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Season 6: Episode 1:

Foundation for FAR / DFAR

Part 201 – Federal Acquisition Regulations System

Part 202 – Definitions

Parts 252.1 and 52.1 – Structure of Provisions and Clauses

Part 203 – Improper Business Practices and Personal Conflicts of Interest

Part 204 – Administrative and Information Matters

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- Deputy Assistant General Counsel in the Procurement Law Division, Office of the General Counsel, U.S. Government Accountability Office (GAO).
- From 1988 to 2001, served as an active duty Army judge advocate, culminating with his assignment as Associate Professor, Contract and Fiscal Law Department, the Army Judge Advocate General's Legal Center and School.
- Former Chief Counsel for the Army Futures Command Task Force, which resulted in the Army's largest acquisition-related reorganization in 50 years



Co-Host – Dave Drabkin

- Currently:
 - Independent consultant
 - Chairman, Procurement Round Table
- Previously:
 - Chairman of The Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel), <https://discover.dtic.mil/section-809-panel/>
 - Commissioner, Service Acquisition Reform Act (SARA) and the Multiple Award Schedule (MAS) Panels
 - Senior Procurement Executive, General Services Administration (GSA); Deputy Program Manager, Pentagon Renovation Program;
 - Assistant Deputy Undersecretary of Defense Acquisition Reform (Acquisition Policy);
 - Staffer, Homeland Security and Government Affairs Committee (HSGAC) of the U.S. Senate;
 - Blank Holder, Defense Contract Management Agency (DCMA);
 - Corporate Director Contracts, Northrop Grumman Corporation.



Today's Topics:

- FAR System
 - US Code
 - Executive Orders
 - Code of Federal Regulation
 - FAR Part 1

- DFARS Parts, 48 CFR 2
 - Part 201 – Federal Acquisition Regulations System
 - Part 202 – Definitions
 - Parts 252.1 and 52.1 – Structure of Provisions and Clauses
 - Part 203 – Improper Business Practices and Personal Conflicts of Interest
 - Part 204 – Administrative and Information Matters

Welcome and Rules of Engagement

- Class will begin promptly at 2:00.
- Class will end promptly at 3:30.
- Please use the chat to ask your questions!

How to Receive Credits

- To get credit for the class you must collect the passwords provided during the class.
- You must enter the passwords on the PCI website survey after class!

DFUN with the DFARS Trivia Game

In the Final Episode of this series Fun Points will be awarded during the DFUN with the DFARS Trivia Game and may be redeemed for PCI prizes!

What DFUN with the DFARS Covers

- This class covers the DFARS. We do not cover the FAR, except where necessary to provide context.
- PCI's course, "Fun with the FAR", that covers the FAR in 26 separate episodes.
- If you have questions, please email:
ophelia@publiccontractinginstitute.com

Overview – Introduction

- DFARS is not a standalone system/document
 - Statutes
 - Executive Orders
 - Case Law
 - The FAR
 - Deviations
 - Agency Supplements (Services, Defense Agencies)
 - Procedures, Guidance and Information (PGI)
- For a history of DFARS changes see the Section 809 Panel Genealogy at [Section 809 Panel Genealogy \(osd.mil\)](https://www.osd.mil/Section809/PanelGenealogy)

Polling Question #1

The Procedures, Guidance and Information (PGI) is regulatory in nature, must be published for notice and comment and must be complied with by DoD Contracting Officers.

- True
- False

In the Beginning

- The Constitution does not mention government contracting –
- 1831 - US v Tingey, 30 U.S. (5 Pet.) 115
- 1884 - Anti-Deficiency Act
- 1947 - Armed Services Procurement Act
- 1949 - Federal Property and Administrative Services Act
- 1974 - OFPP Act
- 1984 - Competition in Contracting Act (CICA)
- 1994 - Federal Acquisition Streamlining Act
- 2003 - Services Acquisition Reform Act
- Annual National Defense Appropriations Act

Hierarchy

- Statutes
- Case Law
- Executive Orders
- Federal Acquisition Regulation
- Federal Acquisition Regulation Agency Supplements

Promulgation of the FAR

FAR Council

- Civilian Agency Acquisition Council
- Defense Acquisition Regulatory Council

Office of Management and Budget

- OFPP – Office of Federal Procurement Policy
- OIRA – Office of Information and Regulatory Affairs

Polling Question #2

Are statutes, caselaw or executive orders self-executing – do they take immediate effect?

