

Acquisition Regulations System

[Reference: FAR 1; [DEAR 901](#); [DOE O 541.1](#)]



Guiding Principles

- Authority is delegated to the maximum practical extent.
- Reviews and approvals are minimized and the layering of review is avoided.
- Participants in the acquisition process work together as a team and are empowered to make decisions in their areas of responsibility.

Overview

This section discusses the Civilian Agency Acquisition Council, agency acquisition regulations, deviations from the FAR and DEAR, ratification of unauthorized commitments, and Contracting Officers and their representatives.

The Civilian Agency Acquisition Council

The DOE representative to the Civilian Agency Acquisition Council is a staff member of the Office of Procurement and Assistance Policy, within the Headquarters procurement organization, and is appointed by the Procurement Executive. The Office of Procurement and Assistance Policy coordinates with all interested Departmental elements regarding proposed FAR revisions and advocates revisions sought by DOE.

Agency Acquisition Regulations

Acquisition policies and procedures appropriate for regulation are issued in the DEAR by the Procurement Executive. Rulemakings are developed by, or with the concurrence of, the Office of Procurement and Assistance Policy and issued by the Procurement Executive.

Other Directives/Information Vehicles

Implementing procedures, instructions, and guides which are necessary to clarify, implement, or provide supplementary information to the DEAR may be issued by the Procurement Executive and Heads of Contracting Activities (HCA).

The Procurement Executive uses the following vehicles to provide additional acquisition information:

The Acquisition Guide
Acquisition Letters
DOE Orders

Any implementing procedures, instructions, or guides must:

Be consistent with the policies and procedures contained in the FAR and the DEAR.

Not contain material that duplicates, paraphrases, or is inconsistent with the contents of the FAR or the DEAR.

Deviations from the FAR or the DEAR

(This guidance applies to any deviation from the FAR or the DEAR for any contractual action, either M&O or non-M&O.)

What is a deviation to the FAR or the DEAR?

A deviation to the FAR or the DEAR is any change to FAR or DEAR that meets the criteria spelled out at FAR 1.401 (for DEAR deviations, substitute "DEAR" for "FAR" when reading FAR 1.401).

The baseline for determining deviations is the FAR or DEAR, for example, the version of a provision that is prescribed in the FAR or the DEAR at the time the solicitation is issued.

What is not a deviation to the FAR or the DEAR?

The following are not deviations to the FAR or the DEAR.

Local policies and procedures, for example, local clauses, as long as they are not inconsistent with the FAR or the DEAR.

FAR or DEAR provisions and clauses, or modifications thereto, that are otherwise not prescribed for the particular solicitation or contract in which the provisions or clauses will be used, as long as they are not inconsistent with prescribed FAR or DEAR provisions, clauses, or policies. Provisions and clauses prescribed in the FAR that have been modified in accordance with FAR 52.104.

Provisions and clauses prescribed in the FAR with their alternate(s) in accordance with FAR 52.105.

What is the Department's policy for FAR and DEAR deviations?

While the Department must treat all its contractors consistently and fairly--creating a bias for uniformity in solicitations and contracts--it can not ignore special needs or innovations that bring greater effectiveness to the acquisition process.

To strengthen the deviation process and provide uniform and consistent application of DOE policies and procedures, the guidance below constitutes our internal Departmental procedures for obtaining approval of FAR or DEAR deviation requests.

Previous approval of the same, or a similar, deviation request remains effective only for the period identified in the approval of the deviation request. Each new request for deviation must be supported by the facts of the instant acquisition.

Who can authorize FAR and DEAR deviations?

The Procurement Executive.

The general rule is that the Procurement Executive or his or her designee must approve any request to deviate from the FAR or the DEAR.

The Head of a Contracting Activity.

