



# UNITED STATES DEPARTMENT OF EDUCATION

## OFFICE OF FINANCE AND OPERATIONS

August 5, 2025

### ACQUISITION ALERT 2025-18

TO: Heads of Contracting Activities

FROM: Calvin J. Mitchell Jr. **CALVIN MITCHELL** Digitally signed by CALVIN MITCHELL  
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Date: 2025.08.05 17:23:31 -04'00'

SUBJECT: FAR Class Deviation for FAR Part 36 in Support of Executive Order on Restoring Common Sense to Federal Procurement

- 1. Purpose.** This Acquisition Alert (AA) adopts 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.
- 2. Background.** On April 15, 2025, the Executive Order (E.O.) 14275 on Restoring Common Sense to Federal Procurement was signed. Section 2 of the E.O. establishes 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." On May 31, 2025, the enclosed class deviation was issued for the use of all Revolutionary FAR Overhaul (RFO) model deviation texts and corresponding EDAR deviations.
- 3. Summary of Changes.** FAR Part 36, Construction and Architect-Engineer Contracts, has undergone a comprehensive revision that includes a complete structural reorganization to align with the acquisition lifecycle, enhanced clarity, and a strategic consolidation of policies coupled with the elimination of outdated requirements. In addition, multiple clauses and provisions were removed reflecting an almost 20% reduction in clauses and provisions.

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

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Change	Description
Retained	<ul style="list-style-type: none"> <li>● <b>The scope of the part is simplified</b> to define the part's coverage to "construction, which includes dismantling, demolition or removal of improvements; and architect-engineer services".</li> <li>● The <b>definition of “Firm”</b> is retained in the part.</li> <li>● The section titled <b>“Policy”</b> is moved from 36.104 to 36.002 and revised to consolidate critical high-level requirements: <ul style="list-style-type: none"> <li>○ Agencies <b>must require the use of Project Labor Agreement</b> for Federal construction projects with a total estimated construction cost at or above \$35 million unless an exception applies.</li> <li>○ Market research for construction contracts valued at or above \$35 million must involve a <b>current and proactive examination of the market conditions in the project area</b>.</li> <li>○ For <b>design and construction selection</b>, the contracting officer must use either design-bid-build procedures, two- phase design-build procedures, or another acquisition procedure authorized by law.</li> <li>○ Agencies must implement <b>high-performance sustainable building</b> practices.</li> </ul> </li> <li>● <b>New subparts 36.1, Pre-Solicitation, 36.2, Evaluation and Award and 36.3, Postaward</b> create logical organization in <b>alignment with the acquisition lifecycle</b>, creating clear points of reference.</li> <li>● The contracting officer is required to evaluate the need for <b>liquidated damages</b> during acquisition planning. The FAR was previously silent as to the timing of this evaluation.</li> <li>● <b>Clauses retained with plain language adjustments include:</b> <ul style="list-style-type: none"> <li>○ 52.236-2, Differing Site Conditions</li> <li>○ 52.236-3, Site Investigation and Conditions Affecting the Work</li> <li>○ 52.236-5, Material and Workmanship</li> <li>○ 52.236-6, Superintendence by the Contractor</li> <li>○ 52.236-7, Permits and Responsibilities</li> <li>○ 52.236-8, Other Contracts</li> <li>○ 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements</li> <li>○ 52.236-10, Operations and Storage Areas</li> <li>○ 52.236-11, Use and Possession Prior to Completion</li> <li>○ 52.236-12, Cleaning Up</li> <li>○ 52.236-13, Accident Prevention</li> <li>○ 52.236-14, Availability and Use of Utility Services</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ 52.236-15, Schedules for Construction Contracts</li> <li>○ 52.236-16, Quantity Surveys</li> <li>○ 52.236-17, Layout of Work</li> <li>○ 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts</li> <li>○ 52.236-20, [remains Reserved]</li> <li>○ 52.236-21, Specifications and Drawings for Construction</li> <li>○ 52.236-22, Design Within Funding Limitations</li> <li>○ 52.236-23, Responsibility of the Architect-Engineer Contractor</li> <li>○ 52.236-24, Work Oversight in Architect-Engineer Contracts</li> <li>○ 52.236-25, Requirements for Registration of Designers</li> </ul>
<b>Removed</b>	<ul style="list-style-type: none"> <li>● Definitions previously scattered between 36.001 and 36.102 are removed, leaving only a <b>single definition, "Firm,"</b> at 36.001.</li> <li>● The “<b>Applicability</b>” section, previously at 36.101, is removed.</li> <li>● The reference to <b>evaluation of contract performance</b>, previously at 36.201, has been removed. The new subpart 36.3, Postaward, refers contracting officers to FAR Part 42 for general contract administration functions.</li> <li>● The timing of requirement to prepare and furnish the <b>Government estimate of construction costs</b> to the contracting officer is clarified to be done “<b>before receipt of proposals</b>” instead of what was previously “at the earliest practicable time.” The instructions were also moved from 36.203 to 36.101-6.</li> <li>● The section titled “<b>Disclosure of the magnitude of construction projects</b>”, previously at 36.204, is removed. This information may still be disclosed based on the strategy needs of the acquisition team.</li> <li>● Supplemental procedures for <b>sealed bidding</b> are removed. Acquisition teams desiring to utilize sealed bidding should review part 14.</li> <li>● The requirements for a <b>site inspection during the solicitation phase</b>, previously at 36.210 and 36.523, and conducting a <b>preconstruction conference after award</b>, previously at 36.212 and 36.522, are removed.</li> <li>● The “<b>Procedures</b>” section for two-phased design-build selection, previously at 36.303, has been moved to 36.101-2 and significantly streamlined. The contracting activity retains discretion to issue one or two solicitation documents for the procurement phases.</li> <li>● The section titled, “<b>Performance of Work by the Contractor</b>”, formerly located at 36.501 and the implementing clause at 52.236-1 are removed. This requirement, often referred to as the “<b>12 percent rule</b>,” mandated that prime contractors perform a</li> </ul>

