

Federal Acquisition Regulation (FAR) Fundamentals: Demystifying the FAR

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Abstract. The purpose of this paper is to provide an introductory overview of federal government contracting. It provides the basic information on what the Federal Acquisition Regulation (FAR) is all about and allows the reader to identify differences and similarities between commercial and government contracting methods.

History. Although the FAR is the current regulation, it is derived from a long history. In the United States, this starts with the Purveyor of Public Affairs Act of 1795. The Armed Services Procurement Act of 1947 resulted in a close precursor to the FAR—the ASPR, or Armed Services Procurement Regulations in 1948. Meanwhile the civil agencies used the Federal Procurement Regulation (FPR) from 1949. Finally both military and civil agency regulations came together in the FAR on April 1, 1984, as a result of the Competition in Contracting Act (CICA) of 1984. The FAR is continually updated but the Federal Acquisition Streamlining Act (FASA) of 1996 required the most recent major changes.

In addition to the FAR, each major agency has acquisition regulations that implement and supplement, ideally without repeating, coverage in the FAR.

Statement of Guiding Principles. The FAR opens with a Statement of Guiding Principles. They are repeated here.

- (a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.
- (b) The Federal Acquisition System will
 - (1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example
 - (i) Maximizing the use of commercial products and services;
 - (ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and
 - (iii) Promoting competition;
 - (2) Minimize administrative operating costs;
 - (3) Conduct business with integrity, fairness, and openness; and
 - (4) Fulfill public policy objectives.
- (c) The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.
- (d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy, practice, policy or procedure is in the best

interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

Administration. Two councils jointly administer the FAR; the Defense Acquisition Regulations Council (DAR Council), made up of the military departments, DLA, and NASA; and the Civilian Agency Acquisition Council (CAA Council). Administratively, the General Services Administration operates the FAR Secretariat.

The FAR is issued in a variety of media. It is still published for use in a loose-leaf binder edition, but is also found on the Web. All changes are published in the *Federal Register* and the full document is in the *Code of Federal Regulations* (CFR) and on a CD-ROM. In addition, commercial contractors reproduce it and make it available under subscription programs. Internally, the FAR is arranged into subchapters, parts, subparts, sections, and subsections. A FAR citation might look like: FAR 25.108-2(a)(1)(i)(A)(1)(i)

Some of the standard FAR conventions include the concept of authority being delegable unless otherwise stated and that the contracting officer is the one responsible for actions in imperative sentences. The FAR provides for deviations from its provisions. A deviation is needed to perform any action that is inconsistent with the FAR. This might be the omission of a required solicitation provision or contract clause, use of modified or alternate language, or establishing lesser or greater dollar limitations. Such deviations may be for an individual contract action or for a class of contract actions.

In general, contracting authority is vested in the agency head who may appoint contracting officers for the agency. The FAR states “Contracts may be entered into and signed on behalf of the Government only by contracting officers.” The contracting officer has the overall responsibility for ensuring that requirements are met—“No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.” However, and even with more emphasis in recent years, “. . . contracting officers should be allowed wide latitude to exercise business judgment.”

In addition, contracting officers shall

- Ensure legal requirements are met
- Ensure that funds are available
- Ensure contractors get impartial, fair, and equitable treatment
- Request and consider the advice of specialists (audit, law, engineering, transportation, other fields)

Individuals shall be selected to be contracting officers on the basis of their experience, education, general contracting knowledge, specialized knowledge in particular types of contracting, and acquisition training courses they have completed.

The FAR covers some other administrative matters, only a few of which are unique. For contract execution, the signature must be that of a contracting officer and typically the government signs last. The contracting officer is reminded to ensure the authority of the

contractor's signer. When paper documents are used, they shall be prepared as double-sided on recycled paper, however, electronic commerce in contracting shall be used whenever practicable or cost-effective. The contracting officer shall facilitate access to the process by small businesses. Contracts are reported using the Federal Procurement Data System (FPDS), which may be accessed at www.fpdc.gov.

Standards of Conduct. The FAR provides that "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none." It also promotes the general rule of avoiding strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. Specifically, it requires that "No Government employee may solicit or accept, directly or indirectly, any gratuity gift, favor, entertainment, loan, or anything of monetary value from any one who

- (a) has or is seeking to obtain government business with the employee's agency,
- (b) conducts activities that are regulated by the employee's agency, or
- (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties."

Agency personnel shall report suspected violations of the Gratuities clause to the contracting officer or another designated official.

Offerors are required to execute a Certificate of Independent Price Determination for offers for FFP or FPEPA contracts (in most situations), which states that there has been no collusion on pricing. As part of the procurement integrity requirements, government personnel are prohibited from disclosing procurement information or obtaining procurement information before award. When agency officials are contacted by offerors regarding non-Federal employment, they are required to report the offer and reject it. Former officials are prohibited from accepting compensation from a contractor for a 1-year period.

Agencies are required to report to the Attorney General any bids or proposals appearing to violate antitrust laws. Practices that may be an indication of such violations might include collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, or sharing the business.

In addition, contingent fee arrangements based on success in obtaining a government contract may lead to attempts at improper influence, contrary to public policy. Congress has allowed exceptions for bona fide employees or agencies. A bona fide employee is a person employed by the contractor and subject to contractor's supervision and control as to time, place, and manner of performance and a bona fide agency is an established commercial or selling agency, maintained by the contractor to secure business. Contractors are also prohibited from using appropriated funds to influence contract awards or modifications.