One exception to the general rule is that the Head of a Contracting Activity may approve a request to deviate from the DEAR, but only if it is:

- not for a facility management contract, that is, a M&O or M&I contract.
- not a deviation from cost principles or cost accounting standards.
- not a deviation from contract reform clauses (See Attachment A to this Guide chapter).
- within the Head of a Contracting Activity's delegated dollar authority (which is based on the value of the contract, not the value of the instant acquisition).
- a deviation involving patents, data, and copyrights for which the Field Patent Counsel has obtained the concurrence of the Department's Patent Counsel (this approval authority applies without regard to either the Head of Contracting Activity's delegated authority or whether the deviation is to a facility management contract).
- a deviation from standard financial management clauses for which the Field Chief Financial Officer has obtained the concurrence of the Department's Chief Financial Officer (this approval authority applies without regard to either the Head of Contracting Activity's delegated authority or whether the deviation is to a facility management contract; see Attachment B to this Guide chapter for the list of standard financial management clauses).
- an administrative deviation; that is, a non-substantive change that does not alter the obligations or requirements of either the contractor or the Government in any way such as correcting a typographical error, an improper punctuation mark, an incorrect cross reference, or an outdated citation; an example would be replacing that part of a DEAR clause that cites an executive order

that has just been replaced with a new executive order cite (this approval authority applies without regard to either the Head of Contracting Activity's delegated authority or whether the deviation is to a facility management contract).

The Director of the Office of Procurement and Assistance Policy.

Both the Director of the Office of Procurement and Assistance Policy, for non-NNSA activities, and the Director of the Office of Procurement and Assistance Policy, NNSA, for NNSA activities, may authorize administrative deviations to the DEAR.

How are deviations that the HCA can approve processed?

Follow the substance of this guidance for deviations submitted to the Procurement Executive, utilizing similar justification and documentation.

Provide to the Office of Procurement and Assistance Policy a copy of each approved deviation and supporting information.

How are deviations that must be submitted to the Procurement Executive processed?

Submit a complete deviation request package to the Office of Contract Management. Include the signature of your HCA and the concurrence of your Field Counsel.

Include the concurrence of your Field Chief Financial Officer for deviations from standard financial management clauses (See Attachment B).

Include the concurrence of your Field Patent Counsel for deviations involving patents, data, or copyrights.

Submit the package well in advance to allow for an appropriate amount of time for the Headquarters review. This also will allow sufficient time for you to negotiate an alternative position with the contractor if your request is not approved.

The time required to obtain approval of deviations depends on such factors as the number of deviations requested, the complexity of the issues, and specific circumstances (new contract award, annual fee negotiation, contract change order, etc.). You should submit deviation requests as soon as possible after identifying a need, but at least 120 days (60 days for a DEAR deviation request) before the planned execution date of the affected contract or modification. If your request will require expedited review, contact the Office of Contract Management as soon as possible so that Office can assist you in obtaining the extra support you need in a timely manner. Submit supplemental information in writing. (Oral communications are permitted and encouraged, but the decision to approve or disapprove will rest primarily on the written record.)

What information is included in the request package?

- An executive summary of the rationale for each requested deviation. (For a deviation with an extremely brief rationale, you do not need to prepare an executive summary.)
- Identification of all approved deviations included in the package (for example, those authorized by the Director of the Office of Procurement and Assistance Policy through Acquisition Letters or other forms of communication).
- Identification of all clauses affected by the deviation request.
- A statement that, other than the identified approved deviations and the identified requested deviations, there are no other deviations relating to the contractual action (i.e., no local clause included in the contractual action should meet the criteria at FAR 1.401 for a deviation).
- Period of time each deviation is needed.
- Solicitation, contract, offeror, contractor, etc., affected by the deviation.
- Specific FAR or DEAR policy, procedure, provision, clause, etc. from which each deviation is desired (include number, title, alternate, etc.).
- For each requested deviation, identification of the specific words to be deleted or added by a line-in/line-out comparison of the policy, procedure, provision, clause, etc. prescribed by the FAR or DEAR to the proposed language.
- For each requested deviation, whether the deviation was requested before. If it was, provide the complete history of the prior request, including past approvals and uses of the deviation. For each requested deviation, a complete justification for using the proposed policy, procedure, provision, clause, etc. instead of the standard policy, procedure, provision, clause, etc.; include an explanation of the problem the deviation would solve, the benefit the Government would gain, and any cost the Government would incur (if no explanation applies, list "N/A").

What is the role of the Office of Contract Management?

Provides assistance to contracting activities before they initiate the formal deviation approval process and throughout the deviation approval process.

Assesses the merit of any deviation request and recommends appropriate action to the Procurement Executive.

Consults with the Office of Procurement and Assistance Policy on issues related to cost accounting standards, cost principles, and other policy areas.

Provides technical assistance to the Office of Procurement and Assistance Policy during consultations with the chairperson of the Civilian Agency Acquisition Council on class deviations to the FAR.

