

Memorandum

TO: Office of Management Services **DATE:** July 31, 2026

FROM: Cindy Hennigan
Deputy Managing Director
Office of Managing Director
Senior Procurement Executive

SUBJECT: Class Deviation for Federal Acquisition Regulation Part 12 in Support of Executive Order on Restoring Common Sense to Federal Procurement

1. **Purpose:** To issue a class deviation to Federal Acquisition Regulation (FAR) Part 12 for purposes of implementing the FAR Council's model deviation text to FAR Part 12.
2. **Effective Date:** Immediately
3. **Expiration Date:** Expires when incorporated into the FAR or is otherwise rescinded.
4. **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- Remove duplicative or outdated language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.

5. Summary of Changes.

FAR Part 12, *Acquisition of Commercial Products and Commercial Services*, has been fundamentally re-engineered in its structure, scope, and operational mechanics. These changes reflect an effort to create a user-centric part that champions streamlining, flexibility, and innovation when acquiring commercial products and services. Commercial procedures, as well as terms and conditions, are now significantly consolidated in Part 12.

Statutory requirements and presidential directives retained in the RFO FAR Part 12 model deviation includes, but are not limited to, the following:

- 10 U.S.C. §§ 3451 et seq: Procurement of Commercial Products and Commercial Services
- 10 U.S.C. § 3453 and 41 U.S.C. § 3307: Preference for Commercial Products and Commercial Services
- 10 U.S.C. § 3771 and 41 U.S.C. § 2302: Rights in Technical Data
- 10 U.S.C. § 3805 and 41 U.S.C. § 4505: Payments for Commercial Products and Commercial Services
- 41 U.S.C. § 103: Commercial Product
- 41 U.S.C. § 103a: Commercial Service
- 41 U.S.C. § 104: Commercially Available Off-the-Shelf Item
- 41 U.S.C. § 1708: Procurement Notice
- Pub. L. 103-355: Federal Acquisition Streamlining Act of 1994 (FASA)
- Pub. L. 105-261 Sec 803: Defense Commercial Pricing Management Improvement

Change	Description
Retained	Part 12 is revised to clarify if commercial products or commercial services that meet agency needs are available from any priority source identified in part 8, including existing contracts awarded for Governmentwide use (e.g., the Federal Supply Schedules and Governmentwide acquisition contracts) procure the commercial products or commercial services from that source. If not, use the streamlined procedures for solicitation, evaluation, and award in this subpart.
Removed	A significant update to Part 12 clauses and provisions. Two of the foundational "master" clauses have been removed. The majority of the references are no longer required, and any remaining references are retained through other means. • 52.212-3, Offeror Representations and Certifications—Commercial Products and Commercial Services. • 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Products and Commercial Services. Several clauses and provisions from other FAR parts are no longer required for commercial contracts. This change reflects an approximate 30% reduction, over 40 clauses and provisions no longer required.
Updated	• The revised part structure consolidates all relevant guidance into the process-oriented subparts: ○ Subpart 12.1 - Presolicitation ○ Subpart 12.2 - Solicitation, Evaluation, and Award ○ Subpart 12.3 - Postaward ○ Subpart 12.4 - Micro-purchases • New Table 12-1, Authority citations for restricting competition is added to section 12.102 to help readers find information easier. • New tables are added to section 12.205, Solicitation provisions and contract clauses, to help readers find information easier: ○ Table 12-2, Provisions to include as prescribed ○ Table 12-3, Clauses to include as prescribed ○ Table 12-4, Provisions and clauses to include as needed • The following part 12 clauses and provisions are retained, with plain language revisions, and streamlined: ○ 52.212-1 Instructions to Offerors—Commercial Products and Commercial Services ○ 52.212-2 Evaluation—Commercial Products and Commercial Services

	○ 52.212-4 Terms and Conditions—Commercial Products and Commercial Services • Several definitions related to this part, such as "Commercial Product", "Commercial Service", "Commercial Off the Shelf (COTS)", and "Nondevelopmental Item" were updated and remain in FAR part 2.101. • Moving to FAR part 44 The definition of and the requirements for "Subcontract" are retained, and will move to subpart 44.4, "Subcontracts for Commercial Products and Commercial Services". ○ Clause 52.244-6, Subcontracts for Commercial Products and Services will be streamlined and retained and will move to Part 44. ○ Comparative Evaluation ○ The contracting officer has broad discretion in establishing how quotations will be evaluated. For example, the contracting officer may perform a comparative evaluation of quotations. • Acquiring construction as a commercial service ○ When using the procedures in part 12 to acquire construction, comply with the requirements in part 36 for construction contracts and subpart 22.4 on labor standards for contracts involving construction. ○ "Commercial service" at FAR 2.101 clarifies "services, including construction" within the definition. • Table 12-3 has been updated to include the clause at 52.222-90, Addressing DEI Discrimination by Federal Contractors. • Section 12.000, Scope, adds that simplified procedures authorized by statute are implemented now in part 12 for commercial contracts. This includes using simplified procedures for acquisitions up to \$9 million (or \$15 million to support responses to emergencies or major disasters). • New Section 12.201-1, Simplified Procedures, provides clear instructions that for acquisitions valued up to \$9 million, issue a request for quotations (RFQ) followed by a purchase order. • New Section 12.102, Preference, retains the preference to acquire commercial products or commercial services. • New 12.104, Contract Type, retains the preference to utilize fixed-price contracts to the maximum extent practicable. Provides clear language on the use of labor- hour or time-and-material contracts for commercial services and instructs contracting officers that a determination and finding for their use must be written. • Section 12.201-1(b), Legal effect of quotations, clearly explains how a binding contract is formed within the Request for Quotation process. • New Section 12.201-1(d), Innovation, provides a call out to use innovative approaches to the maximum extent practicable when soliciting quotations and issuing purchase orders. • New Section 12.201-2, Other Procedures, provides clear instructions that for acquisitions valued at greater than \$9 million, use the procedures in the new
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	subpart 12.2 in conjunction with the procedures in part 15 for requests for proposals (RFPs) or part 14 for invitations for bids (IFBs), as appropriate. Use of an RFP is the preferred method over an IFB because it includes consideration of past performance when evaluating offers (see the new 12.203(a)(2)). • Section 12.203(c)(1), Timely quotations and offers provide clear instructions to contracting officers to exercise good business judgment in deciding whether or not to accept a quotation or offer received after the due date or time. • Section 12.203(c)(2), Quotations, the contracting officer has broad discretion in establishing how quotations will be evaluated. The evaluation procedures are not subject to part 15 or 14. Contracting officers are not required to have evaluation plans, score quotations, or establish a competitive range before communicating with quoters or soliciting revised quotations (see 12.203(c)(2)).
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This table is not an exhaustive list.

Required Action: The FMC acquisition workforce shall follow the RFO Part 12 model deviation text instead of FAR Part 12 as codified at 48 CFR Chapter 1. The Council's RFO Part 12 model deviation text is available at [Acquisition.gov/far-overhaul](https://www.acquisition.gov/far-overhaul), and is incorporated into this class deviation.

6. Applicability: This class deviation applies to all FMC procurements.

7. Authority: This deviation is issued under the authority of Executive Order 14275, OMB Memo M-25-26, and 48 CFR 1.4 and Executive Order 14398.

8. Point of Contact: If you have any questions please contact Michelle Calhoun, Procurement Analyst (mcalhoun@fmc.gov) or (202) 523-5901.

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