



# Decoding a Revolution: Demystifying the Major “Overhaul” to the FAR

Moderator: Tony Higdon, GFT

Speakers:

- Maria L. Panichelli, Esq.; McCarter & English, LLP

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# Tony Higdon

## **GFT**



## Fun Facts

Grew up in:

- The Air Force

Currently binge-watching:

- House Floorplan Changes

Proudest accomplishment:

- Salesmanship

Biggest fear:

- Social Media



# Maria L. Panichelli, Esq.

## McCarter & English, LLP

### Fun Facts

Avid Traveler:

- 38 States and 42 Countries

Currently binge-watching:

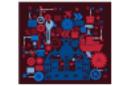
- The Diplomat; Ponies; Slow Horses

From:

- Go Birds!

...

- History Nerd, Trivia Whiz and Cheese Enthusiast





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# **Critical Takeaways from the Revolutionary FAR Overhaul**



# Today's Agenda

1. Overview of the Revolutionary FAR Overhaul (RFO)
2. Revisions to FAR Part 15
3. Revisions to FAR Part 36
4. Revisions to FAR Part 19
5. Revisions to FAR Part 12



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# **Overview of the Revolutionary FAR Overhaul (RFO)**



# Overview of the Revolutionary FAR Overhaul

Executive Order 14275 (April 15, 2025): “Restoring Common Sense to Federal Procurement”

- Kicked off the most comprehensive overhaul of the Federal Acquisition Regulation (FAR) since its inception over 40 years ago.
- Stated that the FAR was “an excessive and overcomplicated regulatory framework”
- Establishes policy “to create the most agile, effective, and efficient procurement system possible”
- Provides that the FAR should contain “only provisions required by statute or essential to sound procurement”
- Intersects with other Trump Administration Executive Orders focused on deregulation and federal procurement



# Overview of the Revolutionary FAR Overhaul: M-25-26

- In response to EO 14725, the Office of Management & Budget issued Memorandum M-25-26, Overhauling the Federal Acquisition Regulation
  - Through this memo, OMB explains its implementation approach to changing the federal procurement system and seeks to eliminate most non-statutory requirements with three goals:
    - Lowering transaction costs for contractors
    - Increasing competition for agency requirements
    - Making it easier for buyers to negotiate better deals for the taxpayer



# Overview of the Revolutionary FAR Overhaul

- EO 14275 does not use the word “revolutionary” – OMB Memorandum M-25-26 does as do components of the government implementing the updates: The Office of Federal Procurement Policy (OFPP), the FAR Council, and the General Services Administration (GSA)
- EO 14275 directed OFPP to work with the FAR Council to amend the FAR within 180 days, or by October 13, 2025
- Acquisition.gov has a page called the “Revolutionary FAR Overhaul (RFO):” <https://www.acquisition.gov/far-overhaul>.
  - DFARS:  
[https://www.acq.osd.mil/dpap/dars/dfars\\_far\\_overhaul\\_class\\_deviations.html](https://www.acq.osd.mil/dpap/dars/dfars_far_overhaul_class_deviations.html)



# Overview of the Revolutionary FAR Overhaul

- RFO has a dual tracked approach:
  - **Class Deviations:** The FAR Council issues guidance to agencies and deviation text; agencies issue agency-specific class deviations to implement the new language.
  - **Formal Rulemaking:** Following issuance of all revised FAR Parts, the FAR Council will undertake formal rulemaking through the notice and comment process
- The RFO page collects the revised FAR Parts as they are revised and includes several other resources, such as agency deviations, implementation guidance, and FAQs
  - Now into the first quarter of 2026, numerous agencies have issued deviations for various parts.
  - While simplifying FAR text, the RFO uses the “FAR Companion.”
    - The FAR Council has developed this FAR Companion to help acquisition officials exercise their discretion. The FAR Companion provides context, additional information, and practical advice for planning, awarding, managing, and closing out contracts, consistent with the FAR’s core buying principles.
      - FAR Companion, Version 2.0, at p. 4.