Obtains the concurrence of the Department's Chief Financial Officer before recommending approval of a deviation to a financial management policy, procedure, solicitation provision, or contract clause.

Obtains the concurrence of the Department's Patent Counsel before recommending approval of a deviation from the FAR or the DEAR involving patents, data, or copyrights.

Obtains the concurrence of the Department's Headquarters Procurement Counsel, as appropriate, before recommending approval of a significant, substantial deviation.

Provides the Office of Procurement and Assistance Policy a copy of each approved deviation request.

What is the role of the Office of Procurement and Assistance Policy?

Aids the Office of Contract Management in providing assistance to contracting activities before they initiate the formal deviation approval process.

Supports the Office of Contract Management throughout the deviation approval process, providing assistance in determining whether requests for deviations are appropriate.

Issues, on the behalf of the Procurement Executive, administrative deviations to the DEAR pending appropriate rulemakings.

Consults with the chairperson of the Civilian Agency Acquisition Council on class deviations to the FAR.

Analyzes all approved deviation requests provided by the Office of Contract Management or Contracting Activities, collects data, monitors trends, determines when changes to the FAR or DEAR are appropriate, and initiates actions for FAR and DEAR changes when necessary.

Ratification of Unauthorized Commitments

The following procedures are used for ratification of any unauthorized commitment:

Whenever it is discovered that any person is performing or has performed work as a result of an unauthorized commitment, the contracting officer advises that person that the work is unauthorized and performance is at the person's own risk.

The Government representative who made the unauthorized commitment furnishes the contracting officer, through the Director of the cognizant Program Office at the contracting activity, or comparable official, all records and documents concerning the commitment and a complete, written statement of facts, including, but not limited to, a statement as to why authorized procurement procedures were not used, why the contractor was selected, a list of other sources considered, description of work to be performed or products to be furnished, estimated or agreed upon contract price, citation of available appropriations, a statement as to whether the contractor has commenced performance, and status of work. To preclude recurrence, the Director of the Program Office includes in the package recommendations for corrective action. If the Government representative who made the unauthorized commitment is no longer available, appropriate program personnel provide this information to the contracting officer, along with the name of the employee who made the commitment.

The contracting officer evaluates this information, makes a determination with respect to reasonableness of price and recommends whether payment should be made, and forwards the documentation to the HCA.

The HCA is responsible for assuring the implementation and monitoring of a corrective action plan. A copy of each ratification action approved by an HCA, along with supporting documentation, is provided to the Headquarters Office of Contract Management.

For individual unauthorized commitments involving amounts in excess of \$25,000, the HCA evaluates the supporting information and, if the HCA concurs, forwards the package to the Procurement Executive.

The Procurement Executive may ratify the unauthorized commitment. When appropriate, concurrence of the Senior Program Official is obtained. The Procurement Executive monitors the implementation of the corrective action plan.

If the Procurement Executive does not ratify the action, the file will be returned to the HCA with an explanation of the decision not to ratify.

If an unauthorized commitment is ratified, the supporting documentation is included as part of the official contract file. If an unauthorized commitment is not ratified, the documentation is maintained for audit purposes as a separate file by the cognizant contracting office.

Selection, Appointment and Termination of Appointment

The DOE system for the selection, appointment, and termination of appointment of contracting officers is established in [DOE O 541.1](#), *Appointment of Contracting Officers and Contracting Officer Representatives*.

Contracting Officer's Representatives

A contracting officer may designate other qualified personnel to be the Contracting Officer's Representative (COR) for the purpose of performing certain technical functions in administering a contract. These functions include, but are not limited to, technical monitoring, inspection, approval of shop drawings, testing, approval of samples, and other functions of a technical nature.

The COR acts solely as a technical representative of the contracting officer and is not authorized to perform any function that results in a change in the scope, price, terms or conditions of the contract.

Under limited conditions, non-Government personnel may be appointed CORs. These appointments would be made on an as-needed basis and would not allow the performance of inherently Governmental functions by the COR. The Procurement Executive's approval to appoint non-Government personnel as a COR must be obtained in advance of the designation. [DOE O 541.1](#), *Appointment of Contracting Officers and Contracting Officer Representatives*, establishes the procedures for the appointment of CORs. An individual designated by a contracting officer to be a COR must have completed a minimum of 24 hours of formal education in basic Government procurement or contract administration or have at least one year's experience as a COR at a Federal agency.

