

MKU-DEV-2025-40

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

**DATE:** November 25, 2025

**SUBJECT:** Class Deviations for FAR Part 37 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 37 for purposes of implementing the Federal Acquisition Regulatory Council's ("the Council's" or "RFO") model deviation text to FAR Part 37.
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](mailto: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 September 25, 2025, the FAR Council issued completed revisions for FAR Part 37, Service Contracting, and FAR Part 52 provisions and clauses. The updated text is s been updated with a new structure that is more logical and easier to follow. The changes focus on two key themes: emphasizing policy priorities and organizing guidance to follow the acquisition lifecycle.

Previously, critical topics like Performance-Based Acquisition (PBA), rules on personal services, and the prohibition on contracting for inherently governmental functions were either embedded within broader sections or placed at the end of the part. Now, these topics have been elevated into their own distinct subparts at the very beginning of the regulation. Placing PBA first, for example, is a deliberate signal of policy emphasis.

Additionally, each of these new subparts is organized to mirror parts of the acquisition process. Sections are now titled "Presolicitation," "Evaluation and Award," and "Postaward" where applicable. This turns the regulation into a procedural roadmap, guiding users through the steps at each phase of the acquisition.

Statutory requirements retained in the RFO FAR part 37 deviation include, but may not be limited to, the following:

- 5 U.S.C. §§ 3101 et seq, Employment Authorities
- 10 U.S.C. § 3133 and 41 U.S.C. § 3902, Severable Services Contracts for Periods Crossing Fiscal Years
- 10 U.S.C. § 3744 and 41 U.S.C. § 4304, Specific Costs not Allowable
- 10 U.S.C. § 4507, Contracts for Professional and Technical Services
- 34 U.S.C. § 20351, Requirement for Background Checks
- 40 U.S.C. §§ 3141 et seq, Wage Rate Requirements
- 41 U.S.C. § 1709, Contracting Functions Performed by Federal Personnel
- 41 U.S.C. § 4105, Advisory and Assistance Services
- 41 U.S.C. §§ 6701 et seq, Service Contract Labor Standards
- Pub. L. 106-398, Sec 821, Improvements in Procurements of Services

Change	Description
Retained	<ul style="list-style-type: none"> <li>• Section 37.000, “<b>Scope of Part,</b>” is retained and revised for brevity and focus. The legacy text included a detailed list of other applicable FAR parts (35, 36, 39, 47), a statement of precedence for those parts, and a specific reference to the Service Contract Labor Standards. The revised text removes these specific cross-references, retaining only the core statement that the part prescribes policy for service contracts and applies to all such contracts and orders.</li> <li>• Subsection 37.101-1, “<b>Policy,</b>” located under “Presolicitation” for PBA, retains the mandate to <b>use PBA methods to the maximum extent practicable</b>, lists the same exceptions (architect-engineer services, construction, utility services, and incidental services), and retains the required order of precedence for contract types. The language clarifies that <b>this policy applies to acquisitions of commercial services</b> using FAR part 12 procedures.</li> <li>• Subsection 37.102-1, “Procedures,” under “Evaluation and award” for PBA, consolidates and rewrites the content from the legacy sections</li> </ul>

