

**CLASS DEVIATION
FINDINGS AND DETERMINATION
FEDERAL ACQUISITION REGULATION (FAR) PART 15 - CONTRACTING BY
NEGOTIATION**

Findings

1. The objective of this class deviation is to implement the Federal Acquisition Regulatory Council's model deviation text to the Federal Acquisition Regulation (FAR) Part 15 - *Contracting by Negotiation*, and applicable sections of FAR Part 52 - *Solicitation Provisions and Contract Clauses*.
2. On April 15, 2025, President Donald J. Trump issued Executive Order (E.O.) 14275, *Restoring Common Sense to Federal Procurement*. Section 2 of the E.O. established 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."
3. On May 2, 2025, the Office of Management and Budget (OMB) issued memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*, initiating a major overhaul of the FAR (Revolutionary FAR Overhaul, or "RFO"). The memorandum tasked the Office of Federal Procurement Policy (OFPP) with leading the RFO, in coordination with the other members of the Federal Acquisition Regulatory Council – i.e., the General Services Administration (GSA), the Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA) and federal buying agencies. The goal is refocusing the FAR on its statutory roots. To that end, 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 - Remove duplicative or outdated language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

The OMB memorandum M-25-26 established a two phased approach to implementing enterprise deregulation as follows: Phase one, FAR Council deviation guidance, and phase two, formal rulemaking. Phase one involves the FAR Council issuing guidance on a rolling basis with clear, plain language model deviation text organized by FAR part. The goal is streamlining the regulation by aligning it more closely to its statutory base. According to the memorandum, agencies should adopt this model deviation text within 30 days by issuing either individual or class deviations.

4. On May 2, 2025, the FAR Council issued further implementing guidance in a memorandum titled *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*. Pursuant to the FAR Council's memorandum, "agencies that adopt the Council's RFO class deviation text without change, or require different text

only to address statutory direction unique to the agency, do not need to coordinate with the Council.”

5. On September 30, 2025, the FAR Council issued model deviation text for FAR Part 15 and corresponding provisions and clauses at FAR Part 52. Pursuant to the RFO, FAR Part 15 has undergone a major restructuring that includes significant changes in flow, consolidation, vocabulary changes, rules of engagement, competitive range, and clarity, as follows:
 - **Logical Flow:** The new framework replaces a topic-based structure with a more intuitive flow based on the acquisition life-cycle.
 - **Consolidation:** Concepts that were previously fragmented are now unified creating a more cohesive framework.
 - **Vocabulary Changes:** Key terms are defined and standardized.
 - The term “discussions” is replaced with “negotiations.”
 - The term “communications,” in the context of competitive range establishment, has been eliminated.
 - The term “deficiency” is redefined.
 - The use of “clarifications” is revised to include robust guidelines for its application. Clarifications permit minor corrections but do not allow for proposal revision and cannot be used to cure proposal deficiencies or material omissions. The scope of permissible clarifications is expanded to include coverage that was previously limited to “communications” before establishing the competitive range. Clarifications may be conducted at any time after receipt of proposals through contract award irrespective of whether a competitive range has been established.
 - **Rules of Engagement:** Contracting officers must negotiate with each responsible offeror within the competitive range and may further negotiate with the offerors as needed. Having further negotiations with one offeror does not require the contracting officer to have further negotiations with other offerors. The deviation text provides guidance on industry communication through early exchanges and debriefing.
 - **Competitive Range:** The competitive range is now clearly defined as “the group of evaluated proposals that the contracting officer determines are best suited for further negotiation” instead of “all of the most highly rated proposals”.
 - **Enhanced Clarity:** The text has been revised for greater clarity. It employs more direct language and introduces explicit subheadings for complex topics.

Statutory requirements retained in the RFO FAR Part 15 model deviation include, but are not limited to, the following:

- 6 U.S.C. § 394, *Unsolicited Proposals*
- 10 U.S.C. § 3206 and 41 U.S.C. § 3306(c), *Evaluation Factors*

- 10 U.S.C. §§ 3301 et seq. and 41 U.S.C. §§ 3701 et seq., *Awarding of Contracts*
- 10 U.S.C. §§ 3701 et seq. and 41 U.S.C. §§ 3501 et seq., *Truth in Negotiations Act*
- 41 U.S.C. § 2102, *Prohibitions on Disclosing and Obtaining Procurement Information*

In addition, the following table provides a non-exhaustive list of non-statutory requirements that have been revised and retained, or removed from Part 15:

Change	Description
Retained	• Part 15 continues to be the part primarily used for establishing negotiated contracts when using a request for proposal (RFP). • The following provision and clauses are retained (or remain reserved) with no changes: ○ 52.215-4 remains reserved ○ 52.215-7 remains reserved ○ 52.215-9 (Clause), <i>Changes or Additions to Make-or-Buy Program</i> ○ 52.215-10 (Clause), <i>Price Reduction for Defective Certified Cost or Pricing Data</i> ○ 52.215-14 (Clause), <i>Integrity of Unit Prices</i> ○ 52.215-16 (Provision), <i>Facilities Capital Cost of Money</i> ○ 52.215-17 (Clause), <i>Waiver of Facilities Capital Cost of Money</i> ○ 52.215-24 thru 52.215-42 remain reserved
Moved / Updated	• The Part structure is revised from six subparts to five, as follows: ○ Subpart 15.1 - <i>Presolicitation and Solicitation</i> ○ Subpart 15.2 - <i>Evaluation and Award</i> ○ Subpart 15.3 - <i>Postaward</i> ○ Subpart 15.4 - <i>Contract Pricing</i> ○ Subpart 15.5 - <i>Unsolicited Proposals</i> • 15.000, <i>Scope</i>, is updated to emphasize that the procedures in the Part provide an opportunity for back-and-forth negotiation between the Government and an offeror(s) upon receipt of a proposal submitted in response to an RFP. • 15.001, <i>Definitions</i>, updates two of the four definitions: ○ “Deficiency” is updated to remove reference to “unacceptable risk” and clearly define a “material requirement”. ○ “Proposal revision” is updated to include the phrase “material elements of a proposal”. This revision clarifies that not every change made during negotiations constitutes a proposal revision, focusing the definition on changes that are substantive in nature.