- Yes
- No

1.101 Purpose

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in [1.301\(a\)\(2\)](#).

1.102 Guiding Principles for FAR

(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.

Acquisition Team

- FAR Part 1.102(d) defines the Acquisition Team
- The Acquisition Team consists of Government Representatives:
 - Technical
 - Supply
 - Procurement
 - Customers
- **The team also includes Contractors**

Acquisition Team Roles

- 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.
- ***If it is not prohibited, it's permitted!***

DFARS Numbering and Paragraphs

- The FAR Parts are numbered 1 through 53.
- The DFARS Parts are numbered 201 through 253.
- Within the DFARS Part Paragraphs and subparagraphs are added as applicable.
- We'll see how this works as we go through the DFARS.

201.101 Purpose

- Manage DoD's investments in technologies, programs, and product support necessary to achieve the national security strategy
- Current and future investments
- The Objective is
 - quality supplies and services
 - satisfy user needs
 - fair and reasonable price.

201.104 Applicability

- Includes purchases and contracts for:
 - DoD
 - Foreign Military Sales
 - North Atlantic Treaty Organization (NATO)

201.107 Certifications

- DoD can create new certifications for contractors if:
 - Imposed by statute; or
 - Approved in writing by the Secretary of Defense

201.109 Acquisition-related Dollar Thresholds

- Statutory acquisition-related dollar thresholds may be adjusted for inflation regardless of when the contract was awarded.
- See PGI 201.109 for a current matrix of thresholds

201.4 Deviations

- Class Deviations
 - Approval - DPC
- Individual Deviations
 - Approval
 - DPC
 - Service/Agency SPE see DFARS 201.404(b)
- Submit through DAR Council
- Exception – Nonstatutory provisions/clauses overseas contracting

201.602-2 COR Responsibilities

- A Contracting Officer's Representative (COR) shall be an employee, military or civilian, of the U.S. Government, a foreign government, or a North Atlantic Treaty Organization/coalition partner. [emphasis added]
- In no case shall contractor personnel serve as CORs. [emphasis added]
- Clause [252.201-7000](#) identifies anticipated appointment of COR in solicitations and contracts.

201.603 Contracting Officer Qualifications

- CO's have Warrants:
 - Identifies requirements/qualifications
 - Certificates of Appointment (Warrant)
 - Authority derives from Agency Head
 - Apparent Authority vs Actual Authority in government contracts

201.670 Appointment of property administrators and plant clearance officers

- DoD has unique requirements for property administrators and plant clearance officers
 - The appropriate agency authority shall appoint individuals or terminate (in writing)
 - In appointing qualified property administrators and plant clearance officers, the appointing authority shall consider experience, training, education, business acumen, judgment, character, and ethics.

202.1 Definitions

- Unique general definitions for DoD, see <https://www.acquisition.gov/dfars/part-202-definitions-words-and-terms>
- All unique definitions are not located at 202.1
- Check each DFARS Part (including the clauses in DFARS Part 252) applicable to your contract

Polling Question #3

These are the six “best business practices for ensuring the separation of functions for oversight, source selection, contract negotiations, and contract award?”

1. Senior leaders only perform one role in a source selection for a major system or major service acquisition
2. Fill vacant acquisition positions on an “acting” basis from below, until a permanent appointment is made
3. Conduct acquisition process review of the military departments to improve acquisition and management processes
4. Document, internally review, and periodically externally review source selection processes
5. Conduct legal review of the documentation surrounding every major system acquisition source selection prior to contract award
6. Conduct procurement management reviews to determine whether clearance threshold authorities are clear and ensure that independent review exists for acquisitions above the simplified acquisition threshold.

