

MKU-DEV-2025-13

**MEMORANDUM FOR MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION (UDALL FOUNDATION)  
CONTRACTING ACTIVITIES**

**DATE:** August 21, 2025

**SUBJECT:** Class Deviations for FAR Part 36 in support of Executive Order 14275, *Restoring Common Sense to Federal Procurement*

**FROM:** David P. Brown, Executive Director

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" or "RFO") model deviation text to FAR Part 36.
2. **Background.** On April 15, 2025, President Trump signed Executive Order (E.O.) 14275, "Restoring Common Sense to Federal Procurement" to reform the Federal Acquisition Regulation (FAR). This E.O. further advances the intent of E.O. 14192, "Unleashing Prosperity Through Deregulation," signed on January 31, 2025, which established that the policy of the executive branch is to be prudent and financially responsible in the expenditure of funds and to alleviate unnecessary regulatory burdens placed on the American people. E.O. 14275 orders the Administrator of the Office of Federal Public Procurement Policy (OFPP), in coordination with the other members of the Federal Acquisition Regulatory Council (FAR Council), the heads of agencies, and appropriate senior acquisition and procurement officials from agencies, to amend the FAR to ensure that it contains only provisions that are required by statute or that are otherwise necessary to support simplicity and usability, strengthen the efficacy of the procurement system, or protect economic or national security interests. This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative.

On May 2, 2025, the Office of Management and Budget (OMB) released Memorandum M-25-26, "Overhauling the Federal Acquisition Regulation," that directs all agencies to "Generally issue individual or class deviations to implement the FAR Council's deregulated coverage within 30 days after the Council releases its model deviation text[and] Provide copies of class deviations to the FAR Secretariat at [gsaregsec@gsa.gov](mailto:gsaregsec@gsa.gov) for public posting on Acquisition.gov."

Also on May 2, 2025, the Acting Administrator for Federal Procurement Policy at OMB released a Memorandum, "Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation." This Memorandum advises that agencies using the RFO model class deviation text do not need to further coordinate with the Council; class deviations that differ from the RFO model text require Council approval unless the difference is necessary to address agency-specific statutory direction.

On July 24, 2025, the FAR Council issued completed revisions for FAR Part 36 and FAR Part 52 provisions and clauses. The text has been updated in 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 29 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

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> </ul> </li> </ul>

	<ul style="list-style-type: none"> <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> <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 <b>a 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 <b>"at the earliest practicable time."</b> 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</b> phase, 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 specified minimum percentage of the</li> </ul>

	<p>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.

3. **Determination.** To fully comply with E.O. 14275, OMB implementation guidance, and direction related to use of model deviations, and the model deviations for revised FAR Part 26, the Udall Foundation shall follow the RFO Part 26 model deviation text instead of FAR Part 26 as codified at 48 CFR Chapter 36. The FAR Council's RFO Part 29 model deviation text is available at Acquisition.gov, under the "FAR Overhaul" link. This deviation applies to all solicitations and new contracts as of the date of the Memorandum. This deviation does not apply to contracts signed and executed on or before the date of this Memorandum.
4. **Instructions.** The Udall Foundation acquisition workforce shall follow the RFO Part 36 model deviation text instead of FAR Part 36 as codified at 48 CFR Chapter 36 and the RFO Part 52 model deviation text of FAR Part 52 as codified at 48 CFR Chapter 52. The Council's RFO Parts 36 and 52 model deviation text are available at Acquisition.gov, under the "FAR Overhaul" link, and are incorporated into this class deviation.

When using any provisions or clauses that have been revised, the Udall Foundation acquisition workforce shall use the RFO model deviation language at RFO FAR part 52 and shall 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 remove unnecessary pro

The Udall Foundation acquisition workforce shall review templates and related standard operating procedures to align with this deviation and remove unnecessary processes or steps.

A copy of this Class Deviation will be provided to the FAR Secretariat at [gsaregsec@gsa.gov](mailto:gsaregsec@gsa.gov).

5. **Applicability.** This class deviation applies to all Udall Foundation procurements.
6. **Authority.** This class deviation is issued under the authority of E.O. 14275, OMB Memo M-25-26, and 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.

**Points of Contact.** Questions regarding this class deviation may be directed to the Udall Foundation General Counsel, Gwendolyn Franks, at [franks@udall.gov](mailto:franks@udall.gov).