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Government Contracts Alert

September 25, 2026

FAR Council releases second round of FAR overhaul proposed rules

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Four new proposed rules target source selection, contract types, construction, data rights, and more. Comments due October 19, 2026.

What's the impact?

- The FAR Council published four proposed rules on September 18, 2026, covering FAR Parts 8, 9, 12, 13, 14, 15, 16, 17, 27, 28, 35, 36, 38, 44, 47, and 51—the second batch of proposed rules implementing the Revolutionary FAR Overhaul (RFO).
- Key changes affect commercial buying, negotiated acquisitions, contract types, non-fixed-price justifications, construction contracting, debriefings, and data rights rules.
- Stakeholders should begin reviewing the proposed text and preparing comments immediately.

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Overview of the Revolutionary FAR Overhaul

On April 15, 2025, President Trump issued Executive Order 14275, Restoring Common Sense to Federal Procurement (April 15, 2025), which kicked off the most comprehensive overhaul of the Federal Acquisition Regulation (FAR) since its inception more than 40 years ago. Executive Order 14275 requires the FAR Council to produce a simpler, clearer FAR that contains "only provisions required by statute or essential to sound procurement." The Revolutionary FAR Overhaul (RFO) has a two-phase approach. In the first phase, the FAR Council issued guidance to agencies and deviation text for each FAR Part. Agencies have since issued agency-specific class deviations to implement the new language. The second phase involves formal rulemaking.

Phase One model class deviations have been in effect since fiscal year 2025 and will remain operative while formal rulemaking proceeds. Phase Two moves the overhaul into notice-and-comment rulemaking and may change the text contractors and agencies have been using under those deviations. The first batch of proposed rules, published in June 2026 with a 30-day comment period, proposed significant changes to the existing regulations and the model class deviations, including comprehensive expansion and reorganization of FAR Part 40 into three parts: Processing Supply Chain Risk Information, Security Prohibitions and Exclusions, and Safeguarding Information. The latter subpart specifically addresses the treatment of Controlled Unclassified Information (CUI) in civilian agency contracts, proposing to close the long-standing gap between CUI safeguarding requirements in the Defense Federal Acquisition Regulation Supplement (DFARS) and the lack thereof in the FAR.

Second batch of proposed rules

On September 18, 2026, the FAR Council published four proposed rules in the Federal Register as part of Phase Two of the Revolutionary FAR Overhaul. The four rules are part of a 12-rule package intended, collectively, to streamline the FAR in its entirety. This second batch addresses FAR Parts 8, 9, 12, 13, 14, 15, 16, 17, 27, 28, 35, 36, 38, 44, 47, and 51.

Comments are due October 19, 2026—only 31 days after publication. As with the first batch of proposed rules, the compressed period leaves little time to assess interactions across the four cases, compare proposed text against the model deviations, coordinate operational and legal input, and develop concrete drafting recommendations. Interested stakeholders should begin that work now.

The four cases are FAR Case 2026-003 (Parts 8, 12, 13, 15, 38, 44, and 51); FAR Case 2026-006 (Parts 16, 17, and 35); FAR Case 2026-010 (Parts 14, 28, and 36); and FAR Case 2026-011 (Parts 9, 27, and 47).

Major impact: Increased contracting officer discretion

A recurring theme across all four proposed rules is the significant expansion of contracting officer discretion. The RFO's guiding philosophy—replacing prescriptive mandates with streamlined regulations that reinforce the contracting officer's authority to "determine the best way to apply policies and practices"—runs through nearly every substantive change, from the permissive contract-type framework in Part 16 to the broadened competitive range and late-proposal standards in Part 15 to the migration of procedural "how to" requirements into nonregulatory FAR Companion guidance. For contractors, in-house counsel, and procurement professionals, this shift has significant practical implications. Greater discretion can produce faster, more innovative acquisitions—but it can also introduce inconsistency, reduce predictability, and shift the locus of protest disputes from bright-line regulatory compliance to the reasonableness of individual judgment calls.

The balance will depend heavily on recordkeeping. Even where the proposed FAR no longer prescribes a detailed sequence, contemporaneous documentation of the contracting officer's rationale will remain important for internal governance, oversight, and protest defense.