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# **Revisions to FAR Part 15 – Contracting by Negotiation**



# Revisions to FAR Part 15: New Structure

Like other overhauled parts, Part 15 tracks the acquisition lifecycle in 5 subparts:

- Subpart 15.1 Presolicitation and Solicitation
- Subpart 15.2 Evaluation and Award
- Subpart 15.3 Postaward
- Subpart 15.4 Contracting Pricing
- Subpart 15.5 Unsolicited Proposals



# Revisions to FAR Part 15: Notes on Deviation Text

- Source Selection Approaches
  - Old FAR 15 included two source selection approaches under “Best Value Continuum”: Best Value Tradeoff and “Lowest Price Technically Acceptable” (LPTA).
  - The RFO at FAR 15.103 adds two additional approaches:
    - FAR 15.103-3 adds the “highest technically rated with a fair and reasonable price” approach. This approach is “appropriate when the Government determines in advance that it would not be advantageous to consider tradeoffs between cost or price and non-cost or non-price factors; rather, the acquisition warrants paying any fair and reasonable price for the highest quality performance.”
    - FAR 15.103-4 adds “phased acquisition,” an approach used to break down a complex or high-risk acquisition into evaluation phases. The solicitation establishes the phases and must inform offerors what is required to advance to the next phase.



# Revisions to FAR Part 15: Notes on Deviation Text

- **“Deficiency”** defined as “any part of an offer that does not conform to a material requirement of a RFP.”
  - No longer “a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level”
  - “Material requirement” (of an RFP) defined as “one that affects price, quantity, quality, or delivery, or that the RFP requires to be met at the time of proposal submission.”
- **“Proposal Revision”** is modified substantively. No longer just a “change” to a proposal after the closing of the solicitation, but a change to “material elements” of a proposal.



# Revisions to FAR Part 15: Notes on Deviation Text

- Concept of “**Competitive Range**” Changed:
  - The original FAR provides that “all of the **most highly rated** proposals” were to be included in the competitive range, unless the range was further reduced for efficiency.
  - New FAR 15.204-1(a) defines the “competitive range” as “the group of evaluated proposals that the contracting officer determines are **best suited for further negotiation.**”
    - Query whether competitive ranges now will include only the most highly rated proposals, or whether COs will include less highly rated proposals that are “best suited” in some other aspect other than, presumably, technical.



# Revisions to FAR Part 15: Notes on Deviation Text

- Revising how COs Negotiate. No more “Discussions” or “Communications”. “Clarifications” Broader, Discretionary.
- “Clarifications” have been defined as “exchanges between the Government and offerors where offerors are given the opportunity to resolve minor or clerical errors or clarify certain aspects of their proposal. Clarifications can be used to enhance the Government’s understanding of a proposal, allow reasonable interpretation of a proposal, or facilitate the Government’s evaluation process.”
- Clarifications can also be used to have contractors address “adverse past performance information to which the offeror has not previously had an opportunity to respond.”
- “Clarifications may occur, at the contracting officer’s discretion, at any time after receipt of proposals through contract award.”
- The Practitioner Album states, “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).”
- **As “clarifications” are discretionary, COs now apparently have no requirement to raise any issue with any offeror prior to establishing the competitive range.**



# Revisions to FAR Part 15: Notes on Deviation Text

- Discussions → “Competitive Negotiations”
  - While old FAR 15.306(d)(1) requires the CO to conduct “discussions” with “each offeror within the competitive range,” the revised FAR 15.204-2(b)(1)(i) states that the CO must “Negotiate with each responsible offeror within the competitive range.”
    - Responsibility determinations are usually conducted later, but the RFO appears to require agencies to make such determinations earlier.
  - FAR 15.204-2(b)(1)(ii) still must be tailored to the offerors’ proposals and address any deficiencies or significant weaknesses, the obligation to discuss adverse past performance to which the offeror has not yet had an opportunity to respond is removed from “negotiations” and moved to “clarifications.”
  - FAR 15.204(b)(2) allows COs to “further negotiate with an offeror” and that “further negotiations with a particular offeror **does not obligate** contracting officers to have further negotiations with any other offerors.” (emphasis added)