	<p>37.601, 37.602, and 37.603. It clarifies the relationship between the Performance Work Statement (PWS) and the Statement of Objectives (SOO), stating that the SOO is used to guide PWS development but does not become part of the contract. It also <b>incorporates the requirements for describing work in terms of outcomes</b> and using measurable performance standards.</p> <ul style="list-style-type: none"> <li>• Subsection 37.201-1, “<b>Policy</b>,” under “Presolicitation” for Personal Services, retains the requirement that agencies <b>must not contract for personal services</b> unless specifically authorized by statute.</li> <li>• The following provisions and clauses are retained with no changes to text: <ul style="list-style-type: none"> <li>○ 52.237-1 (Provision), Site Visit</li> <li>○ 52.237-2 (Clause), Protection of Government Buildings, Equipment, and Vegetation</li> <li>○ 52.237-3 (Clause), Continuity of Services</li> <li>○ 52.237-4 (Clause), Payment by Government to Contractor</li> <li>○ 52.237-5 (Clause), Payment by Contractor to Government</li> <li>○ 52.237-6 (Clause), Incremental Payment by Contractor to Government</li> <li>○ 52.237-10 (Provision), Identification of Uncompensated Overtime</li> </ul> </li> </ul>
<b>Moved/Updated</b>	<ul style="list-style-type: none"> <li>• Most of the <b>definitions</b> previously at section 37.101 have been relocated to more relevant areas of the part. The definition of “Service contract” has been updated and moved to a new section at the part level, 37.001, “Definition.” The definitions of “Child care services,” “Adjusted hourly rate (including uncompensated overtime),” and “Uncompensated overtime” have been relocated to subparts 37.5 and 37.8.</li> <li>• Subpart 37.1, “<b>Performance-based Acquisition</b>” is a new subpart that represents a major consolidation and elevation of PBA policy. It merges the policy preference for PBA from the former 37.102(a) with the procedural guidance from the entirety of the former Subpart 37.6. Placing all PBA content into a single, high-level subpart streamlines the regulation and makes the guidance significantly easier for contracting personnel to locate and apply. Under the old structure, a user had to read 37.102(a) to understand that PBA was the preferred method and then navigate to the very end of the part to find the implementation details.</li> <li>• Subpart 37.2, “<b>Personal Services</b>,” is created by consolidating and substantially rewriting the content from the former 37.104. This gives the critical topic of personal services its own dedicated, high-visibility subpart. <ul style="list-style-type: none"> <li>○ Subsection 37.201-2, “<b>Characteristics of personal services contracts</b>,” replaces the lengthy, six-factor descriptive guide previously located at 37.104(d).</li> </ul> </li> <li>• Subpart 37.3, “<b>Inherently Governmental Functions</b>,” consolidates policy previously found in two separate locations: the one-sentence</li> </ul>

