 Protest After Award, revised to describe steps for protests post award, such as stop work orders.
 - 52.233-4 Applicable Law for Breach of Contract Claim, remains the same that U.S. law will be applied to address breach.

Removed:

- Section 33.212, “Contracting Officer’s Duties Upon Appeal,” is removed. The section created a general obligation for the contracting officer to provide data, documentation, information, and support to the agency Boards of Contract Appeals (BCA) upon appeal. The contracting officer’s requirements are dictated by the procedural rules of the adjudicative body and do not need to be stated in the FAR.

Determination

In accordance with FAR 1.304 *Class deviations* 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 33 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 33 and the applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will follow the RFO model deviation text for Part 33 in lieu of 48 Code of Federal Regulations (CFR)

Part 33, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections of 48 CFR Part 52.233-1, 52.233-2, 52.233-3, and 52.233-4. 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 November 3, 2025, 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 33 and 52 Model Deviation Text