Are they mandatory, or just a suggestion? [Hint: check out 203.170]

203.070 Reporting of violations and suspected violations

Report violations and suspected violations of the following requirements in accordance with [209.406-3](#) or [209.407-3](#) and DoDD 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities:

- (a) Certificate of Independent Price Determination (FAR 3.103).
- (b) Procurement integrity (FAR 3.104).
- (c) Gratuities clause (FAR 3.203).
- (d) Antitrust laws (FAR 3.303).
- (e) Covenant Against Contingent Fees (FAR 3.405).
- (f) Kickbacks (FAR 3.502).
- (g) Prohibitions on persons convicted of defense-related contract felonies ([203.570](#)).

203.104 Procurement integrity

- Disclosure, protection, and marking of contractor bid or proposal information and source selection information
- Contractor has the obligation to disclose receipt of protected information from the Government
- DoD follows the notification procedures in FAR 27.404-5(a)

203.170 Business practices

- DFARS Requires separation of functions for oversight, source selection, contract negotiation, and contract award
 - Senior leaders
 - Vacant acquisition positions
- Acquisition process reviews shall be conducted to assess and improve acquisition and management processes, roles, and structures.
 - Distribution of acquisition roles and responsibilities among personnel
 - Processes for reporting concerns about unusual or inappropriate actions
 - DoD Instruction 5000.2, Operation of the Defense Acquisition System
 - Disciplines in the Defense Acquisition Guidebook.

203.171 Senior DoD officials seeking employment with defense contractors *(Revolving Door Provisions)*

- Implements Section 847 of the FY 2008 NDAA.
- Covered DoD official is defined at DFARS 252.203-7000 Requirements Relating to
- Compensation of Former DoD Officials
- Obtain written opinion from DoD Ethics Counselor
- Contractors can't employ without opinion
- Contractor subject to cancellation, rescission of contracts or S&D actions
- 252.203-7000, Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts, including FAR Part 12
- 252.203-7005, Representation Relating to Compensation of Former DoD Officials, in all solicitations & contracts, including FAR Part 12

203.570 Prohibition on persons convicted of fraud or other defense-contract-related felonies

- DoD determines period of the prohibition. The prohibition period—
 - Shall not be less than 5 years from the date of conviction
 - Waiver procedures at [PGI 203.570-2\(a\)](#)
 - May be more than 5 years from the date of conviction if the agency head or a designee makes a written determination see [PGI 203.570-2\(b\)](#).
 - Contract clause [252.203-7001](#), Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies, in all solicitations and contracts exceeding the simplified acquisition threshold, except solicitations and contracts for commercial items

203.7- Voiding and Rescinding Contracts

- Presidential Appointment with Senate Confirmation (PAS) in the Services needed to approve
- For Defense Agencies – this is the Undersecretary of Defense-Acquisition & Sustainment (USD(A&S))

203.8 – Anti-Bribery

- Limitations on the payment of funds to influence federal transactions
- Requires certification
- Report suspected violations to the address at [PGI 203.8\(a\)](#)
osd.pentagon.ousd-atl.mbx.cpic@mail.mil

203.9 - Whistleblower Protections

- This subpart applies to DoD instead of FAR subpart 3.9.
- Prohibits contractors and subcontractors from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing information that the employee reasonably believes is evidence of
 - Gross mismanagement of a DoD contract,
 - Gross waste of DoD funds,
 - An abuse of authority relating to a DoD contract,
 - a violation of law, rule, or regulation related to a DoD contract (including the competition for or negotiation of a contract),
 - or a substantial and specific danger to public health or safety.
- Includes reprisals directed by executive branch officials, unless the request takes the form of a non-discretionary directive and is within the authority of the executive branch official making the request
 - Different rules for the Intelligence community
 - Includes procedures and remedies
 - Rights may not be waived

203.10 - Contractor Code Of Business Ethics

- Leverages FAR 3.10 requirements for contractors to maintain a written Code of Business Ethics and Conduct
- CO is required to coordinate violations with DoD IG
<https://www.dodig.mil/Programs/Contractor-Disclosure-Program/>
- 252.203-7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct.
- 252.203-7004, Display of Hotline Posters, in lieu of the clause at FAR 52.203-14 for non-commercial contracts over \$6 million.

