



Millennium Challenge Corporation
Contracts and Grants Management Division
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MEMORANDUM

Date: July 29, 2025

From: Jonathan C. Hamlet
Managing Director & Senior Procurement Executive
Contracts and Grants Management Division
Department of Administration and Finance
Millennium Challenge Corporation

To: MCC Contracts and Grants Management Division Staff

Subject: Class Deviation to Implement the FAR Revisions Parts 36 *Construction and Architect-Engineer Contracts* and 52 *Solicitation Provisions and Contract Clauses* Issued on July 24, 2025

Findings

On April 15, 2025, President Trump signed the [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 the [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.

The E.O. 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 its memo M-25-25 “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. Provide copies of class deviations to the FAR Secretariat at gsaregsec@gsa.gov for public posting on Acquisition.gov.”

On July 24, 2025, the FAR Council issued completed revisions for [FAR Part 36](#) and [FAR Part 52](#) clause. The RFO FAR Part 36 model deviation text has been updated to include 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

Other key changes include:

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

Determination

To fully comply with the President's E.O.s and the revised FAR Parts 36 and 52, MCC shall follow the [RFO Part 36 model deviation text](#) instead of FAR Part 36 as codified at 48 CFR Chapter 36 and replace the relevant [RFO Part 52 model deviation clause](#) instead of the FAR Part 52 clause as codified at 48 CFR Chapter 52. The FAR Council's RFO Parts 36 and 52 model deviation texts are available at [Acquisition.gov](#), under the "[FAR Overhaul](#)" link.

This deviation applies to all solicitations and new contracts as of July 24, 2025. This deviation does not apply to contracts signed and executed on or before July 23, 2025.

Approval

In accordance with RFO FAR 1.304 *Class deviations*, MCC Contracts Operating Manual (COM) 1.305-3 *Contracts and Grants Management Division MD/SPE*, and the OMB memo M-25-25, the RFO Part 36 model deviation text and the RFO Part 52 model deviation clause are hereby approved effective as of July 24, 2025 for use by all MCC Contracting Officers until final implementation of the FAR update or rescission of this Memo by the SPE. Additional instructions related to this Memo may be issued by the Senior Procurement Executive, Deputy Managing Director, and the Supervisory Procurement Analyst of the MCC CGM Division on an *ad hoc* basis.

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Attachments

OMB Memo M-25-25 *Overhauling the Federal Acquisition Regulation*