



October 19, 2026

Regulatory Secretariat Division (MVCB)
General Services Administration
1800 F Street NW, 2nd Floor
Washington, DC 20405

Re: BSA Comments on the Revolutionary FAR Overhaul, Round 2 (FAR Cases 2026-003, 2026-006, and 2026-011)¹

Dear Members of the FAR Council:

The Business Software Alliance (BSA) is the leading advocate for the global enterprise software industry.² We work in over 20 markets in the Americas, Europe, and Asia, advocating for policies that build trust in technology so that the government, every industry sector, and the public can benefit from innovation. BSA members are at the forefront of providing AI, cybersecurity, cloud computing, quantum, and other technologies. Our members welcome the opportunity to comment on Round 2 of the Revolutionary FAR Overhaul (RFO). Many of our members hold or are pursuing federal contracts and rely on the FAR to provide clarity and consistency in how the government buys commercial software and services. Our comments below focus on FAR Parts 12, 16, 27, 44, and 52, which most directly affect commercial software and cloud providers.

FAR Part 12, Acquisition of Commercial Products and Commercial Services

BSA supports the direction of the Part 12 restructuring, including the consolidation of required commercial solicitation provisions and contract clauses into a single table at proposed FAR 12.205. We offer the following recommendations to ensure the restructured Part 12 preserves the commercial terms that it is meant to advance.

As a threshold matter, BSA asks the FAR Council to state expressly that the Part 12 revisions are to be interpreted against a backdrop strongly favoring the acquisition of commercial products and commercial services on commercial terms. Where the proposed rule removes regulatory text, the removal should be read to increase flexibility and reduce friction for commercial acquisitions, not to

¹FR Doc. 2026-19162 (FAR Case 2026-003, Docket No. FAR-2026-0003); FR Doc. 2026-19160 (FAR Case 2026-006, Docket No. FAR-2026-0006); FR Doc. 2026-19159 (FAR Case 2026-011, Docket No. FAR-2026-0011).

²BSA's members include: Adobe, Alteryx, Amadeus, Asana, Atlassian, Autodesk, Avalara, Bentley Systems, Box, Cisco, Cohere, Cohesity, Dassault Systemes, Databricks, Docusign, Dropbox, Elastic, EY, Graphisoft, HubSpot, IBM, Informatica, Kyndryl, MathWorks, Microsoft, Notion, Okta, OpenAI, Oracle, PagerDuty, Palo Alto Networks, PTC, Rubrik, Salesforce, SAP, ServiceNow, Shopify Inc., Siemens Industry Software Inc., Trend Micro, TriNet, Veeam, Workday, Zendesk, and Zoom Communications Inc.

give contracting officers new room to depart from commercial practice. Each of the recommendations below should be read in that light.

Waiver and tailoring authority (proposed FAR 12.205(c))

Proposed FAR 12.205(c)(1) would allow agencies to waive or tailor provisions and clauses authorized for commercial acquisitions when the provision or clause does not implement a statute or Executive order and the contracting officer determines its content to be inconsistent with customary commercial practice, with approval by the head of the contracting activity (HCA) or, for a class of acquisitions, the senior procurement executive (SPE). BSA supports moving commercial contracts closer to customary commercial practice. As drafted, however, the determination is made unilaterally by the government, with no requirement for written findings and no opportunity for affected offerors or contractors to be heard. This results in a one-way rather than a two-way conversation between the contracting officer and the contractor. This is a significant gap, because the contracting officer is not well positioned to determine on its own what is customary in a given commercial market. The companies that sell commercial products and services on commercial terms are the best source of that information. Without a check, the authority could become a one-way path away from commerciality, used to strip commercial terms rather than to align contracts with them. BSA recommends that proposed 12.205(c)(1) require that:

- (1) the contracting officer issue written findings explaining why the content of the provision or clause is inconsistent with customary commercial practice;
- (2) the contracting officer seek input from the offerors or contractors under the solicitation or contract in which the change will take effect;
- (3) the HCA or SPE consider both the contracting officer's findings and the contractor input, and document the decision to waive or tailor in writing; and
- (4) where a waiver or tailoring occurs after proposals are submitted or after award, the contractor may seek an equitable adjustment for any increased costs attributable to the change.

The waiver mechanism should also work in both directions. Nothing in the proposed rule requires a contracting officer to justify retaining a listed provision or clause that neither implements a statute or Executive Order nor reflects customary commercial practice. BSA recommends that retaining such a provision or clause also requires a waiver supported by the same written findings.

Relatedly, proposed FAR 12.205(b)(1)(ii) provides that the clause at 52.212-4 “may” be tailored to reflect customary commercial practice. BSA welcomes this flexibility and recommends changing “may” to “must” so that alignment with customary commercial practice is the expectation rather than a discretionary option. That flexibility is undercut, however, by the proposed revision to the order of precedence in 52.212-4(r), discussed under Part 52 below.