	• 15.002, <i>Types of Negotiated Acquisitions</i>, is updated to modernize the language throughout. The two paragraphs in this section are now titled <i>Noncompetitive Acquisitions</i> and <i>Competitive Acquisitions</i>. • 15.101, <i>Early Exchanges with Industry</i>, revises and consolidates content previously located in multiple sections of the Part. The new section is structured with clear subheadings for <i>Draft RFPs</i>, <i>Requests for Information</i>, <i>Mission Needs and Requirements</i>, and <i>Advisory Multistep Process</i>, making the content more accessible. • 15.102, <i>Structuring a request for proposals</i>, more clearly outlines the required format and content for RFPs. • 15.103, <i>Developing a Competitive Source Selection Approach</i>, relocates the existing source selection approaches (“Tradeoff” and “Lowest Price Technically Acceptable”) and adds two approaches - “Highest Technically Rated with a Fair and Reasonable Price” (15.103-3) and “Phased Acquisitions” (15.103- 4). • 15.105, <i>Other Considerations</i>, relocates, consolidates, and updates topics previously located throughout the part into a single section. This consolidation enhances the usability of the regulation by grouping these specific solicitation-related considerations together for easy reference during RFP preparation: ○ 15.105-1 <i>Oral presentations</i>. Relocated from 15.102. ○ 15.105-2 <i>Negotiations disclosure</i>. Relocated from 15.209(a). ○ 15.105-3 <i>Limitation on tiered evaluations for multiple award contracts</i>. Relocated from 15.101-3. ○ 15.105-4 <i>Request for cost or pricing data</i>. Relocated from 15.403-5. ○ 15.105-5 <i>Make-or-buy decision</i>. Relocated from 15.407-2. ○ 15.105-6 <i>Should-cost review</i>. Relocated from 15.407-4. ○ 15.105-7 <i>Unit prices</i>. Relocated from 15.404-1(f). • 15.106, <i>Amending a Request for Proposal</i>, updates former section 15.206 to clarify the requirements. • 15.109, <i>Uniform Contract Format</i>, and its subsections, are relocated and streamlined. • New subpart 15.2, <i>Evaluation and Award</i>, updates and clarifies the evaluation and award process. • 15.202, <i>Evaluating Competitive Proposals</i>, relocates and substantially revises the content previously at section 15.305. ○ 15.202(a)(2) provides a more robust, multi-part definition of “clarifications”. It states that clarifications can be used to “enhance the Government’s understanding of a proposal”, “allow reasonable interpretation”, and address
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	“ambiguities” as well as “perceived deficiencies, weaknesses, errors, omissions, or mistakes”. The new definition allows the contracting officer to request additional information or documentation provided cost/price or other material elements of the proposal are unchanged. Clarifications are not to be used for revising proposals and curing deficiencies or material omissions. • 15.204, <i>Competitive Award with Negotiation</i>, streamlines and consolidates the complex rules for post-evaluation exchanges with offerors, which were previously spread across sections 15.306 (<i>Exchanges with offerors after receipt of proposals</i>) and 15.307 (<i>Proposal revisions</i>). The phrase “communications with offerors before establishment of the competitive range” has been deleted, and where appropriate, functions have been moved to the new definition of “clarifications” under 15.202(a)(2). • 15.206, <i>Preaward notices and debriefings</i>, updates guidance on preaward notices and debriefings. • New 15.207-1, <i>Award to successful offeror</i>, provides new information about completing the award document when not using OF 307, <i>Contract Award</i>; SF 26, <i>Award/Contract</i>; or SF 33, <i>Solicitation, Offer and Award</i>. • 15.301, <i>Postaward Debriefing of Offerors</i>, relocates and updates the content on post-award debriefings, previously at 15.506. • Subpart 15.4, <i>Contract Pricing</i>, has been restructured and the internal section numbering and organization have been significantly updated. • Subpart 15.5, <i>Unsolicited Proposals</i>, is moved from former subpart 15.6 and the content is reorganized and streamlined. • The following provision and clauses are updated for clarity, to mirror updates made throughout the part, and/or to update cross-references or remove outdated content: ○ 52.215-1 (Provision), <i>Instructions to Offerors—Competitive Acquisition</i> ○ 52.215-2 (Clause), <i>Audit and Records—Negotiation</i> ▪ Alternate I is removed because it implemented the <i>American Recovery and Reinvestment Act</i> which is no longer active. ○ 52.215-6 (Provision), <i>Place of Performance</i> ○ 52.215-8 (Clause), <i>Order of Precedence—Uniform Contract Format</i> ○ 52.215-11 (Clause), <i>Price Reduction for Defective Certified Cost or Pricing Data—Modifications</i> ○ 52.215-12 (Clause), <i>Subcontractor Certified Cost or Pricing Data</i> ○ 52.215-13 (Clause), <i>Subcontractor Certified Cost or Pricing Data—Modifications</i>
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	○ 52.215-15 (Clause), <i>Pension adjustments and asset reversions</i> ○ 52.215-18 (Clause), <i>Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions</i> ○ 52.215-19 (Clause), <i>Notification of Ownership Changes</i> ○ 52.215-20 (Provision), <i>Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data</i> ○ 52.215-21 (Clause), <i>Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications</i> ○ 52.215-22 (Provision), <i>Limitations on Pass-Through Charges—Identification of Subcontract Effort</i> ○ 52.215-23 (Clause), <i>Limitations on Pass-Through Charges</i>
Removed	● Former section 15.205, <i>Issuing Solicitations</i>, is removed because it is repetitive of information found in other FAR parts. ● The following provisions are deleted: ○ 52.215-3 (Provision), <i>Request for Information or Solicitation for Planning Purposes</i>, is now reserved. The information is covered by the new 15.101(c). ○ 52.215-5 (Provision), <i>Facsimile Proposals</i>, is now reserved. The revised regulation takes a more technology-neutral approach. ○

Determination

In accordance with FAR 1.304 *Class deviations* (as implemented by DOE/NNSA class deviation) and Department of Energy Acquisition Regulation (DEAR) 901.404 *Class deviations*, to fully comply with the requirement of E.O. 14275 and the revised FAR Parts 15 and 52, it is hereby determined that a class deviation is appropriate pursuant to OMB memorandum M-25-26 (Attachment 1) and the FAR Council memorandum (Attachment 2) issued on May 2, 2025, using the RFO model deviation text for Part 15 and applicable sections of Part 52 (Attachment 3). Specifically, DOE/NNSA will use the RFO model deviation text for Part 15 in lieu of 48 Code of Federal Regulations (CFR) Part 15, and the RFO model deviation text for the applicable sections of Part 52 in lieu of the corresponding applicable sections at 48 CFR 52.215-1 through 52.215-42. Once approved, the Department will share the deviation widely among its workforce to ensure full awareness of and compliance with the revisions to the affected regulations. This class deviation is effective upon issuance, and will remain effective until cancelled or incorporated into the FAR.

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Attachments:

OMB Memorandum M-25-26, *Overhauling the Federal Acquisition Regulation*
FAR Council Memorandum, *Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation*
RFO Parts 15 and 52 Model Deviation Text