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SESSION GUIDE
SEASON 10, EPISODE ONE
January 11, 2023
FAR PARTS 1 & 2:
INTRODUCTION TO THE FAR

I. The Federal Acquisition Regulations System

Some government contracts professionals teasingly say that the Federal Acquisition Regulation (“FAR”) is Ronald Reagan’s longest-running April Fools’ joke! (Bet many of you did not know the FAR became effective on April 1st, 1984.) Jokes aside, the FAR is a compilation of rules that govern how agencies in the executive branch purchase supplies and services using **contracts**. It also provides guidance to contractors as to how they may market or sell supplies and services to U.S. Government customers. It does not apply to the Government’s use of “other transactions,” grants, or cooperative agreements the Government may use to purchase supplies or services. Those type of agreements are each governed by different regulations.

The FAR is published in **Chapter 1, Title 48** of the *Code of Federal Regulations* (48 CFR 1). In addition to the hard copy we provide you, you can download a searchable PDF of the current FAR at www.acquisition.gov, which also contains a searchable online FAR. You can access an electronic version of the FAR; download a free copy to your Apple iPhone by visiting the Apple App Store or to your Android smartphone from the Google Play Store. Make sure the App that you choose is provides a current version of the FAR. You can also access prior versions of the FAR at www.acquisition.gov.

A. The Guiding Principles of the FAR

The FAR and the Federal Acquisition System as a whole are based upon certain **underlying values/performance standards** of the procurement system. **Subpart 1.1** provides a broad overview of these underlying values, the purpose of the FAR, what it applies to, and how it’s organized, revised, implemented, and administered. This Subpart also contains the Guiding Principles of the FAR. We will make frequent reference to these Principles throughout this Workbook. They are the glue that holds the FAR together!

The FAR makes mention of a group called the “**Acquisition Team**.” Note that the FAR Council includes both Government personnel *and* contractor personnel in the FAR Acquisition Team. Some of you might be scratching your heads at this a little bit. The Government is the entity that’s acquiring goods and services, right? So, wouldn’t Government personnel be the only member of the Acquisition Team? Strictly speaking, that’s true. But let’s not forget the word “Team” in there! Government personnel (which includes the “end user/customer”) and contractor personnel must work together as a strong team to make the procurement process as smooth and efficient as possible. So even though contractor personnel don’t always work in the same offices as Government personnel, they must all function in harmony.

Question 1– What three organizational principles does the FAR Council suggest/emphasize be utilized by the Acquisition Team during the acquisition/contract administration process? [Hint: Check out **FAR 1.102-3**] ¹

B. How is the FAR Organized?

The FAR is divided into subchapters, parts, subparts, sections, and subsections. We will regularly refer to parts and subparts of the FAR. For example, if we say, “let’s look at *solicitation and acceptance of gratuities by Government personnel* at **part** three, **subpart** one, **section** one, **subsection** two,” this would be written out as **3.101-2**. The FAR has eight broad Subchapters which contain its 53 Parts. The Parts are sorted into the Subchapters by topic. All subchapters and parts set forth in the FAR can be found in the Table of Contents.

Exercise 1– *The Parts are Greater than the Sum of... 48 CFR 1*

In which Subchapter AND Part can you find the following topics: administrative matters, government property, service contracting, and emergency acquisitions. [Hint: Check out the **FAR Table of Contents**]

Administrative Matters	_____
Government Property	_____
Service Contracting	_____
Emergency Acquisitions	_____

C. Interpretation and Compliance

The FAR provides some tips on how to interpret its provisions and some guidance about how to manage revisions to the FAR. When reading any particular FAR provision, it is important to take into account the following “**7 Conventions**.”

- General or Special Definitions of Words, Terms, or Phrases
- Delegation of Authority
- Dollar Thresholds
- Application of FAR Changes in Solicitations and Contracts
- Citations
- Treatment of Imperative Sentences (“Shall” and other commands)
- Prescriptive language and relationship between FAR Part 1-51 and FAR Part 52

All of these conventions are found at **FAR 1.108**

¹ Answers to all Questions are contained at the end of the Session Guide

Question 2 – All seven of the above conventions are critically important when you read/interpret the language in the FAR. Remember them! **FAR 1.108** explicitly sets out six of the above seven conventions. Which one is not explicitly detailed at **FAR 1.108**?

