



Homeland
Security

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Paul Courtney
Chief Procurement Officer

SUBJECT: FAR Class Deviation (Number 26-11) for FAR Part 42 in Support
of Executive Order on Restoring Common Sense to Federal
Procurement

1. **Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 42 for purposes of implementing the FAR Council's model deviation text to FAR Part 42.
2. **Background.** [Executive Order \(E.O.\) 14275, Restoring Common Sense to Federal Procurement](#), signed April 15, 2025, mandates a comprehensive review and simplification of the FAR.

The FAR is being updated to:

- Eliminate non-statutory language
- Remove redundant or obsolete language
- Enhance clarity through plain language
- Align with the new FAR framework
- Preserve essential governmentwide acquisition standards

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative. This initiative will make the FAR more concise, understandable, and focused on core procurement requirements.

3. **Summary of Changes.** FAR Part 42, Contract Administration and Audit Services, has been streamlined from 17 subparts to 13, and places more emphasis on contractor performance evaluations and using performance information throughout the acquisition lifecycle, not just for source selection information.

The update removes language limiting past performance information to future "source selection" purposes, and places an end date (April 1, 2026) on when evaluations should be marked as source selection.

This revision signals to acquisition teams that past performance information may be used throughout the acquisition lifecycle.

In addition, the deviated text makes certain permissive considerations during performance evaluations mandatory. For example, section 42.1503(b) previously suggested considerations to document on an evaluation report, but the deviated text (42.1103(b)) now states that these areas **must** be documented. This emphasizes the importance of documenting key information consistently.

Finally, the deviated text removes the limitation on evaluating performance on AbilityOne contracts (previously at 42.1502(h)). With removal of this limitation, contracting activities can now document performance evaluations for AbilityOne contractors, providing a useful tool to motivate good contract performance by AbilityOne contractors, and enabling high-performing AbilityOne contractors to use positive performance evaluations to compete for new opportunities.

Statutory requirements retained in the RFO FAR Part 42 model deviation include, but are not limited to, the following:

- 10 U.S.C. §§ 3741 et seq and 41 U.S.C. §§ 4301 et seq, Allowable Costs
- 10 U.S.C. § 3841 and 41 U.S.C. § 4706, Contractor Audits and Accounting
- 11 U.S.C. §§ 501 et seq, Creditors and Claims
- 31 U.S.C. § 1535, The Economy Act
- 41 U.S.C. § 1126, Policy Regarding Consideration of Contractor Past Performance
- 41 U.S.C. § 1326, Requirements for Executive Agencies
- 41 U.S.C. § 2313, Database for Federal Agency Contract and Grant Officers and Suspension and Debarment Officials
- 41 U.S.C. § 3102, Delegation and Assignment of Powers, Functions, and Responsibilities
- 41 U.S.C. § 4504, Conditions for Progress Payments
- 41 U.S.C. § 6305, Assignment of Contracts Act

Change	Description
Retained	• Subpart 42.1, “Contract Audit Services”, is streamlined with plain language updates. • Subpart 42.2, “Contract Administration Services”, is streamlined with plain language updates. • Subpart 42.3, “Contract Administration Office Functions”, is retained. The list of 71 functions has been updated with plain language and revised cross-references to align with the new part structure. • Most provisions and clauses have been retained (or remain reserved) with no changes. The only exception is noted in the “Moved/Updated”

