



# U.S. MERIT SYSTEMS PROTECTION BOARD

Financial and Administrative Management

1615 M Street, NW  
Washington, DC 20419-0002

September 12, 2025

TO: MSPB Contracting Officers

A handwritten signature in black ink, appearing to read 'Michaela Klarmann'.

FROM: Michaela Klarmann, Senior Procurement Official  
Acting Director, Financial and Administrative Management

Subject: FAR Class Deviation for FAR Part 12 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 12 for purposes of implementing the FAR Council's model deviation to FAR part 12.

2. Background. On April 15, 2025, Executive Order (EO) 14275 on Restoring Common Sense to Federal Procurement was signed by the President. Section 2 of the EO 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:

- 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 12, Acquisition of Commercial Products and Commercial Services, is significantly updated. 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 may not be 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

#### Retained

- The revised part structure consolidates all relevant guidance into process-oriented subparts:
  - 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” still 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.
- 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:
  - 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 clear 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 competitive range before communicating with quoters or soliciting revised quotations (see 12.203(c)(2)).
- 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 use the streamlined procedures for solicitation, evaluation, and award in the new subpart 12.2.
- Timely quotations and offers. The deviated text 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.
- The following provisions and clauses are retained with plain language and other edits.
  - 52.212-1, Instructions to Offerors-Commercial Products and Commercial Services
  - 52.212-2, Evaluation-Commercial Products and Commercial Services
  - 52.212-4, Terms and Conditions-Commercial Products and Commercial Services

#### Removed

- 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.
- Further, the following clause and provision are removed as they are unnecessary. The majority of the references are no longer required, and any required references are retained through other means:
  - 52.212-3, Offeror Representations and Certifications-Commercial Products and Commercial Service
  - 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders-Commercial Products and Commercial Services

This is not an exhaustive list of the changes.

4. Instructions. The MSPB acquisition workforce shall:

- Follow RFO part 12 and corresponding 52 model deviation text instead of FAR part 12 and 52 as codified at 48 CFR Chapter 1. The Council's RFO part 12 model deviation text is available at [Acquisition.gov/far-overhaul](https://www.acquisition.gov/far-overhaul) 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 at RFO FAR 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.
- For any solicitation or contract using RFO provisions or clauses, contracting officers may include the following language:  
*"System updates may lag policy updates. The System for Award Management (SAM) may continue to require entities to complete representations based on provisions that are not included in this solicitation. Contracting officers will rely on representations from offers based on provisions in the solicitation. Entities are not required to, nor are they able to, update their entity registration to remove these representations in SAM."*
- Review templates and related standard operating procedures to align with this deviation and remove unnecessary processes or steps.

5. Applicability. This class deviation applies to all MSPB procurements.

6. Authority. This class deviation is issued under the authority of EO 14275, OMB memorandum 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. Point of Contact. Questions regarding this class deviation may be directed to: Michaela Klarmann, [michaela.klarmann@mspb.gov](mailto:michaela.klarmann@mspb.gov).