

Subpart 701.4—Deviations from the FAR or AIDAR

Parent topic: [PART 701—FEDERAL ACQUISITION REGULATION SYSTEM](#)

701.402 Policy.

It is USAID policy to approve deviations from the mandatory requirements of the FAR and AIDAR only if it is essential to effect necessary procurement actions and when special and exceptional circumstances make such deviation clearly in the best interest of the Government.

701.470 Procedure.

[Link to an amendment published at 89 FR 4203, Jan. 23, 2024.](#)

[Link to a correction published at 89 FR 31658, Apr. 25, 2024.](#)

(a) *Deviation from the FAR or AIDAR affecting one contract or transaction.*

(1) Deviations which affect only one contract or procurement will be made only after prior approval by the head of the contracting activity. Deviation requests containing the information listed in paragraph (c) of this section shall be submitted sufficiently in advance of the effective date of such deviation to allow adequate time for consideration and evaluation by the head of the contracting activity.

(2) Requests for such deviations may be initiated by the responsible USAID contracting officer who must obtain clearance and approvals as may be required by the head of the contracting activity. Prior to submission of the deviation request to the head of the contracting activity for approval, the contracting officer must obtain written comments from the Bureau for Management, Office of Acquisition and Assistance, Policy Division (M/OAA/P), hereinafter referred to as "M/OAA/P". M/OAA/P will normally be allowed 10 working days prior to the submission of the deviation request to the head of the contracting activity to review the request and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with M/OAA/P for a shorter review period. In addition to a copy of the deviation request, M/OAA/P must be furnished any background or historical data that will contribute to a more complete understanding of the deviation. The comments of M/OAA/P must be made a part of the deviation request file, which is forwarded to the head of the contracting activity.

(3) Coordination with the Office of the General Counsel, as appropriate, should also be effected prior to approval of a deviation by the head of the contracting activity.

(b) *Class deviations from the FAR or AIDAR.* Class deviations are those which affect more than one contract or contractor.

(1) Class deviations from the AIDAR will be processed in the same manner as prescribed in paragraph (a) of this section. Individual heads of contracting activities have authority to approve class deviations affecting only contracts within their own contracting activities, except that the

Director, M/OAA, has authority to approve class deviations that affect more than one contracting activity.

(2) Class deviations from the FAR will be considered jointly by USAID and the Chairperson of the Civilian Agency Acquisition Council (C/CAAC) (FAR 1.404) unless, in the judgment of the head of the contracting activity, after due consideration of the objective of uniformity, circumstances preclude such consultation. The head of the contracting activity must certify on the face of the deviation the reason for not coordinating with the C/CAAC. In such cases, M/OAA/P will be responsible for notifying the C/CAAC of the class deviation.

(3) Class deviations from the FAR shall be processed as follows:

(i) The request must be processed in the same manner as paragraph (a) of this section, except that M/OAA/P will be allowed 15 working days, prior to the submission of the deviation request to the head of the contracting activity, to effect the necessary coordination with the C/CAAC and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with M/OAA/P for a shorter review and coordination period. The comments of C/CAAC and M/OAA/P must be forwarded to the head of the contracting activity along with the deviation request and made a part of the deviation request file.

(ii) The request shall be processed in the same manner as paragraph (a) of this section if the request is not being jointly considered by USAID and the C/CAAC.

(4) Deviations involving basic agreements or other master type contracts are considered to involve more than one contract.

(5) Unless the approval is sooner rescinded, class deviations shall expire 2 years from the date of approval provided that deviation authority shall continue to apply to contracts or task orders which are active at the time the class deviation expires. Authority to continue the use of such deviation beyond 2 years may be requested in accordance with the procedures prescribed in paragraph (a) of this section.

(6) Expiration dates shall be shown on all class deviations.

(c) Requests for deviation shall contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, the name of the contractor, and the contract or task order number.

(d) *Register of deviations.* Separate registers must be maintained by the procuring activities of the deviations granted from the FAR and AIDAR. Each deviation must be recorded in its appropriate register and be assigned a control number as follows: For USAID Washington deviations the symbol of the procuring activity, or for overseas mission deviations the relevant geographic code; the abbreviation "DEV"; the fiscal year; the type of deviation (from the FAR or AIDAR); the serial number [issued in consecutive order during each fiscal year] assigned to the particular deviation; and the suffix "c" if it is a class deviation (*e.g.*, M/OAA-DEV-FAR-14-1, M/OAA-DEV-FAR-14-2c, 123-DEV-AIDAR-14-1). The control number must be embodied in the document authorizing the deviation and must be cited in all references to the deviation.

(e) *Central record of deviations.* Copies of approved deviations shall be furnished promptly to the M/OAA/P, who shall be responsible for maintaining a central record of all deviations that are granted.

(f) *Semiannual report of class deviations.*

(1) USAID contracting officers must submit a semiannual report to M/OAA/P of all contract actions effected under class deviations to the FAR and AIDAR, which have been approved pursuant to paragraph (b) of this section.

(2) The report shall contain the applicable deviation control number, the contractor's name, contract number and task order number (if appropriate).

(3) The report shall cover the 6-month periods ending June 30 and December 31, respectively, and shall be submitted within 20 working days after the end of the reporting period.