	section below.
Moved and Updated	• Subpart 42.4, “Corporate Administrative Contracting Officer”, is renumbered from subpart 42.6 and streamlined. • Subpart 42.5, “Indirect Cost Rates”, is renumbered from subpart 42.7 and streamlined. • Subpart 42.6, “Disallowance of Costs”, is renumbered from subpart 42.8 and streamlined. • Subpart 42.7, “Bankruptcy”, is renumbered from subpart 42.9 and streamlined. • Subpart 42.8, “Production Surveillance and Reporting”, is renumbered from subpart 42.11 and streamlined. • Subpart 42.9, “Novation and Change-of-Name Agreements”, is renumbered from subpart 42.12 and streamlined. • Subpart 42.10, “Suspension of Work, Stop-Work Orders, and Government Delay of Work”, is renumbered from subpart 42.13 and streamlined. • Subpart 42.11, “Contractor Performance Information”, is renumbered from subpart 42.15. The structure of the “policy” and “procedures” sections (formerly 42.1502 and 42.1503, now 42.1102 and 42.1103) has been substantially improved. The subpart uses more headings, numbered lists, and subparagraphs to break down complex requirements into more digestible components. ○ Subsection 42.1101 removes language limiting past performance information to future “source selection” purposes ▪ From: “Past performance information (including the ratings and supporting narratives) is relevant information, for <u>future source selection purposes</u>, regarding a contractor’s actions under previously awarded contracts or orders.” ▪ To: “Past performance information (including the ratings and supporting narratives) is relevant information, <u>for future purposes</u>, regarding a contractor’s actions under previously awarded contracts or orders.” ○ Subsection 42.1103(d)(4) provides an end date for marking performance evaluations as source selection. It now states, “Evaluations of contractor performance developed on contracts awarded prior to April 1, 2026 should be marked ‘Source Selection Information’”. This update emphasizes that past performance information is no longer limited only to future source selection purposes. ○ Subsection 42.1103(f) replaces the reference to FAPIIS (formally at 42.1503(g)) with the “responsibility/qualification reports in the System for Award Management (SAM), at SAM.gov”.

	• Subpart 42.12, “Small Business Contract Administration”, is renumbered from subpart 42.16 and streamlined. • Subpart 42.13, “Forward Pricing Rate Agreements”, is renumbered from subpart 42.17 and streamlined. • The following clause has been updated to align cross-references: ○ 52.242-3 (Clause), Penalties for Unallowable Costs • The FAR Companion is expected to include best practice information not required in the FAR, on the following content: ○ Uses of performance information ○ Interagency agreements ○ Cognizant federal agency ○ Contract administration functions ○ Contract correspondence ○ Visits to contractors’ facilities ○ Evaluation of contract administration functions ○ Postaward orientation ○ Selecting contracts for postaward orientation ○ Postward subcontractor conferences ○ Procedures, related to distribution of documentation of indirect contract rates ○ Production surveillance and reporting requirements ○ Evaluation of Federal Prison Industries (FPI) performance
Removed	• Former subparts 42.4, “Correspondence and Visits”, and 42.5, “Postaward Orientation”, are removed. Best practice content is expected to be moved to the FAR Companion. • 42.1502 paragraph (h) is removed to allow for past performance evaluations of AbilityOne.

This table is not an exhaustive list.

4. Instructions.

- The Department of Homeland Security (DHS) acquisition workforce shall follow the RFO Part 42 as codified at 48 CFR chapter 1. The Council’s RFO Part 42 model deviation text is available <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-42> and is incorporated into this class deviation.
- For new solicitations or contracts, when using any provisions or clauses that have been revised, utilize the RFO model deviation language in Attachment 1.
- 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.

- Contracting activities must review templates and related standard operating procedures to align with this class deviation and remove unnecessary processes and steps.
5. **Applicability.** This class deviation applies to all DHS procurements.
 6. **Authority.** This class deviation is issued under the authority of E.O. 14275, [OMB Memo M-25-26](#), 48 CFR 1.4, and RFO FAR 1.304.
 7. **Effective Date.** This class deviation is effective November 3, 2025 and remains in effect until rescinded or incorporated into the FAR.
 8. **Points of Contact.** Questions regarding this class deviation may be directed to Acquisition Policy and Legislation Branch at Acquisition.Policy@hq.dhs.gov.

Attachment:

1. FAR Part 42 Solicitation Provisions and Contract Clauses Revisions

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

52.242-3 Penalties for Unallowable Costs.

As prescribed in 42.508-7, use the following clause:

Penalties for Unallowable Costs (OCT 2025) (DEVIATION 26-11)
(effective November 3, 2025)

(a) Definition. Proposal, as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in 10 U.S.C. 374810 U.S.C. 3748 or 41 U.S.C. chapter 4341 U.S.C. chapter 43,, as applicable, which is implemented in section 42.508 of the Federal Acquisition Regulation (FAR).

(c) The Contractor will not include in any proposal any cost that is unallowable in the FAR or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor must be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed-

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to 41 U.S.C. 7109.

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of 41 U.S.C. chapter 71, Contract Disputes.

(g) Pursuant to the criteria in FAR 42.709-6, the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)