Significant updates across the four proposed rules

FAR CASE 2026-003 (PARTS 8, 12, 13, 15, 38, 44, AND 51)

Key Takeaways:

- "One Stop Shop" for Commercial Acquisitions (Part 12): The proposed rule re-engineers FAR Part 12 into a process-oriented, user-centric framework, consolidating simplified acquisition procedures, micro-purchase rules, and publicizing requirements into a single part. It removes 52.212-3 and 52.212-5 and requires agencies to obtain a formal deviation under FAR Part 1 before including any provision or clause not explicitly prescribed for commercial products or services.
- End of "Late is Late" and Shift to Negotiations (Part 15): The proposed rule replaces the rigid late-proposal rules with a broad "best interest" standard, allowing a contracting officer to accept any late proposal received before award if doing so would not unduly delay the acquisition and serves the government's interest. It also reframes Part 15 around "negotiations" rather than "discussions," permitting asymmetric rounds of negotiation with individual offerors in the competitive range—now redefined to include proposals "best suited for negotiation" rather than only the "most highly rated."

FAR Case 2026-003	Parts 8, 12, 13, 15, 38, 44, and 51
Part 8	The proposal clarifies the priority of required sources and simplifies ordering from government sources. It reinforces the use of existing governmentwide contracts and blanket purchase agreements (BPAs), consistent with Executive Order 14240, Eliminating Waste and Saving Taxpayer Dollars by Consolidating Procurement. It also consolidates Part 51's rules on contractor use of Government supply sources into Part 8 and expands potential access beyond cost-reimbursement contractors.
Parts 12 and 13	Although the mandate to prioritize acquisition of commercial products and services has always existed in FAR Part 12, the RFO proposes to refocus buyers on this concept and reorient Part 12 on the statutory requirements for procuring commercial products and services. Part 12 would be fundamentally reorganized around process-oriented subparts (presolicitation, solicitation/evaluation/award, and post-award). The proposal removes omnibus provision 52.212-3 and clause 52.212-5; requires a deviation before adding clauses not prescribed for commercial acquisitions; explicitly permits construction to be considered a commercial service; consolidates simplified-acquisition and micro-purchase procedures; embeds higher simplified-procedure thresholds of $9 million and $15 million; and consolidates publicizing rules. Part 13 would focus on non-commercial acquisitions at or below the simplified acquisition threshold and cross-reference Part 12 for commercial procedures.
Part 15	The negotiated acquisition rules would shift their emphasis from "discussions" to "negotiations." The proposal defines deficiency more directly as nonconformance with a material solicitation term; eliminates pre-competitive-range exchanges; allows clarifications throughout the process, including to address adverse past performance; and gives contracting officers discretion to accept late proposals when doing so is in the government's best interest. It also reframes the competitive range to include proposals "best suited for negotiation," formally recognizes a highest-technically-rated-with-fair-and-reasonable-price approach and phased

	evaluations or down-selects, and adds an LPTA restriction for munitions-response services.
Parts 38, 44, and 51	Part 38 would be removed as duplicative of the General Services Administration Acquisition Regulation. Part 44 would be streamlined without any intended substantive policy changes. Part 51 will be removed after relocating its content to Part 8.

FAR CASE 2026-006 (PARTS 16, 17, AND 35)

Key Takeaways:

- Permissive Contract-Type Framework with a Fixed-Price Default (Part 16): The proposed rule replaces Part 16's restrictive approach (where contract types not explicitly authorized were disfavored) with a permissive framework allowing agencies to use any contract type that promotes the government's best interest and is not expressly prohibited by statute. Fixed-price contracts with performance-based considerations become the default, and any non-fixed-price contract type requires written justification signed by the agency head, with additional approval thresholds tied to total potential contract value.
- Streamlined Allowable Cost and Payment (52.216-7). The proposed rule significantly reduces the information contractors must submit for incurred-cost audit purposes under clause 52.216-7, removing multiple line items previously required for an adequate indirect-cost proposal. These changes are expected to reduce the time required for contract closeout and settlement.

