

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 12 - ACQUISITION OF
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES**

Findings

1. The objective of this class deviation is to implement the Federal Acquisition Regulatory Council's model deviation text to the Federal Acquisition Regulation (FAR) Part 12 - *Acquisition of Commercial Products and Commercial Services*, and applicable sections of FAR Part 52 - *Solicitation Provisions and Contract Clauses*.
2. On April 15, 2025, President Donald J. Trump issued Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*. Section 2 of the E.O. established the policy that the FAR "should only contain provisions required by statute or essential to sound procurement, and any FAR provisions that do not advance these objectives should be removed."
3. On May 2, 2025, the Office of Management and Budget (OMB) issued memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*, initiating a major overhaul of the FAR (Revolutionary FAR Overhaul, or "RFO"). The memorandum tasked the Office of Federal Procurement Policy (OFPP) with leading the RFO, in coordination with the other members of the Federal Acquisition Regulatory Council – i.e., the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA) and federal buying agencies. The goal is refocusing the FAR on its statutory roots. To that end, the FAR is being updated to:
 - Remove language that is not required by statute
 - Remove duplicative or outdated language
 - Clarify or provide more plain language
 - Revise language for the new FAR framework
 - Retain language necessary for governmentwide acquisition standards

The OMB memorandum M-25-26 established a two phased approach to implementing enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. Phase one involves the FAR Council issuing guidance on a rolling basis with clear, plain language model deviation text organized by FAR part. The goal is streamlining the regulation by aligning it more closely to its statutory base. According to the memorandum, agencies should adopt this model deviation text within 30 days by issuing either individual or class deviations.

4. On May 2, 2025, the FAR Council issued further implementing guidance in a memorandum titled *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*. Pursuant to the FAR Council's memorandum, "agencies that adopt the Council's RFO class deviation text without change, or require different text

only to address statutory direction unique to the agency, do not need to coordinate with the Council.”

5. On August 14, 2025, the FAR Council issued model deviation text for FAR Part 12 and corresponding provisions and clauses at FAR Part 52. Part 12 has been significantly updated as a result of the RFO process. The Part has been fundamentally re-engineered in its structure, scope, and operational mechanics to make federal buying faster, simpler, and more aligned with commercial practices. These changes reflect an effort to create a user-centric Part that champions flexibility and innovation when acquiring commercial products and services.

Statutory requirements retained in the RFO FAR Part 12 model deviation include, but are not limited to, the following:

- 10 U.S.C. §§ 3451 et seq, Procurement of Commercial Products and Commercial Services
- 10 U.S.C. § 3453 and 41 U.S.C. § 3307, Preference for Commercial Products and Commercial Services
- 10 U.S.C. § 3771 and 41 U.S.C. § 2302, Rights in Technical Data
- 10 U.S.C. § 3805 and 41 U.S.C. § 4505, Payments for Commercial Products and Commercial Services
- 41 U.S.C. § 103, Commercial Product
- 41 U.S.C. § 103a, Commercial Service
- 41 U.S.C. § 104, Commercially Available Off-the-Shelf Item
- 41 U.S.C. § 1708, Procurement Notice
- Pub. L. 103-355, Federal Acquisition Streamlining Act of 1994 (FASA)
- Pub. L. 105-261 Sec 803, Defense Commercial Pricing Management Improvement

In addition, the following table provides a non-exhaustive list of non-statutory requirements that have been revised and retained, or removed from Part 12:

| Change | Description |
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| Retained | <ul style="list-style-type: none">• The revised Part structure consolidates all relevant guidance into process-oriented subparts:<ul style="list-style-type: none">○ Subpart 12.1 - Presolicitation○ Subpart 12.2 - Solicitation, Evaluation, and Award○ Subpart 12.3 - Postaward○ Subpart 12.4 - Micro-purchases• Definitions related to this Part, such as “Commercially Available Off-the-Shelf Item or COTS Item” and “Nondevelopmental Item” remain at FAR 2.101, with some edits.• The definition of “Commercial service” at FAR 2.101 clarifies that construction is included within the definition. |

