



Homeland  
Security

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Paul Courtney  
Chief Procurement Officer

SUBJECT: FAR Class Deviation (Number 25-06) for FAR Part 10 in Support of  
Executive Order on Restoring Common Sense to Federal Procurement

1. **Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 10 for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text to FAR Part 10.
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."

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- Remove duplicative or outdated language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. This initiative will make the FAR more concise, understandable, and focused on core procurement requirements.

3. **Summary of Changes.** FAR Part 10, concerning Market Research, has been updated to offer acquisition teams more flexibility in their research methods:
  - Greater flexibility in techniques: The FAR no longer lists specific market research considerations or techniques that must be used.
    - You have the flexibility to choose the market research method that best fits your needs. For example, you might host a reverse industry day or expert panel. This allows industry experts to share their perspectives, commercial practices, and experiences with the acquisition team.

- For more information on reverse industry days, and to read about more good market research techniques, check out the “Smart Accelerators” in the Practitioner Album available at [Acquisition.gov/far-overhaul](https://www.acquisition.gov/far-overhaul).
- Competition requirements remain: Acquisition professionals must still comply with the Competition in Contracting Act (CICA) (41 U.S.C. § 3301 et seq), which may necessitate market research.
- Flexibility at all dollar values: Acquisition professionals can apply market research concepts to procurements of any size.
- While FAR Clause 52.210-1 Market Research is not required by statute, across Government, it has been retained as essential to the acquisition process.

Statutory requirements retained in the RFO FAR Part 10 model deviation include, but are not limited to, the following:

- 10 U.S.C. § 3453, Preference for Commercial Products and Commercial Services
- 41 U.S.C. § 3306, Planning and Solicitation Requirements
- 41 U.S.C. § 3307, Preference for Commercial Products and Commercial Services
- 41 U.S.C. § 1703 note, Effective Communication Between Government and Industry; inclusive of 41 U.S.C. § 3301 et seq and 41 U.S.C. § 2101 et seq.

Change	Description
<b>Retained</b>	<ul style="list-style-type: none"> <li>● Subparts “10.001 Policy” and “10.002 Procedures” are combined and <b>streamlined</b> to remove duplicative and discretionary guidance.</li> <li>● FAR Clause <b>52.210-1, Market Research</b>, in solicitations and contracts for noncommercial acquisitions over \$6 million.</li> <li>● Language encouraging <b>exchanges with industry</b> is moved from FAR Part 1 to FAR Part 10.</li> </ul>
<b>Removed</b>	<ul style="list-style-type: none"> <li>● Requirements to consider various issues in market research, including for <b>consolidation or bundling procurements</b> are removed. Content stemming from 15 U.S.C. 644(e) and 15 U.S.C. 657(q) is mandatory, however the requirement is covered in FAR Part 7.</li> <li>● Requirements for <b>disaster relief purchasing</b> are removed. Content stemming from 6 U.S.C. 796 is mandatory, however the requirement is covered in FAR Part 26.</li> </ul>

This table is not an exhaustive list.

4. **Instructions.** The Department of Homeland Security (DHS) acquisition workforce shall follow the RFO Part 10 deviation text instead of FAR Part 10 as codified at 48 CFR Chapter 1. The Council's RFO Part 10 model deviation text is available at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-10>, and is incorporated as attachment 1 to this deviation.
5. **Applicability.** This class deviation applies to all DHS 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.
8. **Points of Contact.** Questions regarding this class deviation may be directed to Acquisition Policy and Legislation Branch at [Acquisition.Policy@hq.dhs.gov](mailto:Acquisition.Policy@hq.dhs.gov).

**Attachments:**

1. FAR Part 10 Line Out Text<sup>1</sup>
2. FAR Part 10 Solicitation Provisions and Contract Clauses Revisions

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<sup>1</sup> The line-out does not indicate what was added or moved. See [FAR Overhaul - Part 10 | Acquisition.GOV](#) for conformed text.

## PART 10—MARKET RESEARCH

### 10.000 Scope of part.

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements the requirements of 41 U.S.C. 3306(a)(1) , 41 U.S.C. 3307, 10 U.S.C. 3453, and 6 U.S.C. 796.

### 10.001 Policy.

(a) Agencies shall—

- (1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire ~~items that meet those needs~~;
- (2) Conduct market research appropriate to the circumstances—
  - (i) Before developing new requirements documents for an acquisition by that agency;
  - (ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;
  - ~~(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;~~
  - ~~(iv) Before soliciting offers for acquisitions that could lead to consolidation or bundling (15 U.S.C. 644(e)(2)(A) and 15 U.S.C. 657q);~~
  - ~~(v) Before awarding a task or delivery order under an indefinite delivery-indefinite quantity (ID/IQ) contract (e.g., GWACs, MACs) for other than a commercial product or commercial service in excess of the simplified acquisition threshold 10 U.S.C. 3453(e)); and~~
  - ~~(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of~~
    - ~~(A) A contingency operation or defense against or recovery from cyber, nuclear, biological, chemical, or radiological attack; and~~
    - ~~(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities (see 26.205); and~~
- (3) Use the results of market research to—
  - (i) Determine if sources capable of satisfying the agency's requirements exist;
  - (ii) Determine if commercial products or commercial services, or, to the extent commercial products suitable to meet the agency's needs are not available, nondevelopmental items are available that—
    - (A) Meet the agency's requirements;