# Revisions to FAR Part 15: Notes on Deviation Text

- Oral Presentations
  - FAR 15.105-1 provides that oral presentations ---
    - can be used as a substitute for requesting portions of a written proposal (and list the types of information suitable for an oral presentation)
    - can occur at any time in the source selection process, and
    - that offerors must have sufficient information to prepare and provide their presentations.
  - The FAR Companion Guide now contains the former FAR requirements about the limits and restrictions on using materials to supplement oral presentations, time for presentations, and the scope and content of exchanges with the Government.



# Revisions to FAR Part 15: Notes on Deviation Text

- Debriefings:
  - Now located in FAR 15.206-2 (preaward debriefing) and FAR 15.301-1 (postaward debriefing)
  - Revised FAR 15.301-1 includes the aspect of the DFARS enhanced debriefing features for DoD acquisitions for the provision of a redacted source selection decision
    - Does not include a process for additional questions
    - “If time permits, contracting officers may provide successful and unsuccessful offerors an opportunity to submit follow up questions after the postaward debriefing.”

**Note:** This does not appear to extend the time a debriefing is kept open.



# Revisions to FAR Part 15: Implementation

- Because the scope of changes is large, we expect a corresponding shift in practices and potential implementation bumps in the road. For example, potential issues could arise from:
  - Oral Presentations. Given the wide discretion to agencies in conducting oral presentations and the removal of regulatory language, offerors may increase sensitivity to how oral presentations are conducted, and whether they are done in a fair and equitable manner, such as with time limitations or content.
  - Adverse Past Performance Information Addressed in Clarifications. On one hand, COs can “clarify” adverse past performance information that an offeror has not yet had a chance to address. On the other hand, however, clarifications are now discretionary, and a CO does not have to conduct them. Query whether offerors will be trapped by adverse past performance information not raised by a CO through clarifications.
  - Negotiations and the Alleged Unequal Treatment of Offerors. It is well established that agencies must treat offerors equally. Given the discretion afforded to COs in conducting negotiations at their discretion, we anticipate bid protest litigation will center on how agencies conducted negotiation, and the creation of new case law.
  - Increased CO Discretion May Diminish Uniformity. As a regulatory framework, the FAR seeks to impose uniformity or regularity to agency processes. The increased discretion to COs may lead to differing practices and differing approaches between agencies and, perhaps, within agencies. This may lead to more complexity for contractors.



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# **Revisions to FAR Part 36 – Construction and Architect-Engineer Contracts**



# Revisions to FAR Part 36: New Structure & Notable Deletions

- **New Structure:** As with other overhauled sections, regulatory text has been reorganized to reflect the life cycle of procurement with three Subparts:
  - Subpart 36.1 – Pre-solicitation
  - Subpart 36.2 - Evaluation and Award
  - Subpart 36.3 – Postaward
- **Notable Deletions**
  - Deletion of definitions. The terms “design” and “modernization projects” have been deleted because they were determined to be outdated and/or unnecessary. These terms, however, remain in the overhauled Part 36.
  - Deletion of applicability provision. The overhauled Part 36 deletes provisions from old FAR 36.101 regarding the applicability of Part 36 and that it takes precedence over other FAR provisions, such as FAR part 15.
  - Do these deletions create ambiguity or flexibility for contractors?



# Revisions to FAR Part 36: Notes on Deviation Text

- **Price Negotiation Procedures In Construction Contracts**

- Overhauled Part 36 deletes price negotiation procedures, such as directing the CO to ensure an offeror and the government estimator understand the scope of work if a proposed price is significantly lower than the government estimate.

- **Minimum Amount of Work Requirement**

- Overhauled Part 36 deletes the provision reflecting that contractors “be required to perform a significant part of the contract work with its own forces,” “ordinarily not less than 12 percent.”
  - *Query:* Will this change lead prime contractors to subcontract more work?