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| | <ul style="list-style-type: none"> • Section 12.000, “Scope”, now clarifies that simplified procedures authorized by statute are implemented in Part 12. This includes using simplified procedures for acquisitions up to \$7.5 million (or \$15 million to support responses to emergencies or major disasters, or other specified situations). • Tables are added that help readers find information easier: <ul style="list-style-type: none"> ○ Table 12-1, Authority citations for restricting competition ○ Table 12-2, Provisions to include as prescribed ○ Table 12-3, Clauses to include as prescribed ○ Table 12-4, Provisions and clauses to include as needed. • New section 12.101, “Preference”, retains the preference for commercial procurement. • New section 12.104, “Contract Type”, retains the preference to utilize fixed-price contracts to the maximum extent practicable. • Labor-hour or Time-and-Material contracts may still be used for commercial services, but a determination and findings must be executed by the contracting officer. • New section 12.201-1, “Simplified Procedures”, clarifies that for acquisitions valued up to \$7.5 million, the agency use a request for quotations (RFQ) followed by a purchase order (vs. RFP/Part 15 procedures for acquisitions over \$7.5M). • New section 12.201-1(b) provides clear guidance as to the legal effect of quotations. • New section 12.201-1(d) encourages agencies to use additional innovative approaches to the maximum extent practicable when soliciting quotations and issuing purchase orders. • New section 12.201-2, “Other Procedures”, provides instruction that for acquisitions valued at greater than \$7.5 million, agencies are to use the procedures in the new subpart 12.2 in conjunction with the procedures in Part 15 for requests for proposals (RFPs) or Part 14 for invitations for bids (IFBs), as appropriate. Use of an RFP is the preferred method because it includes consideration of past performance when evaluating offers (see the new 12.203(a)(2)). • The deviated text clarifies that construction can now be procured commercially. When using the procedures in this subpart to acquire construction, comply with the requirements in Part 36 for construction contracts and subpart 22.4 on labor standards. • The contracting officer has broad discretion in establishing how quotations will be evaluated. For example, the contracting officer may perform a comparative evaluation of quotations. • The deviated text emphasizes that evaluation procedures are not subject to Part 15 or 14. Contracting officers are not required to have evaluation plans, score quotations, or establish a |
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| | <p>competitive range before communicating with quoters or soliciting revised quotations (see 12.203(c)(2)).</p> <ul style="list-style-type: none"> • The Part is revised to clarify that if commercial products or commercial services that meet agency needs are available from any priority source identified in Part 8, including existing contracts awarded for Governmentwide use (e.g., the Federal Supply Schedules and Governmentwide acquisition contracts), agencies must procure the commercial products or commercial services from that source. If not available, agencies are to use the streamlined procedures for solicitation, evaluation, and award in the new subpart 12.2. • New section 12.203(c)(1), “Timely quotations and offers”, instructs contracting officers to exercise good business judgment in deciding whether to accept a quotation or offer received after the due date or time. • The definition of and requirements for subcontracts are retained, and will be moved to Part 44. |
| Removed | <ul style="list-style-type: none"> • A total of 46 clauses and provisions from other FAR parts are removed as they are no longer required for commercial contracts. This change reflects an approximate 30% reduction in the number of clauses and provisions that are applicable to commercial contracts. |

The RFO Part 52 model deviation text also makes adjustments to provisions 52.212-1 *Instructions to Offerors-Commercial Products and Commercial Services* and 52.212-2 *Evaluation-Commercial Products and Commercial Services*, and clause 52.212-4 *Terms and Conditions-Commercial Products and Commercial Services*. In addition, the provision 52.212-3 *Offeror Representations and Certifications-Commercial Products and Commercial Services* and the clause 52.212-5 *Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services*, are removed and reserved.

Determination

In accordance with RFO 1.304 *Class deviations* and Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Parts 12 and 52, it is hereby determined that a class deviation is appropriate pursuant to OMB memorandum M-25-26 (Attachment 1) and the FAR Council memorandum (Attachment 2) issued on May 2, 2025, using the RFO model deviation text for Part 12 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 12 in lieu of 48 Code of Federal Regulations (CFR) Part 12, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections at 48 CFR 52.212-1, 52.212-2, 52.212-3, 52.212-4, and 52.212-5. Once approved, the Department will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to the affected regulations. This

class deviation is effective November 3, 2025, and will remain effective until cancelled or incorporated into the FAR.

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Attachments:

OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*
FAR Council Memorandum, *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*
RFO Parts 12 and 52 Model Deviation Text