Termination for the Government's convenience (proposed FAR 12.304(c))

Current FAR 12.403(d)(1) specifies how a contractor is paid when a commercial contract is terminated for the Government's convenience: the percentage of the contract price reflecting the work performed before the notice of termination (or, for labor-hour work, the hours expended multiplied by the scheduled rates), plus charges the contractor can demonstrate resulted from the termination. It further provides that the contractor may use its standard record keeping system, is not required to comply with the cost accounting standards or the contract cost principles in part 31, and that the Government has no right to audit the contractor's records solely because of the termination.

Proposed FAR 12.304(c) replaces this text with a general statement that the contractor “may be entitled to certain payments” and that the parties should mutually agree on the requirements of the termination proposal. Although paragraph (l) of 52.212-4 retains a version of the payment formula, that clause may itself be tailored under proposed 12.205(b)(1)(ii), and the termination paragraph is not among the paragraphs exempt from tailoring. The regulatory text is therefore an important guardrail for commercial contractors. The statement that cost accounting standards do not apply is particularly important, because it addresses a recurring source of confusion among contracting officers less familiar with commercial contracting. BSA asks the FAR Council to retain the substance of current FAR 12.403(d)(1) in proposed 12.304(c).

Commercial computer software (proposed FAR 12.107)

Proposed FAR 12.107(b) states that the Government should have only those rights specified in the license incorporated into the contract, because commercial license terms are most often incorporated by addendum, BSA recommends revising this sentence to read that the Government should have only those rights specified in the license incorporated into the contract “in any form, including any addendum to the contract.” Contracting vehicles and methods vary across enterprise software, and we want contract language flexible enough to handle a variety of sales situations, so that the commercial terms are kept intact through the transaction. Together with the order of precedence correction recommended below, this change ensures that the policy in 12.107(a) of acquiring commercial software under licenses customarily provided to the public is not undercut by the clause hierarchy.

COTS treatment for standard commercial services

The restructured Part 12 continues to limit commercially available off-the-shelf (COTS) treatment under FAR 2.101 to products. Standard commercial services, including SaaS, cloud infrastructure, and related standard commercial professional services sold with no or minimal modification, are sold to the government on the same terms as to commercial customers and should receive the same streamlined treatment. BSA recommends extending the COTS definition at FAR 2.101 to include these services.

FAR Part 16, Types of Contracts

BSA strongly supports the new definition of “consumption-based solution” at proposed FAR 16.001 and the express authority at proposed 16.202-2(b) to acquire consumption-based solutions on a firm-fixed-price basis. Treating usage-metered cloud pricing as firm-fixed-price reflects how enterprise software and cloud services are sold and will reduce friction with contracting officers who default to time-and-materials or level-of-effort structures for anything metered.

This provision must interact cleanly with the fixed-price preference implementing E.O. 14402 and the justification requirement for covered contracts and orders at proposed 16.104. The proposed rule is silent on two structures common to enterprise software agreements: a fixed subscription fee combined with a variable usage component, and prepaid consumption commitments drawn down over the contract term. BSA asks the FAR Council to confirm that both structures qualify as consumption-based solutions and are not treated as hybrid or other than fixed-price contracts subject to the justification requirement at 16.104.

BSA is also concerned that codifying consumption-based solutions in the FAR could lead to overly literal interpretations that do not reflect how these solutions are priced in practice. Proposed 16.202-2(b) refers to usage “metered and billed based on actual usage as fixed-price units.” A contracting officer should not read “fixed price” to require a single unit price. Industry pricing commonly combines a unit price for compute or other consumption with percentage-based charges for support, compliance enhancements, or similar services. BSA asks the FAR Council to confirm that a consumption-based solution may include multiple fixed-price unit elements, including percentage-based charges tied to consumption, without losing consumption-based treatment.

FAR Part 27, Patents, Data, and Copyrights

BSA supports the new Subpart 27.5, and in particular proposed 27.502-2, which states plainly that the Government receives only the rights specified in the license under which it obtained the commercial computer software. BSA also supports the proposed presumption at 27.402-13(c)(2) that commercial products and services were developed exclusively at private expense, which the Government may not challenge without stating specific, reasonable grounds.

BSA likewise supports proposed 27.402-1(c), which prohibits requiring offerors, as a condition of responsiveness or award, to sell or relinquish rights in computer software or technical data developed at private expense. This is an important protection of intellectual property that will help the Government grow the industrial base and adopt commercial solutions, and it should discourage requests for information that is not provided under customary commercial practice. BSA also welcomes the new definition of “covered Government support contractor” at 27.401, which will help Government personnel protect proprietary information, maintain competition, and avoid conflicts of interest.

