

# Subpart 1.4 - Deviations from the FAR

Parent topic: [Part 1 - Federal Acquisition Regulations System](#)

## 1.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing *deviations* from the FAR. Exceptions pertaining to the use of forms prescribed by the FAR are covered in [part 53](#) rather than in this subpart.

## 1.401 Definition.

*Deviation* means any one or combination of the following:

- (a) The issuance or use of a policy, procedure, *solicitation* provision (see definition in [2.101](#)), *contract clause* (see definition in [2.101](#)), method, or practice of conducting *acquisition* actions of any kind at any stage of the *acquisition* process that is inconsistent with the FAR.
- (b) The omission of any *solicitation* provision or *contract clause* when its prescription requires its use.
- (c) The use of any *solicitation* provision or *contract clause* with modified or *alternate* language that is not authorized by the FAR (see definition of "modification" in [52.101\(a\)](#) and definition of "alternate" in [2.101](#)).
- (d) The use of a *solicitation* provision or *contract clause* prescribed by the FAR on a "*substantially as follows*" or "substantially the same as" basis (see definitions in [2.101](#) and [52.101\(a\)](#)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the FAR.
- (e) The authorization of lesser or greater limitations on the use of any *solicitation* provision, *contract clause*, policy, or procedure prescribed by the FAR.
- (f) The issuance of policies or procedures that govern the *contracting* process or otherwise control *contracting* relationships that are not incorporated into agency *acquisition* regulations in accordance with [1.301\(a\)](#).

## 1.402 Policy.

Unless precluded by law, executive order, or regulation, *deviations* from the FAR may be granted as specified in this subpart when necessary to meet the specific needs and requirements of each agency. The development and testing of new techniques and methods of *acquisition* should not be stifled simply because such action would require a FAR *deviation*. The fact that *deviation* authority is required should not, of itself, deter agencies in their development and testing of new techniques and *acquisition* methods. Refer to [31.101](#) for instructions concerning *deviations* pertaining to the subject matter of [part 31](#), Contract Cost Principles and Procedures. *Deviations* are not authorized with

respect to [30.201-3](#) and [30.201-4](#), or the requirements of the Cost Accounting Standards Board (CASB) rules and regulations ([48 CFR chapter 99](#)). Refer to [30.201-5](#) for instructions concerning waivers pertaining to Cost Accounting Standards.

### **1.403 Individual deviations.**

Individual *deviations* affect only one contract action, and, unless [1.405\(e\)](#) is applicable, *may* be authorized by the *agency head*. The *contracting officer must* document the justification and agency approval in the contract file.

### **1.404 Class deviations.**

Class *deviations* affect more than one contract action. When an agency knows that it will require a class *deviation* on a permanent basis, it *should* propose a FAR revision, if appropriate. Civilian agencies, other than NASA, *must* furnish a copy of each approved class *deviation* to the FAR Secretariat.

(a) For civilian agencies except NASA, class *deviations may* be authorized by *agency heads* or their designees, unless [1.405\(e\)](#) is applicable. Delegation of this authority *shall* not be made below the head of a *contracting activity*. Authorization of class *deviations* by agency officials is subject to the following limitations:

(1) An agency official who *may* authorize a class *deviation*, before doing so, *shall* consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless that agency official determines that urgency precludes such consultation.

(2) Recommended revisions to the FAR *shall* be transmitted to the FAR Secretariat by *agency heads* or their designees for authorizing class *deviations*.

(b) For DoD, class *deviations shall* be controlled, processed, and approved in accordance with the Defense FAR Supplement.

(c) For NASA, class *deviations shall* be controlled and approved by the Assistant Administrator for Procurement. *Deviations shall* be processed in accordance with agency regulations.

### **1.405 Deviations pertaining to treaties and executive agreements.**

(a) "Executive agreements," as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the *United States* is a party.

(b) Any *deviation* from the FAR required to comply with a treaty to which the *United States* is a party is authorized, unless the *deviation* would be inconsistent with FAR coverage based on a law enacted after the execution of the treaty.

(c) Any *deviation* from the FAR required to comply with an executive agreement is authorized unless

the *deviation* would be inconsistent with FAR coverage based on law.

(d) For civilian agencies other than NASA, a copy of the text *deviation* authorized under paragraph (b) or (c) of this section *shall* be transmitted to the FAR Secretariat through a central agency control point.

(e) For civilian agencies other than NASA, if a *deviation* required to comply with a treaty or an executive agreement is not authorized by paragraph (b) or (c) of this section, then the request for *deviation shall* be processed through the FAR Secretariat to the Civilian Agency *Acquisition* Council.