Note: The line-out does not indicate what was added or moved. See <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-10> for conformed text

- (B) Could be modified to meet the agency's requirements; or
- (C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;
- ~~(iii) Determine the extent to which commercial products or nondevelopmental items could be incorporated at the component level;~~
- ~~(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial products or commercial services, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;~~
- ~~(v) Ensure maximum practicable use of sustainable products and services (as defined in 2.101) in accordance with subpart 23.1;~~
- ~~(vi) Determine whether consolidation is necessary and justified (see 7.107-2) (15 U.S.C. 657q);~~
- ~~(vii) Determine whether bundling is necessary and justified (see 7.107-3) (15 U.S.C. 644(e)(2)(A));~~
- ~~(viii) Determine whether the acquisition should utilize any of the small business programs in accordance with part 19; and~~
- ~~(ix) Assess the availability of supplies or services that meet all or part of the applicable information and communication technology accessibility standards at 36 CFR 1194.1 (see subpart 39.2).~~
- (b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.
- (c) If an agency contemplates consolidation or bundling, the agency—
  - (1) When performing market research, should consult with the agency small business specialist and the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see 19.402(a); and
  - (2) Shall notify any affected incumbent small business concerns of the Government's intention to bundle the requirement and how small business concerns may contact the appropriate Small Business Administration procurement center representative (see 7.107-5(a)).
- (d) See 10.003 for the requirement for a prime contractor to perform market research in contracts in excess of \$6 million, other than contracts for the acquisition of commercial products or commercial services (section 826 of Pub. L. 110-181).

#### **10.002 Procedures.**

- ~~(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.~~
- ~~(b) Market research is then conducted to determine if commercial products, commercial services, or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.~~
  - ~~(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any~~

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~~task or delivery order if the information is still current, accurate, and relevant. Market research involves obtaining information specific to the product or service being acquired and should include—~~

~~(i) Whether the Government's needs can be met by—~~

~~(A) Products or services of a type customarily available in the commercial marketplace;~~

~~(B) Products or services of a type customarily available in the commercial marketplace with modifications; or~~

~~(C) Products or services used exclusively for governmental purposes;~~

~~(ii) Customary practices regarding customizing, modifying or tailoring of products or services to meet customer needs and associated costs;~~

~~(iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;~~

~~(iv) The requirements of any laws and regulations unique to the item being acquired;~~

~~(v) The availability of items that contain recovered materials and items that are energy efficient;~~

~~(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and~~

~~(vii) Whether the Government's needs can be met by small business concerns that will likely submit a competitive offer at fair market prices (see part 19).~~

~~(2) Techniques for conducting market research may include any or all of the following:~~

~~(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.~~

~~(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.~~

~~(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.~~

~~(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available~~

~~at <https://www.contractdirectory.gov/contractdirectory/> (opens in a new tab) and other Government and commercial databases that provide information relevant to agency acquisitions.~~

~~(v) Participating in interactive, on-line communication~~

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~~among industry, acquisition personnel, and customers.~~

~~(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.~~

~~(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on line.~~

~~(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.~~

~~(ix) Reviewing systems such as the System for Award Management, the Federal Procurement Data System, and the Small Business Administration's Dynamic Small Business Search.~~

~~(c) If market research indicates commercial products, commercial services, or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with 10.001(a)(3)(ii) and determine whether the need can be restated to permit commercial products, commercial services, or nondevelopmental items to satisfy the agency's needs.~~

~~(d)~~

~~(1) If market research establishes that the Government's need may be met by a type of product or service customarily available in the commercial marketplace that would meet the definition of a commercial product or commercial service at subpart 2.1, the contracting officer shall solicit and award any resultant contract using the policies and procedures in part 12.~~

~~(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, part 12 shall not be used. When publication of the notice at 5.201 is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use part 12 for the acquisition.~~

~~(e) The head of the agency shall document the results of market research in a manner appropriate to the size and complexity of the acquisition.~~

### **10.003 Contract clause.**

The contracting officer shall insert the clause at 52.210-1, Market Research, in solicitations and contracts over \$6 million, other than solicitations and contracts for the acquisition of commercial products or commercial services.

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## **PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

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### **Subpart 52.2—Text of Provisions and Clauses**

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#### **52.210-1 Market Research.**

As prescribed in 10.002, insert the following clause:

#### **Market Research (JUNE 2025) (DEVIATION 25-06)**

(a) *Definition.* As used in this clause—

*Commercial product, commercial service, and nondevelopmental item* have the meaning contained in Federal Acquisition Regulation (FAR) 2.101.

(b) Before awarding subcontracts for noncommercial acquisitions, where the subcontracts are over the simplified acquisition threshold, as defined in FAR 2.101 on the date of subcontract award, the Contractor shall conduct market research to determine, in the following order of priority, whether—

- (1) A commercial product or commercial service can meet the agency's requirements;
- (2) The requirements could be modified so the agency could use an existing commercial product or commercial service;
- (3) A commercial product or commercial service could be modified to meet the agency's requirements; or
- (4) The requirement can only be satisfied by a nondevelopmental item.

(End of clause)

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