- **Selection Criteria for Architect-Engineer Contracts**

- Overhauled Part 36 deletes FAR 36.602-1, which governs selection criteria for architect-engineer contracts. The Practitioner’s Album states that with this deletion “Contracting activities now have additional flexibility in evaluating offeror qualifications.”
- While overhauled Part 36 requires agencies to evaluate a company’s Standard Form (SF) 330, the contents of an SF 330 are not co-extensive with FAR 36.602-1. The most notable gap is that FAR 36.602-1(a)(3) required agencies to consider a company’s “capacity to accomplish the work in the required time.” SF 330 does not include this criterion, which begs the question whether an agency’s practice will evaluate this aspect of an offeror.



# Revisions to FAR Part 36: Notes on Deviation Text

- Removal of recommendation that COs provide pre-award site inspection or pre-construction conference after award
  - Old FAR Part 36 provided that COs should provide opportunities for offerors to inspect the construction site (FAR 36.210) and may hold a preconstruction conference (FAR 36.212).
  - This text has been deleted, leaving the decision to hold a pre-award site inspection “at the discretion of the acquisition team,” according to the Practitioner’s Album.
- Note: The deviation text at FAR 36.101-7 still instructs COs to use FAR clause 52.236-3 3 in solicitations and contracts. FAR 52.236-3 continues to provide that –
  - ***The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost.***
  - Deletion of the site inspection recommendation may create an issue for contractors if there was no pre-award site inspection offered.



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# **Revisions to FAR Part 19 – Small Business**



# Revisions to FAR Part 19: Simplification, New Structure, and the “Rule of Two” Retained

- **Simplification**

- FAR Part 19 has been renamed “Small Business” from “Small Business Programs.”
- The intent of the revisions is to make the text easier to read and deleting duplicative language
- Consolidation of definitions into FAR 19.001.

- **New Structure:** As with other overhauled sections, regulatory text has been reorganized to reflect the life cycle of a procurement:

- Subpart 19.1 - Presolicitation
- Subpart 19.2 - Evaluation and Award
- Subpart 19.3 - Postaward



# Revisions to FAR Part 19: Notes on Deviation Text

- **“Rule of Two” Retained**
  - The “Rule of Two” requires agencies to source from a small business if the agencies identifies 2 or more small businesses who can provide the supplies or service above the micro-purchase threshold (MPT), which for most contracts is \$15,000.
  - The Practitioner’s Album explains that, while the Rule of Two is required by statute between the MPT of \$15,000 and the Simplified Acquisition Threshold (SAT) of \$350,000, “the FAR Council retained the rule of two above the SAT as essential to sound procurement.”(emphasis added)
  - Importantly, the Rule of Two Doesn’t Apply to Orders. Contracting officers may, at their discretion, set aside orders placed under multiple-award contracts.
- **Agency Small Business Credit for Small Business Goals**
  - Agency small business credit is driven by the size determination made by the contracting officer at the contract-level upon initial offer
  - Updates to the size determination are made upon certain contract-level events take place, such as the exercise of an option or novation)



# Revisions to FAR Part 19: Notes on Deviation Text

- **8(a) Program Changes**

- Where an acquisition is below applicable sole source thresholds (see overhauled FAR 19.108-7(a)(2)), COs must first try conducting the acquisition as a competitive 8(a) order using SBA-approved government-wide contracts (GWACs) before proceeding with a sole source 8(a) award.
- Now, a requirement is automatically released from the 8(a) program if the follow-on will be set aside under another SBA program: HUBzone, SDVOSB, or WOSB. A release does not have to be formally requested from the SBA.