Two gaps remain. First, proposed 27.502-1(b) governs only the Government's dealings with offerors and contractors. It does not prevent a prime contractor or higher-tier subcontractor from demanding rights beyond the license from a downstream commercial supplier. BSA recommends extending

27.502-1(b) to bar contractors and subcontractors at every tier from requiring such rights. Second, BSA asks the FAR Council to confirm that the commercial computer software definition carried into Subpart 27.5 matches the current FAR 2.101 definition and the policy in current FAR 12.212 without narrowing either.

FAR Part 44, Subcontracting Policies and Procedures

BSA supports the closed-list approach in proposed FAR 44.402(b) and 52.244-6, which limits required commercial subcontract flowdowns to the clauses identified in the table and bars requiring any clause outside it. We ask the Council to clarify that 52.244-6(b)(2) requires flowdown of a listed clause only where it applies to the commercial products or services furnished under the subcontract, not merely because it appears in the prime contract. As drafted, 44.402(b) does not prevent a prime contractor or higher-tier subcontractor from flowing unlisted clauses down to commercial suppliers. BSA recommends that the FAR state that any clause not identified in 52.244-6 is unenforceable against a commercial supplier at any tier, and that the list be limited to clauses statutorily required to be flowed down in commercial subcontracts.

BSA notes that the table at proposed FAR 52.244-6(b)(2) references “52.240-3, Security Prohibitions and Exclusions” and its Alternate I. The clause is designated 52.240-91 in the RFO Part 40 model deviation. BSA recommends that the reference in the table be conformed to 52.240-91 and its Alternate I so that commercial subcontractors can identify the clause that applies.

FAR Part 52, Solicitation Provisions and Contract Clauses

Order of precedence (52.212-4(r))

BSA reiterates the significant concern raised in our Round 1 comments regarding the order of precedence in 52.212-4. The proposed clause makes two changes that, together, would subordinate commercial license terms to the clause hierarchy.

First, the current clause specifically references “license agreements for computer software” within addenda to the contract, and the proposed clause deletes this reference. While that language may be technically subsumed within the broader reference to addenda, the specific callout has been important in practice for commercial software vendors dealing with contracting officers who are reluctant to attach commercial terms to a contract or who do not recognize that commercial terms control over conflicting FAR clauses in commercial procurements. Without it, a license risks being treated as an “other document” ranked near the bottom of the hierarchy rather than as an addendum.

Second, proposed paragraph (r)(3) would place all “other contract clauses incorporated in the solicitation or contract,” potentially including intellectual property clauses, ahead of addenda that incorporate commercial license terms. Under the current clause, only 52.212-5 takes precedence over addenda. Replacing that narrow exception with an open category would allow unnamed clauses to override negotiated commercial terms, which conflicts directly with proposed FAR 12.107(a), 27.502-1, and 27.502-2.

Consistent with our Round 1 comments, BSA recommends that the FAR Council (1) restore the specific reference to license agreements for computer software in the addenda paragraph; and (2) specify which, if any, other contract clauses take precedence over addenda under proposed paragraph (r)(3), consistent with the narrow exception in the current clause, and ensure that no intellectual property clauses are included among them. Finally, ask that the provision expressly recognized commercial software license agreements regardless of the mechanism through which they become part of the contract, while preserving the appropriate priority relative to other terms.

Renumbering of Part 52

As BSA noted in our Round 1 comments, renumbering FAR provisions and clauses from the current 52.2XX format to a new series would require contractors to update contract management systems, clause logic, templates, compliance checklists, and clause tracking tools, and would require contracting officers to maintain a working knowledge of both old and new clause references. With four Round 2 rules now pending across 17 FAR Parts, BSA recommends that renumbering be sequenced as the final step of the RFO, taking effect only after the substantive changes have been finalized and implemented, so that contractors and the acquisition workforce are not asked to absorb both at once.

To reduce the transition burden, BSA asks the FAR Council to publish an official, machine-readable crosswalk between current and new clause numbers on [acquisition.gov](https://www.acquisition.gov) before renumbering takes effect, and to provide a dual-citation period in which the current clause number appears alongside the new one in the FAR, solicitations, and contracts. Many contractors, including smaller firms, still track clauses manually; an official crosswalk would spare each contractor from building and maintaining its own.

BSA also reiterates two recommendations from our Round 1 comments. First, contractors should be able to update clause references over the life of a contract without amending every affected subcontract. Second, the final rules should replace the current FAR deviations all at once, rather than in stages where some deviations remain in effect while others are replaced at different times. Finally, some BSA members question whether the benefits of renumbering justify its costs and would prefer that it not proceed.

BSA appreciates the FAR Council's efforts to modernize federal acquisition regulations, and we welcome the opportunity to discuss any of the comments above in more detail.

Sincerely,

Jessica Salmoiraghi
Senior Director, IT Modernization & Procurement