All COR designations are to be by name and position title and made in writing by the contracting officer. The COR designation letter also identifies the responsibilities and limitations of the designation. A copy of the COR designation is furnished to the contractor and the contract administration office.

Attachment C is a model COR designation letter for use by contracting officers and may be tailored as appropriate for local use.

Uniform Contract Format

What is the Uniform Contract Format?

The Uniform Contract Format (UCF) is the standard contract format identified in FAR Part 14.201 for Sealed Bidding and FAR Part 15.204 for Negotiation that is required in the generation of solicitations and contracts. The UCF organizes contractual material into four separate parts.

Part I--The Schedule

- A Solicitation/contract form.
- B Supplies or services and prices/costs.
- C Description/specifications/statement of work.
- D Packaging and marking.
- E Inspection and acceptance.
- F Deliveries or performance.
- G Contract administration data.
- H Special contract requirements.

Part II--Contract Clauses

- I Contract clauses.

Part III--List of Documents, Exhibits, and Other Attachments

- J *List of attachments.*

Part IV--Representations and Instructions.

- K Representations, certifications, and other statements of offerors or respondents.
- L Instructions, conditions, and notices to offerors or respondents.
- M Evaluation factors for award.

The FAR exempts several types of contracts from the requirement to use the UCF, including construction, architect-engineer services, subsistence, letter requests for proposals, and contracts specifically exempted by the agency head or designee.

Does the Uniform Contract Format apply to the Department's M&O contracts?

Yes. The Department of Energy has not made a determination to specifically exempt its M&O contracts from the FAR requirement to use the Uniform Contract Format. During its review of existing M&O contracts, the Office of Procurement and Assistance Policy found that the majority of DOE's procurement offices were using the UCF. However, several offices were administering active contracts that have not yet been converted to the UCF. Converting these remaining contracts to the UCF will conform the Department's contracts to FAR practices and will facilitate a more consistent approach in the organization and structure of M&O contracts.

What do DOE Procurement Offices need to do?

All M&O contracts must be converted to the Uniform Contract Format. This may be accomplished at different occasions - such as contract renewal, modification, or re-competition.

Each DOE field office that still has contracts not following the UCF must identify the most opportune time to convert them to the UCF.

Attachment A - DEAR Contract Reform Clauses

Integration of Environment, Safety, and Health into Work Planning and Execution.
Preservation of Individual Occupational Radiation Exposure Records.
Displaced Employee Hiring Preference.
Allowable Costs and Fixed-Fee (Management and Operating Contracts).
Allowable Costs and Fixed-Fee (Support Contracts).
Property.
Insurance--Litigation and Claims.
Cost Prohibitions Related to Legal and Other Proceedings.
Preexisting Conditions.
Make-or-Buy Plan.
Workforce Restructuring Under Section 3161 of the National Defense Authorization Act for Fiscal Year 1993.
Laws, Regulations, and DOE Directives.
Access to and Ownership of Records.
Overtime Management.

Attachment B - Standard Financial Management Clauses

DEAR Clauses:

Accounts, Records, and Inspection.
Obligation of Funds.
Payments and Advances.
Management Controls.
Liability with Respect to Cost Accounting Standards.
Work for Others Funding Authorization.
Financial Management.
Integrated Accounting.

FAR Clauses:

Cost Accounting Standards.
Administration of Cost Accounting Standards.

Attachment C -Model COR Designation Letter

**Designation of Contracting Officer's Representative
for Contract No. DE-AC-_____ with _____**

To: _____

Pursuant to [DOE Order O 541.1](#), *Appointment of Contracting Officers and Contracting Officer Representatives*, and in accordance with the Technical Direction clause contained in the subject contract, you are hereby designated to act as the Contracting Officer's Representative (COR) in relation to the supplies and/or services to be provided under the subject contract. You must, therefore, familiarize yourself with the requirements of the contract and your responsibilities relative to these requirements. Your duties will consist of the following:

A. Monitor Contract Compliance. Ensure that the Contractor complies with all technical requirements of the work defined in the scope of work, including reports, documentation, data, work products, milestone schedules, and deliverables. In this connection, you should:

1. Inform the Contracting Officer (CO) in writing of any performance failure by the Contractor.
2. Inform the CO if you foresee that the contract or any task order will not be completed according to schedule. Your written notice should include your recommendations for resolving the schedule problem.
3. Ensure that the government meets its contractual obligations to the Contractor. This includes, but is not limited to, furnishing any government property and services specified in the contract, and providing timely Government comment on or approval of draft contract deliverables as may be required by the contract.
4. Inform the CO in writing of any necessary changes to the contract or task orders, as applicable, giving a full explanation of the proposed changes. A written request must be processed through the CO to effect any changes in the scope of work, task order, reporting requirements, or any other part of the contract. If the Contractor proposes a change, you are to obtain a written statement to that effect and forward that statement along with your recommendations to the CO. Your request should include the estimated cost of any proposed increase or decrease in the scope of work and the availability of funds. You should ensure that changes in the scope of work, including delivery schedule, are issued by written contract modification by the CO before the Contractor proceeds with the changes.
5. Issue technical direction within the limitations set forth in this designation and in accordance with the Technical Direction clause of the contract. Such technical direction should be in writing. A copy of all technical direction sent to the Contractor will be provided to the CO.
6. Assist the Contractor in interpreting the technical requirements of the contract. Immediately report to the CO in writing all technical issues which cannot be resolved without increasing costs or changing the contract. Also immediately report in writing any issues that cannot be mutually agreed to so that the CO can take action to resolve the issues. Such reports must include the facts pertinent to the issues and the recommended action.

7. Inspect and accept all deliverables within the scope of the contract. Review contract deliverables for unauthorized work.
8. If the contract contains a task ordering clause, recommend approval of task orders to the CO.
9. Inform the CO, in writing, of the need to exercise the contract option, if any, for additional time and/or quantities of units acquired.
10. Complete and return the past performance Contractor Performance Report when requested.
11. Ensure that requirements and policies of FAR 37.104, Personal Services Contracts, are adhered to and that no employer-employee relationship between Government and Contractor employees is created. [Note: The DOE Acquisition Guide, Part 37, provides guidance on support service contracting, a copy of which is available from the CO.]
12. Inform the CO of any potential or evidence of organizational conflict of interest (OCI) problems. [OCI means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.]

B. Monitor Administrative and Funds Aspects of Contract.

1. Notify the CO immediately of any indication that the cost to the government for completing performance under the contract will exceed the amount stated in the contract or task orders, as applicable.
2. Report any indication that costs are being incurred which are not appropriately chargeable to the contract.
3. Monitor travel under the contract to assure the necessity, number of travelers, and duration are appropriate.
4. Review and certify Contractor's periodic vouchers or invoices for payments in relation to the contract and progress reports to determine whether work accomplished is commensurate to payment requested. Questionable costs should be reported promptly to the CO for appropriate resolution.

C. Property Management (as applicable).

1. Review and comment on the Contractor's request for government-furnished facilities, supplies, materials, and equipment and forward the request to the CO for disposition.

2. Review and comment on the Contractor's request for consent to the purchase of supplies, materials, and equipment, and forward the request to the CO for disposition.
3. Review and comment on the Contractor's lease-purchase analysis or make-buy decisions.
4. Review and comment on the Contractor's submitted property management reports.

D. Assist in Close-out of Contract.

1. Forward a written statement to the CO attesting to the Contractor's completion of technical performance, delivery, and acceptance of all goods and services for which inspection and acceptance are delegated.
2. In accordance with DOE policies and procedures existing upon close-out, provide any required close-out information to the CO; and make disposition of all records and documents pertinent to the administration of the contract which you retained in your capacity as COR during the period of performance.

As a matter of practice, the COR should prepare a written record of meetings, trips, and telephone conversations relating to the contract. Each record and all correspondence relating to the contract should cite the contract number. It is requested that a copy of records or correspondence that you generate or receive relating to the contract be furnished to the CO and all other interested parties having a need to know. The utmost care must be given to restrictions regarding proprietary data, as well as classified and business-sensitive information.

In performing these responsibilities, you are not authorized to redelegate any COR responsibility to others; or negotiate terms or make any agreements or commitments with the Contractor which involve a change in the scope, price/cost, terms, or conditions of the contract. Only the CO is authorized to modify any term or condition of the contract, waive any requirement of the contract, or approve the payment of vouchers.

Please acknowledge acceptance of the COR designation and return one copy to the CO identified below.

ACCEPTANCE OF COR DESIGNATION

Contracting Officer

Name

Date