

MKU-DEV-2025-24

**MEMORANDUM FOR MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION (UDALL FOUNDATION)
CONTRACTING ACTIVITIES**

DATE: September 11, 2025

SUBJECT: Class Deviations for FAR Part 33 in support of Executive Order 14275, *Restoring Common Sense to Federal Procurement*

FROM: David P. Brown, Executive Director

1. **Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 33 for purposes of implementing the Federal Acquisition Regulatory Council's ("the Council's" or "RFO") model deviation text to FAR Part 33.
2. **Background.** On April 15, 2025, President Trump signed Executive Order (E.O.) 14275, "Restoring Common Sense to Federal Procurement" to reform the Federal Acquisition Regulation (FAR). This E.O. further advances the intent of E.O. 14192, "Unleashing Prosperity Through Deregulation," signed on January 31, 2025, which established that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds and to alleviate unnecessary regulatory burdens placed on the American people. E.O. 14275 orders the Administrator of the Office of Federal Public Procurement Policy (OFPP), in coordination with the other members of the Federal Acquisition Regulatory Council (FAR Council), the heads of agencies, and appropriate senior acquisition and procurement officials from agencies, to amend the FAR to ensure that it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests. This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative.

On May 2, 2025, the Office of Management and Budget (OMB) released Memorandum M-25-26, "Overhauling the Federal Acquisition Regulation," that directs all agencies to "Generally issue individual or class deviations to implement the FAR Council's deregulated coverage within 30 days after the Council releases its model deviation text[and] Provide copies of class deviations to the FAR Secretariat at gsaregsec@gsa.gov for public posting on Acquisition.gov."

Also on May 2, 2025, the Acting Administrator for Federal Procurement Policy at OMB released a Memorandum, "Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation." This Memorandum advises that agencies using the RFO model class deviation text do not need to further coordinate with the Council; class deviations that differ from the RFO model text require Council approval unless the difference is necessary to address agency-specific statutory direction.

On August 21, 2025, the FAR Council issued completed revisions for FAR Part 33, Protests, Disputes, and Appeals, and FAR Part 52 provisions and clauses. The text 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 and presidential directives retained in the RFO FAR Part 33 model deviation include, but are not limited to, the following:

- 5 U.S.C. §§ 571 et seq, Administrative Dispute Resolution Act (ADRA)
- 31 U.S.C. § 1558, Availability of Funds Following Resolution
- 31 U.S.C. §§ 3551 et seq, Procurement Protest System
- 41 U.S.C. §§ 7101 et seq, Contract Disputes
- E.O. 12979, Agency Procurement Protests

Change	Description
Added	<ul style="list-style-type: none"> • 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.” <ul style="list-style-type: none"> ○ 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 CO must be provided a redacted copy of the source selection decision and 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	<ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> ○ The section is completely reorganized into four distinct subsections for improved clarity and usability.

	<ul style="list-style-type: none"> ○ 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. <ul style="list-style-type: none"> ○ 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	<ul style="list-style-type: none"> ● 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.

This table is not an exhaustive list.

3. **Determination.** To fully comply with E.O. 14275, OMB implementation guidance, and direction related to use of model deviations, and the model deviations for revised FAR Part 33, the Udall Foundation shall follow the RFO Part 33 model deviation text instead of FAR Part 33 as codified at 48 CFR Chapter 33. The FAR Council’s RFO Part 33 model deviation text is available at [Acquisition.gov](https://www.acquisition.gov), under the “FAR Overhaul” link. This deviation applies to all solicitations and new contracts as of the

date of the Memorandum. This deviation does not apply to contracts signed and executed on or before the date of this Memorandum.

4. **Instructions.** The Udall Foundation acquisition workforce shall follow the RFO Part 33 model deviation text instead of FAR Part 33 as codified at 48 CFR Chapter 33 and the RFO Part 52 model deviation text of FAR Part 52 as codified at 48 CFR Chapter 52. The Council's RFO Parts 33 and 52 model deviation text are available at Acquisition.gov, under the "FAR Overhaul" link, and are incorporated into this class deviation.

For new solicitations or contracts, when using any provisions or clauses that have been revised, the Udall Foundation acquisition workforce shall use the RFO model deviation language at RFO FAR part 52.

For open solicitations or awarded contracts, the contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clauses, the contracting officer may be required to separately address certain aspects in the contract.

The Udall Foundation acquisition workforce shall review templates and related standard operating procedures to align with this deviation and remove unnecessary processes or steps.

A copy of this Class Deviation will be provided to the FAR Secretariat at gsaregsec@gsa.gov.

5. **Applicability.** This class deviation applies to all Udall Foundation procurements.
6. **Authority.** This class deviation is issued under the authority of E.O. 14275, OMB Memo M-25-26, and 48 CFR 1.4, and RFO FAR 1.304.
7. **Effective Date.** This class deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

Points of Contact. Questions regarding this class deviation may be directed to the Udall Foundation General Counsel, Gwendolyn Franks, at franks@udall.gov.