FAR Case 2026-006	Parts 16, 17, and 35
Part 16	The proposal replaces a restrictive contract-type framework with a more permissive one, while implementing the preference in Executive Order 14402, Promoting Efficiency, Accountability, and Performance in Federal Contracting (Apr. 30, 2026) for fixed-price contracts through new justification and agency-head approval requirements for non-fixed-price arrangements. It treats consumption-based solutions as firm-fixed-price contracts under section 1825 of the FY2026 NDAA; distinguishes an ordering period from an order's period of performance; introduces on-ramps and off-ramps

	for multiple-award contracts; and authorizes BPAs under those contracts. The rule also substantially reorganizes task- and delivery-order procedures and requires a brief explanation to unsuccessful offerors for orders above the simplified acquisition threshold and not exceeding $7.5 million, implementing section 874 of the FY2020 NDAA. In addition, it streamlines clause 52.216-7, Allowable Cost and Payment, removing a number of items required for an adequate indirect cost proposal, and clarifies that the clause applies to cost-type incentive contracts.
Part 17	The proposal removes the nonstatutory five-year limit on contract duration and replaces it with a requirement to "follow any statutory or regulatory limits on contract duration"; modernizes option clauses 52.217-6, -7, and -8, so they can apply to both supplies and services; adds a paragraph in clauses 52.217-8 and -9 to permit the government and a contractor to mutually agree to toll or delay option-exercise periods during a government shutdown; removes the best-interest determination for Economy Act interagency acquisitions; and incorporates the statutory prohibition on reverse auctions for complex construction services.
Part 35	The proposal clarifies the scope of research-and-development contracting; adds guidance on grants, cooperative agreements, and other transaction authorities; removes the preference for "well-established" entities; and confirms the flexibility available under Part 15 when evaluating R&D proposals.

FAR CASE 2026-010 (PARTS 14, 28, AND 36)

Key Takeaways:

- Site Visit Flexibility (Part 36): The proposed rule eliminates the dedicated site-visit clause (52.236-27) but does not eliminate the contracting officer's authority to require site visits or preconstruction conferences, which will now be written directly into each solicitation. This gives agencies more flexibility but increases the risk of inconsistent agency practices, making it harder for contractors to anticipate pre-bid obligations and increasing the risk of

uninformed pricing.

- Debriefing Requirement Restored (Part 36): The Phase One model deviation text eliminated the legacy FAR 36.607(b), creating confusion by neither mentioning nor requiring government debriefings. The proposed rule restores them through new instructions in FAR 36.202-3(f), indicating that debriefings may be provided in accordance with 15.301.

FAR Case 2026-010	Parts 14, 28, and 36
Part 14	The sealed-bidding rules would be simplified and reorganized. Duplicative material would move to the part where it principally belongs—for example, uniform-contract-format text to Part 15 and protest text to Part 33. The proposal removes pre-bid-conference text and outdated provisions addressing facsimile bids and bid envelopes.
Part 28	The proposed revisions are administrative corrections; the Council states that they do not substantively change policy.
Part 36	The proposal separates construction rules from architect-engineer regulations and removes nonstatutory permissive text on matters such as preconstruction conferences and site visits, and removes the associated clause at FAR 52.236-26, Preconstruction Conference, while noting that the removal of this text and clause "would not prohibit or limit" the contracting officer from establishing a requirement for an optional or mandatory preconstruction conference, but would shift it to the solicitation stage. It also removes clauses 52.236-1, Performance of Work by the Contractor, as competition-restricting; 52.236-4, Physical Data, as the intent of the clause is served by 52.236-3, Site Investigation and Conditions Affecting the Work; 52.236-19, Organization and Direction of the Work; 52.236-27, Site Visit; and 52.236-28, Preparation of Offers—Construction.