D. Agency Supplemental Regulations/Deviations

Individual agencies have the authority to issue their own set of acquisition policies, procedures, contract clauses, solicitation provisions, and forms known as “supplemental acquisition regulations”. Except for authorized deviations, these agency-specific regulations should not be inconsistent with the FAR and should be promulgated only to the extent “necessary to implement FAR policies and procedures within an agency.” See **1.304(b)** and **1.302(a)**.

Agencies may also seek authorization to deviate from the FAR. **1.402**. Deviations are allowed on an individual contract-by-contract (**1.403**) and agency-wide (**1.404**) basis.

Question 3 – For most agencies, class deviations may be authorized by agency heads or their designees. Two organizations have slightly different rules set aside at **FAR 1.202**. Which organizations, and how are they different?

E. Authority/ Government Acquisition Team

Subpart 1.6 of the FAR discusses the various authorities of agency heads and contracting officers. In general, agency heads carry out and delegate all the authorities required to procure goods and services. They create offices within agencies to exercise acquisition functions. They also may assign contracting functions from one agency to another. However, only contracting officers can sign a contract on behalf of the government. The FAR notes that in some agencies, some high-level officials are “designated contracting officers solely by virtue of their position.”

A contracting officer is usually referred to as “CO” or “KO.” COs are selected according to criteria laid out in **1.603-2**. COs are trained to have the requisite skill to successfully carry out their responsibilities. Once selected, COs are given authority to “enter into, administer, or terminate contracts and make related determinations and findings” on contracts up to a certain threshold. **1.602-2**. This threshold is often called a “warrant.” A long list of specific responsibilities of the CO can be found at **1.602-2**. A CO has the authority to “delegate” some of his/her duties to other personnel (e.g., contract specialist or Contracting Officer Representative (“COR”)). Contract specialists are often tasked with helping COs

“administer” assigned contracts or task orders, but have little, if any, authority to contractually bind the Government. The COR “assists in the technical monitoring or administration of a contract.” **1.604**. For a list of requirements and an explanation of the COR’s responsibilities, see **1.602-2(d)(1)-(7)**.

Exercise 2 – With Specific, Authorized Powers Come Enumerated Responsibilities

Contracting officers may delegate a great deal of authority to their COR. However, the contractor officer may not delegate two different authorities to their COR. What are these authorities? [Hint: check out **1.602-2**]

Contractors always should be aware of the limits of the authority of their COs or other Government personnel involved in the acquisition process. A contractor risks financial harm when it relies on the advice or direction of a Government employee who is not authorized to bind the Government. Under limited circumstances, a contractor could obtain relief from a contract action called “**ratification**.” Ratification, however, is subject to seven factors that must exist for a contractor to obtain relief. We can find these factors in **1.602-3**.

Question 4 – FAR 1.602-3(b) mentions that unauthorized commitments that involve the submission of “formal claims” sometimes needs a separate procedure for resolution. What is this procedure, and where can it be found elsewhere in the FAR?

F. Determinations and Findings

Most contract actions require the contracting officer to specifically support her decision in writing. In some circumstances, the contracting officer may only take an action if it is supported with specific factual and legal support. The document that reflects this analysis is often and correctly referred to as a “determinations and findings” (D&F) memorandum. A D&F can be issued and apply to either an individual contract action or a “class” of contract actions. See **FAR 1.703**. You can find an example of a D&F Memorandum in your resource materials.

II. Definitions

A legally binding contract requires a “meeting of the minds” between the contracting parties. To that end, parties to a contract should always agree on the definition of important words in the contract. Lucky for us, the FAR has a series of frequently-used definitions in **2.101** to make sure that use of special words and phrases are not subject to ambiguity or misunderstanding.

FAR Definitions have recently been in the news. The FAR Council issued a final rule, effective December 6, 2021, that replaces the definition of “commercial item” with “commercial product” and “commercial service.” These separate definitions are to reduce “confusion over how to identify eligible commercial products and services.”

