



Office of the Chief  
Acquisition Officer

**Date:** September 29, 2025

**From:** Darnese M. Wilkerson, Chief Acquisition Officer *DMW*

**To:** Office of the Chief Acquisition Officer (OCAO)

**Subject:** CLASS DEVIATION (CD) in Support of Executive Order (EO) 14275, "Restoring Common Sense to Federal Procurement" - Deviation to FAR Part 36, Construction and Architect-Engineer Contracts

## 1. Purpose

This Class Deviation (CD) implements the FAR Council's model deviation text for FAR Part 36, Construction and Architect-Engineer Contracts. This action aligns with Executive Order (EO) 14275, "Restoring Common Sense to Federal Procurement," and the Revolutionary FAR Overhaul (RFO) initiative.

The revised FAR Part 36 streamlines policies and procedures related to contract cost principles. Burdensome, duplicative, or outdated language not required by statute has been removed. Key changes include:

- Reorganization and Streamlining: It is now aligned with the acquisition lifecycle, with new subparts for Pre-Solicitation, Evaluation and Award, and Post-award. This creates a more logical flow and clearer points of reference for our contracting professionals.
- Removal of Redundant and Prescriptive Content.
- Provisions and Clauses Removed: Clauses such as 52.236-1 (Performance of Work by the Contractor), 52.236-4 (Physical Data), and 52.236-26 (Preconstruction Conference) are no longer included.
- Elimination of Prescriptive Procedures: The requirement for a site inspection during the solicitation phase and the conduct of a pre-construction conference after award have been removed.
- Plain Language and Enhanced Clarity: The language throughout the part has been rewritten to be more concise and understandable.
- Movement of Content to Buying Guides: Non-regulatory content and best practices are being moved out of the FAR and into new, non-regulatory Buying Guides.

## 2. Background

EO 14275, signed on April 15, 2025, established a policy that the FAR should contain only provisions required by statute or those essential for sound procurement. To implement this EO, the Office of Federal Procurement Policy (OFPP) is leading the Revolutionary FAR Overhaul (RFO) initiative, supported by the Federal Acquisition Regulatory Council. The initiative aims to eliminate unnecessary regulations and policies across all levels of the federal government.

Further guidance was provided by OMB Memorandum M-25-26, "Overhauling the Federal Acquisition Regulation," issued on May 2, 2025.

The RFO FAR Part 36 model deviation text provides a simplified and more efficient framework for ensuring effective competition, emphasizing a mission-first approach, prudent use of taxpayer dollars, and efficiency in achieving acquisition outcomes.

## 3. Summary of Changes

RFO FAR Part 36, **is simplified** to define the part's coverage to "construction, which includes dismantling, demolition or removal of improvements; and architect-engineer services". Enhanced to ensure requirements are clear and aligned with best practices. Statutory requirements retained in the RFO FAR part 36 model deviation include, but are not limited to, the following:

- Design-Build Selection Procedures (10 U.S.C. § 3241 and 41 U.S.C. § 3309)
- Administration of Construction Change Orders (15 U.S.C. § 644(w))
- Brooks Act of 1972 (Pub. L. 92-582)
- Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355)
- Services Acquisition Reform Act of 2003 (Pub. L. 108-136)

The following chart details information that has been changed by way of revision (Retained) or have been removed due to being outdated, redundant, or otherwise unnecessary (Deleted).

Change	Description
Added	<ul style="list-style-type: none"><li>• New subparts added to create logical organization for all activities in alignment with the acquisition lifecycle creating clear points of reference:<ul style="list-style-type: none"><li>○ 36.1, Pre-Solicitation,</li><li>○ 36.2, Evaluation and Award, and</li><li>○ 36.3, Post Award</li></ul></li></ul>
Retained	<ul style="list-style-type: none"><li>• The section titled "Policy" was moved from 36.104 to 36.002 and revised to consolidate critical high-level requirements:<ul style="list-style-type: none"><li>○ Retention of the direction that agencies must require the use of Project Labor Agreements for Federal construction</li></ul></li></ul>

