



PROCUREMENT MEMORANDUM 2026-04

ACTION

MEMORANDUM FOR: Senior Bureau Procurement Officials

FROM: Olivia J. Bradley
Senior Procurement Executive and
Director for Acquisition Management

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

Background

On May 2, 2025, the Federal Acquisition Regulatory Council (the Council) issued a memorandum entitled, "Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation," to provide guidance to agencies to support the issuance of FAR deviations to implement Executive Order 14275, "Restoring Common Sense to Federal Procurement," and OMB Memorandum M-25-26, "Overhauling the Federal Acquisition Regulation." This guidance states that agencies should issue agency-specific class deviations within 30 days after the Council has released class deviation text on [acquisition.gov](https://www.acquisition.gov). On August 14, 2025, the Council released deviated language for FAR Part 12.

FAR Part 12, Acquisition of Commercial Products and Commercial Services, is significantly updated. The part has been fundamentally re-engineered in its structure, scope, and operational mechanics to make federal buying faster, simpler, and more aligned with commercial practices. These changes reflect an effort to create a user-centric part that champions flexibility and innovation when acquiring commercial products and services.

Statutory requirements retained in the FAR Part 12 deviation include, but may not be 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

Purpose

This class deviation is issued in accordance with 48 CFR 1.4 and Revolutionary FAR Overhaul (RFO) FAR 1.304, pursuant to the Council’s memo entitled, “Deviation Guidance to Support the Overhaul of the Federal Acquisition Regulation,” to provide contracting officers with revised FAR Parts 12 and 52 language.

Required Actions

Upon effective date contracting officers shall comply with the deviated FAR text found in Attachment A.

- A. When issuing new solicitations or contracts, contracting officers shall not include the following provision and clause:
 - 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
- B. When issuing new solicitations or contracts, contracting officers shall use the following revised provisions and clause:
 - 52.212-1 Instructions to Offerors—Commercial Products and Commercial Services.
 - 52.212-2 Evaluation—Commercial Products and Commercial Services.
 - 52.212-4 Contract Terms and Conditions—Commercial Products and Commercial Services.
- C. For open solicitations or awarded contracts, the Contracting Officer has discretion regarding the need to enforce or amend these provisions and clauses.
- D. For any solicitation or contract using deviated provisions or clauses, contracting officers may include the following language:

“System updates may lag policy updates. The System for Award Management (SAM) may continue to require entities to complete representations based on provisions that are not included in this solicitation. Contracting officers will rely on representations

from offers based on provisions in the solicitation. Entities are not required to, nor are they able to, update their entity registration to remove these representations in SAM.”

Effective Date

This deviation shall be effective December 15, 2025, and remains in effect until rescinded or incorporated into the FAR. Contracting officers may choose to use the deviated FAR text immediately.

Questions

Please direct any questions regarding this Procurement Memorandum to OAM_Mailbox@doc.gov.

Attachment A – FAR Deviation Text