204.4 - Safeguarding Classified Information

- DoD employees/members of the Armed Forces at a contractor facility that are engaged in oversight of an acquisition program will retain control of their work products, both classified and unclassified (see PGI 204.402)
- 252.204-7000, Disclosure of Information
 - Contractors shall not disclose unclassified information without approval
 - Does not apply to information in the public domain
 - Contact involves no covered defense information
- 252.204-7003, Control of Government Personnel Work Product
 - Contractors cannot require government personnel to relinquish control of their work products

Polling Question #4

Suppose a DoD employee is assigned to a contractor facility. Who exercises control over that employee's work product? Does it matter if the work product is classified? [Hint: check out **204.402**]

- The DoD Employee
- The Contractor
- None of the above

204.470 - U.S.-International Atomic Energy Agency

- If a contractor is required to report any of its activities in accordance with the US - IAEA, the program manager will—
 - Conduct a security assessment to determine if, and by what means, access may be granted to the IAEA; or
 - Provide written justification to the component or agency treaty office for application of the national security exclusion at that location to exclude access by the IAEA, in accordance with DoD Instruction 2060.03
- Covered items
 - Any fissionable materials (e.g., uranium, plutonium, neptunium, thorium, americium);
 - Other radiological source materials; or
 - Technologies directly related to nuclear power production, including nuclear or radiological waste materials.

204.6 - Contract Reporting

- Provides guidance through PGI regarding Federal Procurement Data System (FPDS)
- Chief Acquisition Officer of each DoD component must submit annual report certifying contract action data to DPC by December 15th

204.8 - Contract Files

- In the Electronic Data Access system - "photocopy, facsimile, electronic, mechanically-applied and printed signature, seal, and date are considered to be an original signature, seal, and date."
- Detailed directions are provided to Contracting Officers for:
 - Close-out of contract files
 - Disposal of contract files
- Guidance is also provided at PGI 204.8
- Most contract systems within DoD walk you through the process

204.11 – SAM

- System for Award Management (SAM)
- PGI 204.1103 for helpful information on navigation and data entry in the database
- Very specific instructions to the CO on:
 - Awards
 - Options
 - Novations, Change-of-name agreement, or Address changes
 - Payment documents

204.12—Representations And Certifications

- In addition to FAR 52.204-8, Annual Representations and Certifications:
 - Covered Defense Telecommunications Equipment or Services
 - Disclosure of Ownership or Control by a Foreign Government
 - Wage Rates or Material Prices Controlled by a Foreign Government
 - Secondary Arab Boycott of Israel
 - Buy American—Free Trade Agreements
 - Authorization to Perform
 - Prohibition on Acquisition of Certain Foreign Commercial Satellite Services
 - Disclosure of Ownership or Control by the Government of a Country that is a State Sponsor of Terrorism
 - Representation for Demonstration Project for Contractors Employing Persons with Disabilities
 - Tax Exemptions (Italy & Spain)
 - Performance-Based Payments—Representation.
 - Representation of Extent of Transportation by Sea.

204.16—Uniform PIID

- Provides Guidance for CO on Procurement Instrument Identifiers (PIID)
- Procedures at PGI 204.1601

