

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 44 - SUBCONTRACTING
POLICIES AND PROCEDURES**

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 44 - *Subcontracting Policies and Procedures*, 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"). 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 - Remove duplicative or outdated language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 4, 2025, the FAR Council issued model deviation text for FAR Part 44 and corresponding clauses at FAR Part 52. Pursuant to the RFO, FAR Part 44 has been updated to create a more agile, risk-based, and efficient system that empowers contracting officers, reduces administrative burdens on contractors, and encourages broader participation from the commercial sector. Statutory requirements retained in the RFO FAR Part 44 model deviation include, but are not limited to, the following:

- 10 U.S.C. § 3322(c) and 41 U.S.C. § 3905(c), *Advance Notice of Certain Subcontracts*
- 41 U.S.C. § 3307, *Preference for Commercial Products and Commercial Services*

In addition, the following table provides a non-exhaustive list of non-statutory requirements that have been revised and retained, or removed from Part 44:

Change	Description
Retained	• The revised part structure consolidates relevant guidance into process-oriented subparts as follows: ○ Subpart 44.1 – [Reserved] ○ Subpart 44.2 - <i>Evaluation and Award</i> ○ Subpart 44.3 - <i>Postaward</i> ○ Subpart 44.4 - <i>Subcontracts for Commercial Products and Commercial Services</i> • Most of the definitions, now at section 44.001 are retained with only minor, non-substantive wording changes, with the exception of “approved purchasing system”, which can be found at clause 52.244-2. • Subpart 44.2 has been significantly streamlined to consolidate policies related to subcontract consent, advance notification, and the contracting officer’s evaluation process. ○ The previous section 44.202-2(a) contained a detailed, 13-point checklist of considerations that the contracting officer was required to consider “at a minimum” for every consent request. The new section 44.201-3(b) provides a shorter, higher-level list of four situations that necessitate “careful and thorough review and consideration” of the request to subcontract. ○ Note that the FAR Companion Guide will provide additional guidance on notice and consent best practices for commercial time and materials contracts. • Subpart 44.3 is reorganized and streamlined into four subsections (from seven separate sections) as follows: ○ 44.301-1 <i>Objective</i>

	○ 44.301-2 <i>Requirements</i> ○ 44.301-3 <i>Responsibilities for granting, withholding or withdrawing approval</i> ○ 44.301-4 <i>Notice</i> ● Section 44.402 breaks down <i>Requirements</i> into three distinct categories that improve readability: ○ <i>Preference</i> (for commercial products and services) ○ <i>Flowdown</i> (rules for flowing down clauses) ○ <i>Inapplicable laws</i> (laws that do not apply to commercial products and services)
Removed	● The use of Administrative Contracting Officer (ACO) is no longer used as a designation. The part now reflects “Contracting Officer” where ACO was previously shown. ● The requirements for Contractor Purchasing System Reviews (CPSR) are significantly streamlined to remove overly prescriptive conditions. ○ <i>Extent of Review</i>, with its 11 special attention areas, is removed (former section 44.303). ○ <i>Reports</i>, with its distribution requirements, is removed (former section 44.307).

In addition, RFO Part 52 model deviation text retains (or reserves if previously reserved) with no changes to the text the following clauses: 52.244-1 Reserved, 52.244-2 *Subcontracts*, 52.244-3 Reserved, 52.244-4 *Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)*, and 52.244-5 *Competition in Subcontracting*.

Finally, clause 52.244-6 *Subcontracts for Commercial Products and Services* is retained with streamlining updates to reflect other RFO changes and references.

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* (as implemented by DOE/NNSA class deviation), to fully comply with the requirement of E.O. 14275 and the revised FAR Parts 44 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 44 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 44 in lieu of 48 Code of Federal Regulations (CFR) Part 44, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections at 48 CFR 52.244-1 through 52.244-6. 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.

Janella Davis

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Davis
Date: 2025.09.22 12:33:56
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Janella Davis,
Acting Director
Office of Acquisition Management
Senior Procurement Executive
Department of Energy

**WILLIAM
QUIGLEY**

Digitally signed by WILLIAM
QUIGLEY
Date: 2025.09.17 21:17:55
-04'00'

William J. Quigley,
Deputy Associate Administrator
Office of Partnership and Acquisition
Services
Senior Procurement Executive
National Nuclear Security Administration

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 44 and 52 Model Deviation Text