




U.S. MERIT SYSTEMS PROTECTION BOARD

Financial and Administrative Management

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August 13, 2025

TO: MSPB Contracting Officers

FROM: 
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Subject: FAR Class Deviation for 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 FAR Council's model deviation to FAR part 36.
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 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the acquisition lifecycle, enhanced clarity, and a strategic consolidation of policies coupled with the elimination of outdated requirements.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

Retained

- The scope of the part is simplified to define the part's coverage to "construction, which includes dismantling, demolition or removal of improvements; and architect-engineer services".
- The definition of "Firm" is retained in the part.
- The section titled "Policy" is moved from 36.104 to 36.002 and revised to consolidate critical high-level requirements:
 - Agencies must require the use of Project Labor Agreement for Federal construction projects with a total estimated construction cost at or above \$35 million unless an exception applies.
 - Market research for construction contracts valued at or above \$35 million 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.
- New subparts 36.1, Pre-Solicitation, 36.2, Evaluation and Award and 36.3, Postaward create logical organization in alignment with the acquisition lifecycle, creating clear points of reference.
- The contracting officer is required to evaluate the need for liquidated damages during acquisition planning. The FAR was previously silent as to the timing of this evaluation.
- Clauses retained with plain language adjustments include:
 - 52.236-2, Differing Site Conditions
 - 52.236-3, Site Investigation and Conditions Affecting the Work
 - 52.236-5, Material and Workmanship
 - 52.236-6, Superintendence by the Contractor
 - 52.236-7, Permits and Responsibilities
 - 52.236-8, Other Contracts
 - 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements
 - 52.236-10, Operations and Storage Areas
 - 52.236-11, Use and Possession Prior to Completion
 - 52.236-12, Cleaning Up
 - 52.236-13, Accident Prevention
 - 52.236-14, Availability and Use of Utility Services

- 52.236-15, Schedules for Construction Contracts
- 52.236-16, Quantity Surveys
- 52.236-17, Layout of Work
- 52.236-18, Work Oversight in Cost-Reimbursement Construction Contracts
- 52.236-20, [remains Reserved]
- 52.236-21, Specifications and Drawings for Construction
- 52.236-22, Design Within Funding Limitations
- 52.236-23, Responsibility of the Architect-Engineer Contractor
- 52.236-24, Work Oversight in Architect-Engineer Contracts
- 52.236-25, Requirements for Registration of Designers.

Removed

- Definitions previously scattered between 36.001 and 36.102 are removed, leaving only a single definition, "Firm," at 36.001.
- The "Applicability" section, previously at 36.101, is removed.
- The reference to evaluation of contract performance, 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.
- The timing of requirement to prepare and furnish the Government estimate of construction costs to the contracting officer is clarified to be done "before receipt of proposals" instead of what was previously "at the earliest practicable time." The instructions were also moved from 36.203 to 36.101-6.
- The section titled "Disclosure of the magnitude of construction projects", previously at 36.204, is removed. This information may still be disclosed based on the strategy needs of the acquisition team.
- Supplemental procedures for sealed bidding are removed. Acquisition teams desiring to utilize sealed bidding should review part 14.
- The requirements for a site inspection during the solicitation phase, previously at 36.210 and 36.523, and conducting a preconstruction conference after award, previously at 36.212 and 36.522, are removed.
- The "Procedures" 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.
- The section titled, "Performance of Work by the Contractor", formerly located at 36.501 and the implementing clause at 52.236-1 are removed. This requirement, often referred to as the "12 percent rule," mandated that prime contractors perform a 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.
- Specific evaluation requirements for architect-engineer contracts, previously at 36.602-1 and 36.603, are removed. Contracting activities now have additional flexibility in evaluating offeror qualifications.
- Clauses and provisions removed include:
 - 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.

This is not an exhaustive list of the changes.

4. Instructions. The MSPB acquisition workforce shall:

- Follow the RFO part 36 and corresponding 52 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 [Acquisition.gov/far-overhaul](https://www.acquisition.gov/far-overhaul) and is incorporated into this class deviation.
- When using any provisions or clauses that have been revised, utilize the RFO model deviation language at RFO FAR part 52.
- Do not include 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 of the contract.
- 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 immediately 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.