	<p>prohibition from the former 37.102(c) and the detailed oversight requirements from the former 37.114. The new structure logically groups the presolicitation prohibition with the necessary post-award administration actions, presenting a complete, unified block of guidance.</p> <ul style="list-style-type: none"> <li>• Subpart 37.4, “<b>Advisory and Assistance Services (A&amp;AS)</b>,” is the reorganized successor to the former Subpart 37.2. The content has been restructured into the new acquisition lifecycle format. <ul style="list-style-type: none"> <li>○ 37.401, “Definition,” relocates the definition of “<b>Covered personnel</b>” from the former 37.201.</li> <li>○ 37.402-1, “Policy,” provides <b>clarity on the types of A&amp;AS</b> for which agencies may contract.</li> <li>○ 37.402-3, “A&amp;AS contracts for the evaluation of proposals,” clarifies the <b>timing requirement for the agency head’s determination</b> regarding the availability of personnel for proposal evaluation, stating that the contracting officer must ensure, to the maximum extent practicable, the determination is made prior to issuing the solicitation, or if the need arises later, prior to granting the A&amp;AS contractor access to proposal material.</li> </ul> </li> <li>• Subpart 37.5, “<b>Child Care Services</b>,” is a new subpart created by consolidating the definition of “Child care services” from former 37.101 with the contracting officer’s responsibility for ensuring criminal history background checks from former 37.103(d). This consolidation creates a single, easy-to-find location for all rules related to this specific category of service contracts, improving usability and ensuring this important safety requirement is not overlooked.</li> <li>• Subpart 37.6, “<b>Nonpersonal Health Care Services</b>,” is renumbered and reorganized from the former Subpart 37.4. The content is restructured into the lifecycle format, which clarifies the timing of the contracting officer’s actions regarding medical liability insurance. <ul style="list-style-type: none"> <li>○ 37.601-2, “Procedures,” <b>adds a procedural step</b>, explicitly instructing the contracting officer to insert the necessary insurance coverage values into paragraph (a) of the clause at 52.237-7.</li> </ul> </li> <li>• Subpart 37.7, “<b>Dismantling, Demolition, or Removal of Improvements</b>,” is renumbered and reorganized from the former Subpart 37.3. The content is largely the same but is now organized under a single “Presolicitation” section (37.701), as most of the content relates to structuring the solicitation and contract. The language has been slightly revised for clarity and readability.</li> <li>• Subpart 37.8, “<b>Other Service Considerations</b>,” is a new subpart that acts as a consolidated home for various standalone content that was previously scattered throughout the former Subpart 37.1. The following illustrates this major consolidation effort.</li> </ul>
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	<ul style="list-style-type: none"> <li>○ Uncompensated Overtime: Content from the former 37.115 and the related definitions previously at 37.101 are consolidated and reorganized into new sections 37.801 (Definitions), 37.802 (Presolicitation), and 37.803 (Evaluation and award).</li> <li>○ Services of quasi-military armed forces: Content from the former 37.109 is relocated to the new 37.802-2. Note, reference to “Pinkerton Detective agencies” is deleted.</li> <li>○ Foreign national severance cost limitations: Content from the former 37.113 is relocated and revised in the new 37.802-3.</li> <li>○ Use of private sector temporaries: Content from the former 37.112 is relocated to the new 37.802-4</li> <li>○ Solicitation provisions and contract clauses: The list of general service contract clauses from the former 37.110 is relocated to the new 37.802-5.</li> <li>○ Funding and term of service contracts: Content from the former 37.106 is relocated to the new 37.803-2.</li> <li>• The following <b>provision and clauses</b> are updated to correct cross-references: <ul style="list-style-type: none"> <li>○ 52.237-7 (Clause), Indemnification and Medical Liability Insurance</li> <li>○ 52.237-8 (Provision), Restriction on Severance Payments to Foreign Nationals</li> <li>○ 52.237-9 (Clause), Waiver of Limitation on Severance Payments to Foreign Nationals</li> </ul> </li> <li>• The FAR Companion is expected to include best practice information on the following <b>moved content</b> that is not statutorily required: <ul style="list-style-type: none"> <li>○ Examples of various types of service contracts (formerly at 37.101)</li> <li>○ Factors that aid in determining whether a contract is for personal services (formerly at 37.104)</li> <li>○ Strategic inclusion of “continuity of services” and “option to extend services” clauses (formerly at 37.111)</li> </ul> </li> </ul>
<b>Removed</b>	<ul style="list-style-type: none"> <li>• The definition of “Nonpersonal services contract”, previously at section 37.101, is deleted as unnecessary.</li> <li>• Former section 37.604, “<b>Quality Assurance Surveillance Plans</b>,” is removed from part 37. This topic is covered comprehensively in FAR Part 46, and its inclusion in Part 37 was redundant.</li> <li>• <b>Former section 37.102 (paragraphs b, e, f, g, h, i, j).</b> These paragraphs contained general policy statements, such as the directive to rely on the private sector (OMB Circular A-76), obtain services cost-effectively, prevent fraud and abuse, ensure trained officials are available, and limitations on using the lowest price technically acceptable source selection process. These statements were largely high-level policy pronouncements that are covered more authoritatively elsewhere in the part or in other parts of the FAR (e.g., Part 1, Part 7, Part 15) or are considered inherent responsibilities of</li> </ul>

	<p>the acquisition workforce. Their removal streamlines Part 37 to focus on actionable rules specific to service contracting.</p> <ul style="list-style-type: none"> <li>• <b>Former section 37.103 (Contracting officer responsibility).</b> This general list of contracting officer responsibilities is deleted as a standalone section. The specific duties contained within it have been integrated directly into the new, relevant topical subparts, making the guidance more contextual and direct.</li> <li>• <b>Former sections 37.105, 37.107, 37.108, 37.111.</b> These sections, which addressed competition, Service Contract Labor Standards, Small Business Certificates of Competency, and extension of services, have been deleted. The content of these sections is fully covered elsewhere in the part or in other parts of the FAR (e.g., part 6, part 17, part 19, and part 22, respectively), making their inclusion in Part 37 duplicative.</li> <li>• <b>Former subpart 37.5 (Management Oversight of Service Contracts).</b> This entire subpart, which referenced OFPP Policy Letter 93-1 and the use of “best practices,” has been deleted.</li> </ul>
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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 37, the Udall Foundation shall follow the RFO Part 37 model deviation text instead of FAR Part 37 as codified at 48 CFR Chapter 37. The FAR Council’s RFO Part 37 model deviation text is available at 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 37 model deviation text instead of FAR Part 37 as codified at 48 CFR Chapter 37 and the RFO Part 52 model deviation text of FAR Part 52 as codified at 48 CFR Chapter 52. The Council’s RFO Parts 37 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](mailto: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](mailto:franks@udall.gov).