STRUCTURE OF REQUIRED IDENTIFIERS				
Key and Description	Format			
A - DoD Procurement Instrument Identifier (PIID)	Consists of the concatenation of the following four fields:			
	Enterprise Identifier - DODAAC of contracting office	Fiscal Year in which award is made	Procurement Instrument Type Code	Serialized Identifier
	Six alpha-numeric characters excluding I and O	Two numeric characters	One alpha character excluding I and O	Four alpha-numeric characters excluding I and O. 0000 is not an acceptable value.
B - DoD Order Number (Supplementary PIID)	Four alpha-numeric characters excluding I and O. A and P are prohibited in the first position. 0000 is not an acceptable value. <i>(NOTE: Four character supplementary PIID order numbers are only allowed to be issued through FY16. Subsequently, all orders must be in the format shown above in section A of this table. DoD activities are encouraged to transition as soon as possible in FY16 to this new method for numbering orders under DoD contracts and agreements. Transition must be completed no later than October 1, 2016.)</i>			
C - DoD Procurement Instrument Modification Identifier (Supplementary PIID)	Six alpha-numeric characters beginning with A or P, excluding I and O. P00000 and A00000 are not acceptable values.			
D - DoD Order Modification Identifier (Supplementary PIID)	Two alpha-numeric characters excluding I and O. 00 is not an acceptable value. <i>(NOTE: Two character supplementary PIID modification numbers are only allowed to be issued to DoD orders issued through FY16. Modification to DoD orders issued after the transition to the new method of numbering orders under DoD contracts and agreements must be in the form shown in section C of this table.)</i>			
E - Non DoD Procurement Instrument Number	4 to 50 Alpha-numeric characters			

204.18 - CAGE Codes

- Commercial and Government Entity Code or CAGE Code
- Procedures and guidance for COs at PGI 204.1870
- Takes you to the dock of the facility where the product is made

204.21- Prohibition on Telecom Services & Equipment

- Prohibition On Contracting For Certain Telecommunications And Video Surveillance Services Or Equipment
- Implements the prohibition against purchasing supplies or services from companies located in certain identified countries
- Covered defense telecommunications equipment or services means—
 - equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate
 - services provided by such entities or using such equipment
- Covered foreign country means—
 - The People's Republic of China; or
 - The Russian Federation.
- Companies must execute an annual representation
- Companies must report to <https://dibnet.dod.mil>

204.70 - PALT Reporting

- DoD Tracks Procurement Acquisition Lead Time (PALT)
- CO guidance is at PGI 204.7001
- Useful to understand PALT for persons in the business pursuit process

204.71-Uniform CLIN System

- Contract Line Item Number (CLIN)
- Contracts shall identify the items or services to be acquired as separate contract line items unless it is not feasible to do so.
- A CLIN is an ID code used by DoD to track the money obligated under a contract
- An ACRN is an Accounting classification reference number
- PGI 204.7103 provides comprehensive guidance to the CO for establishing contract line items

204.72– Antiterrorism Awareness Training

- Contractor personnel with physical access to federal-controlled facilities and military installations
- Level I antiterrorism awareness training
- 252.204-7004, DoD Antiterrorism Awareness Training for Contractors

204.73 - CDI and CYBER INCIDENT REPORTING

- NEW – Revised November 30, 2020
- Contractors are required to safeguard Covered Defense Information (aka Controlled Unclassified Information (CUI) in the FAR)
 - Provided to the contractor
 - Generated by them contractor for the government
- Self-Assessment Based on National Institute of Standards and Technology (NIST) SP 800-171
 - Over 100 items on the checklist
 - High assessments done by DCMA DIBCAC
- Cyber Incident Reporting
 - Within 72 hours of discovery
 - Report directly to DoD at <http://dibnet.dod.mil>
- Procedures detailed at PGI 204.7303.

204.75 - CMMC

- This coverage implements an Interim Rule effective 30 Nov 20. Modifications are expected when the final rule is published.
- Cybersecurity Maturity Model Certification (CMMC)
 - A framework that measures a contractor's cybersecurity maturity
 - Limited roll-out today . . . by 2025 – All DoD suppliers must be CMMC certified
 - CMMC establishes 5 levels
 - Program Managers are responsible for determining the Level required for procurements of their program
 - Prime contractors are responsible for determining levels for subcontractors
 - Contractors must obtain certifications from third-party assessors
- The clause at [252.204-7021](#), Cybersecurity Maturity Model Certification Requirements, may only be included in solicitations, etc, requiring CMMC until 30 Sep 25 and all solicitations, etc., thereafter.

See you on 1 Feb Same Time Same Teams Link!

THANKS!!!!!!