- **Emphasis of the FAR Companion Guide:** Given the FAR Overhaul's focus on removing language deemed to be unnecessary, significant edits targeted text by removing it and addressing the topics in the FAR Companion Guide. This includes guidance on the following items:

- Identifying manufacturers for the purpose of the nonmanufacturer rule;
- Encouraging small business participation;
- Selection of North American Industry Classification System (NAICS) Codes; and
- Setting aside orders under Multiple Award Contracts (FAR 8.4 and 16.5)



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# **Revisions to FAR Part 12 Acquisition of Commercial Products and Commercial Services**



# Revisions to FAR Part 12: Statutory Authority

- 10 U.S.C. § 3453, Preference for Commercial Products and Commercial Services
  - Requires the head of an agency to ensure that the procurement officials of that agency, to the maximum extent practicable, “**acquire commercial services, commercial products, or nondevelopmental items other than commercial products to meet the needs of the agency**”
  - Agencies must “revise the agency’s procurement policies, practices, and procedures not required by law **to reduce any impediments** in those policies, practices, and procedures to the acquisition of commercial products and commercial services.”
- Consequently, the revised FAR Part 12 streamlines the acquisition requirements applicable to commercial products and services with the aim of increasing the participation of commercial suppliers in the federal supply chain and aligning federal acquisition with commercial best practices.



# Revisions to FAR Part 12: Deviation Text and Tables

- The deviation text divides FAR Part 12 into subparts that track the life cycle of a commercial acquisition:
  - Subpart 12.1 – Presolicitation
  - Subpart 12.2 – Solicitation, Evaluation, and Award
  - Subpart 12.3 – Postaward
  - Subpart 12.4 – Micro-purchases (new to Part 12)
- The revised FAR Part 12 also contains multiple tables that guide contracting officers on finding information about how to structure commercial acquisitions:
  - Table 12-1 – Authority citations for restricting competition
  - 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 prescribed



# Revisions to FAR Part 12: Notes on Deviation Text

- The definition of “commercial service” at FAR 2.101 is revised
  - Now explicitly states that construction is included within the definition:  
“Services, **including construction**, of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions”
- Section 12.000, “Scope,” clarifies that the simplified acquisition procedures for acquisitions of up to \$9 million are implemented in Part 12.



# Revisions to FAR Part 12: Notes on Deviation Text

- Section 12.200(a): directive on sourcing commercial products and services
  - If commercial products or 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) . . . .
  - **Then** agencies are instructed to procure the commercial products or commercial services from that source.
- **If they aren't**, agencies are to use the streamlined procedures for solicitation, evaluation, and award in Subpart 12.2.



# Revisions to FAR Part 12: Notes on Deviation Text

- Section 12.203: Evaluation
  - Provides considerable discretion to contracting officers (COs) as to how to evaluate quotations for commercial products and services;
  - COs are not required to have evaluation plans, score quotations, or establish a competitive range before communicating with quoters or soliciting revised quotations.
  - Agencies are to ensure that quotations and offers
    - “can be evaluated in an efficient and minimally burdensome fashion”;
    - Are considered if timely received and to exercise “good business judgment in deciding whether or not to accept a quotation or offer received after the due date or time”



# Revisions to FAR Part 12: Notes on Deviation Text

- The revised Part 12 also revises or eliminates several key FAR Part 52 provisions and clauses applicable to commercial products and services.
  - Note: The RFO applies “plain language and other edits” to:
    - FAR 52.212-1, Instructions to Offerors-Commercial Products and Commercial Services;
    - FAR 52.212-2, Evaluation-Commercial Products and Services; and
    - FAR 52.212-4, Terms and Conditions – Commercial Products and Commercial Services
  - 46 clauses and provisions from other FAR parts have been removed from Part 12
  - Represents an approximate 30% reduction in the number of clauses/provisions applicable to commercial contracts, including:
    - FAR 52.212-3, Offeror Representation and Certifications – Commercial Products and Commercial Services, and
    - FAR 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Products and Commercial Services



**QUESTIONS?**

**ANSWERS!**



# Contact Info

**Maria Panichelli, Esq.**

Partner, McCarter & English LLP

[www.mccarter.com](http://www.mccarter.com)

[mpanichelli@mccarter.com](mailto:mpanichelli@mccarter.com)

T: 215.979.3886

@MariaPanichelli

<https://www.linkedin.com/in/mariapanichelli/>