	<p>projects with a total estimated construction cost at or above \$35 million unless an exception applies.</p> <ul style="list-style-type: none"> <li>○ Retention of the requirement that market research for construction contracts valued at or above \$35 million must ensure that the market research procedures involve a current and proactive examination of the market conditions in the project area.</li> <li>○ For design and construction selection, retention of the requirement that the contracting officer must use either design-bid-build procedures, two-phase design-build procedures, or another acquisition procedure authorized by law.</li> <li>○ Retention of the requirement that agencies must implement high-performance sustainable building practices.</li> </ul> <ul style="list-style-type: none"> <li>● Subpart 36.101-2 provides the streamlined “Procedures” for two-phased design-build selection, previously at subpart 36.303. The contracting activity retains discretion to issue one or two solicitation documents for the procurement phases.</li> <li>● Subpart 36.101-5 provides clarified instruction that consideration for liquidated damages must be evaluated by the contracting officer during acquisition planning. The previous instruction was silent on when this evaluation must be made.</li> <li>● The requirement that the Government estimate of construction costs is to be prepared and furnished to the contracting officer remains, but was moved from subpart 36.203 to subpart 36.101-6, and the timing is revised from “at the earliest practicable time” to the estimate must be given to the contracting officer “before receipt of proposals”.</li> <li>● Clauses and provisions retained with plain language adjustments to this part, include: <ul style="list-style-type: none"> <li>○ 52.236-2 and 52.236-3</li> <li>○ 52.236-5 thru 52.236-18</li> <li>○ 52.236-20 thru 52.236-25</li> </ul> </li> </ul>
<b>Removed</b>	<ul style="list-style-type: none"> <li>● Deleted content that is outdated, redundant, or otherwise unnecessary. <ul style="list-style-type: none"> <li>○ Definitions across 36.001 and 36.102 are removed, leaving only a single definition, "Firm," at 36.001.</li> <li>○ The “Applicability” section, previously found at 36.101, is removed.</li> <li>○ 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.</li> <li>○ A specific call out for the evaluation of contract performance and preparing past performance evaluations</li> </ul> </li> </ul>

	<p>for construction contracts, previously at 36.201, has been removed. Instead, the new subpart 36.3 Post award refers contracting officers to FAR part 42 for general contract administration functions.</p> <ul style="list-style-type: none"> <li>○ 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.</li> <li>○ The supplemental requirements for sealed bidding at 36.213 is removed. Acquisition teams who want to utilize sealed bidding should review part 14.</li> <li>○ 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.</li> <li>○ Other clauses and provisions removed include: <ul style="list-style-type: none"> <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> <li>● Nonregulatory information moved to practitioner albums, FAR companion Guides and/or Category Buying Guides. <ul style="list-style-type: none"> <li>○ Requirements to provide for a site inspection during the solicitation phase, previously at 36.210 and 36.523, and to conduct a preconstruction conference after award, previously at 36.212 at 36.522, are removed. The decision to conduct these activities are now at the discretion of the acquisition team. The FAR Companion Guide (CG) provides best practices for acquisition teams to consider for pre-award construction site visits in CG Part 36 and for post-award conferences in CG Part 10.</li> </ul> </li> </ul>
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## FAR Streamlining

As part of the RFO, the FAR is be streamlined to include only statutory requirements. Non-statutory content will be moved to new buying guides, collectively known as the Strategic Acquisition Guidance (SAG). The Council will first issue model deviation guidance by FAR

part, followed by formal rulemaking through the notice and comment process. Agencies have 30 days to issue class deviations based on the model text once released.

**A. Streamlining Agency Acquisition Supplements:** Agencies must streamline their FAR supplements by removing regulations not based on statute or executive orders and by aligning with the FAR Council's deviation guidance. Supporting policies must also be updated to reflect these changes. This is an excellent opportunity for NARA to formally publish a streamlined NARA FAR Supplement, ensuring consistency with the new FAR.

**B. FAR Buying Guides and Supplemental Companion Guides (CG):** As the FAR and agency supplements are streamlined, helpful non-regulatory content will be moved to these new FAR Buying Guides. These guides will offer practical instructions and best practices for implementing effective contracting methods, including those related to competition. The RFO Part 36 model deviation text is a plain language version that will be adhered to by all NARA contracting personnel.

#### **4. Instructions**

The NARA acquisition workforce shall follow the RFO Part 36 deviated text instead of FAR Part 36 as codified at 48 CFR Chapter 1, Subchapter B, Part 36. The FAR Council's RFO text is available at [FAR Overhaul - FAR Part 36 - Acquisition.gov](https://www.far.gov/far-overhaul-far-part-36-acquisition.gov) and is incorporated by reference into this deviation.

#### **5. Applicability**

The requirements in this CD apply to all solicitations and contract actions issued or awarded on or after **October 1, 2025**.

#### **6. Authority**

This class deviation is issued under the authority of Executive Order 14275 and OMB Memorandum M-25-26, 48 CFR Subpart 1.4.

#### **7. Effective Date**

This CD is effective as of the date signed and shall remain in effect until the provisions of the RFO are formally implemented in the FAR through a final rulemaking.

**Darnese M. Wilkerson,**  
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cc: NGC