FAR CASE 2026-011 (PARTS 9, 27, AND 47)

Key Takeaways:

- FAR Data Rights Replaced with DFARS Framework: The proposed rule deletes FAR subpart 27.4 entirely, replacing it with two DFARS-derived subparts—27.4 for other-than-commercial acquisitions and 27.5 for commercial—and introduces government-purpose rights into the FAR. Aligning with the DFARS should yield significant cost savings by letting contractors work within a single data-rights system across all agencies instead of two separate regimes.
- Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) Data Protection Overhaul: The rule replaces the extendable four-year SBIR protection period with a single, non-extendable 20-year term, after which the government receives a perpetual government purpose rights license rather than unlimited rights—significantly strengthening small-business IP protections. It also adds STTR-specific coverage to the FAR for the first time, including rules for allocating IP rights between partnering institutions and contractors.

FAR Case 2026-011	Parts 9, 27, and 47
Part 9	The proposal removes coverage of preaward surveys, contractor team arrangements, and defense production pools. It replaces references to the Federal Awardee Performance and Integrity Information System (FAPIIS) with "integrity records." To implement Executive Order 14398, Addressing DEI Discrimination by Federal Contractors (Mar. 31, 2026), the proposal also would add noncompliance with new clause 52.222-XX, Addressing DEI Discrimination by Federal Contractors, to the list of causes for suspension or debarment.
Part 27	The proposal would replace existing subpart 27.4, Rights in Data and Copyrights, with DFARS-derived rules. The subpart would be deleted in its entirety and would be replaced by a new subpart 27.4 containing analogous content derived from the Defense Federal Acquisition Regulation Supplement (DFARS) addressing technical data, computer software, computer-software documentation, and related intellectual property for other-than-commercial products and services; new subpart 27.5 would cover commercial products and services and would also be derived from the DFARS. The framework adds government-purpose rights, two patent-related clauses, and revised SBIR/STTR rules, providing a single, nonextendable 20-year protection period followed by government-purpose rights rather than unlimited rights. The addition of STTR coverage itself is a significant expansion.

Part 47	The proposal removes 33 nonstatutory provisions and clauses, streamlines transportation requirements, and eliminates obsolete shipping terminology.

Note that revisions to FAR Part 52 are incorporated in each of the proposed rules discussed above. Provisions and clauses associated with a particular FAR part are discussed in that FAR part's analysis.

Comparison to the Revolutionary FAR Overhaul model deviation text

The RFO model deviations were the Phase One mechanism for replacing each FAR part with streamlined text; however, the proposed rules are Phase Two formal rulemaking. They do not mirror the deviations now in use.

The proposed rules incorporate later executive and statutory requirements, including Executive Order 14402 (Promoting Efficiency, Accountability, and Performance in Federal Contracting, Apr. 30, 2026); Executive Order 14398 (Addressing DEI Discrimination by Federal Contractors, Mar. 26, 2026); section 1825 of the FY2026 NDAA (consumption-based solutions); section 812(a)(6) of the FY2026 NDAA (DoD qualification requirements); and section 822 of the FY2025 NDAA (the LPTA restriction for munitions-response services). They also implement the FY2020 NDAA section 874 explanation requirement for unsuccessful task- and delivery-order offerors, building on the model-deviation framework.

Several proposals go beyond the original model text. Part 27 would replace the FAR's data-rights structure with DFARS-derived content and add STTR coverage. Part 16 would add on-ramp/off-ramp procedures and BPA authority for multiple-award contracts. The Council is also considering renumbering all Part 52 provisions and clauses—potentially into a new subpart 52.4—to distinguish RFO-era text from prior clause versions, an approach not included in the original deviations.

The broader RFO framework also includes FAR 1.109, a four-year regulatory sunset under which non-statutory FAR sections expire unless renewed. That feature, together with migration of procedural detail to nonregulatory companion guidance, underscores that implementation will remain dynamic even after these cases are finalized.

Practitioners should compare each proposed rule line by line against the operative model deviation, not merely the pre-RFO FAR. Comments should identify concrete differences, explain operational consequences, and, where possible, propose regulatory text. Priority issues include standards governing discretionary decisions, documentation expectations, transition rules for

existing solicitations and contracts, and the boundary between binding FAR text and companion guidance.

With comments due October 19, 2026, contractors, in-house counsel, and procurement professionals should promptly assemble cross-functional teams—including contracts, legal, pricing, intellectual property, business development, and program personnel—to identify provisions that alter risk allocation or acquisition strategy.

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