The FAR warns about some other improper business practices. One is buying-in, submitting an offer below anticipated costs, with a view to increasing the contract amount after award or receiving follow-on contracts at artificially high prices to recover the initial losses. Subcontractor kickbacks to get favorable treatment from a prime or another subcontractor are prohibited, as are unreasonable restrictions on subcontractor sales directly to the government. Additionally, to avoid any conflict of interest, contracting officers shall not award a contract to a government employee or to a concern owned or controlled by a government employee, except

for the most compelling reason, such as when the government's needs cannot reasonably be met otherwise.

Under the whistleblower protections for contractor employees, "Government contractors shall not discharge, demote or otherwise discriminate against an employee as a reprisal for disclosing information to a Member of Congress, or an authorized official of an agency or of the Department of Justice, relating to a substantial violation of law related to contract (including the competition for or negotiation of a contract)."

Additional FAR Parts. Above, the first subchapter of the FAR has been highlighted in the discussion. A list of the contents of that section is below.

PART	TITLE
SUBCHAPTER A—GENERAL	
1	Federal Acquisition Regulations System
2	Definitions of words and terms
3	Improper business practices and personal conflicts of interest
4	Administrative matters

In addition, there are several other parts of the FAR that may be of particular interest. One is Part 5, Publicizing Contract Actions, which requires letting the public know of the government's needs. Currently this is principally done through www.fedbizopps.gov, which replaced the Commerce Business Daily. Competition requirements are found in Part 6.

PART	TITLE
SUBCHAPTER B—ACQUISITION PLANNING	
5	Publicizing contract actions
6	Competition requirements
7	Acquisition planning
8	Required sources of supplies and services
9	Contractor qualifications
10	Market research
11	Describing agency needs
12	Acquisition of commercial items

The discussion of acquisition planning is contained in Part 7 and contractor qualifications are in Part 9. Perhaps the best-known item in Part 9 is often called the Debarred List, formally the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

Parts of the FAR that have been substantially revised in recent years include Part 10, Market Research; Part 11, Describing Agency Needs; and Part 12, Acquisition of Commercial Items. The procedures for the purchase of commercial items now are streamlined by limiting the number of terms and conditions as provided for by changes in the law.

From the subchapter on contracting methods and contract types, Part 13, Simplified Acquisition Procedures, discusses the use of purchase cards and other methods of purchasing

supplies and services up to \$100,000 in value. Simplified methods can also be used for the purchase of commercial goods up to \$5 million in value.

PART	TITLE
SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES	
13	Simplified acquisition procedures
14	Sealed bidding
15	Contracting by negotiation
16	Types of contracts
17	Special contracting methods
18	[Reserved]

Because sealed bidding is much less used since 1984, Part 15, Contracting by Negotiation is the standard for large non-commercial deals.

Subchapter D contains the Parts on socioeconomic programs, one of the most applicable to a wide variety of contracts being Part 19, Small Business Programs.

PART	TITLE
SUBCHAPTER D—SOCIOECONOMIC PROGRAMS	
19	Small business programs
20	[Reserved]
21	[Reserved]
22	Application of labor laws to Government acquisitions
23	Environment, conservation, occupational safety, and drug-free workplace
24	Protection of privacy and freedom of information
25	Foreign acquisition
26	Other socioeconomic programs

Of the remaining parts of the FAR, perhaps those that most generally come into play are Part 37, Service Contracting; Part 38, Federal Supply Schedule Contracting; and Part 44, Subcontracting Policies and Procedures.

Finally, Part 52, Solicitation provisions and contract clauses, contains the full text of all the solicitation provisions and contract clauses, while Part 53, Forms, contains many of the common forms called for by the FAR. The Matrix is a table showing contract clauses by type of contract action that assists in preparing contracting documents.

PART	TITLE
SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS	
27	Patents, data, and copyrights
28	Bonds and insurance
29	Taxes
30	Cost accounting standards administration
31	Contract cost principles and procedures
32	Contract financing

33	Protests, disputes, and appeals
SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING	
34	Major system acquisition
35	Research and development contracting
36	Construction and architect-engineer contracts
37	Service contracting
38	Federal supply schedule contracting
39	Acquisition of information technology
40	[Reserved]
41	Acquisition of utility services
SUBCHAPTER G—CONTRACT MANAGEMENT	
42	Contract administration and audit services
43	Contract modifications
44	Subcontracting policies and procedures
45	Government property
46	Quality assurance
47	Transportation
48	Value engineering
49	Termination of contracts
50	Extraordinary contractual actions
51	Use of Government sources by contractors
52	Solicitation provisions and contract clauses
53	Forms
	Matrix
	FAR Index

Conclusions. The FAR provides the basic guidance for federal contracting and many of the requirements are likely quite familiar to industrial and commercial contracting professionals, sharing many common principles. The current version of the full FAR may be found at www.arnet.gov/far/.

Recent modifications to the FAR have been written to be more user-friendly by being written in plain English in an attempt to be more accessible. While most would agree that more could be done in this area, many sections are straightforward. On the other hand, the FAR implements the laws that are written for general procurement matters or added as parts of appropriations or other bills. As a result, certain parts are quite different from industrial or commercial purchasing actions. For the vast majority of procurements the FAR requirements are usually benign, but that cannot be taken for granted as always being the case.

Finally, with nearly 130,000 people in the federal acquisition career fields, about 30,000 of whom are in contracting and purchasing, implementation uniformity for the FAR is a continuing effort. (DAU)

REFERENCES

DAU, Defense Acquisition University http://www.dau.mil/pdf/ANNUAL_REPORT.pdf
 FAR, Federal Acquisition Regulation www.arnet.gov/far/
 FPDS, Federal Procurement Data System www.fpdc.gov