	<p>specified minimum percentage of the total contract work with their own forces. This requirement is separate from the clause at 52.219-14, Limitations of Subcontracting.</p> <ul style="list-style-type: none"> <li>• Specific evaluation requirements for <b>architect-engineer contracts</b>, previously at 36.602-1 and 36.603, are removed. Contracting activities now have additional flexibility in evaluating offeror qualifications.</li> <li>• <b>Clauses and provisions removed include:</b> <ul style="list-style-type: none"> <li>○ 52.236-1, Performance of Work by the Contractor</li> <li>○ 52.236-4, Physical Data</li> <li>○ 52.236-19, Organization and Direction of the Work</li> <li>○ 52.236-26, Preconstruction Conference</li> <li>○ 52.236-27, Site Visit (Construction)</li> <li>○ 52.236-28, Preparation of Proposals-Construction</li> </ul> </li> </ul>
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This table is not an exhaustive list.

#### 4. Instructions.

- The Department of Education’s acquisition workforce shall 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> and is incorporated into this class deviation. There is no EDAR Part 3436 and therefore no corresponding changes to the EDAR are necessary.
- When using any provisions or clauses that have been revised, utilize the RFO model deviation language at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-52>.
- Do not include any of the removed provisions or clauses in future solicitations and contracts.
- 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.
- Review templates and related standard operating procedures to align with this deviation and remove unnecessary processes and steps.

5. **Training.** Acquisition Professionals are highly encouraged to complete “Practitioner Album: FAR Part 36 – Research and Development Contracting” at [https://www.acquisition.gov/sites/default/files/practitioner\\_albums/far-part-36-construction-and-architect-engineer-contracts/content/index.html#/](https://www.acquisition.gov/sites/default/files/practitioner_albums/far-part-36-construction-and-architect-engineer-contracts/content/index.html#/) within 30 days. Please complete the Practitioner Album and mark “yes” under the completion attestation within FAI CSOD.

6. **Effective Date.** This class deviation to FAR Part 36 is effective immediately and remains in effect until rescinded or incorporated into the FAR.
7. **Points of Contact.** Direct questions regarding this class deviation to your respective policy points of contact.
8. **Enclosure.** Determination and Findings - Class Deviation for the Revolutionary FAR Overhaul

**DETERMINATION AND FINDINGS**  
Department of Education, All Contracting Activities  
Class Deviation for the Revolutionary FAR Overhaul

This approves a class deviation to all Federal Acquisition Regulation (FAR) and Department of Education Acquisition Regulation (EDAR) parts for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text.

**Findings**

On April 15, 2025, the Executive Order (E.O.) 14275 on Restoring Common Sense to Federal Procurement was signed. Section 2 of the E.O. establishes 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."

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

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative.

In explaining the Federal Acquisition System, the RFO FAR Part deviation text establishes bedrock principles. Most centrally, it sets a "mission first" message at the top of the guiding principles. The RFO model deviation also increases the emphasis on the best use of taxpayer dollars and calls out the value of time as another guiding principle. Additionally, it retains a focus on satisfying the customer, maximizing use of commercial products and services, promoting competition, and encouraging innovation.

The FAR Council Deviation guidance allows for agencies to deviate agency acquisition regulation supplements as it relates to the RFO.

**Determination**

In accordance with FAR 1.404 and EDAR 3401.404, I hereby issue a class deviation for the use of all RFO model deviation texts and corresponding EDAR deviations. The adoption date for each RFO part model deviation text will be the date of the corresponding Acquisition Alert. EDAR deviation texts may be issued in a separate Acquisition Alert. All Department of Education contracting activities must follow the RFO model deviation texts instead of the FAR Parts codified at 48 CFR. Should the language of the RFO FAR contradict any statutorily granted procurement authorities to the Department of Education including the Office of Federal Student Aid, the statutorily granted authorities prevail.

In the unlikely event that the Department wishes to vary from a RFO model deviation text, a separate deviation will be issued. This class deviation will remain in effect until incorporated into the FAR, EDAR or rescinded.

**RICHARD LUCAS** Digitally signed by RICHARD LUCAS  
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Richard Lucas

Date

Acting Chief Acquisition Officer (CAO)