Exercise 3 – Fun with Definitions

Look up the definitions for the following words and answer the following phrases with True or False:

- a. “Contiguous United States” includes the District of Columbia? _____
- b. An “option” means a bilateral agreement between the Government and the contractor. _____
- c. A “purchase order” is how the government procures services: _____
- d. “Indirect cost” means any cost not directly identified with a single final cost objective: _____

Discussion Questions

1. The FAR appears in the Code of Federal Regulations under which title? (Hint: 18 U.S.C. Crimes and Criminal Procedure appears at title 18)
2. Show your FAR citation mastery by identifying which FAR Part includes acquisition regulations involving wages, compensation, and affirmative action?
3. My favorite character in Star Trek – The Next Generation is an android called “Data”. In **FAR 1.1101**, the FAR Council refers to a current statute called “*Truthful Cost or Pricing Data*.” What was the original name of that statute?
4. True or False? A contracting officer is prohibited from using his/her personal business judgement when making a procurement decision? Explain your answer. [Hint: Check out **FAR 1.102-2(c)**].
5. True or False? The definitions contained in **FAR 2.101** are the final and only definition of a term accepted in public contracting. Explain your answer. [Hint: Check out **FAR 52.202-1**]

Answer Key

Answer 1 – Teamwork, unity of purpose, and open communication

Exercise 1 –

Administrative Matters – FAR Part 4

Government Property – FAR 52.245-1

Service Contracting – FAR Part 37

Emergency Acquisitions – FAR Part 18

Answer 2 – Prescriptive language and relationship between FAR Part 1-51 and FAR Part 52.

Answer 3 – DOD: class deviations shall be controlled, processed, and approved in accordance with the Defense FAR Supplement & NASA: class deviations shall be controlled and approved by the Assistant Administrator for Procurement. Deviations shall be processed in accordance with agency regulations.

Exercise 2 –

May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office; 2) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract nor in any way direct the contractor or its subcontractors to operate in conflict with the contract terms and conditions.

Answer 4 – Unauthorized commitments that would involve claims subject to resolution under 41 U.S.C. chapter 71, Contract Disputes, should be processed in accordance with subpart 33.2, Disputes and Appeals.

Exercise 3 –

- a. “Contiguous United States” includes the District of Columbia? TRUE
- b. An “option” means a bilateral agreement between the Government and the contractor. FALSE
- c. A “purchase order” is how the government procures services: FALSE
- d. “Indirect cost” means any cost not directly identified with a single final cost objective: TRUE

Discussion Questions Answer Key

1. Title 48
2. Citation: FAR Part 22
3. Truth in Negotiations Act (“TINA”)
4. False. The Executive Branch will accept and manage contract risk associated with empowering local procurement officials to take independent actions based on their professional judgment.
5. False, there are several scenarios in FAR 52.202-1 where a definition differs from the definitions in FAR 2.101. Examples are a) if the solicitation, or amended solicitation, provides a different definition; b) the contracting parties agree to a different definition; c) the part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning.

Appendix of Resources

All of the following materials are linked and can be found via our Adobe Connect platform or online.

[Acronyms List](#)

This concise list that contains commonly used acronyms in the public procurement field.

[ACQuipedia – Articles List](#)

The Defense Acquisition University has curated an encyclopedia of government contracting terms, phrases, and resources.

[Civilian Agency Acquisition Council \(CAAC\) Letters](#)

This link contains all “class deviations” that have been passed by the CAAC between April 1990 to present.

[CRS FAR FAQ](#)

Congressional Research Service’s answers to frequently asked questions regarding the Federal Acquisition Regulation. The CRS report gives a brief summary of the FAR, the policy goals, and general information regarding acquisitions.

[Determination & Findings from a T&M Contract](#)

This is a sample of a Determination & Findings document promulgated by government agencies and/ or entities. It contains information concerning material facts or information pertaining to the issue at hand, along with a brief synopsis of the authorized official’s decision.

[Determination & Findings List](#)

The Determination & Findings List contains the questions and findings an authorized official is required to answer as a prerequisite to taking certain contract actions. The list contains examples and the relating FAR provisions for each action.

[DoD Class Deviation](#)

Memorandum from the Department of Defense for a class deviation concerning the threshold standards for obtaining certified cost or pricing data. This is an example of how Departments may deviate from FAR thresholds and regulations.

[FAR Change in Acquisition Dollar Thresholds](#)

This is a similar memorandum but from the General Services Administration concerning a class deviation to increase the micro-purchase threshold and the simplified acquisition threshold for civilian agencies.

[Federal Acquisition Regulation: Revision of Definition of “Commercial Item”](#)

This is the final rule issued in the Federal Register by the FAR Council with the amended definitions of “commercial product” and “commercial service.”

[DoD COR Guidebook](#)

The DoD issued an updated Contracting Officer Representative Guidebook in October 2022.

[FAR Part 1](#) - Federal Acquisition Regulations System

FUN WITH THE FAR
Episode 1
FAR Parts 1 & 2
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