



U.S. Department of Justice

Justice Management Division

Washington, D.C. 20530

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: William N. Taylor II
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SUBJECT: Class Deviation from the Federal Acquisition Regulation (FAR) Part 36 in support of Executive Order 14275 on Restoring Common Sense to Federal Procurement

1. **PURPOSE**

This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 36 for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text to FAR Part 36 available at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-36>.

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 36, concerning construction and architectural-engineering (AE) contracts, has been updated to streamline and align requirements with the acquisition lifecycle. This includes new subparts 36.1, Presolicitation, 36.2 Evaluation and Award, and 36.3, Postaward. A high-level summary of the content updates, additions, and removals is as follows:

The following items are updated or retained:

- Statutory requirements retained in the RFO FAR part 36 model deviation include, but are not limited to, the following:
 - 10 U.S.C. § 3241 and 41 U.S.C. § 3309, Design-Build Selection Procedures
 - 15 U.S.C. § 644(w), Administration of Construction Change Orders
 - Pub. L. 92-582, Brooks Act of 1972
 - Pub. L. 103-355, Federal Acquisition Streamlining Act of 1994
 - Pub. L. 108-136, Services Acquisition Reform Act of 2003
- The “Policy” section has been moved and revised to consolidate critical high-level requirements to include the following:
 - Agencies must use Project Labor Agreements for federal construction requirements valued at or above \$35 million unless an exception applies.
 - Market research for constructions projects over \$35M must involve a current and proactive examination of the market conditions in the project area.
 - For design and construction selection, the contracting officer must use either design-bid-build procedures, two-phase design-build procedures, or another acquisition procedure authorized by law.
 - Agencies must implement high-performance sustainable building practices.
- The “Procedures” section for two-phased design-build selection, previously at 36.303, has been moved to 36.101-2 and significantly streamlined.
- Clarification regarding when the Government estimate of construction costs must be provided to the contracting officer and when liquidated damages must be assessed has been added.
- Twenty-two (22) provisions/clauses were retained with plain language adjustments. See the Deviation section below for instructions on removing these clauses from solicitations and awards.

The following items have been removed:

- All definitions formerly at 36.001 and 36.102, other than “Firm.”
- The “Applicability” section, previously at 36.101 is removed.
- Focus areas where guidance is provided in other FAR parts, such as contract performance under Part 42 and sealed bidding procedures under Part 14.
- The section titled, "Performance of Work by the Contractor", which required that prime contractors perform a specific percentage of the work with their own forces, and the implementing clause at 52.236-1 are removed. This requirement is separate from the clause at 52.219-14, Limitations of Subcontracting.
- Specific evaluation requirements for A-E requirements to allow for additional flexibility.

- The requirement for the Government to disclose the magnitude of the construction project. This information may still be disclosed based on the strategy needs of the acquisition team.
- Requirements for site inspection during the solicitation and preconstruction conference after award.
- Six clauses/provisions are removed. See the Deviation section below for instructions on removing these clauses from solicitations and awards.

4. AUTHORITY

This class deviation is issued under the authority of [E.O. 14275](#), [OMB M-25-26](#), and RFO FAR 1.304.

5. DEVIATION

The DOJ acquisition workforce must follow the RFO Part 36 model deviation text instead of FAR Part 36 as codified at 48 CFR Chapter 1. The Council's RFO Part 36 model deviation text is available at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-36>.

Where applicable, include the revised Part 36 provision and clause deviations, at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-52> in lieu of the standard versions. For open solicitations or awarded contracts, the Contracting Officer has discretion regarding the need to enforce or amend the clause.

When issuing new solicitations and contracts do not include the clauses noted below in solicitations and delete the following clauses in existing contracts:

- 52.236-1, Performance of Work by the Contractor
- 52.236-4, Physical Data
- 52.236-19, Organization and Direction of the Work
- 52.236-26, Preconstruction Conference
- 52.236-27, Site Visit (Construction)
- 52.236-28, Preparation of Proposals-Construction

6. EFFECTIVE DATE AND EXPIRATION

This class deviation is effective immediately and remains in effect until rescinded or incorporated into the FAR.

7. SCOPE AND APPLICABILITY

This class deviation applies to all DOJ procurements.

8. ADDITIONAL INFORMATION

If you have questions, please contact DOJAcquisitionPolicy@usdoj.gov.

9. ATTACHMENTS

Attachment 1 – Deviation to FAR Text – FAR Part 36 (Line-In/Line-Out)